

2016 -- S 2575

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LC004783
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

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A N A C T

RELATING TO TOWNS AND CITIES -- RHODE ISLAND DEVELOPMENT IMPACT FEE
ACT

Introduced By: Senators McCaffrey, and Lombardi

Date Introduced: February 25, 2016

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 45-22.4-4, 45-22.4-5 and 45-22.4-6 of the General Laws in
2 Chapter 45-22.4 entitled "Rhode Island Development Impact Fee Act" are hereby amended to
3 read as follows:

4 **45-22.4-4. Calculation of impact fees.** -- (a) The governmental entity considering the
5 adoption of impact fees shall conduct a needs assessment for the type of public facility or public
6 facilities for which impact fees are to be levied. The needs assessment shall identify levels of
7 service standards, projected public facilities capital improvements needs, and distinguish existing
8 needs and deficiencies from future needs. The findings of this document shall be adopted by the
9 local governmental entity. [In order for a municipality to continue assessing and collecting impact](#)
10 [fees, a needs assessment shall be conducted every five \(5\) years.](#)

11 (b) The data sources and methodology upon which needs assessments and impact fees
12 are based shall be made available to the public upon request.

13 (c) The amount of each impact fee imposed shall be based upon actual cost of public
14 facility expansion or improvements, or reasonable estimates of the cost, to be incurred by the
15 governmental entity as a result of new development, [as set forth in the needs assessment.](#) The
16 calculation of each impact fee shall be in accordance with generally accepted accounting
17 principles.

18 (d) An impact fee shall meet the following requirements:

1 (1) The amount of the fee must be reasonably related to or reasonably attributable to the
2 development's share of the cost of infrastructure improvements made necessary by the
3 development; and

4 (2) The impact fees imposed must not exceed a proportionate share of the costs incurred
5 or to be incurred by the governmental entity in accommodating the development. The following
6 factors shall be considered in determining a proportionate share of public facilities capital
7 improvement costs:

8 (i) The need for public facilities' capital improvements required to serve new
9 development, based on a capital improvements program that shows deficiencies in capital
10 facilities serving existing development, and the means, other than impact fees, by which any
11 existing deficiencies will be eliminated within a reasonable period of time, and that shows
12 additional demands anticipated to be placed on specified capital facilities by new development;

13 ~~and~~

14 (ii) The extent to which new development is required to contribute to the cost of system
15 improvements in the future; ~~and~~

16 (iii) No impact fee portion attributable to schools and school facilities shall be assessed,
17 imposed or collected when a city or town has declining school enrollment since the last needs
18 assessment was performed in accordance with §45-22.4-4(a), or when that municipality has
19 excess student capacity.

20 **45-22.4-5. Collection and expenditure of impact fees.** --

(a) The collection and
21 expenditure of impact fees must be reasonably related to the benefits accruing to the development
22 paying the fees. The ordinance ~~may~~ shall consider the following requirements:

23 (1) Upon collection, impact fees must be deposited in a special proprietary fund, which
24 shall be invested with all interest accruing to the trust fund;

25 (2) Within eight (8) years of the date of collection, impact fees shall be expended or
26 encumbered for the construction of public facilities' capital improvements of reasonable benefit to
27 the development paying the fees and that are consistent with the capital improvement program;

28 (3) Where the expenditure or encumbrance of fees is not feasible within eight (8) years,
29 the governmental entity may retain impact fees for a longer period of time if there are compelling
30 reasons for the longer period. The governing body shall identify, in writing, the compelling
31 reasons for retaining impact fees for a longer period of time over eight (8) years. In no case shall
32 impact fees be retained longer than ~~twelve (12)~~ ten (10) years.

33 (b) All impact fees imposed pursuant to the authority granted in this chapter shall be
34 assessed upon the issuance of a building permit or other appropriate permission to proceed with

1 development and shall be collected ~~in full~~ upon the issuance of the certificate of occupancy or
2 other final action authorizing the intended use of a structure. No impact fees shall be collected for
3 development property as defined in §45-5-12(a)(6), until such time as the subject property no
4 longer qualifies as development property.

5 (c) A governmental entity may recoup costs of excess capacity in existing capital
6 facilities, where the excess capacity has been provided in anticipation of the needs of new
7 development, by requiring impact fees for that portion of the facilities constructed for future
8 users. The need to recoup costs for excess capacity must have been documented by a
9 preconstruction assessment that demonstrated the need for the excess capacity. Nothing contained
10 in this chapter shall prevent a municipality from continuing to assess an impact fee that recoups
11 costs for excess capacity in an existing facility without the preconstruction assessment so long as
12 the impact fee was enacted at least ninety (90) days prior to July 22, 2000 and is in compliance
13 with this chapter in all other respects pursuant to § 45-22.4-7. The fees imposed to recoup the
14 costs to provide the excess capacity must be based on the governmental entity's actual cost of
15 acquiring, constructing, or upgrading the facility and must be no more than a proportionate share
16 of the costs to provide the excess capacity. That portion of an impact fee deemed recoupment is
17 exempted from provisions of § 45-22.4-5(a)(2).

18 (d) Governmental entities may accept the dedication of land or the construction of public
19 facilities in lieu of payment of impact fees provided that:

20 (1) The need for the dedication or construction is clearly documented in the community's
21 capital improvement program or comprehensive plan;

22 (2) The land proposed for dedication for the facilities to be constructed are determined to
23 be appropriate for the proposed use by the local governmental entity;

24 (3) Formulas and/or procedures for determining the worth of proposed dedications or
25 constructions are established.

26 (e) Exemptions: Impact fees shall not be imposed for remodeling, rehabilitation, or other
27 improvements to an existing structure, or rebuilding a damaged structure, unless there is an
28 increase in the number of dwelling units or any other measurable unit for which an impact fee is
29 collected. Impact fees may be imposed when property which is owned or controlled by federal or
30 state government is converted to private ownership or control.

31 (1) Impact fees shall not be imposed for remodeling, rehabilitation, or other
32 improvements to an existing structure, or rebuilding a damaged structure, unless there is an
33 increase in the number of dwelling units or any other measurable unit for which an impact fee is
34 collected. Impact fees may be imposed when property which is owned or controlled by federal or

1 state government is converted to private ownership or control- ;

2 (2) Impact fees shall not be imposed for low and moderate income housing units;

3 (3) That portion of impact fees attributable to schools and school facilities shall not be
4 imposed on age-restricted units;

5 (4) To the extent that a portion of the impact fee is not attributable to a new development,
6 that portion shall be waived; and

7 (5) Nothing in this chapter shall prevent a municipality from granting any exemption(s)
8 which it deems appropriate.

9 **45-22.4-6. Refund of impact fees. --** (a) If impact fees are not expended or encumbered
10 within the period established in § 45-22.4-5, the governmental entity shall refund to the fee payer
11 or his or her successors the amount of the fee paid and accrued interest. The governmental entity
12 shall send the refund to the fee payer at the last known address by certified mail within one year
13 of the date on which the right to claim refund arises. Should the mailing of the fee be returned,
14 the municipality shall make every effort to obtain a new address for the fee payer, including a
15 search of the public records, secretary of state's database, and the database for the contractors'
16 registration board. All refunds due and not claimed within one year shall be ~~retained by the~~
17 ~~municipality~~ forwarded to the state treasurer's office for inclusion in the unclaimed property fund.

18 (b) When a governmental entity seeks to terminate any or all impact fee requirements, all
19 unexpended or unencumbered funds shall be refunded as provided above. Upon the finding that
20 any or all fee requirements are to be terminated, the governmental entity shall place a notice of
21 termination and availability of refunds in a newspaper of general circulation in the community at
22 least two (2) times. All funds available for refund shall be retained for a period of one year. ~~At the~~
23 ~~end of one year, any remaining funds may be transferred to the general fund and used for any~~
24 ~~public purpose. A governmental entity is released from this notice requirement if there are no~~
25 ~~unexpended or unencumbered balances within a fund or funds being terminated.~~ All refunds not
26 claimed within one year shall be forwarded to the state treasurer's office for inclusion in the
27 unclaimed property fund.

28 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO TOWNS AND CITIES -- RHODE ISLAND DEVELOPMENT IMPACT FEE
ACT

1 This act would amend provisions of the Rhode Island Development Impact Fee Act
2 regarding the need and basis for impact fees, the need for impact fees for new schools, the need
3 for impact fees for low, moderate and age restricted housing, and how municipalities manage
4 impact fee accounts.

5 This act would take effect upon passage.

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