

2017 -- S 0333

LC001575

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

A N A C T

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

Introduced By: Senators Crowley, Metts, Quezada, and McCaffrey

Date Introduced: February 16, 2017

Referred To: Senate Housing & Municipal Government

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.**

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

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

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

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

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

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

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

15 (ii) The extent to which new development is required to contribute to the cost of system  
16 improvements in the future.

17 **45-22.4-5. Collection and expenditure of impact fees.**

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

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

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

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

31 (b) All impact fees imposed pursuant to the authority granted in this chapter shall be  
32 assessed upon the issuance of a building permit or other appropriate permission to proceed with  
33 development and shall be collected ~~in full~~ only upon the issuance of the certificate of occupancy  
34 or other final action authorizing the intended use of a structure.

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

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

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

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

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

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

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28 improvements to an existing structure, or rebuilding a damaged structure, unless there is an  
29 increase in the number of dwelling units or any other measurable unit for which an impact fee is  
30 collected. Impact fees may be imposed when property which is owned or controlled by federal or  
31 state government is converted to private ownership or control.

32 (2) Nothing in this chapter shall prevent a municipality from granting any exemption(s)  
33 which it deems appropriate.

34 **45-22.4-6. Refund of impact fees.**

1 (a) If impact fees are not expended or encumbered within the period established in § 45-  
2 22.4-5, the governmental entity shall refund to the fee payer or his or her successors the amount  
3 of the fee paid and accrued interest. The governmental entity shall send the refund to the fee  
4 payer at the last known address by certified mail within one year of the date on which the right to  
5 claim refund arises. Should the mailing of the fee be returned, the municipality shall make every  
6 effort to obtain a new address for the fee payer, including a search of the public records, the  
7 secretary of state's database, and the database for the contractors' registration and licensing board.  
8 All refunds due and not claimed within one year shall be ~~retained by the municipality~~ forwarded  
9 to the state treasurer's office for inclusion in the unclaimed property fund.

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

20 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

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1           This act would require municipalities to revisit its needs for the basis of imposing impact  
2 fees every five (5) years, reduce the time a municipality can retain unspent impact fees from  
3 twelve (12) to ten (10) years, provide that impact fees would only be collected at the time of  
4 issuance of a certificate of occupancy or other final authorizing action, and provide that all  
5 refunds due and not claimed within one year shall be forwarded to the state treasurer's unclaimed  
6 property fund.

7           This act would take effect upon passage.

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