



Legislative Briefs

from the Legislative Reference Bureau



Legislative Brief 06-16

June 2006

NEW RESTRICTIONS ON IMPACT FEES

Two laws passed in the 2005-06 session of the Wisconsin Legislature place new restrictions on local governments' use of impact fees. These fees offset the costs of expanded public services and infrastructure often needed in response to new real estate development.

2005 Wisconsin Act 203, passed by the legislature and signed by Governor Jim Doyle on March 27, 2006, changes the time by which unused impact fees must be refunded.

2005 Wisconsin Act 477, passed by the legislature and signed by Governor Jim Doyle on May 30, 2006, removes the ability of counties to establish impact fees and restricts the scope of impact fees that municipalities may establish.

BACKGROUND

New residential and commercial development creates additional demand for a variety of public facilities and services. Impact fees assessed on developers have been used as a way of allocating a portion of the costs of these new expenses to the new development rather than funding the improvements solely through increased property taxes.

Wisconsin's statute on impact fees was enacted by 1993 Wisconsin Act 305, which created Section 66.55, Wisconsin Statutes (subsequently renumbered to Section 66.0617 in 1999 Wisconsin Act 150).

The law allowed cities, villages, towns, and counties to assess impact fees on developers to offset the capital costs for public facilities needed as a result of the new

development, including roads and other transportation facilities; water, sewage, and stormwater infrastructure; parks and recreational facilities; solid waste and recycling facilities; fire protection, emergency medical, and law enforcement facilities; and libraries. (For the purpose of the impact fee law, schools are not included in the definition of public facilities.)

A 1997 change in the law prohibited counties from assessing impact fees to recover costs related to transportation projects.

PROS AND CONS

Proponents of impact fees argue that the cost of the added demand for public facilities and services should be paid, at least in part, by the new development that is responsible for the impact rather than by existing property taxpayers. The "pay as you go" approach of impact fees, they argue, is fairer, more predictable, and encourages planning for growth in a community.

Opponents argue that impact fees could deter development, as developers and other businesses may choose not to locate in a community with impact fees. They add that impact fees can increase the cost of new homes and argue that it is unfair to force newcomers to pay new costs that could be spread among all property taxpayers.

2005-06 LEGISLATION

2005 Wisconsin Act 203, introduced as 2005 Assembly Bill 1077 by Representatives Lamb and Kleefisch, addresses the time period during which impact fees must be used to pay

Reference Desk: (608) 266-0341
Web Site: www.legis.state.wi.us/lrb

the capital costs of the public facility for which the fee was assessed.

Prior law required that impact fees assessed and collected be either spent or refunded to the current property owner within a “reasonable period of time.” Local governments were responsible for specifying those time periods in their impact fee ordinances, accounting for appropriate planning and financing periods for the various types of facilities.

Act 203 generally limits those “reasonable time periods” to a maximum of seven years. It provides for a possible extension of three additional years to use the impact fees collected if the local government adopts a resolution specifying extenuating circumstances or a hardship in meeting the seven-year limit.

2005 Wisconsin Act 477, by redefining the eligible entities from “political subdivision” to “municipality,” effectively removes counties from the types of local governments that may employ impact fees to offset the costs of new public facilities. It was introduced as 2005 Senate Bill 681 by Senators Stepp and Grothman. Prior law already excluded counties from using impact fees for transportation facilities.

The scope of eligible recreational facilities for which impact fees may be collected is narrowed by Act 477 from “parks, playgrounds, and other recreational facilities” under prior law, to “parks, playgrounds, and land for athletic fields” in the new law.

It also excludes vehicles (e.g., fire trucks) from the definition of eligible capital costs.

Under the new law, municipalities must report revenue and expenditure totals for each impact fee as part of the annual budget summary.

Prior law required that municipalities deposit impact fees in a segregated interest-bearing account, accounted for separately from other municipal funds. Act 477 requires that revenues from *each* impact fee be placed in a separate account.

Previously, impact fees were payable by the developer before issuance of a building permit or other required approval. Under Act 477, impact fees are payable by the developer *or the property owner* within 14 days of the issuance of a building or occupancy permit.

Act 477 prohibits local governments from imposing fees or charges as a condition of plat approvals for a development. The law also stipulates that the required public improvements must “bear a rational relationship to a need” resulting from the development.

EFFECTIVE DATES

2005 Wisconsin Act 203 took effect April 11, 2006. 2005 Wisconsin Act 477 took effect June 14, 2006.

FOR FURTHER INFORMATION

View a copy of 2005 Wisconsin Acts 203 and 477 at www.legis.state.wi.us.