

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990

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# ENROLLED

Com. Sub. for  
HOUSE BILL No. 4189

(By ~~the~~ Delegates Murphy & Manuel )

— ● —

Passed ..... March 10, ..... 1990

In Effect ..... July 1, 1990 ..... ~~Page~~

**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
**H. B. 4187**  
(By DELEGATES MURPHY AND MANUEL)

[Passed March 10, 1990; in effect July 1, 1990.]

AN ACT to amend chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty, relating to the local powers act; purpose and findings; definitions; authorizing counties to collect fees; credits and offsets accruing for benefit of development; implementation criteria and requirements; establishment of new levies and fees; use and administration of impact fees; refunds of impact fees; and impact fees being required to be consistent with development regulations.

*Be it enacted by the Legislature of West Virginia:*

That chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article twenty, to read as follows:

**ARTICLE 7. FEES AND EXPENDITURES FOR COUNTY  
DEVELOPMENT.**

**§7-20-1. Short title.**

1        This article shall be known as the "Local Powers Act."

**§7-20-2. Purpose and findings.**

1 (a) It is the purpose of this article to provide for the  
2 fair distribution of costs for county development by  
3 authorizing the assessment and collection of fees to  
4 offset the cost of commercial and residential develop-  
5 ment within affected counties.

6 (b) The Legislature hereby makes the following  
7 findings:

8 (1) The residents, taxpayers and users of county  
9 facilities and services, in affected counties, have  
10 contributed significant funds in the form of taxes and  
11 user charges toward the cost of existing county facilities  
12 and services, which represent a substantial and incal-  
13 culable investment;

14 (2) Affected counties in West Virginia are experienc-  
15 ing an increased demand for development which is  
16 causing strain on tax revenues and user charges at  
17 existing levels and impairing the ability of taxpayers,  
18 residents and users to bear the cost of increased demand  
19 for county facilities and services. In some instances,  
20 county borrowing has been required to meet the  
21 demand;

22 (3) Equitable considerations require that future  
23 residents and users of existing county facilities and  
24 services contribute toward the investment already made  
25 in those facilities and services;

26 (4) Sound fiscal policy in the efficient administration  
27 of county government requires that the imposition of  
28 taxes and user charges be commensurate to the actual  
29 yearly cost of county facilities and services;

30 (5) Accumulations of large financial reserves for  
31 future capital expenditures unjustly exact unneeded  
32 current funds from taxpayers and users; and

33 (6) County borrowing unnecessarily increases the cost  
34 of government by the amount of debt service and should  
35 be avoided unless considered absolutely necessary to  
36 meet an existing public need.

**§7-20-3. Definitions.**

1 (a) "Capital improvements" means the following

2 public facilities or assets that are owned, supported or  
3 established by county government:

- 4 (1) Water treatment and distribution facilities;
- 5 (2) Wastewater treatment and disposal facilities;
- 6 (3) Sanitary sewers;
- 7 (4) Storm water, drainage, and flood control facilities;
- 8 (5) Public primary and secondary school facilities;
- 9 (6) Public road systems and rights of way;
- 10 (7) Parks and recreational facilities; and
- 11 (8) Police, emergency medical, rescue, and fire  
12 protection facilities.

13 "Capital improvements" as defined herein is limited  
14 to those improvements that are treated as capitalized  
15 expenses according to generally accepted governmental  
16 accounting principles and that have an expected useful  
17 life of no less than three years. "Capital improvement"  
18 does not include costs associated with the operation,  
19 repair, maintenance, or full replacement of capital  
20 improvements. "Capital improvement" does include  
21 reasonable costs for planning, design, engineering, land  
22 acquisition, and other costs directly associated with the  
23 capital improvements described herein.

24 (b) "County services" means the following: (1) Services  
25 provided by administration and administrative person-  
26 nel, law enforcement and its support personnel; (2)  
27 street light service; (3) fire-fighting service; (4) ambu-  
28 lance service; (5) fire hydrant service; (6) roadway  
29 maintenance and other services provided by roadway  
30 maintenance personnel; (7) public utility systems and  
31 services provided by public utility systems personnel,  
32 water; and (8) all other direct and indirect county  
33 services authorized by this code.

34 (c) "Direct county services" means those public  
35 services authorized and provided by various county  
36 agencies or departments.

37 (d) "Indirect county services" means those public

38 services authorized and provided by commissioned  
39 agents, agencies or departments of the county.

40 (e) "Growth county" means any county within the  
41 state with an averaged population growth rate in excess  
42 of one percent per year as determined from the most  
43 recent decennial census counts and forecasted, within  
44 decennial census count years, by official records of  
45 government or generally approved standard statistical  
46 estimate procedures: *Provided*, That once "growth  
47 county" status is achieved it is permanent in nature and  
48 the powers derived hereby are continued.

49 (f) "User" means any member of the public who uses  
50 or may have occasion to use county facilities and services  
51 as defined herein.

52 (g) "Impact fees" means any charge, fee, or assess-  
53 ment levied as a condition of the following: (1) Issuance  
54 of a subdivision or site plan approval; (2) issuance of a  
55 building permit; and (3) approval of a certificate of  
56 occupancy, or other development or construction appro-  
57 val when any portion of the revenues collected is  
58 intended to fund any portion of the costs of capital  
59 improvements for any public facilities or county services  
60 not otherwise permitted by law. An impact fee does not  
61 include charges for remodeling, rehabilitation, or other  
62 improvements to an existing structure or rebuilding a  
63 damaged structure, provided there is no increase in  
64 gross floor area or in the number of dwelling units that  
65 result therefrom.

66 (h) "Proportionate share" means the cost of capital  
67 improvements that are reasonably attributed to new  
68 development less any credits or offsets for construction  
69 or dedication of land or capital improvements, past or  
70 future payments made or reasonably anticipated to be  
71 made by new development in the form of user fees, debt  
72 service payments, taxes or other payments toward  
73 capital improvement costs.

74 (i) "Reasonable benefit" means a benefit received  
75 from the provision of a capital improvement greater  
76 than that received by the general public located within  
77 the county wherein an impact fee is being imposed.

78 (j) "Plan" means a county, comprehensive, general,  
79 master or other land use plan as described herein.

80 (k) "Program" means the capital improvements  
81 program described herein.

82 (l) "Unincorporated area" and "total unincorporated  
83 area" means all lands and resident estates of a county  
84 that are not included within the corporate, annexed  
85 areas or legal service areas of an incorporated or  
86 chartered municipality, city, town or village located in  
87 the state of West Virginia.

**§7-20-4. Counties authorized to collect fees.**

1 County governments affected by the construction of  
2 new development projects are hereby authorized to  
3 require the payment of fees for any new development  
4 projects constructed therein in the event any costs  
5 associated with capital improvements or the provision of  
6 other services are attributable to such project. Such fees  
7 shall not exceed a proportionate share of such costs  
8 required to accommodate any such new development.  
9 Before requiring payment of any fee authorized he-  
10 reunder, it must be evident that some reasonable benefit  
11 from any such capital improvements will be realized by  
12 any such development project.

**§7-20-5. Credits or offsets to be adjusted; incidental  
benefit by one development not construed as  
denying reasonable benefit to new  
development.**

1 Credits or offsets for past or future payments toward  
2 capital improvement costs shall be adjusted for time-  
3 price differentials inherent in fair comparisons of  
4 monetary amounts paid or received at different times.

5 The receipt of an incidental benefit by any develop-  
6 ment shall not be construed as denying a reasonable  
7 benefit to any other new development.

**§7-20-6. Criteria and requirements necessary to imple-  
ment collection of fees.**

1 (a) As a prerequisite to authorizing counties to levy  
2 impact fees related to population growth and public

3 service needs, counties shall meet the following  
4 requirements:

5 (1) A demonstration that population growth rate  
6 history as determined from the most recent base  
7 decennial census counts of a county, utilizing generally  
8 approved standard statistical estimate procedures, in  
9 excess of one percent annually averaged over a five-year  
10 period since the last decennial census count; or a  
11 demonstration that a total population growth rate  
12 projection of one percent per annum for an ensuing five-  
13 year period, based on standard statistical estimate  
14 procedures, from the current official population esti-  
15 mate of the county;

16 (2) Adopting a county-wide comprehensive plan;

17 (3) Reviewing and updating any comprehensive plan  
18 at no less than five-year intervals;

19 (4) Drafting and adopting a comprehensive zoning  
20 ordinance;

21 (5) Drafting and adopting a subdivision control  
22 ordinance;

23 (6) Keeping in place a formal building permit and  
24 review system, which provides a process to regulate the  
25 authorization of applications relating to construction or  
26 structural modification and which further provides for  
27 the systematic and ongoing inspection of existing  
28 structures. The county shall adopt, pursuant to section  
29 three-n, article one of this chapter, the state building  
30 code into any such building permit and review system;  
31 and

32 (7) Providing an improvement program which shall  
33 include:

34 (A) Developing and maintaining a list within the  
35 county of particular sites with development potential;

36 (B) Developing and maintaining standards of service  
37 for capital improvements which are fully or partially  
38 funded with revenues collected from impact fees; and

39 (C) Lists of proposed capital improvements from all

40 areas, containing descriptions of any such proposed  
41 capital improvements, cost estimates, projected time  
42 frames for constructing such improvements and pro-  
43 posed or anticipated funding sources.

44 (b) Capital improvement programs may include  
45 provisions to provide for the expenditure of impact fees  
46 for any legitimate county purpose. This may include the  
47 expenditure of fees for partial funding of any particular  
48 capital improvement where other funding exists from  
49 any source other than the county, or exists in combina-  
50 tion with other funds available to the county: *Provided*,  
51 That for such expenditures to be considered legitimate  
52 no county or other local authority may deny or withhold  
53 any reasonable benefit that may be derived therefrom  
54 from any development project for which such impact fee  
55 or fees have been paid.

56 (c) Capital improvement programs for public elemen-  
57 tary and secondary school facilities may include  
58 provisions to spend impact fees based on a computation  
59 related to the following: (1) The existing local tax base;  
60 and (2) the adjusted value of accumulated infrastruc-  
61 ture investment, based on net depreciation, and any  
62 remaining debt owed thereon. Any such computation  
63 must establish the value of any equity shares in the net  
64 worth of an impacted school system facility, regardless  
65 of the existence of any need to expand such facility.  
66 Impact fee revenues may only be used for capital  
67 replacement or expansion.

68 (d) Additional development areas may be added to  
69 any plan or capital improvements program provided for  
70 hereunder if a county government so desires. The  
71 standards governing the construction or structural  
72 modification for any such additional area shall not  
73 deviate from those adopted and maintained at the time  
74 such addition is made.

75 (e) The county may modify annually any capital  
76 improvements plan in addition to any impact fee rates  
77 based thereon, pursuant to the following:

78 (1) The number and extent of development projects  
79 begun in the past year;



- 80       (2) The number and extent of public facilities existing  
81       or under construction;
- 82       (3) The changing needs of the general population;
- 83       (4) The availability of any other funding sources; and
- 84       (5) Any other relevant and significant factor applica-  
85       ble to a legitimate goal or goals of any such capital  
86       improvement plan.

**§7-20-7. Establishment of impact fees; levies may be used  
to fund existing capital improvements.**

- 1       (a) Impact fees assessed against a development  
2       project to fund capital improvements and public  
3       services may not exceed the actual proportionate share  
4       of any benefit realized by such project relative to the  
5       benefit to the resident taxpayers.

6       Notwithstanding any other provision of this code to  
7       the contrary, those counties that meet the requirements  
8       of section six of this article are hereby authorized to  
9       assess, levy, collect and administer any tax or fee as has  
10      been or may be specifically authorized by the Legisla-  
11      ture by general law to the municipalities of this state:  
12      *Provided*, That any assessment, levy or collection shall  
13      be delayed sixty days from its regular effective date:  
14      *Provided, however*, That in the event fifteen percent of  
15      the qualified voters of the county by petition duly signed  
16      by them in their own handwriting and filed with the  
17      county commission within forty-five days after any  
18      impact fee or levy, is imposed by the county commission,  
19      pursuant to this article, the fee or levy protested may  
20      not become effective until it is ratified by a majority of  
21      the legal votes cast thereon by the qualified voters of  
22      such county at any primary, general or special election  
23      as the county commission directs. Voting thereon may  
24      not take place until after notice of the subcommission  
25      of the fee a levy on the ballot has been given by  
26      publication of Class II legal advertisement and publica-  
27      tion area shall be the county where such fee or levy is  
28      imposed: *Provided, further*, That counties may not  
29      “double tax” by applying a given tax within any  
30      corporate boundary in which that municipality has

31 implemented such tax. Any such taxes or fees collected  
32 under this law may be used to fund a proportionate  
33 share of the cost of existing capital improvements and  
34 public services where it is shown that all or a portion  
35 of existing capital improvements and public services  
36 were provided in anticipation of the needs of new  
37 development.

38 (b) In determining a proportionate share of capital  
39 improvements and public services costs, the following  
40 factors shall be considered:

41 (1) The need for new capital improvements and public  
42 services to serve new development based on an existing  
43 capital improvements plan that shows (A) any current  
44 deficiencies in existing capital improvements and  
45 services that serve existing development and the means  
46 by which any such deficiencies may be eliminated  
47 within a reasonable period of time by means other than  
48 impact fees or additional levies; and (B) any additional  
49 demands reasonably anticipated as the result of capital  
50 improvements and public services created by new  
51 development;

52 (2) The availability of other sources of revenue to fund  
53 capital improvements and public services including,  
54 user charges, existing taxes, intergovernmental  
55 transfers, in addition to any special tax or assessment  
56 alternatives that may exist;

57 (3) The cost of existing capital improvements and  
58 public services;

59 (4) The method by which the existing capital improve-  
60 ments and public services are financed;

61 (5) The extent to which any new development, re-  
62 quired to pay impact fees, has contributed to the cost  
63 of existing capital improvements and public services in  
64 order to determine if any credit or offset may be due  
65 such development as a result thereof;

66 (6) The extent to which any new development, re-  
67 quired to pay impact fees, is reasonably projected to  
68 contribute to the cost of the existing capital improve-  
69 ments and public services in the future through user

70 fees, debt service payments, or other necessary pay-  
71 ments related to funding the cost of existing capital  
72 improvements and public services;

73 (7) The extent to which any new development is  
74 required, as a condition of approval, to construct and  
75 dedicate capital improvements and public services  
76 which may give rise to the future accrual of any credit  
77 or offsetting contribution; and

78 (8) The time-price differentials inherent in reasonably  
79 determining amounts paid and benefits received at  
80 various times that may give rise to the accrual of credits  
81 or offsets due new development as a result of past  
82 payments.

83 (c) Each county shall assess impact fees pursuant to  
84 a standard formula so as to ensure fair and similar  
85 treatment to all affected persons or projects. A county  
86 commission may provide partial or total funding from  
87 general or other nonimpact fee funding sources for  
88 capital improvements and public services directly  
89 related to new development, when such development  
90 benefits some public purpose, such as providing affor-  
91 dable housing and creating or retaining employment in  
92 the community.

**§7-20-8. Use and administration of impact fees.**

1 (a) Revenues collected from the payment of impact  
2 fees shall be restricted to funding new and additional  
3 capital improvements or expanded or extended public  
4 services which benefit the particular developments from  
5 which they were paid. Except as provided herein, to  
6 ensure that developments for which impact fees have  
7 been paid receive reasonable benefits relative to such  
8 payments, the use of such funds shall be restricted to  
9 areas wherein development projects are located. County  
10 commissions shall have discretion in determining  
11 geographical configurations related to the expenditure  
12 of impact fee collections.

13 (b) Impact fees may only be spent on those projects  
14 specified in the capital improvement plan described in  
15 this article.

16 (c) When impact fees are collected, the county com-  
 17 mission shall enter into agreements with any affected  
 18 party providing new development in order to ensure  
 19 compliance with the provisions of this article.

20 (d) Impact fee receipts shall be specifically ear-  
 21 marked and retained in a special account. All receipts  
 22 shall be placed in interest-bearing accounts wherein the  
 23 interest gained thereon shall accrue. All accumulated  
 24 interest shall be published at least once each fiscal  
 25 period. The county commission shall provide an annual  
 26 accounting for each account containing impact fee  
 27 receipts showing the particular source and amount of all  
 28 such receipts collected, earned, or received, and the  
 29 capital improvements and public services that were  
 30 funded, in whole or in part, thereby.

31 (e) Impact fees shall be expended only in compliance  
 32 with the plan. Impact fee receipts shall be expended  
 33 within six years of receipt thereof unless extraordinary  
 34 and compelling reasons exist to retain them beyond this  
 35 period. Such extraordinary or compelling reasons shall  
 36 be identified and published by the county commission  
 37 in a local newspaper of general circulation for at least  
 38 two consecutive weeks.

**§7-20-9. Refund of unexpended impact fees.**

1 (a) The owner or purchaser of property for which  
 2 impact fees have been paid may apply for a refund of  
 3 any such paid fees. Such refund shall be made when a  
 4 county commission fails to expend such funds within six  
 5 years from the date such fees were originally collected.  
 6 The county commission shall notify potential claimants  
 7 by first class mail deposited in the United States mail  
 8 and directed to the last known address of any such  
 9 claimant. Only the owner or purchaser may apply for  
 10 such refund. Application for any refund must be  
 11 submitted to the county commission within one year of  
 12 the date the right to claim the refund arises. All refunds  
 13 due and unclaimed shall be retained in the special  
 14 account and expended as required herein, except as  
 15 provided in this section. The right to claim any refund  
 16 may be limited by the provisions of section five in this

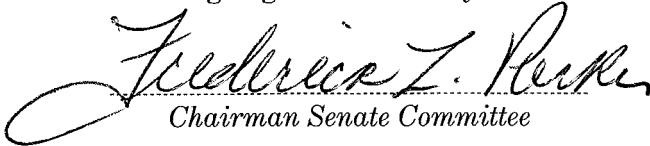
17 article.

18 (b) When a county commission seeks to terminate any  
19 impact fee requirement, all unexpended funds shall be  
20 refunded to the owner or purchaser of the property from  
21 whom such fund was initially collected. Upon the  
22 finding that any or all fee requirements are to be  
23 terminated, the county commission shall place notice of  
24 such termination and the availability of refunds in a  
25 newspaper of general circulation one time a week for  
26 two consecutive weeks and shall also notify all known  
27 potential claimants by first class mail deposited with the  
28 United States postal service at their last known address.  
29 All funds available for refund shall be retained for a  
30 period of one year. At the end of one year, any  
31 remaining funds may be transferred to the general fund  
32 and used for any public purpose. A county commission  
33 is released from this notice requirement if there are no  
34 unexpended balances within an account or funds being  
35 terminated.

**§7-20-10. Impact fees required to be consistent with other  
development regulations.**

1 County commissions that require the payment of  
2 impact fees in providing capital improvements and  
3 public services shall incorporate such financial require-  
4 ments within a master land use plan in order that any  
5 new development or developments are not required to  
6 contribute more than their proportionate share of the  
7 cost of providing such capital improvements and public  
8 services.

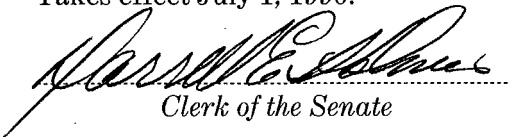
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

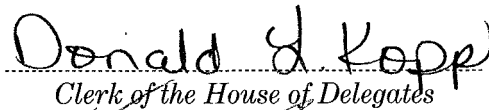
  
Chairman Senate Committee

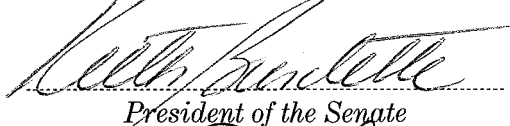
  
Chairman House Committee


Originating in the House.

Takes effect July 1, 1990.

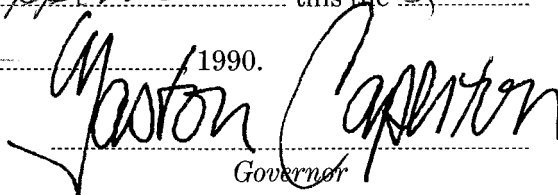
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within is approved this the 30th  
day of March 1990.

  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/20/90

Time 2:10 PM

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1600 MAR 30 AM 11:25  
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ATTORNEY GENERAL