WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990

- • -

ENROLLED

Con. Sub. for
HOUSE BILL No. 4687

(By Delegate Murphy & 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.

This article shall be known as the “Local Powers Act.”

§7-20-2. Purpose and findings.
(a) It is the purpose of this article to provide for the fair distribution of costs for county development by authorizing the assessment and collection of fees to offset the cost of commercial and residential development within affected counties.

(b) The Legislature hereby makes the following findings:

(1) The residents, taxpayers and users of county facilities and services, in affected counties, have contributed significant funds in the form of taxes and user charges toward the cost of existing county facilities and services, which represent a substantial and incalculable investment;

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

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

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

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

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

§7-20-3. Definitions.

(a) "Capital improvements" means the following
public facilities or assets that are owned, supported or established by county government:

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

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

(b) “County services” means the following: (1) Services provided by administration and administrative personnel, law enforcement and its support personnel; (2) street light service; (3) fire-fighting service; (4) ambulance service; (5) fire hydrant service; (6) roadway maintenance and other services provided by roadway maintenance personnel; (7) public utility systems and services provided by public utility systems personnel, water; and (8) all other direct and indirect county services authorized by this code.

(c) “Direct county services” means those public services authorized and provided by various county agencies or departments.

(d) “Indirect county services” means those public
services authorized and provided by commissioned
agents, agencies or departments of the county.

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

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

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

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

(i) "Reasonable benefit" means a benefit received
from the provision of a capital improvement greater
than that received by the general public located within
the county wherein an impact fee is being imposed.
(j) "Plan" means a county, comprehensive, general, master or other land use plan as described herein.

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

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

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

County governments affected by the construction of new development projects are hereby authorized to require the payment of fees for any new development projects constructed therein in the event any costs associated with capital improvements or the provision of other services are attributable to such project. Such fees shall not exceed a proportionate share of such costs required to accommodate any such new development. Before requiring payment of any fee authorized hereunder, it must be evident that some reasonable benefit from any such capital improvements will be realized by 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.

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

The receipt of an incidental benefit by any development shall not be construed as denying a reasonable benefit to any other new development.

§7-20-6. Criteria and requirements necessary to implement collection of fees.

(a) As a prerequisite to authorizing counties to levy 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; and

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

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

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

38 (C) Lists of proposed capital improvements from all
areas, containing descriptions of any such proposed
capital improvements, cost estimates, projected time
frames for constructing such improvements and pro-
posed or anticipated funding sources.

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

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

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

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

(1) The number and extent of development projects
begun in the past year;
(2) The number and extent of public facilities existing or under construction;

(3) The changing needs of the general population;

(4) The availability of any other funding sources; and

(5) Any other relevant and significant factor applicable to a legitimate goal or goals of any such capital improvement plan.

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

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

Notwithstanding any other provision of this code to the contrary, those counties that meet the requirements of section six of this article are hereby authorized to assess, levy, collect and administer any tax or fee as has been or may be specifically authorized by the Legislature by general law to the municipalities of this state: Provided, That any assessment, levy or collection shall be delayed sixty days from its regular effective date: Provided, however, That in the event fifteen percent of the qualified voters of the county by petition duly signed by them in their own handwriting and filed with the county commission within forty-five days after any impact fee or levy, is imposed by the county commission, pursuant to this article, the fee or levy protested may not become effective until it is ratified by a majority of the legal votes cast thereon by the qualified voters of such county at any primary, general or special election as the county commission directs. Voting thereon may not take place until after notice of the subcommission of the fee a levy on the ballot has been given by publication of Class II legal advertisement and publica-
tion area shall be the county where such fee or levy is imposed: Provided, further, That counties may not "double tax" by applying a given tax within any corporate boundary in which that municipality has
implemented such tax. Any such taxes or fees collected under this law may be used to fund a proportionate share of the cost of existing capital improvements and public services where it is shown that all or a portion of existing capital improvements and public services were provided in anticipation of the needs of new development.

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

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

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

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

(4) The method by which the existing capital improvements and public services are financed;

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

(6) The extent to which any new development, required to pay impact fees, is reasonably projected to contribute to the cost of the existing capital improvements and public services in the future through user
fees, debt service payments, or other necessary payments related to funding the cost of existing capital improvements and public services;

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

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

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

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

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

(b) Impact fees may only be spent on those projects specified in the capital improvement plan described in this article.
(c) When impact fees are collected, the county commission shall enter into agreements with any affected party providing new development in order to ensure compliance with the provisions of this article.

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

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

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

(a) The owner or purchaser of property for which impact fees have been paid may apply for a refund of any such paid fees. Such refund shall be made when a county commission fails to expend such funds within six years from the date such fees were originally collected. The county commission shall notify potential claimants by first class mail deposited in the United States mail and directed to the last known address of any such claimant. Only the owner or purchaser may apply for such refund. Application for any refund must be submitted to the county commission within one year of the date the right to claim the refund arises. All refunds due and unclaimed shall be retained in the special account and expended as required herein, except as provided in this section. The right to claim any refund may be limited by the provisions of section five in this
(b) When a county commission seeks to terminate any impact fee requirement, all unexpended funds shall be refunded to the owner or purchaser of the property from whom such fund was initially collected. Upon the finding that any or all fee requirements are to be terminated, the county commission shall place notice of such termination and the availability of refunds in a newspaper of general circulation one time a week for two consecutive weeks and shall also notify all known potential claimants by first class mail deposited with the United States postal service at their last known address. All funds available for refund shall be retained for a period of one year. At the end of one year, any remaining funds may be transferred to the general fund and used for any public purpose. A county commission is released from this notice requirement if there are no unexpended balances within an account or funds being terminated.

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

County commissions that require the payment of impact fees in providing capital improvements and public services shall incorporate such financial requirements within a master land use plan in order that any new development or developments are not required to contribute more than their proportionate share of the cost of providing such capital improvements and public services.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Ferdi Reed
Chairman Senate Committee

Bernard V. Kelly
Chairman House Committee

Originating in the House.

Takes effect July 1, 1990.

Russell Fralin
Clerk of the Senate

Donald D. Kopp
Clerk of the House of Delegates

Fred H. Coyle
President of the Senate

Speaker of the House of Delegates

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

Governor