



1997 ASSEMBLY BILL 800

February 19, 1998 - Introduced by Representatives GARD, JENSEN, PORTER, GREEN, RILEY, F. LASEE, JOHNSRUD, WARD, SERATTI, KREIBICH, HUTCHISON, LA FAVE, SYKORA, HUEBSCH, POWERS, SKINDRUD, VRAKAS, SCHAFFER and HASENOHRL, cosponsored by Senators WINEKE, FARROW, PANZER, DRZEWIECKI, COWLES, DARLING, FITZGERALD and ZIEN. Referred to Committee on Housing.

1 **AN ACT** *to repeal* 66.55 (2) (am); *to renumber and amend* 66.55 (2) (b) and
2 66.55 (10); *to amend* 66.069 (1) (a), 66.076 (1), 66.55 (1) (a), 66.55 (1) (c), 66.55
3 (1) (d), 66.55 (1) (f), 66.55 (1) (g), 66.55 (1) (h), 66.55 (2) (a), 66.55 (2) (c), 66.55
4 (3), 66.55 (4) (a) (intro.), 66.55 (4) (a) 3., 66.55 (4) (b), 66.55 (5) (b), 66.55 (6) (b),
5 66.55 (6) (d), 66.55 (6) (g), 66.55 (7), 66.55 (8), 66.55 (9), 236.45 (2) (b), 814.04
6 (intro.) and 893.80 (8); and *to create* 66.55 (2) (b) 2. and 3., 66.55 (6) (h), 66.55
7 (10) (b), 66.55 (10) (c) and 66.55 (11) of the statutes; **relating to:** revising
8 definitions of, and creating new procedures for, the impact fees statute.

Analysis by the Legislative Reference Bureau

Under current law, a city, village, town or county (political subdivision) may impose an impact fee on a developer to pay for the capital costs to construct certain public facilities that are necessary to accommodate land development. Subject to some conditions, a political subdivision may continue to finance public facilities by other means, such as imposing special assessments or charges. Under this bill, impact fees may be imposed only by a city, village or town (municipality).

The current law definition of "public facilities" includes highways; transportation facilities; sewage, storm and surface waters collection and treatment facilities; facilities for storing and distributing water; parks playgrounds and other

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recreational facilities; solid waste and recycling facilities; fire protection, law enforcement and emergency medical facilities; and libraries. The current law definition also specifies that “public facilities” does not include facilities owned by a school district.

This bill changes the definition of “public facilities” by removing from the definition transportation facilities, solid waste and recycling facilities and libraries, limiting the inclusion of facilities for pumping, storing and distributing water to “drinking” water, and limiting the inclusion of parks, playgrounds and other recreational facilities to “lands” for such uses. The bill also removes the specific exclusion of “facilities owned by a school district” but, because of the way in which the definition appears in the statutes, such a removal has no legal effect and the definition of “public facilities” still excludes “facilities owned by a school district”.

Under current law, a political subdivision must reduce impact fees to compensate a developer for other capital costs imposed on a developer by the political subdivision, with respect to land development, to provide or pay for public facilities by methods such as special assessments, special charges and land dedications or fees in lieu of land dedications or any other items of value. This bill limits some of these other methods that a municipality may use to impose such fees or charges on developers.

Under the bill, a municipality may not require the contribution of land, other items of value or the payment of fees or other charges under a zoning ordinance or as part of the process of platting land, with respect to land development, to finance a facility to be owned by the municipality that does not or is not intended in the future to serve and benefit exclusively the development.

Under current law, impact fees that are collected by a political subdivision must be used within “a reasonable period of time”. Under the bill, such fees must be used within 5 years after they are collected. Impact fees under current law may be contested before the governing body of the political subdivision. Under the bill, the fees may be contested first before the municipality’s governing body and, if the appeal is unsuccessful, before a circuit court. The bill also specifies that if a municipality imposes a moratorium on, or otherwise restricts, land development the municipality, in general, may not enact or amend an impact fee ordinance for 2 years after the moratorium or other restriction terminates.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 66.069 (1) (a) of the statutes is amended to read:
- 2 66.069 (1) (a) Except as provided in par. (am) and s. 66.55 (2) (b), the governing
- 3 body of any town, village or city operating a public utility may, by ordinance, fix the

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1 initial rates and shall provide for this collection monthly, bimonthly or quarterly in
2 advance or otherwise. The rates shall be uniform for like service in all parts of the
3 municipality and shall include the cost of fluorinating the water. The rates may also
4 include standby charges to property not connected but for which such facilities have
5 been made available. The charges shall be collected by the treasurer.

6 **SECTION 2.** 66.076 (1) of the statutes, as affected by 1997 Wisconsin Act 53, is
7 amended to read:

8 66.076 (1) In addition to all other methods provided by law, any municipality
9 may construct, acquire or lease, extend or improve any plant and equipment within
10 or without its corporate limits for the collection, transportation, storage, treatment
11 and disposal of sewage or storm water and surface water, including the lateral, main
12 and interceptor sewers necessary in connection therewith, and any town, village or
13 city may arrange for the service to be furnished by a metropolitan sewerage district
14 or joint sewerage system. Except as provided in s. 66.60 (6m) and subject to s. 66.55
15 (2) (b), payment for the service or any part of the service may be provided from the
16 general fund, from taxation, special assessments, sewerage service charges, or from
17 the proceeds of either municipal obligations, revenue bonds or from any combination
18 of these enumerated methods of financing.

19 **SECTION 3.** 66.55 (1) (a) of the statutes is amended to read:

20 66.55 (1) (a) "Capital costs" means the capital costs to construct, expand or
21 improve public facilities, including the cost of land, and including legal, engineering
22 and design costs to construct, expand or improve public facilities, except that not
23 more than 10% of capital costs may consist of legal, engineering and design costs
24 unless the ~~political subdivision~~ municipality can demonstrate that its legal,
25 engineering and design costs which relate directly to the public improvement for

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1 which the impact fees were imposed exceed 10% of capital costs. "Capital costs" does
2 not include other noncapital costs to construct, expand or improve public facilities
3 or the costs of equipment to construct, expand or improve public facilities.

4 **SECTION 4.** 66.55 (1) (c) of the statutes is amended to read:

5 66.55 (1) (c) "Impact fees" means cash contributions, contributions of land or
6 interests in land or any other items of value that are imposed on a developer by a
7 ~~political subdivision~~ municipality under this section.

8 **SECTION 5.** 66.55 (1) (d) of the statutes is amended to read:

9 66.55 (1) (d) "Land development" means the construction or modification of
10 improvements to real property that creates additional residential dwelling units
11 within a ~~political subdivision~~ municipality or that results in nonresidential uses that
12 create a need for new, expanded or improved public facilities within a ~~political~~
13 ~~subdivision~~ municipality.

14 66.55 (1) (e) "~~Political subdivision~~ Municipality" means a city, village, or town
15 ~~or county~~.

16 **SECTION 6.** 66.55 (1) (f) of the statutes, as affected by 1997 Wisconsin Act 27,
17 is amended to read:

18 66.55 (1) (f) "Public facilities" means highways, as defined in s. 340.01 (22), ~~and~~
19 ~~other transportation facilities~~, traffic control devices, facilities for collecting and
20 treating sewage, facilities for collecting and treating storm and surface waters,
21 facilities for pumping, storing and distributing drinking water, lands for parks, lands
22 for playgrounds and other recreational facilities, ~~solid waste and recycling facilities~~,
23 fire protection facilities, law enforcement facilities, and emergency medical facilities
24 ~~and libraries except that, with regard to counties, "public facilities" does not include~~

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1 highways, as defined in s. 340.01 (22), other transportation facilities or traffic control
2 devices. “Public facilities” does not include facilities owned by a school district.

3 **SECTION 7.** 66.55 (1) (g) of the statutes is amended to read:

4 66.55 (1) (g) “Service area” means a geographic area delineated by a political
5 subdivision municipality within which there are public facilities.

6 **SECTION 8.** 66.55 (1) (h) of the statutes is amended to read:

7 66.55 (1) (h) “Service standard” means a certain quantity or quality of public
8 facilities relative to a certain number of persons, parcels of land or other appropriate
9 measure, as specified by the political subdivision municipality.

10 **SECTION 9.** 66.55 (2) (a) of the statutes, as affected by 1997 Wisconsin Act 27,
11 is amended to read:

12 66.55 (2) (a) Subject to par. (am), a political subdivision A municipality may
13 enact an ordinance under this section that imposes impact fees on developers to pay
14 for the capital costs that are necessary to accommodate land development.

15 **SECTION 10.** 66.55 (2) (am) of the statutes, as created by 1997 Wisconsin Act
16 27, is repealed.

17 **SECTION 11.** 66.55 (2) (b) of the statutes is renumbered 66.55 (2) (b) (intro.) and
18 amended to read:

19 66.55 (2) (b) (intro.) Subject to par. (c), this section does not prohibit or limit the
20 authority of a political subdivision municipality to finance public facilities by any
21 other means authorized by law, except that the as follows:

22 1. The amount of an impact fee imposed by a political subdivision municipality
23 shall be reduced, under sub. (6) (d), to compensate for any other costs of public
24 facilities imposed by the political subdivision municipality on developers to provide
25 or pay for capital costs.

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1 **SECTION 12.** 66.55 (2) (b) 2. and 3. of the statutes are created to read:

2 66.55 **(2)** (b) 2. A municipality may not require the contribution of land,
3 interests in land or other items of value or the payment of fees or other charges under
4 s. 59.69, 60.61, 60.62, 61.35 or 62.23 or under ch. 236 with respect to any land
5 development to finance any part of a facility to be owned by the municipality that
6 does not, or is not intended in the future, to serve and benefit exclusively such land
7 development.

8 3. A municipality or a town sanitary district under s. 60.77 (5) (e) may not
9 require the payment of fees or other charges under s. 66.069 or 66.076 with respect
10 to any land development to finance any part of a facility to be owned by the
11 municipality or the town sanitary district that does not, or is not intended in the
12 future, to serve and benefit exclusively such land development, unless such fees or
13 charges are imposed uniformly upon that portion of the entire municipality or town
14 sanitary district that is being served by the same or comparable facilities at the time
15 that such fees or charges are imposed.

16 **SECTION 13.** 66.55 (2) (c) of the statutes is amended to read:

17 66.55 **(2)** (c) Beginning on May 1, 1995, a ~~political subdivision~~ municipality
18 may impose and collect impact fees only under this section.

19 **SECTION 14.** 66.55 (3) of the statutes is amended to read:

20 66.55 **(3)** PUBLIC HEARING; NOTICE. Before enacting an ordinance that imposes
21 impact fees, or amending an existing ordinance that imposes impact fees, a ~~political~~
22 ~~subdivision~~ municipality shall hold a public hearing on the proposed ordinance or
23 amendment. Notice of the public hearing shall be published as a class 1 notice under
24 ch. 985, and shall specify where a copy of the proposed ordinance or amendment and
25 the public facilities needs assessment may be obtained.

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1 **SECTION 15.** 66.55 (4) (a) (intro.) of the statutes is amended to read:

2 66.55 (4) (a) (intro.) Before enacting an ordinance that imposes impact fees or
3 amending an ordinance that imposes impact fees by revising the amount of the fee
4 or altering the public facilities for which impact fees may be imposed, a ~~political~~
5 ~~subdivision~~ municipality shall prepare a needs assessment for the public facilities
6 for which it is anticipated that impact fees may be imposed. The public facilities
7 needs assessment shall include, but not be limited to, the following:

8 **SECTION 16.** 66.55 (4) (a) 3. of the statutes is amended to read:

9 66.55 (4) (a) 3. A detailed estimate of the capital costs of providing the new
10 public facilities or the improvements or expansions in existing public facilities
11 identified in subd. 2., including an estimate of the effect of recovering these capital
12 costs through impact fees on the availability of affordable housing within the
13 ~~political subdivision~~ municipality.

14 **SECTION 17.** 66.55 (4) (b) of the statutes is amended to read:

15 66.55 (4) (b) A public facilities needs assessment or revised public facilities
16 needs assessment that is prepared under this subsection shall be available for public
17 inspection and copying in the office of the clerk of the ~~political subdivision~~
18 municipality at least 20 days before the hearing under sub. (3).

19 **SECTION 18.** 66.55 (5) (b) of the statutes is amended to read:

20 66.55 (5) (b) An ordinance enacted under this section may delineate
21 geographically defined zones within the ~~political subdivision~~ municipality and may
22 impose impact fees on land development in a zone that differ from impact fees
23 imposed on land development in other zones within the ~~political subdivision~~
24 municipality. The public facilities needs assessment that is required under sub. (4)
25 shall explicitly identify the differences, such as land development or the need for

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1 those public facilities, which justify the differences between zones in the amount of
2 impact fees imposed.

3 **SECTION 19.** 66.55 (6) (b) of the statutes is amended to read:

4 66.55 (6) (b) May not exceed the proportionate share of the capital costs that
5 are required to serve land development, as compared to existing uses of land within
6 the ~~political subdivision~~ municipality.

7 **SECTION 20.** 66.55 (6) (d) of the statutes is amended to read:

8 66.55 (6) (d) Shall be reduced to compensate for other capital costs imposed by
9 the ~~political subdivision~~ municipality with respect to land development to provide or
10 pay for public facilities, including special assessments, special charges, ~~land~~
11 ~~dedications or fees in lieu of land dedications under ch. 236~~ or any other items of
12 value and shall be reduced to compensate for taxes imposed under ch. 70.

13 **SECTION 21.** 66.55 (6) (g) of the statutes is amended to read:

14 66.55 (6) (g) Shall be payable by the developer to the ~~political subdivision~~
15 municipality, either in full or in instalment payments that are approved by the
16 ~~political subdivision, before~~ municipality, and may not be due on a date that is earlier
17 than the date on which a building permit ~~may be~~ for the land development is issued
18 or other required approval may be given by the political subdivision.

19 **SECTION 22.** 66.55 (6) (h) of the statutes is created to read:

20 66.55 (6) (h) Shall be imposed equitably on all types of land development that
21 are served by any of the public facilities to be financed by such fees.

22 **SECTION 23.** 66.55 (7) of the statutes is amended to read:

23 66.55 (7) (title) LOW-COST, MODERATE-COST HOUSING. An ordinance enacted
24 under this section may provide for an exemption from, or a reduction in the amount
25 of, impact fees on land development that provides low-cost or moderate-cost

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1 housing, except that no amount of an impact fee for which an exemption or reduction
2 is provided under this subsection may be shifted to any other development in the land
3 development in which the low-cost or moderate-cost housing is located or to any
4 other land development in the ~~political subdivision~~ municipality. An ordinance
5 enacted under this section may not have a disproportionate effect on a purchaser,
6 occupant or developer of low or moderately priced housing in the municipality.

7 **SECTION 24.** 66.55 (8) of the statutes is amended to read:

8 66.55 (8) REQUIREMENTS FOR IMPACT FEE REVENUES. Revenues from impact fees
9 shall be placed in a segregated, interest-bearing account and shall be accounted for
10 separately from the other funds of the ~~political subdivision~~ municipality. Impact fee
11 revenues and interest earned on impact fee revenues may be expended only for
12 capital costs for which the impact fees were imposed.

13 **SECTION 25.** 66.55 (9) of the statutes is amended to read:

14 66.55 (9) REFUND OF IMPACT FEES. ~~An ordinance enacted under this section shall~~
15 ~~specify that impact~~ Impact fees that are imposed and collected by a ~~political~~
16 ~~subdivision~~ municipality but are not used within a reasonable period of time 5 years
17 after they are collected to pay the capital costs for which they were imposed shall be
18 refunded to the current owner of the property with respect to which the impact fees
19 were imposed. ~~The ordinance shall specify, by type of public facility, reasonable time~~
20 ~~periods within which impact fees must be spent or refunded under this subsection.~~
21 ~~In determining the length of the time periods under the ordinance, a political~~
22 ~~subdivision shall consider what are appropriate planning and financing periods for~~
23 ~~the particular types of public facilities for which the impact fees are imposed.~~

24 **SECTION 26.** 66.55 (10) of the statutes is renumbered 66.55 (10) (a) and
25 amended to read:

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1 66.55 (10) (a) A ~~political subdivision~~ municipality that enacts an impact fee
2 ordinance under this section shall, by ordinance, specify a procedure under which a
3 developer upon whom an impact fee is imposed has the right to contest ~~the any issue~~
4 related to the imposition, amount, collection or use of the impact fee ~~to the governing~~
5 body of the political subdivision. The ordinance shall specify that the initial appeal
6 shall be before the municipality's governing body, and that a subsequent appeal
7 shall be made in circuit court.

8 **SECTION 27.** 66.55 (10) (b) of the statutes is created to read:

9 66.55 (10) (b) A court shall award a developer who contests an impact fee under
10 par. (a) reasonable attorney fees if the developer prevails, notwithstanding s. 814.04
11 (1).

12 **SECTION 28.** 66.55 (10) (c) of the statutes is created to read:

13 66.55 (10) (c) Section 893.80 does not apply to an action commenced under this
14 subsection.

15 **SECTION 29.** 66.55 (11) of the statutes is created to read:

16 66.55 (11) **LIMITS ON RESTRICTIONS.** If a municipality imposes a moratorium on,
17 or similar restriction affecting, land development, including limitations on the
18 approval or issuance of rezoning, land divisions or building permits, no new
19 ordinance or amendment of an existing ordinance that is enacted under this section,
20 after the moratorium or similar restriction takes effect, may take effect before the
21 first day of 24th month beginning after the termination of the moratorium or similar
22 restriction.

23 **SECTION 30.** 236.45 (2) (b) of the statutes is amended to read:

24 236.45 (2) (b) This Subject to s. 66.55 (2) (b), this section and any ordinance
25 adopted pursuant thereto shall be liberally construed in favor of the municipality,

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1 town or county and shall not be deemed a limitation or repeal of any requirement or
2 power granted or appearing in this chapter or elsewhere, relating to the subdivision
3 of lands.

4 **SECTION 31.** 814.04 (intro.) of the statutes, as affected by 1997 Wisconsin Acts
5 55 and (Senate Bill 384), is amended to read:

6 **814.04 Items of costs.** (intro.) Except as provided in ss. 66.55 (10) (b), 93.20,
7 100.30 (5m), 106.04 (6) (i) and (6m) (a), 115.80 (9), 769.313, 814.025, 814.245, 895.035
8 (4), 895.75 (3), 895.77 (2), 895.79 (3), 895.80 (3), 943.212 (2) (b), 943.245 (2) (d) and
9 943.51 (2) (b), when allowed costs shall be as follows:

10 **SECTION 32.** 893.80 (8) of the statutes, as affected by 1997 Wisconsin Act 27,
11 is amended to read:

12 893.80 (8) This section does not apply to actions commenced under s. 19.37,
13 19.97, 66.55 (10) or 281.99.

14 **SECTION 33. Effective date.**

15 (1) This act takes effect on July 1, 1998.

16 (END)