



2007 ASSEMBLY BILL 341

May 16, 2007 - Introduced by Representatives GOTTLIEB, STRACHOTA, LEMAHIEU, ALBERS, BALLWEG, BERCEAU, DAVIS, HONADEL, JORGENSEN and KERKMAN, cosponsored by Senators ERPENBACH, GROTHMAN and OLSEN. Referred to Committee on Urban and Local Affairs.

1 **AN ACT** *to renumber and amend* 66.0617 (6) (g) and 236.45 (6) (a); *to amend*
2 66.0617 (4) (a) 3., 66.0617 (9) (a) and (b), 236.13 (2) (b) and 236.45 (6) (b); and
3 **to create** 66.0617 (2) (d), 66.0617 (6) (g) 1., 2. and 3., 66.0617 (9) (c), 66.0628
4 (3), 236.29 (4) and 236.45 (6) (ac) of the statutes; **relating to:** imposing fees for
5 acquiring public park land, dedicating storm water treatment facilities to the
6 public, changing the time relating to when impact fees must be paid and used,
7 and regulating the costs of certain professional services provided through a
8 political subdivision.

Analysis by the Legislative Reference Bureau

Under current law, a city, village, or town (municipality) 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. Former law required that impact fees not used within a reasonable period of time to pay for the capital costs had to be refunded to the current owner of the property with respect to which the impact fee was imposed.

The "reasonable time" provision was changed in 2005 Wisconsin Act 203 (Act 203). Under Act 203, which is now current law, an impact fee must be used within seven years after it is collected or the fee must be refunded to the current owner of

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the property with respect to which the impact fee was imposed, although a three-year extension is possible in the case of extenuating circumstances or hardship. The change from “reasonable time” to a generally seven-year limit first applied, retroactively, to impact fees that were imposed under an impact fee ordinance that was in effect on April 11, 2006, the effective date of Act 203.

This bill extends the time period during which impact fees must be used to ten years, and maintains the three-year extension if the municipality generates detailed written findings that describe the extenuating circumstances. Also under the bill, the general ten-year time limit for using impact fees applies to fees that are collected after April 10, 2006. Fees that are collected before January 1, 2003, must be used by December 31, 2012, or they must be refunded. Fees that are collected after December 31, 2002, and before April 11, 2006, must be used within approximately ten years after they were collected or they must be refunded.

Current law requires that an impact fee be paid by the developer or property owner to a municipality within 14 days of the issuance of a building permit, or within 14 days of the issuance of an occupancy permit. Under this bill, an impact fee must be paid either at a time agreed to by the parties or no later than the earliest of approximately five years after the municipality grants final approval for the land development that gave rise to the imposition of an impact fee, upon the issuance of a building permit, or upon the issuance of an occupancy permit.

Also under the bill, if a municipality or a county (political subdivision) purchases engineering, legal, or other professional services from another person, and the political subdivision passes along the cost of such services to a third person under a separate contract, the rate charged the third person for the services may not exceed the rate charged to the political subdivision by the service provider.

Current law specifies whether a county, town, city, or village has the right to approve or object to a plat, which is the map of a subdivision. Plat approval is conditioned on the plat’s compliance with the local ordinances and comprehensive, master, or development plan of the local governmental unit or units that have the right to approve the plat. Current law provides that, as a further condition of approval, the governing body of the town or incorporated city or village within which a subdivision lies may require the subdivider to make and install reasonably necessary public improvements or to execute a surety bond to ensure that the improvements will be made, and provides that any land dedication, easement, or other public improvement required as a condition of approval must bear a rational relationship to a need for the land dedication, easement, or other public improvement resulting from the subdivision. However, current law prohibits a county, town, or incorporated city or village from imposing, as a condition of approval of a subdivision plat, any fees or other charges to fund the acquisition or improvement of land. This bill provides an exception to that prohibition for the acquisition or improvement of public park land and requires that any fee for the acquisition or improvement of public park land must bear a rational relationship to a need for it resulting from the subdivision, and that any such fee or land dedication, easement, or other public improvement required as a condition of approval of a subdivision must be proportional to the need for it. In addition, the bill defines the

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improvement of public park land to mean initial grading, landscaping, construction of sidewalks, and installation of utilities, playground equipment, or restroom facilities on land intended for public park purposes.

Under current law, if areas are designated on a plat as dedicated to the public, such as land to be used for streets, alleys, commons, or other public uses, the approval and recording of the plat constitutes acceptance of those areas for the designated purpose. The town, city, or village in which the plat is located holds the land dedicated to the public in trust for the designated purposes. This bill provides that the dedication of any lands within a plat of a subdivision located in a municipality that are intended to include a permanent man-made facility designed for reducing the quantity or quality impact of storm water runoff from more than one lot is not accepted when the plat is approved and recorded but, unless the municipality agrees to an earlier date, when at least 80 percent of the lots in the subdivision have been sold and a professional engineer has certified to the municipality that the facility is functioning properly; any required plantings are adequate, well-established, and reasonably free of invasive species; and any necessary maintenance has been properly performed.

For further information see the *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.** 66.0617 (2) (d) of the statutes is created to read:

2 66.0617 (2) (d) A municipality may not withhold any approval or permit as a
3 result of a developer or property owner failing to reach an agreement with the
4 municipality on a date to pay an impact fee that is earlier than a day or event
5 specified in sub. (6) (g) 1. to 3.

6 **SECTION 2.** 66.0617 (4) (a) 3. of the statutes is amended to read:

7 66.0617 (4) (a) 3. A detailed estimate of the capital costs of providing the new
8 public facilities or the improvements or expansions in existing public facilities
9 identified in subd. 2., including an estimate of the cumulative effect of ~~recovering~~
10 ~~these capital costs through all proposed and existing~~ impact fees on the availability
11 of affordable housing within the municipality.

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1 **SECTION 3.** 66.0617 (6) (g) of the statutes is renumbered 66.0617 (6) (g) (intro.)
2 and amended to read:

3 66.0617 **(6)** (g) (intro.) Shall be payable by the developer or the property owner
4 to the municipality in full ~~within 14 days of the issuance of a building permit or~~
5 ~~within 14 days of the issuance of an occupancy permit by the municipality.~~ according
6 to terms that are agreed to by the parties or, if no agreement on the timing of the
7 payment is reached, no later than the earliest of the following:

8 **SECTION 4.** 66.0617 (6) (g) 1., 2. and 3. of the statutes are created to read:

9 66.0617 **(6)** (g) 1. Upon the issuance of a building permit by the municipality.

10 2. Upon the issuance of an occupancy permit by the municipality.

11 3. The first day of the 60th month beginning after the municipality grants final
12 approval for the land development in which the lot or parcel, for which the fee is being
13 paid, is located. If the land development consists of multiple phases, the date of final
14 approval is the date of final approval for the phase in which the lot or parcel is
15 located.

16 **SECTION 5.** 66.0617 (9) (a) and (b) of the statutes are amended to read:

17 66.0617 **(9)** (a) Subject to ~~par.~~ pars. (b) and (c), and with regard to an impact
18 fee that is collected after April 10, 2006, an ordinance enacted under this section shall
19 specify that impact fees that are imposed and collected by a municipality but are not
20 used within ~~7~~ 10 years after they are collected to pay the capital costs for which they
21 were imposed shall be refunded to the current owner of the property with respect to
22 which the impact fees were imposed, along with any interest that has accumulated,
23 ~~in as~~ as described in sub. (8). The ordinance shall specify, by type of public facility,
24 reasonable time periods within which impact fees must be spent or refunded under
25 this subsection, subject to the ~~7-year~~ 10-year limit in this paragraph and the

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1 extended time period specified in par. (b). In determining the length of the time
2 periods under the ordinance, a municipality shall consider what are appropriate
3 planning and financing periods for the particular types of public facilities for which
4 the impact fees are imposed.

5 (b) The ~~7-year~~ 10-year time limit for using impact fees that is specified under
6 par. (a) may be extended for 3 years if the ~~political subdivision~~ municipality adopts
7 a resolution stating that, due to extenuating circumstances or hardship in meeting
8 the ~~7-year~~ 10-year limit, it needs an additional 3 years to use the impact fees that
9 were collected. The resolution shall include detailed written findings that specify the
10 extenuating circumstances or hardship that led to the need to adopt a resolution
11 under this paragraph.

12 **SECTION 6.** 66.0617 (9) (c) of the statutes is created to read:

13 66.0617 (9) (c) 1. An impact fee that was collected before January 1, 2003, must
14 be used for the purpose for which it was imposed not later than December 31, 2012.
15 Any such fee that is not used by that date shall be refunded to the current owner of
16 the property with respect to which the impact fee was imposed, along with any
17 interest that has accumulated, as described in sub. (8).

18 2. An impact fee that was collected after December 31, 2002, and before April
19 11, 2006, must be used for the purpose for which it was imposed not later than the
20 first day of the 120th month beginning after the date on which the fee was collected.
21 Any such fee that is not used by that date shall be refunded to the current owner of
22 the property with respect to which the impact fee was imposed, along with any
23 interest that has accumulated, as described in sub. (8).

24 **SECTION 7.** 66.0628 (3) of the statutes is created to read:

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1 66.0628 (3) If a political subdivision enters into a contract to purchase
2 engineering, legal, or other professional services from another person and the
3 political subdivision passes along the cost for such professional services to another
4 person under a separate contract between the political subdivision and that person,
5 the rate charged that other person for the professional services may not exceed the
6 contracted rate agreed to by the political subdivision and the person providing the
7 professional services.

8 **SECTION 8.** 236.13 (2) (b) of the statutes is amended to read:

9 236.13 (2) (b) Any city or village may require as a condition for accepting the
10 dedication of public streets, alleys or other ways, or for permitting private streets,
11 alleys or other public ways to be placed on the official map, that designated facilities
12 shall have been previously provided without cost to the municipality, but which are
13 constructed according to municipal specifications and under municipal inspection,
14 such as, without limitation because of enumeration, sewerage, water mains and
15 laterals, storm water management or treatment facilities, grading and improvement
16 of streets, alleys, sidewalks and other public ways, street lighting or other facilities
17 designated by the governing body, or that a specified portion of such costs shall be
18 paid in advance as provided in s. 66.0709.

19 **SECTION 9.** 236.29 (4) of the statutes is created to read:

20 236.29 (4) ACCEPTANCE OF STORM WATER FACILITIES DEDICATED TO PUBLIC.
21 Notwithstanding sub. (2), unless an earlier date is agreed to by the municipality, the
22 dedication of any lands within a plat of a subdivision located within a municipality
23 that are intended to include a permanent man-made facility designed for reducing
24 the quantity or quality impacts of storm water runoff from more than one lot and that
25 are shown on the plat as “Dedicated to the Public for Storm Water Management

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1 Purposes” is not accepted until at least 80 percent of the lots in the subdivision have
2 been sold and a professional engineer registered under ch. 443 has certified to the
3 municipality that all of the following conditions are met with respect to the facility:

4 (a) The facility is functioning properly in accordance with the plans and
5 specifications of the municipality.

6 (b) Any required plantings are adequate, well-established, and reasonably free
7 of invasive species.

8 (c) Any necessary maintenance, including removal of construction sediment,
9 has been properly performed.

10 **SECTION 10.** 236.45 (6) (a) of the statutes is renumbered 236.45 (6) (am) and
11 amended to read:

12 236.45 (6) (am) Notwithstanding subs. (1) and (2) (a) (intro.), a municipality,
13 town, or county may not, as a condition of approval under this chapter, impose any
14 fees or other charges to fund the acquisition or improvement of land, infrastructure,
15 or other real or personal property, except for the acquisition or improvement of land
16 for public parks.

17 **SECTION 11.** 236.45 (6) (ac) of the statutes is created to read:

18 236.45 (6) (ac) In this subsection, “improvement of land for public parks” means
19 initial grading, landscaping, installation of utilities, construction of sidewalks,
20 installation of playground equipment, and construction or installation of restroom
21 facilities on land intended for public park purposes.

22 **SECTION 12.** 236.45 (6) (b) of the statutes is amended to read:

23 236.45 (6) (b) Any land dedication, easement, or other public improvement or
24 fee for the acquisition or improvement of land for a public park that is required by
25 a municipality, town, or county as a condition of approval under this chapter must

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1 bear a rational relationship to a need for the land dedication, easement, or other
2 public improvement or parkland acquisition or improvement fee resulting from the
3 subdivision or other division of land and must be proportional to the need.

4 **SECTION 13. Initial applicability.**

5 (1) The treatment of sections 236.13 (2) (b), 236.29 (4), and 236.45 (6) (a), (ac),
6 and (b) of the statutes first applies to a certified survey map, a preliminary plat, or,
7 if no preliminary plat was submitted, a final plat that is submitted for approval on
8 the effective date of this subsection.

9 (END)