



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2007 Wisconsin Act 44
[2007 Assembly Bill 341]

**Impact Fees and Other
Development-Related Topics**

2007 Wisconsin Act 44 addresses impact fees, professional services fees, dedication of storm water facilities, and fees in lieu of public park dedications (among other things, the Act addresses the treatment of some of the preceding topics by 2005 Wisconsin Acts 203 and 477).

IMPACT FEES

Definition of “Public Facility”

2005 Wisconsin Act 477 deleted “other recreational facilities,” from the definition of “public facilities” eligible for funding under the impact fee law. Act 44 provides, with regard to impact fees imposed before June 14, 2006 (the effective date of Act 477), that “public facilities” includes “other recreational facilities” that were substantially completed by June 14, 2006. The provision sunsets 10 years after the Act’s effective date. The provision clarifies that previously imposed impact fees may continue to be collected for “other recreational facilities.”

Needs Assessment

The Act clarifies an element of the public facilities needs assessment that a municipality is required to prepare before imposing impact fees. Under the Act, the estimate of the capital costs of providing new public facilities or improvements or expansions of such facilities must include an estimate of the “cumulative” effect of “all proposed and existing” impact fees on the availability of affordable housing within the municipality.

When Payable

Currently, impact fees are payable within 14 days of the issuance of a building permit or within 14 days of the issuance of an occupancy permit. Under the Act, impact fees are payable upon issuance of a building permit.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature’s Web site at: <http://www.legis.state.wi.us/>.

Refund of Unexpended Fees

Currently, impact fees must be used to pay the capital costs for which they were imposed within seven years after they are collected. Any fees not used must be refunded to the current property owner. A three-year extension for using fees is available for extenuating circumstances or hardship.

Under the Act:

1. Impact fees collected before January 1, 2003 must be used not later than December 31, 2012.
2. Impact fees collected after December 31, 2002, and before April 11, 2006, must be used not later than the first day of the 120th month beginning after the date on which the fee was collected.
3. Impact fees collected after April 10, 2006 and collected within seven years of the effective date of the ordinance imposing the fee must be used within 10 years after the effective date of the ordinance. The 10 year limit may be extended for three years if the municipality includes detailed written findings that specify the extenuating circumstances or hardship supporting the extension.
4. Impact fees collected after April 10, 2006 and collected more than seven years after the effective date of the ordinance imposing the fees must be used within a reasonable period of time after collected.

PASS-THROUGH OF PROFESSIONAL SERVICES FEES

The Act provides that if a political subdivision enters into a contract to purchase engineering, legal, or other professional services from another professional service provider and the political subdivision passes along the cost for the services to another person under separate contract, the rate charged the other person for the professional services may not exceed the rate customarily paid for similar services by the political subdivision.

STORM WATER FACILITIES

Subdivision Plat Approval

Currently, a city or village, as a condition for accepting the dedication of, or placing on an official map, public or private ways, may require that designated facilities be provided without cost to the city or village or that a portion of the cost of such facilities be paid in advance. The Act adds to the noninclusive list of facilities express reference to storm water management or treatment facilities.

Acceptance of Dedicated Facilities

The Act provides that a dedication of lands within a subdivision plat that is intended to include a facility designed for reducing the quantity or quality impacts of storm water runoff from more than one lot is not accepted by the municipality unless the municipality agrees, until at least 80% of the lots in the subdivision have been sold and a registered professional engineer has certified to the municipality that the facility is functioning properly, required plantings are adequate and well established, and any necessary maintenance has been properly performed.

FEES IN LIEU OF PARKLAND DEDICATION AND IMPROVEMENT

Currently, fees for land acquisition and improvements as a condition of subdivision approval are not authorized. The Act allows such fees to be imposed by cities, villages, and towns for the acquisition or initial improvement of land for public parks. "Improvement of land for public parks" is defined in the Act. A fee for the acquisition or initial improvement of land for public parks must bear a rational relationship to a need for the acquisition or improvement and must be proportional to the need. (Note that the Act's proportionality requirement also applies to any required land dedication, easement, or other public improvement required as a condition of subdivision approval.)

Effective Date: Act 44 takes effect January 19, 2008. The Act's treatment of subdivision approval provisions in ch. 236 is subject to an initial applicability provision in SEC.13 of the Act.

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