

COMMITTEE SUBSTITUTE

FOR

H. B. 3185

(BY DELEGATES LAWRENCE AND MANCHIN)

(Originating in the House Committee on the Judiciary)
[February 25, 2011]

A BILL to amend and reenact §7-20-3 and §7-20-4 of the Code of West Virginia, 1931, as amended, all relating to preservation of affordable housing in counties with county impact fees.

Be it enacted by the Legislature of West Virginia:

That §7-20-3 and §7-20-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; all to read as follows:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 20. FEES AND EXPENDITURES FOR COUNTY DEVELOPMENT.

§7-20-3. Definitions.

1 (a) "Affordable housing" means a single-family detached
2 housing unit that has above-ground living space that does not
3 exceed 1,800 square feet and a cost that is less than 60% of
4 the average cost of a single-family residential house in the
5 county in which it is located, as determined by the annual
6 study of average cost of new single-family homes required
7 by section two-b, article one, chapter eleven of this code;

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

- 11 (1) Water treatment and distribution facilities;
- 12 (2) Wastewater treatment and disposal facilities;
- 13 (3) Sanitary sewers;
- 14 (4) Storm water, drainage, and flood control facilities;
- 15 (5) Public primary and secondary school facilities;
- 16 (6) Public road systems and rights-of-way;
- 17 (7) Parks and recreational facilities; and

18 (8) Police, emergency medical, rescue, and fire protection
19 facilities.

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

31 ~~(b)~~ (c) "County services" means the following:

32 (1) Services provided by administration and
33 administrative personnel, law enforcement and its support
34 personnel;

35 (2) Street light service;

36 (3) Firefighting service;

37 (4) Ambulance service;

38 (5) Fire hydrant service;

39 (6) Roadway maintenance and other services provided by
40 roadway maintenance personnel;

41 (7) Public utility systems and services provided by public
42 utility systems personnel, water; and

43 (8) All other direct and indirect county services
44 authorized by this code.

45 ~~(c)~~ (d) "Direct county services" means those public
46 services authorized and provided by various county agencies
47 or departments.

48 ~~(d) "Indirect county services" means those public services~~
49 ~~authorized and provided by commissioned agents, agencies~~
50 ~~or departments of the county.~~

51 ~~(e)~~ (e) "Growth county" means any county within the
52 state with an averaged population growth rate in excess of
53 1% per year as determined from the most recent decennial
54 census counts and forecasted, within decennial census count
55 years, by official records of government or generally

56 approved standard statistical estimate procedures: *Provided*,
57 That once "growth county" status is achieved it is permanent
58 in nature and the powers derived ~~hereby~~ are continued.

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

62 ~~(g)~~ (f) "Impact fees" means any charge, fee, or
63 assessment levied as a condition of the following:

- 64 (1) Issuance of a subdivision or site plan approval;
65 (2) Issuance of a building permit; and
66 (3) Approval of a certificate of occupancy, or other
67 development or construction approval when any portion of
68 the revenues collected is intended to fund any portion of the
69 costs of capital improvements for any public facilities or
70 county services not otherwise permitted by law.

71 An impact fee does not include charges for remodeling,
72 rehabilitation, or other improvements to an existing structure
73 or rebuilding a damaged structure, provided there is no
74 increase in gross floor area or in the number of dwelling units
75 that result therefrom.

76 (g) "Indirect county services" means those public services
77 authorized and provided by commissioned agents, agencies
78 or departments of the county.

79 (h) "Manufactured home" as that term is defined in
80 section two, article one, chapter eight-a.

81 (i) "Multi-family dwelling" means multiple separate
82 housing units for residential inhabitants that are contained
83 within one building.

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

91 ~~(i) "Reasonable benefit" means a benefit received from~~
92 ~~the provision of a capital improvement greater than that~~
93 ~~received by the general public located within the county~~
94 ~~wherein an impact fee is being imposed.~~

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

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

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

106 (m) "Reasonable benefit" means a benefit received from
107 the provision of a capital improvement greater than that
108 received by the general public located within the county
109 wherein an impact fee is being imposed.

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

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

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

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

14 (b) A county commission or other body may not impose
15 or collect an impact or capital improvement fee for an

16 affordable housing unit, that exceeds 15% of the amount that
17 would otherwise be imposed on the developer, owner or
18 renter of the affordable housing unit.

19 (c) A county commission or other body may not impose
20 or collect a impact or capital improvement fee for a
21 manufactured home or a multi-family dwelling unit that
22 exceeds 20% of the fee or \$3,000 whichever is less, that
23 would otherwise be imposed on the developer, owner or
24 renter of the manufactured home or multi-family dwelling
25 unit.

26 (d) A county commission shall approve an increase to an
27 impact fee by majority vote.