

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 3185**

4 (By Delegates Lawrence and Manchin)

5
6 (Originating in the House Committee on the Judiciary)

7
8 [February 25, 2011]

9
10 A BILL to amend and reenact §7-20-3 and §7-20-4 of the Code of West
11 Virginia, 1931, as amended, all relating to preservation of
12 affordable housing in counties with county impact fees.

13 *Be it enacted by the Legislature of West Virginia:*

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

16 **CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

17 **ARTICLE 20. FEES AND EXPENDITURES FOR COUNTY DEVELOPMENT.**

18 **§7-20-3. Definitions.**

19 (a) "Affordable housing" means a single-family detached
20 housing unit that has above-ground living space that does not
21 exceed 1,800 square feet and a cost that is less than 60% of the
22 average cost of a single-family residential house in the county in
23 which it is located, as determined by the annual study of average
24 cost of new single-family homes required by section two-b, article

1 one, chapter eleven of this code;

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

5 (1) Water treatment and distribution facilities;

6 (2) Wastewater treatment and disposal facilities;

7 (3) Sanitary sewers;

8 (4) Storm water, drainage, and flood control facilities;

9 (5) Public primary and secondary school facilities;

10 (6) Public road systems and rights-of-way;

11 (7) Parks and recreational facilities; and

12 (8) Police, emergency medical, rescue, and fire protection
13 facilities.

14 "Capital improvements" ~~as defined herein is~~ are limited to
15 those improvements that are treated as capitalized expenses
16 according to generally accepted governmental accounting principles
17 and that have an expected useful life of no less than three years.

18 "Capital improvement" does not include costs associated with the
19 operation, repair, maintenance, or full replacement of capital
20 improvements. "Capital improvement" does include reasonable costs
21 for planning, design, engineering, land acquisition, and other
22 costs directly associated with the capital improvements described
23 herein.

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

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

3 (2) Street light service;

4 (3) Firefighting service;

5 (4) Ambulance service;

6 (5) Fire hydrant service;

7 (6) Roadway maintenance and other services provided by roadway
8 maintenance personnel;

9 (7) Public utility systems and services provided by public
10 utility systems personnel, water; and

11 (8) All other direct and indirect county services authorized
12 by this code.

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

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

18 ~~(e)~~ (e) "Growth county" means any county within the state with
19 an averaged population growth rate in excess of 1% per year as
20 determined from the most recent decennial census counts and
21 forecasted, within decennial census count years, by official
22 records of government or generally approved standard statistical
23 estimate procedures: *Provided*, That once "growth county" status is
24 achieved it is permanent in nature and the powers derived hereby

1 are continued.

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

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

6 (1) Issuance of a subdivision or site plan approval;

7 (2) Issuance of a building permit; and

8 (3) Approval of a certificate of occupancy, or other
9 development or construction approval when any portion of the
10 revenues collected is intended to fund any portion of the costs of
11 capital improvements for any public facilities or county services
12 not otherwise permitted by law.

13 An impact fee does not include charges for remodeling,
14 rehabilitation, or other improvements to an existing structure or
15 rebuilding a damaged structure, provided there is no increase in
16 gross floor area or in the number of dwelling units that result
17 therefrom.

18 (g) "Indirect county services" means those public services
19 authorized and provided by commissioned agents, agencies or
20 departments of the county.

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

23 (i) "Multi-family dwelling" means multiple separate housing
24 units for residential inhabitants that are contained within one

1 building.

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

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

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

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

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

24 (m) "Reasonable benefit" means a benefit received from the

1 provision of a capital improvement greater than that received by
2 the general public located within the county wherein an impact fee
3 is being imposed.

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

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

11 **§7-20-4. Counties authorized to collect fees.**

12 ~~County governments affected by the construction of new~~
13 ~~development projects are hereby authorized to~~ A county commission
14 may require the payment of fees for any new development projects
15 constructed, ~~therein in the event any~~ if the costs associated with
16 capital improvements or ~~the provision of~~ other services are
17 attributable to ~~such~~ the project. ~~Such~~ The fees ~~shall~~ may not
18 exceed a proportionate share of ~~such~~ the costs required to
19 accommodate ~~any such~~ the new development. Before requiring payment
20 of ~~any fee~~ a impact or capital improvement fee, authorized
21 ~~hereunder,~~ it ~~must~~ shall be evident that some reasonable benefit
22 from ~~any such~~ the capital improvements will be realized by ~~any such~~
23 the development project.

24 (b) A county commission or other body may not impose or

1 collect an impact or capital improvement fee for an affordable
2 housing unit, that exceeds 15% of the amount that would otherwise
3 be imposed on the developer, owner or renter of the affordable
4 housing unit.

5 (c) A county commission or other body may not impose or
6 collect a impact or capital improvement fee for a manufactured home
7 or a multi-family dwelling unit that exceeds 20% of the fee or
8 \$3,000 whichever is less, that would otherwise be imposed on the
9 developer, owner or renter of the manufactured home or multi-family
10 dwelling unit.

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