

Impact Fees and Adequate Facilities Taxes

Key Takeaways

- Impact fees derive from a government’s power to regulate, called its “police power.” They apply to all types of development, not just residential.
- Impact fees are set to cover only the actual costs of infrastructure required by the development; they are required to be used to build such infrastructure, so new homeowners know they are getting services for the impact fees paid; and they fully cover developers’ obligations in a predictable way, eliminating the need for negotiations and set asides.
- For a county government to implement an impact fee, there must be authoring legislation passed by the General Assembly.
- Adequate facilities taxes are levied in response to rapid growth, with such growth serving as the basis for the tax, but they are different from impact fees in their legal basis, as well as in their use.
- Adequate facilities taxes derive from a government’s power to tax, not the power to regulate, and they need not reflect actual costs of growth.

Questions

1. **Are your county budgets suffering because of the impact of growth?**
2. **Historically, Farm Bureau has not been engaged in authorizing legislation on impact fees and adequate facilities taxes as the legislation is relative to local counties. Should Farm Bureau be more involved in these discussions moving forward?**

Background

Impact Fees

Increased growth in Tennessee has local and state officials discussing whether to impose impact fees for new developments in the area. **Impact fees derive from a government’s power to regulate, called its “police power.”** They apply to all types of development, not just residential. Impact fees are set to cover only the actual costs of infrastructure required by the development; they are required to be used to build such infrastructure, so new homeowners know they are getting services for the impact fees paid; and they fully cover developers’ obligations in a predictable way, eliminating the need for negotiations and set asides. Impact fees are often, but not always, calculated as net amounts after credits for several types of other payments made by developers and homebuyers. This would include on-site and off-site improvements by developers are allowed as credits against impact fees, but also such things as credits for future property

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tax payments by new homeowners for interest and principal payments on new infrastructure built with funds raised from new general obligation bonds.

A handful of counties and cities in Tennessee currently levy impact fees, mostly authorized by private act. **For a county government to implement an impact fee, there must be authoring legislation passed by the General Assembly.** Cities with either a mayor-aldermanic or city manager-council form of government have general authorization to levy such taxes. Arguments against impact fees question without providing some credit for such future property tax payments, new residents, builders, or developers might be subjected to double payment for the same facilities.

Adequate Facilities Taxes

Like impact fees, adequate facilities taxes are levied in response to rapid growth with such growth serving as the basis for the tax, however they differ from impact fees in their legal basis as well as in their use. **Adequate facilities taxes derive from a government's power to tax, not the power to regulate, and they need not reflect actual costs of growth.** The proceeds also cannot be used to build the infrastructure required by growth, though some local tax legislation does require it.

Currently, several municipalities implement adequate facilities taxes under the authority of general law and/or private acts. TCA § 67-4-2913 gives "the exclusive authority for local governments to adopt any new or additional adequate facilities taxes on development." Legislation has recently been brought forth to alter a local government's ability to levy impact fees and adequate facilities taxes, but no changes to current law have been made at this time.

Policy

State and Local Taxes (Partial)

While we generally favor more authority and responsibility for local governments, the authority to tax must be granted with caution. Impact fees and adequate facilities taxes levied by local governments help relieve the cost of urbanization on local property taxpayers. When local governments increase property taxes, impact fees and adequate facilities tax rates should increase proportionally.

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