

APPENDIX A

Indiana Code for Impact Fees

[Pre-Local Government Recodification Citations: 18-7-4-1211; 18-7-6-12.]
As added by Acts 1981, P.L.309, SEC.23.

IC 36-7-4-1212 Township joinder; withdrawal of township; conditions; procedure

Sec. 1212. ADVISORY. Because long range planning studies of population, land use, schools, recreation, and public ways involve substantial expenditures, a township that joins with a municipality or county may not withdraw from the joinder, unless:

(1) the municipality or county has consolidated on an area basis its planning and zoning activity under other law; or

(2) a petition, requesting a referendum on the question "Shall the township withdraw from joinder with (the municipality), or (the county), for planning and zoning purposes?", is sent to the township executive and is signed by at least the number of the voters of the township required under IC 3-8-6-3 to place a candidate on the ballot.

If the petition is received, the township executive shall certify the petition to the county election board under IC 3-10-9-3. The board shall place the question on a ballot to be submitted at the next general election for the township in the form prescribed by IC 3-10-9-4. If the township repays the amount expended for planning and zoning purposes that exceeds the amount contributed by the township and a majority of the voters voting in the election vote in the affirmative, the township may withdraw from its joinder with the municipality or county.

[Pre-Local Government Recodification Citations: 18-7-4-1212; 18-7-6-13.]
As added by Acts 1981, P.L.309, SEC.23. Amended by P.L.3-1987, SEC.566; P.L.12-1995, SEC.131.

IC 36-7-4-1213 Township joinder; authorization

Sec. 1213. ADVISORY. This series authorizes each municipality and county to effect joinder with a contiguous township.

[Pre-Local Government Recodification Citations: 18-7-4-1213; 18-7-6-14.]
As added by Acts 1981, P.L.309, SEC.23.

IC 36-7-4-1300 1300 Series—Impact Fees

Sec. 1300. This series (sections 1300 through 1399 of this chapter) may be cited as follows: 1300 SERIES — IMPACT FEES.

As added by P.L.221-1991, SEC.1.

IC 36-7-4-1301 "Community level of service" defined

Sec. 1301. As used in this series, "community level of service" means a quantitative measure of the service provided by the infrastructure that is determined by a unit to be appropriate.

As added by P.L.221-1991, SEC.2.

IC 36-7-4-1302 "Current level of service" defined

Sec. 1302. As used in this series, "current level of service" means a quantitative measure of service provided by existing infrastructure to support existing development.

As added by P.L.221-1991, SEC.3.

IC 36-7-4-1303 "Development" defined

Sec. 1303. As used in this series, "development" means an improvement of any kind on land.

As added by P.L.221-1991, SEC.4.

IC 36-7-4-1304 "Fee payer" and "person" defined

Sec. 1304. (a) As used in this series, "fee payer" means the following:

- (1) A person who has paid an impact fee.
- (2) A person to whom a person who paid an impact fee has made a written assignment of rights concerning the impact fee.
- (3) A person who has assumed by operation of law the rights concerning an impact fee.

(b) As used in this series, "person" means an individual, a sole proprietorship, a partnership, an association, a corporation, a fiduciary, or any other entity.

As added by P.L.221-1991, SEC.5.

IC 36-7-4-1305 "Impact fee" and "capital costs" defined

Sec. 1305. (a) As used in this series, "impact fee" means a monetary charge imposed on new development by a unit to defray or mitigate the capital costs of infrastructure that is required by, necessitated by, or needed to serve the new development.

(b) As used in this section, "capital costs" means the costs incurred to provide additional infrastructure to serve new development, including the following:

- (1) Directly related costs of construction or expansion of infrastructure that is necessary to serve the new development, including reasonable design, survey, engineering, environmental, and other professional fees that are directly related to the construction or expansion.
- (2) Directly related land acquisition costs, including costs incurred for the following:
 - (A) Purchases of interests in land.
 - (B) Court awards or settlements.
 - (C) Reasonable appraisal, relocation service, negotiation service, title insurance, expert witness, attorney, and other professional fees that are directly related to the land acquisition.
- (3) Directly related debt service, subject to section 1330 of this chapter.
- (4) Directly related expenses incurred in preparing or updating the comprehensive plan or zone improvement plan, including all administrative, consulting, attorney, and other professional fees, as limited by section 1330 of this chapter.

As added by P.L.221-1991, SEC.6.

IC 36-7-4-1306 "Impact fee ordinance" defined

Sec. 1306. As used in this series, "impact fee ordinance" means an ordinance adopted under section 1311 of this chapter.

As added by P.L.221-1991, SEC.7.

IC 36-7-4-1307 "Impact zone" defined

Sec. 1307. As used in this series, "impact zone" means a geographic area designated under section 1315 of this chapter.

As added by P.L.221-1991, SEC.8.

IC 36-7-4-1308 "Infrastructure" defined

Sec. 1308. As used in this series, "infrastructure" means the capital improvements that:

- (1) comprise:
 - (A) a sanitary sewer system or wastewater treatment facility;
 - (B) a park or recreational facility;
 - (C) a road or bridge;
 - (D) a drainage or flood control facility; or
 - (E) a water treatment, water storage, or water distribution facility;
- (2) are:
 - (A) owned solely for a public purpose by:
 - (i) a unit; or
 - (ii) a corporation created by a unit; or

- (B) leased by a unit solely for a public purpose; and
- (3) are included in the zone improvement plan of the impact zone in which the capital improvements are located.

The term includes site improvements or interests in real property needed for a facility listed in subdivision (1).

As added by P.L.221-1991, SEC.9.

IC 36-7-4-1309 "Infrastructure type" defined

Sec. 1309. As used in this series, "infrastructure type" means any of the following types of infrastructure covered by an impact fee ordinance:

- (1) Sewer, which includes sanitary sewerage and wastewater treatment facilities.
- (2) Recreation, which includes parks and other recreational facilities.
- (3) Road, which includes public ways and bridges.
- (4) Drainage, which includes drains and flood control facilities.
- (5) Water, which includes water treatment, water storage, and water distribution facilities.

As added by P.L.221-1991, SEC.10.

IC 36-7-4-1310 "Infrastructure agency" defined

Sec. 1310. As used in this series, "infrastructure agency" means a political subdivision or an agency of a political subdivision responsible for acquiring, constructing, or providing a particular infrastructure type.

As added by P.L.221-1991, SEC.11.

IC 36-7-4-1311 Ordinance; jurisdiction to adopt; impact fees and other charges

Sec. 1311. (a) The legislative body of a unit may adopt an ordinance imposing an impact fee on new development in the geographic area over which the unit exercises planning and zoning jurisdiction. The ordinance must aggregate the portions of the impact fee attributable to the infrastructure types covered by the ordinance so that a single and unified impact fee is imposed on each new development.

(b) If the legislative body of a unit has planning and zoning jurisdiction over the entire geographic area covered by the impact fee ordinance, an ordinance adopted under this section shall be adopted in the same manner that zoning ordinances are adopted under the 600 SERIES of this chapter.

(c) If the legislative body of a unit does not have planning and zoning jurisdiction over the entire geographic area covered by the impact fee ordinance but does have jurisdiction over one (1) or more infrastructure types in the area, the legislative body shall establish the portion of the impact fee schedule or formula for the infrastructure types over which the legislative body has jurisdiction. The legislative body of the unit having planning and zoning jurisdiction shall adopt an impact fee ordinance containing that portion of the impact fee schedule or formula if:

- (1) a public hearing has been held before the legislative body having planning and zoning jurisdiction; and
- (2) each plan commission that has planning jurisdiction over any part of the geographic area in which the impact fee is to be imposed has approved the proposed impact fee ordinance by resolution.

(d) An ordinance adopted under this section is the exclusive means for a unit to impose an impact fee. An impact fee imposed on new development to pay for infrastructure may not be collected after January 1, 1992, unless the impact fee is imposed under an impact fee ordinance adopted under this chapter.

(e) Notwithstanding any other provision of this chapter, the following charges are not impact fees and may continue to be imposed by units:

(1) Fees, charges, or assessments imposed for infrastructure services under statutes in existence on January 1, 1991, if:

(A) the fee, charge, or assessment is imposed upon all users whether they are new users or users requiring additional capacity or services;

(B) the fee, charge, or assessment is not used to fund construction of new infrastructure unless the new infrastructure is of the same type for which the fee, charge, or assessment is imposed and will serve the payer; and

(C) the fee, charge, or assessment constitutes a reasonable charge for the services provided in accordance with IC 36-1-3-8(a)(6) or other governing statutes requiring that any fees, charges, or assessments bear a reasonable relationship to the infrastructure provided.

(2) Fees, charges, and assessments agreed upon under a contractual agreement entered into before April 1, 1991, or fees, charges, and assessments agreed upon under a contractual agreement, if the fees, charges, and assessments are treated as impact deductions under section 1321(d) of this chapter if an impact fee ordinance is in effect.

As added by P.L.221-1991, SEC.12. Amended by P.L.149-2016, SEC.97.

IC 36-7-4-1312 Ordinance; prerequisites to adoption

Sec. 1312. (a) A unit may not adopt an impact fee ordinance under section 1311 of this series unless the unit has adopted a comprehensive plan under the 500 SERIES of this chapter for the geographic area over which the unit exercises planning and zoning jurisdiction.

(b) Before the adoption of an impact fee ordinance under section 1311 of this chapter, a unit shall establish an impact fee advisory committee. The advisory committee shall:

(1) be appointed by the executive of the unit;

(2) be composed of not less than five (5) and not more than ten (10) members with at least forty percent (40%) of the membership representing the development, building, or real estate industries; and

(3) serve in an advisory capacity to assist and advise the unit with regard to the adoption of an impact fee ordinance under section 1311 of this chapter.

(c) A planning commission or other committee in existence before the adoption of an impact fee ordinance that meets the membership requirements of subsection (b) may serve as the advisory committee that subsection (b) requires.

(d) Action of an advisory committee established under subsection (b) is not required as a prerequisite for the unit in adopting an impact fee ordinance under section 1311 of this chapter.

As added by P.L.221-1991, SEC.13.

IC 36-7-4-1313 Other permissible fees and charges of adopting unit

Sec. 1313. This series does not prohibit a unit from doing any of the following:

(1) Imposing a charge to pay the administrative, plan review, or inspection costs associated with a permit for development.

(2) Imposing, pursuant to a written commitment or agreement and as a condition or requirement attached to a development approval or authorization (including permitting or zoning decisions), an obligation to dedicate, construct, or contribute goods, services, land or interests in land, or infrastructure to a unit or to an infrastructure agency. However, if the unit adopts or has already adopted an impact fee ordinance under section 1311 of this chapter the following apply:

(A) The person dedicating, contributing, or providing an improvement under this subsection is entitled to a credit for the improvement under section 1335 of this chapter.

(B) The cost of complying with the condition or requirement imposed by the unit under this subdivision may not exceed the impact fee that could have been imposed

by the unit under section 1321 of this chapter for the same infrastructure.

(3) Imposing new permit fees, charges, or assessments or amending existing permit fees, charges, or assessments. However, the permit fees, charges, or assessments must meet the requirements of section 1311(e)(1)(A), 1311(e)(1)(B), and 1311(e)(1)(C) of this chapter.

As added by P.L.221-1991, SEC.14.

IC 36-7-4-1314 Ordinance; application

Sec. 1314. (a) Except as provided in subsections (b) and (c), an impact fee ordinance must apply to any development:

- (1) that is in an impact zone; and
- (2) for which a unit may require a structural building permit.

(b) An impact fee ordinance may not apply to an improvement that does not create a need for additional infrastructure, including the erection of a sign, the construction of a fence, or the interior renovation of a building not resulting in a change in use.

(c) As used in this section, "qualified property" has the meaning set forth in IC 36-1-8-18. Except as provided in subsection (d), an impact fee ordinance may not apply to qualified property, and an impact fee may not be imposed on qualified property.

(d) Upon the request of the owner of qualified property, an impact fee may be imposed on the qualified property.

As added by P.L.221-1991, SEC.15. Amended by P.L.200-2016, SEC.2.

IC 36-7-4-1315 Ordinance; establishment of impact zones

Sec. 1315. (a) An impact fee ordinance must establish an impact zone, or a set of impact zones, for each infrastructure type covered by the ordinance. An impact zone established for a particular infrastructure type is not required to be congruent with an impact zone established for a different infrastructure type.

(b) An impact zone may not extend beyond the jurisdictional boundary of an infrastructure agency responsible for the infrastructure type for which the impact zone was established, unless an agreement under IC 36-1-7 is entered into by the infrastructure agencies.

(c) If an impact zone, or a set of impact zones, includes a geographic area containing territory from more than one (1) planning and zoning jurisdiction, the applicable legislative bodies and infrastructure agencies shall enter into an agreement under IC 36-1-7 concerning the collection, division, and distribution of the fees collected under the impact fee ordinance.

As added by P.L.221-1991, SEC.16.

IC 36-7-4-1316 Impact zones; geographical area

Sec. 1316. A unit must include in an impact zone designated under section 1315 of this chapter the geographical area necessary to ensure that:

- (1) there is a functional relationship between the components of the infrastructure type in the impact zone;
- (2) the infrastructure type provides a reasonably uniform benefit throughout the impact zone; and
- (3) all areas included in the impact zone are contiguous.

As added by P.L.221-1991, SEC.17.

IC 36-7-4-1317 Ordinance; identification of responsible infrastructure agency

Sec. 1317. A unit must identify in the unit's impact fee ordinance the infrastructure agency that is responsible for acquiring, constructing, or providing each infrastructure type included in the impact fee ordinance.

As added by P.L.221-1991, SEC.18.

IC 36-7-4-1318 Ordinance; zone improvement plan preparation; contents of plan

Sec. 1318. (a) A unit may not adopt an impact fee ordinance under section 1311 of this chapter unless the unit has prepared or substantially updated a zone improvement plan for each impact zone during the immediately preceding one (1) year period. A single zone improvement plan may be used for two (2) or more infrastructure types if the impact zones for the infrastructure types are congruent.

(b) Each zone improvement plan must contain the following information:

- (1) A description of the nature and location of existing infrastructure in the impact zone.
- (2) A determination of the current level of service.
- (3) Establishment of a community level of service. A unit may provide that the unit's current level of service is the unit's community level of service in the zone improvement plan.
- (4) An estimate of the nature and location of development that is expected to occur in the impact zone during the following ten (10) year period.
- (5) An estimate of the nature, location, and cost of infrastructure that is necessary to provide the community level of service for the development described in subdivision (4). The plan must indicate the proposed timing and sequencing of infrastructure installation.
- (6) A general description of the sources and amounts of money used to pay for infrastructure during the previous five (5) years.

(c) If a zone improvement plan provides for raising the current level of service to a higher community level of service, the plan must:

- (1) provide for completion of the infrastructure that is necessary to raise the current level of service to the community level of service within the following ten (10) year period;
- (2) indicate the nature, location, and cost of infrastructure that is necessary to raise the current level of service to the community level of service; and
- (3) identify the revenue sources and estimate the amount of the revenue sources that the unit intends to use to raise the current level of service to the community level of service for existing development. Revenue sources include, without limitation, any increase in revenues available from one (1) or more of the following:
 - (A) Adopting or increasing the following:
 - (i) The local income tax (IC 6-3.6-6).
 - (ii) The county vehicle excise tax or the municipal vehicle excise tax, as applicable.
 - (iii) The county wheel tax or the municipal wheel tax, as applicable.
 - (B) Imposing the property tax rate per one hundred dollars (\$100) of assessed valuation that the unit may impose to create a cumulative capital improvement fund under IC 36-9-14.5 or IC 36-9-15.5.
 - (C) Transferring and reserving for infrastructure purposes other general revenues that are currently not being used to pay for capital costs of infrastructure.
 - (D) Dedicating and reserving for infrastructure purposes any newly available revenues, whether from federal or state revenue sharing programs or from the adoption of newly authorized taxes.

(d) A unit must consult with a qualified engineer licensed to perform engineering services in Indiana when the unit is preparing the portions of the zone improvement plan described in subsections (b)(1), (b)(2), (b)(5), and (c)(2).

(e) A zone improvement plan and amendments and modifications to the zone improvement plan become effective after adoption as part of the comprehensive plan under the 500 SERIES of this chapter or adoption as part of the capital improvements program under section 503(5) of this chapter. If the unit establishing the impact fee schedule or

formula and establishing the zone improvement plan is different from the unit having planning and zoning jurisdiction, the unit having planning and zoning jurisdiction shall incorporate the zone improvement plan as part of the unit's comprehensive plan and capital improvement plan.

(f) If a unit's zone improvement plan identifies revenue sources for raising the current level of service to the community level of service, impact fees may not be assessed or collected by the unit unless:

(1) before the effective date of the impact fee ordinance the unit has available or has adopted the revenue sources that the zone improvement plan specifies will be in effect before the impact fee ordinance becomes effective; and

(2) after the effective date of the impact fee ordinance the unit continues to provide adequate funds to defray the cost of raising the current level of service to the community level of service, using revenue sources specified in the zone improvement plan or revenue sources other than impact fees.

As added by P.L.221-1991, SEC.19. Amended by P.L.197-2016, SEC.123; P.L.256-2017, SEC.191.

IC 36-7-4-1319 Amendment to ordinance or zone improvement plan

Sec. 1319. (a) A unit shall amend a zone improvement plan to make adjustments in the nature, location, and cost of infrastructure and the timing or sequencing of infrastructure installations to respond to the nature and location of development occurring in the impact zone. Appropriate planning and analysis shall be carried out before an amendment is made to a zone improvement plan.

(b) A unit may not amend an impact fee ordinance if the amendment makes a significant change in an impact fee schedule or formula or if the amendment designates an impact zone or alters the boundary of a zone, unless a new or substantially updated zone improvement plan has been approved within the immediately preceding one (1) year period.

As added by P.L.221-1991, SEC.20.

IC 36-7-4-1320 Ordinance; fee schedule and formula

Sec. 1320. (a) An impact fee ordinance must include:

(1) a schedule prescribing for each impact zone the amount of the impact fee that is to be imposed for each infrastructure type covered by the ordinance; or

(2) a formula for each impact zone by which the amount of the impact fee that is to be imposed for each infrastructure type covered by the ordinance may be derived.

(b) A schedule or formula included in an impact fee ordinance must provide an objective and uniform standard for calculating impact fees that allows fee payers to accurately predict the impact fees that will be imposed on new development.

As added by P.L.221-1991, SEC.21.

IC 36-7-4-1321 Fee schedule or formula; requirements; limitations

Sec. 1321. (a) An impact fee schedule or formula described in section 1320 of this chapter shall be prepared so that the impact fee resulting from the application of the schedule or formula to a development meets the requirements of this section. However, this section does not require that a particular methodology be used in preparing the schedule or formula.

(b) As used in this section, "impact costs" means a reasonable estimate, made at the time the impact fee is assessed, of the proportionate share of the costs incurred or to be incurred by the unit in providing infrastructure of the applicable type in the impact zone that are necessary to provide the community level of service for the development. The amount of impact costs may not include the costs of infrastructure of the applicable type needed to raise the current level of service in the impact zone to the community level of service in the impact zone for development that is existing at the time the impact fee is assessed.

(c) As used in this section, "nonlocal revenue" means a reasonable estimate, made at the

time the impact fee is assessed, of revenue that:

- (1) will be received from any source (including but not limited to state or federal grants) other than a local government source; and
- (2) is to be used within the impact zone to defray the capital costs of providing infrastructure of the applicable type.

(d) As used in this section, "impact deductions" means a reasonable estimate, made at the time the impact fee is assessed, of the amounts from the following sources that will be paid during the ten (10) year period after assessment of the impact fee to defray the capital costs of providing infrastructure of the applicable types to serve a development:

- (1) Taxes levied by the unit or on behalf of the unit by an applicable infrastructure agency that the fee payer and future owners of the development will pay for use within the geographic area of the unit.
- (2) Charges and fees, other than fees paid by the fee payer under this chapter, that are imposed by any of the following for use within the geographic area of the unit:
 - (A) An applicable infrastructure agency.
 - (B) A governmental entity.
 - (C) A not-for-profit corporation created for governmental purposes.

Charges and fees covered by this subdivision include tap and availability charges paid for extension of services or the provision of infrastructure to the development.

(e) An impact fee on a development may not exceed:

- (1) impact costs; minus
- (2) the sum of nonlocal revenues and impact deductions.

As added by P.L.221-1991, SEC.22.

IC 36-7-4-1322 Fee assessment date; increase or decrease in fees; developments against which fees may not be assessed; existing contracts

Sec. 1322. (a) Except as provided in subsection (b), an impact fee ordinance must require that, if the fee payer requests, an impact fee on a development must be assessed not later than thirty (30) days after the earlier of:

- (1) the date the fee payer obtains an improvement location permit for the development; or
- (2) the date that the fee payer voluntarily submits to the unit a development plan for the development and evidence that the property is properly zoned for the proposed development. The plan shall be in the form prescribed by the unit's zoning ordinance and shall contain reasonably sufficient detail for the unit to calculate the impact fee.

(b) An impact fee ordinance may provide that if a proposed development is of a magnitude that will require revision of the zone improvement plan in order to appropriately serve the new development, the unit shall revise the unit's zone improvement plan and shall assess an impact fee on a development not later than one hundred eighty (180) days after the earlier of the following:

- (1) The date on which the fee payer obtains an improvement location permit for the development.
- (2) The date on which the fee payer submits to the unit a development plan for a development and evidence that the property is properly zoned for the proposed development. The development plan must be in the form prescribed by the unit's zoning ordinance and must contain reasonably sufficient detail for the unit to calculate the impact fee.

(c) An impact fee assessed under subsections (a) or (b) may be increased only if the structural building permit has not been issued for the development and the requirements of subsection (d) are satisfied. In the case of a phased development, only a portion of an impact fee assessed under subsection (a) or (b) that is attributable to the portion of the development for which a permit has not been issued may be increased if the requirements of subsection (d) are satisfied.

(d) Unless the improvement location permit or development plan originally submitted for the development is changed so that the amount of impact on infrastructure the development creates in the impact zone is significantly increased, an impact fee assessed under:

(1) subsection (a)(1) or (b)(1) may not be increased for the period of the improvement location permit's validity; and

(2) subsection (a)(2) or (b)(2) may not be increased for three (3) years.

(e) An impact fee assessed under subsection (a) or (b) shall be decreased if the improvement location permit or development plan originally submitted for the development is changed so that the amount of impact on infrastructure that the development creates in the impact zone is significantly decreased. If a change occurs in the permit or plan that results in a decrease in the amount of the impact fee after the fee has been paid, the unit that collected the fee shall immediately refund the amount of the overpayment to the fee payer.

(f) If the unit fails to assess an impact fee within the period required by subsection (a) or (b), the unit may not assess an impact fee on the development unless the development plan originally submitted for the development is materially and substantially changed.

(g) Notwithstanding other provisions in this chapter, a unit may not assess an impact fee against a development if:

(1) an improvement location permit has been issued for all or a part of a development before adoption of an impact fee ordinance that is in compliance with this chapter; and

(2) the development satisfies all of the following criteria:

(A) The development is zoned for commercial or industrial use before January 1, 1991.

(B) The development will consist primarily of new buildings or structures. As used in this clause, the term "new buildings or structures" does not include additions or expansions of existing buildings or structures.

(C) The parts of the development for which a structural building permit has not been issued are owned or controlled by the person that owned or controlled the development on January 1, 1991.

(D) A structural building permit is issued for the development not more than four (4) years after the effective date of the impact fee ordinance.

(E) The development is part of a common scheme of development that:

(i) involves land that is contiguous;

(ii) involves a plan for development that includes a survey of the land, engineering drawings, and a site plan showing the anticipated size, location, and use of buildings and the anticipated location of streets, sewers, and drainage;

(iii) if plan approval is required, resulted in an application being filed with an appropriate office, commission, or official of the unit before January 1, 1991, that resulted or may result in approval of any phase of the development plan referred to in item (ii);

(iv) has been diligently pursued since January 1, 1991;

(v) resulted before January 1, 1991, in a substantial investment in creating, publicizing, or implementing the common scheme of development; and

(vi) involved the expenditure of significant funds before January 1, 1991, for the provision of improvements, such as roads, sewers, water treatment facilities, water storage facilities, water distribution facilities, drainage systems, or parks, that are on public lands or are available for other development in the area.

(h) Notwithstanding any other provision of this chapter, this chapter does not impair the validity of any contract between a unit and a fee payer that was:

(1) entered into before January 1, 1991; and

(2) executed in consideration of zoning amendments or annexations requested by the fee payer.

As added by P.L.221-1991, SEC.23.

IC 36-7-4-1323 Fee due date; proration; repeal or lapse of ordinance

Sec. 1323. (a) Except as provided in section 1324 of this chapter, an impact fee assessed in compliance with section 1322 of this chapter is due and payable on the date of issuance of the structural building permit for the new development on which the impact fee is imposed.

(b) For a phased development, an impact fee shall be prorated for purposes of payment according to the impact of the parcel for which a structural building permit is issued in relation to the total impact of the development. In accordance with section 1324 of this chapter, only the prorated portion of the assessed impact fee is due and payable on the issuance of the permit.

(c) If an impact fee ordinance is repealed, lapses, or becomes ineffective after the assessment of an impact fee on a development but before the issuance of the structural building permit for part or all of the development:

- (1) any part of the impact fee attributable to the part of the development for which a structural building permit has not been issued is void and is not due and payable, in the case of a phased development; and
- (2) the entire impact fee is void and is not due and payable, in the case of a development other than a phased development.

As added by P.L.221-1991, SEC.24.

IC 36-7-4-1324 Ordinance; installment payment plan; fee upon permit issuance; interest; penalty for late payment

Sec. 1324. (a) An impact fee ordinance must include an installment payment plan. The installment payment plan must at least offer a fee payer the option of paying part of an impact fee in equal installment payments if the impact fee is greater than five thousand dollars (\$5,000). In an installment plan under this section:

- (1) a maximum of five thousand dollars (\$5,000) or five percent (5%) of the impact fee, whichever is greater, may become payable on the date the structural building permit is issued for the development on which the fee is imposed;
- (2) the first installment may not become due and payable less than one (1) year after the date the structural building permit is issued for the development on which the fee is imposed; and
- (3) the last installment may not be due and payable less than two (2) years after the date the structural building permit is issued for the development on which the fee is imposed.

(b) An impact fee ordinance may require an impact fee of five thousand dollars (\$5,000) or less to be paid in full on the date the structural building permit is issued for the development on which the impact fee is imposed.

(c) An impact fee ordinance may provide that a reasonable rate of interest, not to exceed the prejudgment rate of interest in effect at the time the interest accrues, may be charged if the fee payer elects to pay in installments. If interest is charged, the ordinance must provide that interest accrues only on the portion of the impact fee that is outstanding and does not begin to accrue until the date the structural building permit is issued for the development or the part of the development on which the impact fee is imposed.

(d) An impact fee ordinance may provide that if all or part of an installment is not paid when due and payable, the amount of the installment shall be increased on the first day after the installment is due and payable by a penalty amount equal to ten percent (10%) of the installment amount that is overdue. If interest is charged under subsection (c), the interest shall be charged on the penalty amount.

As added by P.L.221-1991, SEC.25.

IC 36-7-4-1325 Collection of unpaid fees; lien; receipt for payments

Sec. 1325. (a) A unit may use any legal remedy to collect an impact fee imposed by the

unit. A unit must bring an action to collect an impact fee and all penalties, costs, and collection expenses associated with a fee not later than ten (10) years after the fee or the prorated portion of the impact fee first becomes due and payable.

(b) On the date a structural building permit is issued for the development of property on which the impact fee is assessed, the unit acquires a lien on the real property for which the permit is issued. For a phased development, the amount of the lien may not exceed the prorated portion of the impact fee due and payable in one (1) or more installments at the time the structural building permit is issued.

(c) A lien acquired by a unit under this section is not affected by a sale or transfer of the real property subject to the lien, including the sale, exchange, or lease of the real property under IC 36-1-11.

(d) A lien acquired by a unit under this section continues for ten (10) years after the impact fee or the prorated portion of the impact fee becomes due and payable. However, if an action to enforce the lien is filed within the ten (10) year period, the lien continues until the termination of the proceeding.

(e) A holder of a lien of record on any real property on which an impact fee is delinquent may pay the delinquent impact fee and any penalties and costs. The amount paid by the lien holder is an additional lien on the real property in favor of the lien holder and is collectible in the same manner as the original lien.

(f) If a person pays an impact fee assessed against any real property, the person is entitled to a receipt for the payment that is:

- (1) on a form prescribed by the impact fee ordinance; and
- (2) issued by a person designated in the impact fee ordinance.

As added by P.L.221-1991, SEC.26.

IC 36-7-4-1326 Ordinance; special reduced rates for affordable housing development

Sec. 1326. (a) An impact fee ordinance may provide for a reduction in an impact fee for housing development that provides sale or rental housing, or both, at a price that is affordable to an individual or a family earning less than eighty percent (80%) of the median income for the county in which the housing development is located. If the housing development comprises more than one (1) residential unit, the impact fee reduction shall apply only to the residential units that are affordable to an individual or a family earning less than eighty percent (80%) of the median income of the county.

(b) If the impact fee ordinance provides for a reduction in an impact fee under subsection (a), the ordinance must:

- (1) contain a schedule or formula that sets forth the amount of the fee reduction for various types of housing development specified in subsection (a);
- (2) require that, as a condition of receiving the fee reduction, the owner execute an agreement that:
 - (A) is binding for a period of at least five (5) years on the owner and subsequent owners; and
 - (B) limits the tenancy of residential units receiving the fee reduction to individuals or families who at the time the tenancy is initiated are earning less than eighty percent (80%) of the median income of the county;
- (3) contain standards to be used in determining if a particular housing development specified in subsection (a) will receive a fee reduction; and
- (4) designate a board or an official of the unit to conduct the hearing required by subsection (c).

(c) A fee reduction authorized by this section must be approved by a board or official of the unit at a public hearing.

As added by P.L.221-1991, SEC.27.

IC 36-7-4-1327 Fee reduction; appeal procedures

Sec. 1327. An impact fee ordinance must provide a procedure through which the fee reduction decision made under section 1326 of this chapter may be appealed by the following persons:

- (1) The person requesting the fee reduction.
- (2) An infrastructure agency responsible for infrastructure of the applicable type for the impact zone in which the impact fee reduction is granted.

As added by P.L.221-1991, SEC.28.

IC 36-7-4-1328 Fee reduction; complementary payment by granting unit

Sec. 1328. A unit that provides a fee reduction under section 1326 of this chapter shall pay into the account or accounts established for the impact zone in which the fee was reduced an amount equal to the amount of the fee reduction.

As added by P.L.221-1991, SEC.29.

IC 36-7-4-1329 Fund for impact fee collections; establishment; management; reports

Sec. 1329. (a) A unit imposing an impact fee shall establish a fund to receive amounts collected under this series.

(b) Money in a fund established under subsection (a) at the end of the unit's fiscal year remains in the fund. Interest earned by the fund shall be deposited in the fund.

(c) The fiscal officer of the unit shall manage the fund according to the provisions of this series. The fiscal officer shall annually report to the unit's plan commission and to each infrastructure agency responsible for infrastructure in an impact zone. The report must include the following:

- (1) The amount of money in accounts established for the impact zone.
- (2) The total receipts and disbursements of the accounts established for the impact zone.

(d) A separate account shall be established in the fund for each impact zone established by the unit and for each infrastructure type within each zone. Interest earned by an account shall be deposited in that account.

As added by P.L.221-1991, SEC.30.

IC 36-7-4-1330 Use of fees

Sec. 1330. An impact fee collected under this series shall be used for the following purposes:

- (1) Providing funds to an infrastructure agency for the provision of new infrastructure that:
 - (A) is necessary to serve the new development in the impact zone from which the fee was collected; and
 - (B) is identified in the zone improvement plan.
- (2) In an amount not to exceed five percent (5%) of the annual collections of an impact fee, for expenses incurred by the unit that paid for the consulting services that were used to establish the impact fee ordinance.
- (3) Payment of a refund under section 1332 of this chapter.
- (4) Payment of debt service on an obligation issued to provide infrastructure described in subdivision (1).

As added by P.L.221-1991, SEC.31.

IC 36-7-4-1331 Infrastructure construction

Sec. 1331. (a) An infrastructure agency shall, within the time described in the zone improvement plan, construct infrastructure for which:

- (1) a zone improvement plan has been adopted;

- (2) an impact zone has been established; and
- (3) an impact fee has been collected.

(b) A unit may amend the unit's zone improvement plan, including the time provided in the plan for construction of infrastructure, only if the amount of expenditures provided for the construction of infrastructure in the original plan does not decrease in any year and the benefit to the overall impact zone does not decrease because of the amendment.

As added by P.L.221-1991, SEC.32.

IC 36-7-4-1332 Impact fee refunds

Sec. 1332. (a) A fee payer is entitled to a refund of an impact fee if an infrastructure agency:

(1) has failed to complete a part of the infrastructure for which the impact fee was imposed not later than:

(A) twenty-four (24) months after the time described in section 1331 of this chapter; or

(B) a longer time as is reasonably necessary to complete the infrastructure if unforeseeable and extraordinary circumstances that are not in whole or in part caused by the unit have delayed the construction;

(2) has unreasonably denied the fee payer the use and benefit of the infrastructure during the useful life of the infrastructure; or

(3) has failed within the earlier of:

(A) six (6) years after issuance of the structural building permit; or

(B) the anticipated infrastructure completion date as specified in the zone improvement plan existing on the date the impact fee was collected;

to make reasonable progress toward completion of the specific infrastructure for which the impact fee was imposed or thereafter fails to make reasonable progress toward completion.

(b) An application for a refund under subsection (a) must be filed with the unit that imposed the impact fee not later than two (2) years after the right to a refund accrues. A unit shall issue a refund in part or in full or shall reject the application for refund not later than thirty (30) days after receiving an application for a refund.

(c) If a unit approves a refund in whole or in part, the unit shall pay the amount approved, plus interest from the date on which the impact fee was paid to the date the refund is issued. The interest rate shall be the same rate as the rate that the unit's impact fee ordinance provides for impact fee payments paid in installments.

(d) If a unit rejects an application for refund or approves only a partial refund, the fee payer may appeal not later than sixty (60) days after the rejection or partial approval to the unit's impact fee review board established under section 1338 of this chapter by filing with the board an appeal on a form prescribed by the board. The board shall issue instructions for completion of the form. The form and the instructions must be clear, simple, and understandable to a lay person.

(e) An impact fee ordinance shall designate the employee or official of the unit who is responsible for accepting, rejecting, and paying a refund and interest.

(f) A unit's impact fee review board shall hold a hearing on all appeals for a refund under this section. The hearing shall be held not later than forty-five (45) days after the application for appeal is filed with the board. A unit's impact fee review board shall provide notice of the application for refund to the infrastructure agency responsible for the infrastructure for which the impact fee was imposed.

(g) An impact fee review board holding a hearing under subsection (f) shall determine the amount of a refund that shall be made to the fee payer from the account established for the infrastructure for which the fee was imposed. A refund ordered by the board must include interest from the date the impact fee was paid to the date the refund is issued at the same rate the ordinance provides for impact fee payments paid in installments.

(h) A party aggrieved by a final decision of an impact fee review board in a hearing under subsection (f) may appeal to the circuit or superior court of the county in which the unit is located and is entitled to a trial de novo.

As added by P.L.221-1991, SEC.33.

**IC 36-7-4-1333 Impact fees; appeal of amount before impact review board;
judicial review; effect on pending fee payments**

Sec. 1333. (a) A person against whom an impact fee has been assessed may appeal the amount of the impact fee. A unit may not deny issuance of a structural building permit on the basis that an impact fee has not been paid or condition issuance of the permit on the payment of an impact fee. However, in the case of an impact fee of one thousand dollars (\$1,000) or less a unit may require a fee payer to:

- (1) pay the impact fee; or
- (2) bring an appeal under this section;

before the unit issues a structural building permit for the development for which the impact fee was assessed.

(b) A person must file a petition for a review of the amount of an impact fee with the unit's impact fee review board not later than thirty (30) days after issuance of the structural building permit for the development for which the impact fee was assessed. An impact fee ordinance may require a petition to be accompanied by payment of a reasonable fee not to exceed one hundred dollars (\$100). A fee payer shall receive a full refund of the filing fee if:

- (1) the fee payer prevails;
- (2) the amount of the impact fee or the reductions or credits against the fee is adjusted by the unit, the board, or a court; and
- (3) the body ordering the adjustment finds that the amount of the fee, reductions, or credits were arbitrary or capricious.

(c) A unit's impact fee review board shall prescribe the form of the petition for review of an impact fee under subsection (b). The board shall issue instructions for completion of the form. The form and the instructions must be clear, simple, and understandable to a lay person. The form must require the petitioner to specify:

- (1) a description of the new development on which the impact fee has been assessed;
- (2) all facts related to the assessment of the impact fee; and
- (3) the reasons the petitioner believes that the amount of the impact fee assessed is erroneous or is greater than the amount allowed by the fee limitations set forth in this series.

(d) A unit's impact fee review board shall prescribe a form for a response by a unit to a petition for review under this section. The board shall issue instructions for completion of the form. The form must require the unit to indicate:

- (1) agreement or disagreement with each item indicated on the petition for review under subsection (c); and
- (2) the reasons the unit believes that the amount of the fee assessed is correct.

(e) Immediately upon the receipt of a timely filed petition on the form prescribed under subsection (c), a unit's impact fee review board shall provide a copy of the petition to the unit assessing the impact fee. The unit shall not later than thirty (30) days after the receipt of the petition provide to the board a completed response to the petition on the form prescribed under subsection (d). The board shall immediately forward a copy of the response form to the petitioner.

(f) An impact fee review board shall:

- (1) review the petition and the response submitted under this section; and
- (2) determine the appropriate amount of the impact fee not later than thirty (30) days after submission of both petitions.

(g) A fee payer aggrieved by a final determination of an impact fee review board may appeal to the circuit or superior court of the county in which the unit is located and is entitled

to a trial de novo. If the assessment of a fee is vacated by judgment of the court, the assessment of the impact fee shall be remanded to the board for correction of the impact fee assessment and further proceedings in accordance with law.

(h) If a petition for a review or an appeal of an impact fee assessment is pending, the impact fee is not due and payable until after the petition or appeal is finally adjudicated and the amount of the fee is determined.

As added by P.L.221-1991, SEC.34.

IC 36-7-4-1334 Ordinance; appeal provision for amount of fees

Sec. 1334. An impact fee ordinance must set forth the reasons for which an appeal of the amount of an impact fee may be made. The impact fee ordinance must provide that an appeal of the amount of an impact fee may be made for the following reasons:

- (1) A fact assumption used in determining the amount of an impact fee is incorrect.
- (2) The amount of the impact fee is greater than the amount allowed under sections 1320, 1321, and 1322 of this chapter.

As added by P.L.221-1991, SEC.35.

IC 36-7-4-1335 Fee payer credits; infrastructure or improvements; amount of credit

Sec. 1335. (a) As used in this section, "improvement" means an improvement under section 1313(2) of this chapter or a site improvement, land, or real property interest as follows:

- (1) That is to be used for at least one (1) of the infrastructure purposes specified in section 1309 of this chapter.
- (2) That is included in or intended to be used relative to an infrastructure type for which the unit has imposed an impact fee in the impact zone.
- (3) That is not a type of improvement that is uniformly required by law or rule for the type of development on which the impact fee has been imposed.
- (4) That is or will be:
 - (A) public property; or
 - (B) furnished or constructed under requirements of the unit and is or will be available for use by other development in the area.
- (5) That is beneficial to existing development and future development in the impact zone and is not beneficial to only one (1) development.
- (6) That either:
 - (A) allows the removal of a component of infrastructure planned for the impact zone;
 - (B) is a useful addition to the zone improvement plan; or
 - (C) is reasonably likely to be included in a future zone improvement plan for the impact zone.
- (7) That is:
 - (A) constructed, furnished, or guaranteed by a bond or letter of credit under a request by an authorized official of the:
 - (i) applicable infrastructure agency; or
 - (ii) unit that imposed the impact fee; or
 - (B) required to be constructed or furnished under a written commitment that:
 - (i) is requested by an authorized official of the applicable infrastructure agency or the unit that imposed the impact fee;
 - (ii) concerns the use or developing of the development against which the impact fee is imposed; and
 - (iii) is made under section 1015 of this chapter.

(b) A fee payer is entitled to a credit against an impact fee if the owner or developer of the development constructs or provides:

- (1) infrastructure that is an infrastructure type for which the unit imposed an impact fee

in the impact zone; or

(2) an improvement.

(c) A fee payer is entitled to a credit under this section for infrastructure or an improvement that:

(1) is constructed or furnished relative to a development after January 1, 1989; and

(2) meets the requirements of this section.

(d) The amount of a credit allowed under this section shall be determined at the date the impact fee is assessed. However, if an assessment is not requested, the amount of the credit shall be determined at the time the structural building permit is issued. The amount of the credit shall be:

(1) determined by the:

(A) person constructing or providing the infrastructure or improvement; and

(B) applicable infrastructure agency; and

(2) equal to the sum of the following:

(A) The cost of constructing or providing the infrastructure or improvement.

(B) The fair market value of land, real property interests, and site improvements provided.

(e) The amount of a credit may be increased or decreased after the date the impact fee is assessed if, between the date the impact fee is assessed and the date the structural building permit is issued, there is a substantial and material change in the cost or value of the infrastructure or improvement that is constructed or furnished from the cost or value determined under subsection (d). However, at the time the amount of a credit is determined under subsection (d), the person providing the infrastructure or improvement and the applicable infrastructure agency may agree that the amount of the credit may not be changed. The person providing the infrastructure or improvement may waive the person's right to a credit under this section.

As added by P.L.221-1991, SEC.36. Amended by P.L.126-2011, SEC.43.

IC 36-7-4-1336 Fee payer credits; petition to determine amount; proceeding before impact review board

Sec. 1336. (a) If the parties cannot agree on the cost or fair market value under section 1335(d) of this chapter, the fee payer or the person constructing or providing the infrastructure or improvement may file a petition for determination of the amount of the credit with the unit's impact fee review board not later than thirty (30) days after the structural building permit is issued for the development on which the impact fee is imposed. A petition under this subsection may be made as part of an appeal proceeding under section 1334 of this chapter or may be made under this section.

(b) An impact fee review board shall prescribe the form of the petition for determination of the amount of a credit under this section. The board shall issue instructions for completion of the form. The form and the instructions must be clear, simple, and understandable to a lay person.

(c) An impact fee review board shall prescribe a form for a response by the applicable infrastructure agency to a petition under this section for determination of a credit amount. The board shall issue instructions for completion of the form.

(d) Immediately after receiving a timely filed petition under this section for determination of a credit amount, an impact fee review board shall provide a copy of the petition to the applicable infrastructure agency. Not later than thirty (30) days after receiving a copy of the petition, the infrastructure agency shall provide to the board a response on the form prescribed under subsection (c). The board shall immediately provide the petitioner with a copy of the infrastructure agency's response.

(e) The impact fee review board shall:

(1) review a petition and response filed under this section; and

(2) determine the amount of the credit not later than thirty (30) days after the response

is filed.

(f) A fee payer aggrieved by a final determination of an impact fee review board under this section:

(1) may appeal to the circuit or superior court of the county in which the unit is located; and

(2) is entitled to a trial de novo.

As added by P.L.221-1991, SEC.37.

IC 36-7-4-1337 Ordinance; allocation of credits to fee payer provisions

Sec. 1337. An impact fee ordinance shall do the following:

(1) Establish a method for reasonably allocating credits to fee payers in situations in which the person providing infrastructure or an improvement is not the fee payer.

(2) Allow the person providing infrastructure or an improvement to designate in writing a reasonable and administratively feasible method of allocating credits to future fee payers.

As added by P.L.221-1991, SEC.38.

IC 36-7-4-1338 Impact fee review board; membership; powers and duties

Sec. 1338. (a) Each unit that adopts an impact fee ordinance shall establish an impact fee review board consisting of three (3) citizen members appointed by the executive of the unit. A member of the board may not be a member of the plan commission. An impact fee ordinance must do the following:

(1) Set the terms the members shall serve on the board.

(2) Establish a procedure through which the unit's executive shall appoint a temporary replacement member meeting the qualifications of the member being replaced in the case of conflict of interest.

(b) An impact fee review board must consist of the following members:

(1) One (1) member who is a real estate broker licensed in Indiana.

(2) One (1) member who is an engineer licensed in Indiana.

(3) One (1) member who is a certified public accountant.

(c) An impact fee review board shall review the amount of an impact fee assessed, the amount of a refund, and the amount of a credit using the following procedures:

(1) The board shall fix a reasonable time for the hearing of appeals.

(2) At a hearing, each party may appear and present evidence in person, by agent, or by attorney.

(3) A person may not communicate with a member of the board before the hearing with intent to influence the member's action on a matter pending before the board.

(4) The board may reverse, affirm, modify, or otherwise establish the amount of an impact fee, a credit, a refund, or any combination of fees, credits, or refunds. For purposes of this subdivision, the board has all the powers of the official of the unit from which the appeal is taken.

(5) The board shall decide a matter that the board is required to hear:

(A) at the hearing at which the matter is first presented; or

(B) at the conclusion of the hearing on the matter, if the matter is continued.

(6) Within five (5) days after making a decision, the board shall provide a copy of the decision to the unit and the fee payer involved in the appeal.

(7) The board shall make written findings of fact to support the board's decision.

As added by P.L.221-1991, SEC.39.

IC 36-7-4-1339 Declaratory relief; challenge of ordinance

Sec. 1339. (a) This section applies to a person having an interest in real property that may be subject to an impact fee ordinance if the development occurs on the property.

(b) A person may seek to:

- (1) have a court determine under IC 34-26-1 any question of construction or validity arising under the impact fee ordinance; and
 - (2) obtain a declaration of rights, status, or other legal relations under the ordinance.
- (c) The validity of an impact fee ordinance adopted by a unit or the validity of the application of the ordinance in a specific impact zone may be challenged under this section on any of the following grounds:
- (1) The unit has not provided for a zone improvement plan in the unit's comprehensive plan.
 - (2) The unit did not prepare or substantially update the unit's zone improvement plan in the year preceding the adoption of the impact fee ordinance.
 - (3) The unit has not identified the revenue sources the unit intends to use to implement the zone improvement plan, if identification of the revenue sources is required under section 1318(c) of this chapter.
 - (4) The unit has not complied with the requirements of section 1318(f) of this chapter.
 - (5) The unit has not made adequate revenue available to complete infrastructure improvements identified in the unit's zone improvement plan.
 - (6) The impact fee ordinance imposes fees on new development that will not create a need for additional infrastructure.
 - (7) The impact fee ordinance imposes on new development fees that are excessive in relation to the infrastructure needs created by the new development.
 - (8) The impact fee ordinance does not allow for reasonable credits to fee payers.
 - (9) The unit imposed a prohibition or delay on new development to enable the unit to complete the adoption of an impact fee ordinance.
 - (10) The unit otherwise fails to comply with this series in the adoption of an impact fee ordinance.

As added by P.L.221-1991, SEC.40. Amended by P.L.1-1998, SEC.206.

IC 36-7-4-1340 Ordinance; effective date; duration; replacement

Sec. 1340. (a) An impact fee ordinance may take effect not earlier than six (6) months after the date on which the impact fee ordinance is adopted by a legislative body.

(b) An impact fee may not be collected under an impact fee ordinance more than five (5) years after the effective date of the ordinance. However, a unit may adopt a replacement impact fee ordinance if the replacement impact fee ordinance complies with the provisions of this series.

As added by P.L.221-1991, SEC.41.

IC 36-7-4-1341 Delay of new development pending fee process

Sec. 1341. A unit may not prohibit or delay new development to wait for the completion of all or a part of the process necessary for the development, adoption, or updating of an impact fee.

As added by P.L.221-1991, SEC.42.

IC 36-7-4-1342 Application of 1300 Series to certain towns; expiration of provision

Sec. 1342. The general assembly finds that the powers of a local governmental unit to permit and provide for infrastructure are not limited by the provisions of this chapter except as expressly provided in this chapter.

As added by P.L.221-1991, SEC.43.

IC 36-7-4-1400 1400 Series—Development Plans; application of certain amendments to chapter

Sec. 1400. (a) This section and sections 1401, 1401.5, 1402, 1403, 1404, 1405, and 1406 of this chapter apply only to development plans initially submitted after December 31, 1995.