


Colorado Legislative Council Staff Fiscal Note
FINAL
FISCAL NOTE

Drafting Number: LLS 08-0874

Date: June 12, 2008

Prime Sponsor(s): Rep. Bruce

Bill Status: Postponed Indefinitely

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TITLE: CONCERNING GOVERNMENTAL LAND USE REGULATIONS, AND, IN CONNECTION THEREWITH, REQUIRING LAND DEVELOPERS TO PAY FEES TO ADDRESS THE IMPACTS CAUSED BY NEW CONSTRUCTION, PLACING LIMITS ON FEES FOR CHANGES IN PERMITTED USES OF REAL PROPERTY, PROHIBITING THE NEW ISSUANCE OR APPLICATION OF LAND USE REGULATIONS IN SPECIFIED CIRCUMSTANCES WITHOUT THE PAYMENT OF JUST COMPENSATION, AND PROVIDING FOR INITIATIVE PETITION RIGHTS BY WHICH ELECTORS MAY VOTE TO LIMIT OR END LAND USE REGULATIONS.

Fiscal Impact Summary	FY 2008-2009	FY 2009-2010
State Revenue		
State Expenditures		
FTE Position Change	0.0 FTE	0.0 FTE
Effective Date: The bill was postponed indefinitely by the House Local Government Committee on February 14, 2008.		
Appropriation Summary for FY 2008-2009: None required.		
Local Government Impact: See the Local Government Impact section.		

Summary of Legislation

This bill requires land developers to pay fees to address the impacts caused by new construction. In addition to any impact fee currently in existence for parks, school land, and other impacts, the bill requires each land developer seeking to develop real property for new construction to pay a proportionate impact fee in an amount established by a public schedule. The fee is intended to cover to direct and indirect impacts of the development on:

- school district buildings to serve new residents;
- the construction, expansion, or improvement of public roads within three miles of the development;
- fire stations, police or sheriff stations, and related capital expenditures;
- drainage basins; and
- other related governmental capital construction costs as determined by the Office of Smart Growth in the Department of Local Affairs.

As an alternative to paying the impact fee, the bill authorizes developers to perform the work addressing the capital improvement requirements identified in the bill. Failure to pay the impact fee in a timely manner shall void the development approval and the developer's application for a governmental approval. Furthermore, any impact fee charged to finance school buildings to be constructed in the future shall be levied on the construction of residential units only.

The Office of Smart Growth will publish a schedule of impact fees on or before December 1, 2008. The bill requires the Office of Smart Growth to estimate the proper level of impact fees at least once every three years. The schedule must contain an automatic annual inflation factor. A developer may file an appeal with the office contesting the application or the amount of any impact fee.

After the effective date of the bill, local governments, even with voter approval, shall not be allowed to increase taxes or fees or issue bonds, certificates of participation, leases, or any other legal borrowing instruments to finance new or expanded capital improvements that address growth caused by new construction for which impact fees are being paid or will be paid to the local government. Furthermore, no fee required to be paid for processing a land use application or approval for a new zoning, variance, conditional use, special use, waiver, or similar land use classification shall exceed \$1,000, adjusted annually for inflation. Any fee imposed in excess of this amount on a matter pending as of the bill's effective date shall be refunded to the applicant within 30 days.

Regarding any civil action with a governmental entity concerning land use regulations, the bill allows a successful property owner plaintiff to receive damages and recovery of costs and reasonable attorney fees. A governmental entity may recover its damages, costs, or reasonable attorney fees only if the plaintiff's action has been held by a final court ruling to be frivolous.

Provisions of the bill are declared to be severable if the act or the application thereof to any person or circumstance is held to be invalid.

State Expenditures

The Department of Local Affairs and the Judicial Branch will be impacted by the bill. The paragraphs that follow describe those impacts.

Department of Local Affairs. The bill requires the Office of Smart Growth to estimate the proper level of impact fees at least once every three years. This function will most likely be contracted out. While the cost of the first study in FY 2011-12 has not been estimated, a thorough analysis may require as much as \$120,000 General Fund every three years to conduct the study. The office is responsible for publishing fee schedules on the office's website. This function can be accomplished within existing appropriations.

Judicial Branch. The courts have historically seen new civil cases filed due to disagreements concerning matters of just compensation and land use regulations. It is assumed that governmental entities, real property owners, and land developers will generally comply with the new requirements and processes of the bill. It is expected that there will be some new civil case filings resulting from the land use regulation changes. However, it is assumed that the number of case filings will be relatively low and absorbable within the current and future appropriations available to the Judicial Branch.

Local Government Impact

Since many of the infrastructure impacts of growth will be paid directly by developers who are responsible for the new growth, one impact of the bill will be to reduce the need for additional local government fees and the creation of additional legal borrowing instruments to finance new or expanded capital improvements.

Fiscal impact to local governments has been identified in three areas:

- The bill states that no land use application fee shall exceed \$1,000. This will limit the amount of money that municipalities and counties can charge for application fees. The \$1,000 fee may not cover all costs incurred.
- Any local government that seeks a change in a land use classification is required to notify each property owner in writing and obtain the written consent of the owner. The additional cost of these notices is recognized but not quantified.
- The bill states that no land use regulation enacted or applied shall lower the market value of any real property by one percent or more unless the property owner waives the stated dollar amount of compensation, or is compensated by the local government. The potential impact of this provision is significant but unquantifiable. Legal costs relating to claims will also be incurred.

Departments Contacted

Judicial Local Affairs Education