

lecting after May 1, 1994, on tourism promotion and development. Any amount of room tax collected that must be spent on tourism promotion and development shall either be spent directly by the municipality on tourism promotion and development or shall be forwarded to the commission for its municipality or zone if the municipality has created a commission.

3. A commission shall use the room tax revenue that it receives from a municipality to promote and develop tourism, including the support of a convention center, in the zone or in the municipality.

4. The commission shall report annually to each municipality from which it receives room tax revenue the purposes for which the revenues were spent.

5. The commission may not use any of the room tax revenue to construct or develop a lodging facility.

(e) 1. Subject to subd. 2., a district may adopt a resolution imposing a room tax under par. (a) in an amount not to exceed 3% of total room charges. A majority of the authorized members of the district's board may vote that, if the balance in a special debt service reserve fund of the district is less than the requirement under s. 229.50 (5), the room tax imposed by the district under this subdivision is 3% of total room charges beginning on the next January 1, April 1, July 1 or October 1 after the payment and this tax is irrevocable if any bonds issued by the district and secured by the special debt service reserve fund are outstanding. A room tax imposed by a district under this subdivision applies within the district's jurisdiction, as specified in s. 229.43, and the proceeds of the tax may be used only for the district's debt service on its bond obligations. If a district stops imposing and collecting a room tax, the district's sponsoring municipality may impose and collect a room tax under par. (a) on the date on which the district stops imposing and collecting its room tax.

2. In addition to the room tax that a district may impose under subd. 1., if the district's only sponsoring municipality is a 1st class city, the district may adopt a resolution imposing an additional room tax. The additional percentage of room tax under this subdivision shall be equal to the percentage of room tax imposed by the sponsoring municipality on the date on which the sponsoring municipality agrees to stop imposing and collecting its room tax, as described under s. 229.44 (15). A district shall begin collecting the additional room tax imposed under this subdivision on the date on which the sponsoring municipality stops imposing and collecting its room tax. A room tax imposed by a district under this subdivision applies only within the borders of the sponsoring municipality and may be used for any lawful purpose of the district.

(f) 1. The department of revenue shall administer the tax that is imposed under par. (a) by a district and may take any action, conduct any proceeding and impose interest and penalties.

2. Sections 77.51 (14) (c), (f) and (j) and (14g), 77.52 (3), (4), (6) and (18), 77.58 (1) to (5) and (7), 77.59, 77.60, 77.61 (2), (5), (8), (9) and (12) to (14) and 77.62, as they apply to the taxes under subch. III of ch. 77, apply to the tax described under subd. 1.

3. From the appropriation under s. 20.835 (4) (gg), the department of revenue shall distribute 97.45% of the taxes collected under this paragraph for each district to that district and shall indicate to the district the taxes reported by each taxpayer in that district, no later than the end of the month following the end of the calendar quarter in which the amounts were collected. The taxes distributed shall be increased or decreased to reflect subsequent refunds, audit adjustments and all other adjustments. Interest paid on refunds of the tax under this paragraph shall be paid from the appropriation under s. 20.835 (4) (gg) at the rate under s. 77.60 (1) (a). Any district that receives a report along with a payment under this subdivision or subd. 2. is subject to the duties of confidentiality to which the department of revenue is subject under s. 77.61 (5).

4. Hotels and motels and the department of revenue may not collect taxes under this paragraph for any district after the calendar quarter during which all bonds issued by the district under

subch. II of ch. 229 during the first 60 months after April 26, 1994, and any bonds issued to fund or refund those bonds, are retired or for more than 2 years if bonds have not been issued during that time, except that the department may collect from hotels and motels taxes that accrued before that calendar quarter, or before the end of that 2-year period, and interest and penalties that relate to those taxes. If taxes are collected and no bonds are issued, the district may use the revenue for any lawful purpose.

5. Persons who are subject to the tax under this subsection, if that tax is administered by the department of revenue, shall register with the department. Any person who is required to register, including any person authorized to act on behalf of a person who is required to register, who fails to do so is guilty of a misdemeanor.

(2) As a means of enforcing the collection of any room tax imposed by a municipality or a district under sub. (1m), the municipality or district may exchange audit and other information with the department of revenue and may do any of the following:

(a) If a municipality or district has probable cause to believe that the correct amount of room tax has not been assessed or that the tax return is not correct, inspect and audit the financial records of any person subject to sub. (1m) pertaining to the furnishing of accommodations to determine whether the correct amount of room tax is assessed and whether any room tax return is correct.

(b) Enact a schedule of forfeitures, not to exceed 5% of the tax under sub. (1m) or par. (c), to be imposed on any person subject to sub. (1m) who fails to comply with a request to inspect and audit the person's financial records under par. (a).

(c) Determine the tax under sub. (1m) according to its best judgment if a person required to make a return fails, neglects or refuses to do so for the amount, in the manner and form and within the time prescribed by the municipality or district.

(d) Require each person who is subject to par. (c) to pay an amount of taxes that the municipality or district determines to be due under par. (c) plus interest at the rate of 1% per month on the unpaid balance. No refund or modification of the payment determined may be granted until the person files a correct room tax return and permits the municipality or district to inspect and audit his or her financial records under par. (a).

(e) Enact a schedule of forfeitures, not to exceed 25% of the room tax due for the previous year under sub. (1m) or par. (c) or \$5,000, whichever is less, to be imposed for failure to pay the tax under sub. (1m).

(3) The municipality shall provide by ordinance and the district shall provide by resolution for the confidentiality of information obtained under sub. (2) but shall provide exceptions for persons using the information in the discharge of duties imposed by law or of the duties of their office or by order of a court. The municipality or district may provide for the publishing of statistics classified so as not to disclose the identity of particular returns. The municipality or district shall provide that persons violating ordinances or resolutions enacted under this subsection may be required to forfeit not less than \$100 nor more than \$500.

History: 1983 a. 189, 514; 1993 a. 263, 467, 491; 1999 a. 9; 1999 a. 150 ss. 565 to 567; Stats. 1999 s. 66.0615; 2003 a. 203.

A city was authorized to enact a room tax. The gross receipts method was a fair and reasonable way of calculating the tax. *Blue Top Motel, Inc. v. City of Stevens Point*, 107 Wis. 2d 392, 320 N.W.2d 172 (1982).

66.0617 Impact fees. (1) DEFINITIONS. In this section:

(a) "Capital costs" means the capital costs to construct, expand or improve public facilities, including the cost of land, and including legal, engineering and design costs to construct, expand or improve public facilities, except that not more than 10% of capital costs may consist of legal, engineering and design costs unless the political subdivision can demonstrate that its legal, engineering and design costs which relate directly to the public improvement for which the impact fees were imposed exceed 10% of capital costs. "Capital costs" does not include other noncapital costs to

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construct, expand or improve public facilities or the costs of equipment to construct, expand or improve public facilities.

(b) “Developer” means a person that constructs or creates a land development.

(c) “Impact fees” means cash contributions, contributions of land or interests in land or any other items of value that are imposed on a developer by a political subdivision under this section.

(d) “Land development” means the construction or modification of improvements to real property that creates additional residential dwelling units within a political subdivision or that results in nonresidential uses that create a need for new, expanded or improved public facilities within a political subdivision.

(e) “Political subdivision” means a city, village, town or county.

(f) “Public facilities” means highways, as defined in s. 340.01 (22), and other transportation facilities, traffic control devices, facilities for collecting and treating sewage, facilities for collecting and treating storm and surface waters, facilities for pumping, storing and distributing water, parks, playgrounds and other recreational facilities, solid waste and recycling facilities, fire protection facilities, law enforcement facilities, emergency medical facilities and libraries except that, with regard to counties, “public facilities” does not include highways, as defined in s. 340.01 (22), other transportation facilities or traffic control devices. “Public facilities” does not include facilities owned by a school district.

(g) “Service area” means a geographic area delineated by a political subdivision within which there are public facilities.

(h) “Service standard” means a certain quantity or quality of public facilities relative to a certain number of persons, parcels of land or other appropriate measure, as specified by the political subdivision.

(2) GENERAL. (a) Subject to par. (am), a political subdivision may enact an ordinance under this section that imposes impact fees on developers to pay for the capital costs that are necessary to accommodate land development.

(am) No county may impose an impact fee under this section to recover costs related to transportation projects.

(b) Subject to par. (c), this section does not prohibit or limit the authority of a political subdivision to finance public facilities by any other means authorized by law, except that the amount of an impact fee imposed by a political subdivision shall be reduced, under sub. (6) (d), to compensate for any other costs of public facilities imposed by the political subdivision on developers to provide or pay for capital costs.

(c) Beginning on May 1, 1995, a political subdivision may impose and collect impact fees only under this section.

(3) PUBLIC HEARING; NOTICE. Before enacting an ordinance that imposes impact fees, or amending an existing ordinance that imposes impact fees, a political subdivision shall hold a public hearing on the proposed ordinance or amendment. Notice of the public hearing shall be published as a class 1 notice under ch. 985, and shall specify where a copy of the proposed ordinance or amendment and the public facilities needs assessment may be obtained.

(4) PUBLIC FACILITIES NEEDS ASSESSMENT. (a) Before enacting an ordinance that imposes impact fees or amending an ordinance that imposes impact fees by revising the amount of the fee or altering the public facilities for which impact fees may be imposed, a political subdivision shall prepare a needs assessment for the public facilities for which it is anticipated that impact fees may be imposed. The public facilities needs assessment shall include, but not be limited to, the following:

1. An inventory of existing public facilities, including an identification of any existing deficiencies in the quantity or quality of those public facilities, for which it is anticipated that an impact fee may be imposed.

2. An identification of the new public facilities, or improvements or expansions of existing public facilities, that will be required because of land development for which it is anticipated that impact fees may be imposed. This identification shall be based on explicitly identified service areas and service standards.

3. A detailed estimate of the capital costs of providing the new public facilities or the improvements or expansions in existing public facilities identified in subd. 2., including an estimate of the effect of recovering these capital costs through impact fees on the availability of affordable housing within the political subdivision.

(b) A public facilities needs assessment or revised public facilities needs assessment that is prepared under this subsection shall be available for public inspection and copying in the office of the clerk of the political subdivision at least 20 days before the hearing under sub. (3).

(5) DIFFERENTIAL FEES, IMPACT FEE ZONES. (a) An ordinance enacted under this section may impose different impact fees on different types of land development.

(b) An ordinance enacted under this section may delineate geographically defined zones within the political subdivision and may impose impact fees on land development in a zone that differ from impact fees imposed on land development in other zones within the political subdivision. The public facilities needs assessment that is required under sub. (4) shall explicitly identify the differences, such as land development or the need for those public facilities, which justify the differences between zones in the amount of impact fees imposed.

(6) STANDARDS FOR IMPACT FEES. Impact fees imposed by an ordinance enacted under this section:

(a) Shall bear a rational relationship to the need for new, expanded or improved public facilities that are required to serve land development.

(b) May not exceed the proportionate share of the capital costs that are required to serve land development, as compared to existing uses of land within the political subdivision.

(c) Shall be based upon actual capital costs or reasonable estimates of capital costs for new, expanded or improved public facilities.

(d) Shall be reduced to compensate for other capital costs imposed by the political subdivision with respect to land development to provide or pay for public facilities, including special assessments, special charges, land dedications or fees in lieu of land dedications under ch. 236 or any other items of value.

(e) Shall be reduced to compensate for moneys received from the federal or state government specifically to provide or pay for the public facilities for which the impact fees are imposed.

(f) May not include amounts necessary to address existing deficiencies in public facilities.

(g) Shall be payable by the developer to the political subdivision, either in full or in installment payments that are approved by the political subdivision, before a building permit may be issued or other required approval may be given by the political subdivision.

(7) LOW-COST HOUSING. An ordinance enacted under this section may provide for an exemption from, or a reduction in the amount of, impact fees on land development that provides low-cost housing, except that no amount of an impact fee for which an exemption or reduction is provided under this subsection may be shifted to any other development in the land development in which the low-cost housing is located or to any other land development in the political subdivision.

(8) REQUIREMENTS FOR IMPACT FEE REVENUES. Revenues from impact fees shall be placed in a segregated, interest-bearing account and shall be accounted for separately from the other funds of the political subdivision. Impact fee revenues and interest earned on impact fee revenues may be expended only for capital costs for which the impact fees were imposed.

(9) REFUND OF IMPACT FEES. An ordinance enacted under this section shall specify that impact fees that are imposed and collected by a political subdivision but are not used within a reasonable period of time after they are collected to pay the capital costs for which they were imposed shall be refunded to the current owner of the property with respect to which the impact fees were imposed. The ordinance shall specify, by type of public facility, reasonable time periods within which impact fees must be spent or refunded under this subsection. In determining the length of the time periods under the ordinance, a political subdivision shall consider what are appropriate planning and financing periods for the particular types of public facilities for which the impact fees are imposed.

(10) APPEAL. A political subdivision that enacts an impact fee ordinance under this section shall, by ordinance, specify a procedure under which a developer upon whom an impact fee is imposed has the right to contest the amount, collection or use of the impact fee to the governing body of the political subdivision.

History: 1993 a. 305; 1997 a. 27; 1999 a. 150 s. 524; Stats. 1999 s. 66.0617.

An association of developers had standing to challenge the use of impact fees. As long as individual developers had a personal stake in the controversy, the association could contest the use of impact fees on their behalf. Further, individual developers subject to the impact fees do have the right to bring their own separate challenges. *Metropolitan Builders Association of Greater Milwaukee v. Village of Germantown*, 2005 WI App 103, ___ Wis. 2d ___, 698 N.W.2d 301, 04–1433.

Sub. (6) allows a municipality to impose impact fees for a general type of facility without committing itself to any particular proposal before charging the fees. The needs assessment must simply contain a good-faith and informed estimate of the sort of costs the municipality expects to incur for the kind of facility it plans to provide. Sub. (9) requires impact fees ordinances to specify only the type of facility for which fees are imposed. A municipality must be allowed flexibility to deal with the contingencies inherent in planning. *Metropolitan Builders Association of Greater Milwaukee v. Village of Germantown*, 2005 WI App 103, ___ Wis. 2d ___, 698 N.W.2d 301, 04–1433.

Subs. (2) and (6) (b) authorize municipalities to hold developers responsible only for the portion of capital costs whose necessity is attributable to their developments. A municipality cannot expect developers' money to subsidize the existing residents' proportionate share of the costs. If impact fees revenues exceed the developers' proportionate share of the capital costs of a project, the municipality must return those fees to the current owners of the properties for which developers paid the fees. *Metropolitan Builders Association of Greater Milwaukee v. Village of Germantown*, 2005 WI App 103, ___ Wis. 2d ___, 698 N.W.2d 301, 04–1433.

Rough Proportionality and Wisconsin's New Impact Fee. Ishikawa. Wis. Law. March 1995.

66.0619 Public improvement bonds: issuance. (1) A municipality, in addition to any other authority to borrow money and issue its municipal obligations, may borrow money and issue its public improvement bonds to finance the cost of construction or acquisition, including site acquisition, of any revenue-producing public improvement of the municipality. In this section, unless the context or subject matter otherwise requires:

(a) "Debt service" means the amount of principal, interest and premium due and payable with respect to public improvement bonds.

(b) "Deficiency" means the amount by which debt service required to be paid in a calendar year exceeds the amount of revenues estimated to be derived from the ownership and operation of the public improvement for the calendar year, after first subtracting from the estimated revenues the estimated cost of paying the expenses of operating and maintaining the public improvement for the calendar year.

(c) "Municipality" means a county, sanitary district, public inland lake protection and rehabilitation district, town, city or village.

(d) "Public improvement" means any public improvement which a municipality may lawfully own and operate from which the municipality expects to derive revenues.

(2) The governing body of the municipality proposing to issue public improvement bonds shall adopt a resolution authorizing their issuance. The resolution shall set forth the amount of bonds authorized, or a sum not to exceed a stated amount, and the purpose for which the bonds are to be issued. The resolution shall prescribe the terms, form and contents of the bonds and other matters that the governing body considers necessary or advisable. The bonds may be in any denomination of not less than \$1,000, shall

bear interest payable annually or semiannually, shall be payable not later than 20 years from the date of the bonds, at times and places that the governing body determines, and may be subject to redemption prior to maturity on terms and conditions that the governing body determines. The bonds may be issued either payable to bearer with interest coupons attached to the bonds or may be registered under s. 67.09. The bonds may be sold at public competitive sale or by private negotiation. Sections 67.08 and 67.10 apply to public improvement bonds, except insofar as they are in conflict with this section, in which case this section controls.

(2m) (a) A resolution, adopted under sub. (2) by the governing body of a municipality, need not be submitted to the electors of the municipality for approval, unless within 30 days after the resolution is adopted there is filed with the clerk of the municipality a petition, conforming to the requirements of s. 8.40 and requesting a referendum on the resolution, signed by electors numbering at least 10% of the votes cast in the municipality for governor at the last general election. A resolution, adopted under sub. (2), may be submitted by the governing body of the municipality to the electors without waiting for the filing of a petition.

(b) If a referendum is to be held on a resolution, the municipal governing body shall file the resolution as provided in s. 8.37 and shall direct the municipal clerk to call a special election for the purpose of submitting the resolution to the electors for a referendum on approval or rejection. In lieu of a special election, the municipal governing body may specify that the election be held at the next succeeding spring primary or election or September primary or general election.

(c) The municipal clerk shall publish a class 2 notice, under ch. 985, containing a statement of the purpose of the referendum, giving the amount of the bonds proposed to be issued and the purpose for which they will be issued, and stating the time and places of holding the election and the hours during which the polls will be open.

(d) The referendum shall be held and conducted and the votes cast shall be canvassed as at regular municipal elections and the results certified to the municipal clerk. A majority of all votes cast in the municipality decides the question.

(3) The reasonable cost and value of any services rendered by the public improvement to the municipality shall be charged against the municipality and shall be paid by it in monthly installments.

(4) (a) Gross revenues derived from the ownership and operation of the public improvement shall be first pledged to debt service on issued public improvement bonds. When in excess of debt service, the revenues are subject to all of the following requirements set by resolution or ordinance of the governing body fixing:

1. The proportion of revenues of the public improvement necessary for the reasonable and proper operation and maintenance of the public improvement.

2. The proportion of revenues necessary for the payment of debt service on the public improvement bonds. The revenues shall be paid into a special fund in the treasury of the municipality known as the "Public Improvement Bond Account".

(b) At any time after one year's operation, the governing body may recompute the proportion of revenues assignable under par. (a) based upon experience of operation.

(c) All funds on deposit in a public improvement bond account, which are not immediately required for the purposes specified in this section, shall be invested in accordance with s. 66.0605.

(5) Annually, on or before August 1 the officer or department of the municipality responsible for the operation of the public improvement shall file with the governing body, or its designated representative, a detailed statement setting forth the amount of the debt service on the public improvement bonds issued for the public improvement for the succeeding calendar year and an estimate for that year of the total revenues to be derived from the ownership and operation of the public improvement and the total cost of operating and maintaining the public improvement.