

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill No: SB 367

49th Legislature, 1st Session, 2009

Short Title: Payment of Impact Fees for Schools

Sponsor(s): Senator Eric G. Griego

Analyst: Kathleen Forrer

Date: March 9, 2009

Bill Summary:

SB 367 amends the *Development Fees Act* (act) to remove schools from the list of items not payable by impact fees, thereby allowing impact fees to be used to pay for costs associated with school construction as specified in the act.

The effective date is July 1, 2009.

Fiscal Impact:

SB 367 makes no appropriation.

Fiscal Issues:

The act defines an impact fee as:

... a charge or assessment imposed by a municipality or county on new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to the new development.... The term does not include hook-up fees, dedication of rights of way or easements or construction or dedication of on-site water distribution, wastewater collection or drainage facilities, or streets, sidewalks or curbs if the dedication or construction is required by a previously adopted valid ordinance or regulation and is necessitated by and attributable to the new development.

The act allows debt service charges to be included in the determination of the amount of impact fees if those fees are also used to pay the principal and interest on bonds, notes, or other obligations issued to finance construction of capital improvements or facility expansions identified in the capital improvements plan.

The act also specifies that impact fees may be used to pay for the following costs associated with capital improvement construction or facility expansion:

- estimated capital improvements plan cost;
- planning, surveying, and engineering fees paid to an independent qualified professional who is not an employee of the municipality or county for services provided for and directly related to the construction of capital improvements or facility expansions;

- fees actually paid or contracted to be paid to an independent qualified professional, who is not an employee of the municipality or county, for the preparation or updating of a capital improvements plan; and
- administrative costs of up to three percent of total impact fees collected for municipal or county employees who are qualified professionals.

Issues:

In its analysis of SB 367, the Public School Facilities Authority (PSFA) notes:

The city of Albuquerque, in conjunction with APS [Albuquerque Public Schools], charges developers a facility fee per building permit that is applied to construction and maintenance of school facilities. The City and APS do not consider these payments impact fees but they are similar.

According to the City of Albuquerque website, the school facility fee applies to new residential construction but not to nonresidential commercial properties, additions or renovations.

However, PSFA indicates that the Albuquerque city ordinance governing impact fees allows the city to charge the school district, as well as developers, for parks, open spaces, and trails; drainage facilities; public safety; and roadways. PSFA reports that APS paid \$2.0 million in impact fees in school year 2005-2006 and approximately \$700,000 in impact fees in school year 2007-2008.

The Public Education Department states that enacting SB 367 would “relieve the state and many school districts from unexpected expenditures due to growth. The department also suggests that the fees be limited to the proportionate share of costs required to serve the new development.

Related Bills:

None known as of 03/09/2009.