2012 LUTF Legislative Forecast

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1. Impact Fees

11-36-102 Definitions

(x) "Level of service" means the capacity of each type of public facility that exists within a service area, measured per unit of demand that exists within the service area.

11-36a-302. Impact fee facilities plan requirements -- Limitations -- School district or charter school.

(1) An impact fee facilities plan shall:

(a) Establish the existing level of service of each public facility, less any excess capacity existing within the facility that is available to accommodate future growth;

(b) Establish a proposed level of service of each public facility;

(i) A proposed level of service may ~~increase~~ exceed the existing level of service of a an existing public facility or may establish a standard for a new public facility if, independent of the use of impact fees, the jurisdiction or private entity:

A. provides a means; and

B. implements and maintains such a means;

C. to increase the existing level of service for existing demand; and

(c) Identify demands placed upon existing public facilities by new development activity; and

(d) Identify the proposed means by which the local political subdivision will meet those demands.

(2) In preparing an impact fee facilities plan, each local political subdivision shall generally consider all revenue sources, including impact fees and anticipated dedication of system improvements, to finance the impacts on system improvements.

(3) A local political subdivision or private entity may only impose impact fees on development activities when the local political subdivision's or private entity's plan for financing system improvements establishes that impact fees are necessary to maintain an established level of service..

13-43-205. Advisory opinion.

A local government or a potentially aggrieved person may, in accordance with Section 13-43-206, request a written advisory opinion:

(1) from a neutral third party to determine compliance with:

(a) Sections 10-9a-507 through 10-9a-511;

(b) Sections 17-27a-506 through 17-27a-510; and

(c) Title 11, Chapter 36a, Impact Fees Act; and

(2) (a) at any time before a final decision on a land use application by a local appeal authority under Section 10-9a-708 , Title 11, Chapter 36a, or 17-27a-708;

(b) at any time before the deadline for filing an appeal with the district court under Section 10-9a-801, Title 11, Chapter 36a or 17-27a-801, if no local appeal authority is designated to hear the issue that is the subject of the request for an advisory opinion; or

(c) at any time prior to the enactment of an impact fee, if the request for advisory opinion is a request review of and comment on a proposed impact fee facilities plan or a proposed impact fee analysis.

2. Development Standards—Engineer's Specifications—Notice and Vested Rights

10-9a-212. Notice of Modifications to Specifications for Public Improvements.

Prior to implementing an amendment to adopted specifications for public improvements that apply to subdivision or development, the municipality shall give 30 days' mailed notice and an opportunity to comment to anyone who has requested such notice in writing.

10-9a-509. Applicant's entitlement to land use application approval -- Exceptions -- Application relating to land in a high priority transportation corridor -- Municipality's requirements and limitations -- Vesting upon submission of development plan and schedule.

(1) (a) Except as provided in Subsection (1)(b), an applicant is entitled to approval of a land use application if the application conforms to the requirements of the municipality's land use maps, zoning map, adopted specifications for public improvements applicable to subdivision and development and applicable land use ordinances in effect when a complete application is submitted and all application fees have been paid

3. Eminent Domain for Trails—Limited Exception

78B-6-501. Eminent domain -- Uses for which right may be exercised.

(e) roads, streets, and alleys for public vehicular use, excluding trails, paths, or other ways for walking, hiking, bicycling, equestrian use, or other recreational uses, or whose primary purpose is as a foot path, equestrian trail, bicycle path, or walkway, unless such trails, paths or rights of ways are:

1. a component of a master planned trail system;
2. necessary to complete a discrete trail system right of way, the acquisition of which is at least 70% complete;
3. the public entity and the landowner have explored and considered alternate trail alignments; and
4. the trail system alignment is the least disruptive configuration for the landowner that will achieve the local entity’s reasonable objectives for the trail system

4. Code Enforcement

2011 Legislative Session:

1. **SB 146 Impact Fees Act Recodification +**
    a. Substantial reorganization of the current Impact Fees Act, which is very hard to follow, into more of a user friendly, "how to" statute.
    b. Changed the term "capital facilities plan" to "impact fee facilities plan" to remove any existing confusion between the two. A "capital facilities plan" is the GFOA's commonly used term for the long term plan to maintain, improve and expand capital facilities, regardless of whether they are impact fee eligible. An Impact Fee Facilities plan will only include impact fee eligible facilities and will be limited in scope to those facilities that can be built within the six year expend or encumber time frame within the Act. This is an attempt to coordinate concepts in the Impact Fees Act that have otherwise worked as tripwires for some jurisdictions.
    c. Revised the definition of "development activity" to be certain that local districts fall within the Act, even though they don't "authorize development". Local districts had been operating outside of the Act for many years and have been the source of grave frustration to the development community.
    d. Verified that all terms of art were consistently defined.
    e. Continued the multi-year push to bring private entities, which provide qualifying infrastructure, under the Impact Fees Act
    f. Clarified the common law concept that a jurisdiction could not, through impact fees, collect more money for a public facility than it had actually spent on the facility (no creative "replacement cost" accounting).
    g. Clarified that all notice under the Act can be achieved on the public notice website.
    h. Made it easier for a jurisdiction to repeal an outdated impact fee.
    i. Made it easier to waive impact fees for affordable housing projects by removing the obligation to "identify" another revenue source to replace the waived fees.
    j. Tolled the statute of limitations for impact fee challenges in district court that are pending before the Property Rights Ombudsman.
    k. Tolled the statute of limitations for filing in district court if the administrative appeal process is pending.
    l. Added the Ombudsman third party opinion process to the Act itself. Before, the process was found in the Ombudsman's statute, but not in the Impact Fees Act. This addition does not expand rights, but makes it easier to find how to use the existing Ombudsman process.
    m. Clarifies that the sole remedy for challenging an impact fee is a refund of the difference between the fee that was charged, and the fee that should have been charged. We had feared that without this provision, a court could have invalidated the fee enactment and determined that the applicant was entitled to a full refund.

2. **HB 78 Developer Fees—Cost Recovery**
    a. Further clarified definition of "identical plans"- clearly marked, identical floor plan, no additional engineering or analysis.
    b. Can't impose a development fee that exceeds the reasonable cost of processing the application or issuing the permit
    c. Can't impose an inspection, regulatory or review fee that exceeds the reasonable cost of the inspection, regulation or review

d. Provide itemized statement upon request
e. Provide any studies or accounting upon request—but does not require a study
f. Provide appeal authority for fee challenges
g. Applies to water providers

3. **HB226 Local Government Fee Authority**
    a. Service Area fees for police, fire and ambulance disallowed in first through third class counties.

4. **HB 268 Municipal Enforcement Regarding Property and SB 290 Abatement of Weeds, Garbage, Refuse . . .**
    a. Amends Chapter 10-11 Municipal Nuisance Abatement to focus on abatement of nuisance that is exterior to the structure and prohibits abatement for code violations interior to the structure unless the inspection/abatement is required to demolish the structure. Allows a lien for abatement costs.
    b. Allows the owner to select the abatement service

5. **HB 487 County Use of Land Use Ordinance**
    a. County can't require property owners to combine land with third parties as a condition of subdivision (parcel of record problem)

6. **SB 178 Municipal Land Use Amendments**

    A municipal ordinance adopted under Section 10-1-203 may not require physical changes in a structure with a legal nonconforming rental housing use ***unless*** the change is for the reasonable installation of (clearly health safety measures—smoke detector, GFI, address, egress windows, hand rails, etc)