Approval of Impact Fees, and Connection Fees and Associated Projects

Introduction

A political subdivision (district) may

1. adopt an impact fee by complying with Texas Local Government Code (LGC) Chapter 395;
2. adopt an impact fee by complying with 30 Texas Administrative Code (TAC) §293 Subchapter N or
3. establish impact fee (connection fee) pursuant to a written contract.

This document indicates application information to include for commission review of requests to finance impact and connection fees.

Guidance

A. Impact Fees Adopted Under Texas LGC Chapter 395

A political subdivision (including a district) may adopt an impact fee by complying with Texas LGC Chapter 395. Upon payment of an impact fee, a district receives permanent use and benefit of service from facilities with capacity to serve the new connections pursuant to Texas LGC §395.020. Under Texas LGC §395.077, a suit to contest the fee must be filed within 90 days after the date of adoption of the ordinance, order, or resolution establishing the impact fee. If a suit has not been filed within the allotted timeframe, a district may obtain approval to pay or reimburse impact fees adopted pursuant to Texas LGC Chapter 395 out of bond proceeds by providing the following documentation to the commission:

1. A certified copy of the ordinance, order or resolution adopting the impact fee per Texas LGC Chapter 395,
2. A copy of the capital improvement plan upon which the impact fee is based,
3. Evidence of the amount of the capacity reservation received or to be received. If the fee was or will be purchased with cash, the district must provide a written acknowledgment from the political subdivision specifying the amount of the capacity reservation or connections received or to be received upon payment of the impact fee in accordance with the ordinance, order or resolution adopting the fee. If a facility or facilities are constructed as an in-kind payment for the impact fee, the district must provide a written acknowledgment from the political subdivision of the acceptance of the facility or facilities, specifying the amount of the capacity reservation or connection fee credits received in exchange for the in-kind payment; and
4. If the fee is for regional drainage systems, all items are required under 30 TAC §293.53.

B. Impact Fees Adopted Under 30 TAC §293(N)

A district may adopt an impact fee if it obtains approval of the impact fee under the procedures set forth in 30 TAC §293 Subchapter N. A district may obtain approval to pay or reimburse such fees out of bond proceeds by providing the following documentation to the commission:

1. A copy of the commission order approving the impact fee.
2. A written acknowledgment of receipt of payment from the district receiving the impact fee and the amount of connections for which capacity is reserved.

C. Impact Fees Paid to Another District Pursuant to Written Contract

A district may pay an impact fee (also referred to as a connection fee) to another district (Master Utility District or MaUD), if:

1. paid pursuant to a written contract to obtain water, wastewater, or drainage service from the MaUD,
2. the fee is approved by the commission, and
3. the district and the MaUD are both required to obtain commission approval of their bond issues.

Where the impact fees are imposed by a MaUD, the commission can grant approval of the MaUD impact fees in response to either:

1. an application filed by the MaUD for approval of or changes to its impact fees, or
2. (ii) a bond application filed by a satellite district in which the MaUD impact fees are a proposed use of the bond proceeds.

For the commission to grant approval of impact fees in a bond issue by a satellite district, documentation supporting that the criteria set forth in 30 TAC §293.44(b)(3) are met, is needed, and 30 TAC §293 subchapter N does not apply. When a MaUD files an application for approval of or changes to its impact fees, only one of the contracts between the MaUD and a satellite district must be submitted to fulfill the requirements of 30 TAC §293.44(b)(3)(C) if the provisions pertaining to impact fees between the MaUD and satellite districts are the same in all contracts.

Once the commission approves a MaUD's impact fees, whether in response to an application filed by the MaUD or a bond application filed by a satellite district, the approval is effective with regard to future bond applications submitted by either the MaUD or a satellite district. The commission will require re-approval of the impact fees requested in a bond application if the MaUD proposes changes to its impact fees or modifies the impact fee provisions in its contract with the satellite districts.
Approval of Projects

The MaUD shall apply to the commission for approval of the projects for which the fees will be paid by a satellite district. The application shall include construction, engineering, testing, and developer interest costs, as well as construction contract administration. Following commission approval of the projects and their associated costs, no further funding approval of the projects will be required either:

1. in conjunction with a bond application filed by a satellite district which includes impact fees for any of the approved projects, or
2. in conjunction with payment by the MaUD to a developer for the costs of any of the approved projects (including developer interest).

If payment to a developer occurs then purchase of facilities approval is required under 30 TAC §293.69.

D. Changes to and Funding of Impact Fees

If the impact fees to be paid for or reimbursed with bond proceeds change during the pendency of the bond application, the district must provide updated information as required under A, B, or C above regarding the change in unit cost and the total number of connections that will be funded at the changed cost. Notification of changes to impact fees adopted in accordance with Texas LGC Chapter 395 or 30 TAC §293 subchapter N will not be considered a major amendment to the bond application, and the time period for review will not be altered by the commission so long as the engineering and financial feasibility of the project is not compromised.

If a district's bond application proposes to reimburse a developer for 100% of the construction costs for water, wastewater, drainage, and/or recreational facilities on the basis that the district has achieved a ratio of debt to certified assessed valuation of 10% or less, the district must show that it has funded, or proposes to fund in the bond application under consideration, the impact fees necessary to acquire sufficient capacity to serve all connections upon which the feasibility is based or to be financed by the bond issue, whichever is greater.