

- SUBJECT:** Exempting school districts from paying impact fees
- COMMITTEE:** State Affairs —favorable, without amendment
- VOTE:** 7 ayes — Swinford, Paxton, Christian, B. Cook, Flynn, Parker, Veasey
0 nays
2 absent — Van Arsdale, Farrar
- WITNESSES:** For — Daniel T. Casey, Fast Growth School Coalition, Texas School Alliance. (*Registered, but did not testify:* Jackie Lain, Texas Association of School Boards)

Against — T.J. Patterson Jr., City of Fort Worth
- BACKGROUND:** Local Government Code, ch. 395 authorizes governmental entities to impose impact fees expressly authorized by statute for developments on land within their corporate boundaries or extraterritorial jurisdictions. Sec. 395.012 permits the imposition of impact fees to pay the costs of a variety of expenses, including the construction of capital improvements or facility expansions. Authorized impact fees may be imposed on political subdivisions and other governmental entities.

An Attorney General's Opinion issued on December 22, 2006 (GA-0496) determined that Education Code 11.68, which prohibits a board of trustees from authorizing school resources for expenses related to development on land not owned or leased by the district, did not prevent a school district from paying impact fees imposed by a local governmental entity.
- DIGEST:** HB 2038 would exempt school districts from paying impact fees imposed by local governmental entities unless the board of trustees of the district consented to the payment contractually.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

**SUPPORTERS
SAY:**

HB 2038 would spare school districts from having to pay impact fees for providing educational facilities in expanding districts. Current statutory provisions allow political subdivisions to pay development impact fees and provide no exemptions for school districts. The imposition of such fees on districts effectively constitutes an additional tax on education, since the burden of paying the fees ultimately is transferred to taxpayers. Impact fees paid by districts can range from tens to hundreds of thousands of dollars, depending on the size of the school and the municipality imposing the fees. Such fees place a disproportionate burden on rapidly expanding districts, who have to contend with both the need for additional facilities and expenses related to instruction.

HB 2038 would exempt school districts from having to pay impact fees, but would not preclude a board of trustees from entering into a contract with the political subdivision that included the payment of an agreed upon sum. The bill would allow school boards and municipalities to agree to an amount reached through a compromise agreement and specify that amount contractually. Local governmental entities would be allowed to impose impact fees on the developers of school projects, but that charge could not be imposed directly on a school district.

**OPPONENTS
SAY:**

HB 2038 effectively would force a municipality to pay development-related expenses for constructing new schools. Municipalities and other local governments are authorized to impose impact fees in order to offset costs associated with development. Developments often have additional, related costs that must be assumed by municipalities, including the construction of new roads, water and wastewater facilities, transportation safety features, and other related and necessary improvements. Impact fees help offset some of the expense that municipalities assume in the provision of these services.

School districts have a number of financing mechanisms available to account for the cost of instruction and the maintenance and acquisition of new facilities. Districts should calibrate finances to budget for the cost of developing any new schools, including paying for development-related fees. Exempting school districts from paying impact fees would place an unfair burden on municipalities to provide critical services without providing a means of securing funding for the provision of such services.

NOTES: The companion bill, SB 883 by Deuell, passed the Senate on April 19 on the Local and Uncontested Calendar and has been referred to the House State Affairs Committee.