



# TEXAS EDUCATION AGENCY

1701 North Congress Ave. ★ Austin, Texas 78701-1494 ★ 512/463-9734 ★ FAX: 512/463-9838 ★ <http://www.tea.state.tx.us>

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OPINION COMMITTEE

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OPEN RECORDS DIVISION

Robert Scott  
Commissioner

December 14, 2007

Honorable Greg Abbott  
Texas Attorney General  
Post Office Box 12548  
Austin, Texas 78711-2548

FILE # ML-45493-07

I.D. # 45493

**RQ-0658-GA**

Re: Opinion Request on School District Obligations for Impact Fees

Dear General Abbott,

I am writing on behalf of the Spring Branch Independent School District to request your opinion regarding the applicability, if any, of "impact fees" assessed under Chapter 395 of the Texas Local Government Code. Attached is a letter from Mr. Jeffery Horner dated September 28, 2007 explaining the need for clarification of the applicability of impact fees in light of the addition of Section 395.022(b) by the Texas Legislature this spring. I have also attached another letter that gives specific examples of fees and their calculation as currently assessed against the district.

In answering the issues raised by this request, please also consider the effect of Section 11.168, Texas Education Code, in light of the construction placed on that section by Attorney General's Opinion GA-496 (2006). That opinion appears to have been based on an assumption that assessment fees were not voluntary on the part of a school district. To the extent your opinion regarding recent amendments to Chapter 395 of the Local Government Code change that assumption, please clarify whether the holding in GA-496 is still applicable.

Thank you for your consideration of this request. Should you need any additional information, please contact me or David Anderson, TEA General Counsel, at (512) 463-9720.

Sincerely,

*Robert Scott*

Robert Scott  
Commissioner of Education

cc: Mr. Jeffrey Horner

# BRACEWELL & GIULIANI

Texas  
New York  
Washington, DC  
Connecticut  
Dubai  
Kazakhstan  
London

Jeffrey J. Homer  
Partner

713.221.1219 Office  
713.222.3257 Fax

jeffrey.homer@bglip.com

Bracewell & Giuliani LLP  
711 Louisiana Street  
Suite 2300  
Houston, Texas  
77002-2770

September 28, 2007

Mr. Robert Scott  
Interim Commissioner of Education  
Texas Education Agency  
1701 N. Congress Ave.  
Travis Building  
Austin, Texas 78701

Re: Senate Bill 883 ("S.B.883")—Exemption of Texas School Districts From Impact Fees

Dear Mr. Scott:

We write to ask that your office submit a request for an opinion to the Texas Attorney General regarding the interpretation of S.B.883 as to impact fees on school district construction projects. Specifically, we would seek an opinion as to those charges and assessments which qualify as "impact fees" from which school districts are exempt under S.B.883. We believe that such an opinion would assist school districts, their vendors, and other public entities in determining those charges and fees which can properly be assessed to school districts, and alternatively those fees for which school districts are not liable.

S.B.883 amended § 395.022 of the Texas Local Government Code ("Chapter 395"). Chapter 395 governs the financing of capital improvements required for new development in municipalities, counties, and other local governments. Section 395.022 specifically addresses the authority of political subdivisions to pay impact fees. Prior to the passage of S.B.883, § 395.022 of the Local Government Code read, as follows:

§ 395.022. AUTHORITY OF POLITICAL SUBDIVISION TO PAY FEES.  
Political subdivisions and other governmental entities may pay impact fees imposed under this chapter.

However, S.B.883 amended § 395.022 by adding subsection (b):

Sec. 395.022. AUTHORITY OF POLITICAL SUBDIVISION TO PAY FEES. (a) Political subdivisions and other governmental entities may pay impact fees imposed under this chapter.

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(b) A school district is not required to pay impact fees imposed under this chapter unless the board of trustees of the district consents to the payment of the fees by entering a contract with the political subdivision that imposes the fees. The contract may contain terms the board of trustees considers advisable to provide for the payment of the fees (emphasis added).

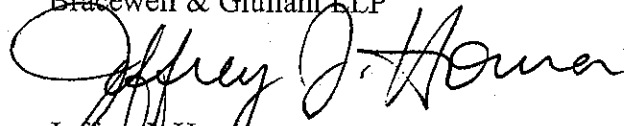
While other types of political subdivisions may still be required to pay impact fees under Chapter 395, the additional language added to § 395.022 clearly exempts a school district from any such requirement, unless its board of trustees consents to the payment of such fees by contract. This fact is further borne out by the House Committee analysis of S.B.883. The analysis states how the "payment of impact fees by school districts...amounts to a needless transfer of money among public entities, and constitutes a de facto tax on school districts." House Comm. on State Affairs, Bill Analysis, Tex. S.B. 883, 80th Leg., R.S. (2007). Further, the analysis explicitly states that "Senate Bill 883 exempts independent school districts from impact fees, unless certain conditions are met." *Id.*

Section 395.001 defines impact fees as "a charge or assessment imposed by a political subdivision against 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." Tex. Loc. Gov't. Code § 395.001. The statute does not go into great detail about specific charges and assessments which constitute "impact fees." An opinion on this issue from the Attorney General could be of global benefit to school districts, their vendors, and other public entities on the proper charges for these projects.

As such, we respectfully request your office to seek an opinion from the Attorney General enumerating the charges and assessments that qualify as "impact fees" under Chapter 395. If you have any questions or need any additional information, please call me at (713) 221-1219.

Very truly yours,

Bracewell & Giuliani LLP



Jeffrey J. Horner

JJH/clh

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cc: Mr. David Anderson  
Texas Education Agency  
1701 N. Congress Ave.  
Travis Building  
Austin, Texas 78701

Mr. Harry F. Wright, Jr.  
Bracewell & Giuliani LLP