

HOUSE BILL No. 5278

October 22, 1991, Introduced by Reps. Willis Bullard, Kosteva, Bobier, Sparks, Goss, Dalman, Middaugh, Berman, DeBeaussiaert, Pitoniak, Gire and DeMars and referred to the Committee on Towns and Counties.

A bill to authorize governing bodies located within certain counties to levy and collect impact fees on developers to defray a portion of the cost of certain improvements made necessary by new land development; to provide for credits and exemptions from impact fees under certain circumstances; to allow the governing bodies to enter into agreements relating to impact fees; to prescribe powers and duties of the governing bodies; to prescribe the powers and duties of certain state agencies and officers; to create impact funds; and to prescribe remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "traffic impact fee enabling act".

3 Sec. 3. As used in this act: 6

1 (a) "County road agency" means a board of county road
2 commissioners or an agency designated by county charter in a
3 county that does not have a board of county road commissioners.

4 (b) "Developer" means a person proposing new land develop-
5 ment and any successor in interest of that new land development.

6 (c) "Governing body" means any of the following in a county
7 that has a population of 400,000 or more:

8 (i) The legislative body of a city.

9 (ii) The legislative body of a village.

10 (iii) The township board of a township.

11 (iv) A county road agency that acts only with the concur-
12 rence of the county board of commissioners.

13 (d) "Impact fee" means an amount to defray a portion of the
14 cost of an off-site improvement.

15 (e) "Impact fund" means a fund created by a governing body
16 pursuant to section 15.

17 (f) "New land development" means the construction, recon-
18 struction, or expansion of a building or a complex of buildings,
19 or the improvement of a recreational area, that will result in
20 the increase of traffic on a highway, street, or road within the
21 area of the building, complex of buildings, or recreational
22 area. However, new land development does not include the con-
23 struction, reconstruction, or expansion of residential property
24 or a residential development if the property or development has a
25 value of less than \$2,000,000.00.

1 (g) "Off-site improvement" means a road improvement
2 occurring off the premises of a new land development that was
3 necessitated by that new land development.

4 (h) "Road improvement" means the construction, reconstruc-
5 tion, paving, replacement, extension, or widening of a highway,
6 street, road, or bridge. Road improvement includes, but is not
7 limited to, the cost of design and construction, plan prepara-
8 tion, right-of-way acquisition, turning lanes, drainage facili-
9 ties, curbs, medians, and shoulders in conjunction with the road
10 improvement, and the purchase and installation of traffic signs
11 and signals. Purchase and installation of traffic signs or sig-
12 nals shall only be considered a road improvement if the signs or
13 signals are of a permanent nature and not installed temporarily
14 before or during the construction of a road improvement.

15 (i) "Traffic improvement plan" means a plan adopted by a
16 governing body as required under section 7.

17 (j) "Traffic improvement zone" means a designated area with
18 distinct boundaries in which new land development is expected to
19 occur and in which off-site improvements will be required to
20 serve that new land development. A traffic improvement zone may
21 cross jurisdictional boundaries.

22 Sec. 5. (1) A governing body, by ordinance or resolution,
23 may levy and collect an impact fee from a developer.

24 (2) Before adopting an impact fee ordinance or resolution,
25 the governing body shall hold a public hearing on the impact fee
26 ordinance or resolution. The governing body shall publish a
27 notice of the public hearing as provided by law or charter for

1 public hearings on other ordinances. A county road agency shall
2 publish notice of the proposed impact fee resolution not less
3 than 2 weeks before the date of the public hearing. A resolution
4 of a county road agency imposing an impact fee shall be concurred
5 in by a majority of the county board of commissioners before the
6 impact fee may be imposed.

7 (3) A governing body may enter into an agreement with
8 another governing body to levy and collect, and regulate the dis-
9 position of, impact fees.

10 (4) Impact fees shall not be expended on a particular road
11 improvement unless the governing body has identified sources of
12 funding for right-of-way acquisition and construction of improve-
13 ments needed to overcome existing service deficiencies or future
14 service deficiencies for the particular road improvement, which
15 deficiency is not attributable to the proposed new land
16 development.

17 Sec. 7. (1) Before adopting an ordinance or resolution
18 establishing an impact fee, the governing body shall adopt, and
19 may from time to time amend, a traffic improvement plan identify-
20 ing 1 or more traffic improvement zones.

21 (2) Before adopting a traffic improvement plan, the govern-
22 ing body shall hold a public hearing on the plan. Notice of the
23 hearing shall be published in the same manner as a notice of a
24 public hearing required by section 5(2).

25 (3) A traffic improvement plan shall identify those segments
26 of the city or village street system, county road system, or
27 state highway system that need improvement, or may need

1 improvement within 5 years after the date of the plan, due to
2 present or future traffic congestion. The plan shall identify
3 off-site improvements within traffic improvement zones.

4 (4) The traffic improvement plan shall set forth anticipated
5 methods of financing the road improvements, including but not
6 limited to the following:

7 (a) The portion of the road improvements expected to be paid
8 for by impact fees that shall not exceed a pro rata share of rea-
9 sonably anticipated costs of the road improvements necessary to
10 serve the increased traffic generated by the new land
11 development.

12 (b) The portion of the road improvements expected to be paid
13 from special assessments or other fees, if any, against property
14 benefited by the road improvements.

15 (c) The portion of the road improvements expected to be paid
16 from other sources.

17 (5) A city or village master plan, comprehensive plan, or
18 capital improvements plan may be adopted or amended to meet the
19 requirements of this section instead of adopting a separate traf-
20 fic improvement plan.

21 (6) A traffic improvement plan adopted by a county road
22 agency shall be reviewed and agreed to by not less than 2/3 of
23 the governing bodies of the cities and villages within the
24 county, but only with respect to those traffic improvement zones
25 contained in the traffic improvement plan that are located wholly
26 or partially within the particular city or village.

1 (7) A traffic improvement plan of a county road agency shall
2 be reviewed and approved by resolution of each township board
3 with regard to those provisions, if any, in the plan that require
4 a portion of the cost of a road improvement to be borne by that
5 township or from impact fees, special assessments, or other
6 charges to be imposed by that township.

7 (8) A traffic improvement plan of a township shall be
8 reviewed and approved by the county road agency of the county in
9 which the township is located.

10 (9) A traffic improvement plan of a city, village, or county
11 road agency that identifies road improvements needed on a segment
12 of a state highway and methods of financing those road improve-
13 ments shall be reviewed and approved by the state transportation
14 commission.

15 Sec. 9. A governing body may enter into an agreement with
16 another governing body to provide for the creation of 1 or more
17 traffic improvement zones.

18 Sec. 11. (1) The schedule of impact fees set forth in an
19 impact fee ordinance or resolution shall be uniform within each
20 traffic improvement zone with regard to each type or class of new
21 land development. The schedule of impact fees shall bear a rea-
22 sonable relationship to the increased traffic attributable to the
23 new land development and the cost of the road improvements
24 attributable to the increased traffic generated by that new land
25 development. The schedule of impact fees may vary with regard to
26 different segments or classes of highways, streets, or roads and
27 with regard to the proportionate impact of new land development

1 on the existing traffic carried by those segments or classes of
2 highways, streets, or roads. An impact fee shall be assessed
3 only once during the period of the new land development, but may
4 be paid in installments based on a schedule established pursuant
5 to this subsection.

6 (2) The impact fee ordinance or resolution shall set forth
7 when the impact fee is to be paid and the information required to
8 accompany the impact fee.

9 (3) The impact fee ordinance or resolution shall provide a
10 procedure for determining an alternative impact fee if the devel-
11 oper believes that the cost of an off-site improvement is less
12 than the impact fee established in the impact fee ordinance or
13 resolution.

14 (4) The impact fee ordinance or resolution may provide that
15 the governing body and a developer may enter into an impact fee
16 agreement designed to establish a just and equitable impact fee,
17 or its equivalent in the form of contributed right-of-way or
18 other appropriate equivalent, instead of the impact fee set forth
19 in the impact fee ordinance or resolution. The impact fee agree-
20 ment may provide that the developer shall be reimbursed from
21 impact fees subsequently paid by another developer. The govern-
22 ing body shall approve an impact fee agreement only if the gov-
23 erning body finds that the impact fee agreement will apportion
24 the burden of expenditures for off-site improvements in a just
25 and equitable manner.

26 (5) The impact fee ordinance or resolution shall provide
27 that a developer is entitled to a credit against an impact fee in

1 an amount equal to the cost of the off-site improvement, or
2 contributions of land, money, or services for the off-site
3 improvement contributed or previously contributed, paid, or
4 legally committed to by the developer or by his or her predeces-
5 sor in interest as a condition of any new land development permit
6 issued by the governing body.

7 Sec. 13. (1) A developer that has received a new land
8 development permit may petition the governing body for an exemp-
9 tion from the impact fees assessed pursuant to an impact fee
10 ordinance or resolution adopted under this act. A petition shall
11 be evaluated by the governing body based on the following
12 criteria:

13 (a) Whether a legally enforceable act of the governing body
14 currently exist that authorizes the specific new land development
15 for which a determination is sought.

16 (b) Whether the petitioner has made or incurred expenditures
17 or obligations in reliance upon the authorizing act described in
18 subdivision (a) that are reasonably equivalent to the impact fee
19 required by the impact fee ordinance or resolution.

20 (c) Whether it is inequitable to deny the petitioner the
21 opportunity to complete the previously-approved new land develop-
22 ment in a manner consistent with the conditions of that previous
23 approval by requiring the developer to comply with the require-
24 ments of the impact fee ordinance or resolution. For the pur-
25 poses of this subdivision, consideration of whether the injury
26 suffered by the petitioner outweighs the public cost of allowing
27 the new land development to proceed without payment of the impact

1 fee shall be considered as a factor in determining whether it
2 would be inequitable to deny the petitioner the opportunity to
3 complete the previously-approved new land development.

4 (2) If the previous approval of a new land development con-
5 tains conditions with respect to off-site improvements, the
6 developer may request a modification of the previous approval in
7 order to bring the previously approved conditions into compliance
8 with the impact fee ordinance or resolution adopted pursuant to
9 this act. A modification of the previous approval of new land
10 development permits is not a substantial change under a city or
11 village planned development ordinance or a substantial deviation
12 under state law.

13 Sec. 15. (1) A governing body that levies and collects
14 impact fees under this act shall create an impact fund for each
15 traffic improvement zone created under section 7. A governing
16 body shall deposit all impact fees collected pursuant to this act
17 in the impact fund created for that traffic improvement zone.
18 The revenue in an impact fund shall be kept separate from other
19 revenue of the city, village, township, or county road agency.

20 (2) The governing body shall use revenue collected from
21 impact fees solely for the purpose of off-site improvements
22 determined to be needed to serve traffic generated within the
23 traffic improvement zone.

24 (3) The governing body shall use 90% or more of the revenue
25 collected from impact fees exclusively for off-site improvement
26 within the traffic improvement zone from which the impact fees
27 were collected.

1 (4) The governing body may use not more than 10% of the
2 revenue collected from impact fees for road improvements on high-
3 ways, streets, or roads that provide access to the traffic
4 improvement zone from which the impact fees were collected.

5 (5) The governing body shall use amounts withdrawn from an
6 impact fund solely in accordance with this section. The dis-
7 bursement of revenue from an impact fund shall occur only upon
8 the approval of a majority of the members of the governing body.

9 (6) The governing body shall invest the money on deposit in
10 the impact fund that is not immediately necessary for expenditure
11 as provided in this act in interest-bearing accounts. All income
12 derived from the accounts shall be credited to the impact fund.

13 Sec. 17. The impact fee ordinance or resolution shall pro-
14 vide that the impact fees collected shall be returned to the
15 present owner of the new land development if actual physical work
16 has not commenced on the off-site improvement by the last day of
17 the calendar quarter that ends immediately following 5 years from
18 the date the impact fees were collected by the governing body, in
19 accordance with the following procedure:

20 (a) The present owner files a petition with the governing
21 body for the refund within 1 year following the last day of the
22 calendar quarter that ends immediately following 5 years from the
23 date on which the fee was collected.

24 (b) The petition contains the following:

25 (i) A notarized sworn statement that the petitioner is the
26 present owner of the property.

1 (ii) A certified copy of the latest recorded deed.

2 (iii) A copy of the most recent ad valorem property tax bill
3 for the property.

4 (c) Upon approval of the governing body, the money shall be
5 returned to the petitioner with interest paid at the average rate
6 of 1-year United States treasury bills for the 12-month period
7 immediately preceding the month in which the money is returned.

8 Sec. 19. A governing body shall annually review an impact
9 fee ordinance or resolution adopted by that governing body. The
10 review shall consider trip generation rates, trip lengths, and
11 actual construction and right-of-way acquisition costs for work
12 contracted for the off-site improvement by the governing body.
13 The purpose of this review is to analyze the effects of inflation
14 on the actual costs of road improvements and the fees charged to
15 support these improvements; to review and revise, if necessary,
16 the off-site improvements encompassed by the impact fee ordinance
17 or resolution; to review and revise, if necessary, the size,
18 shape, and location of the traffic improvement zones identified
19 in the traffic improvement plan of the governing body; and to
20 ensure that the impact fees charged against new land development
21 do not exceed the new land development's pro rata share of the
22 reasonably anticipated costs of off-site improvements necessi-
23 tated solely by that new land development.

24 Sec. 21. A person or a governing body may bring a civil
25 action against any person or governing body that violates the
26 provisions of an impact fee ordinance or resolution adopted
27 pursuant to this act.