

HOUSE BILL No. 4187

January 30, 1997, Introduced by Reps. Cassis, Martinez, Godchaux and Geiger and referred to the Committee on Local Government.

A bill to authorize governing bodies located within certain counties to levy and collect impact fees on developers to defray the cost of certain improvements required by land development; to provide for certain credits and exemptions; 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 certain 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:

4 (a) "County road agency" means a board of county road
5 commissioners or an individual or entity exercising the powers

1 and duties of a board of county road commissioners pursuant to
2 county charter in a county that does not have a board of county
3 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 under 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 near the
21 building, complex of buildings, or recreational area. However,
22 new land development does not include the construction, recon-
23 struction, or expansion of residential property or a residential
24 development if the property or development has a value of less
25 than \$2,000,000.00.

1 (g) "Off-site improvement" means a road improvement
2 necessitated by that new land development and located off the
3 premises of 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 permanent and not installed temporarily before or
14 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 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, collect, and regulate the dispo-
9 sition 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 or future service deficiencies
14 for the particular road improvement not attributable to the pro-
15 posed new land development.

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

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

24 (3) A traffic improvement plan shall identify those segments
25 of the city or village street system, county road system, or
26 state highway system that need improvement, or may need
27 improvement within 5 years after the date of the plan, due to

1 present or future traffic congestion. The plan shall identify
2 off-site improvements within traffic improvement zones.

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

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

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

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

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

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

26 (7) A traffic improvement plan of a county road agency shall
27 be reviewed and approved by resolution of each township board

1 with regard to those provisions, if any, in the plan that require
2 a portion of the cost of a road improvement to be borne by that
3 township or from impact fees, special assessments, or other
4 charges to be imposed by that township.

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

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

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

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

1 only once during the period of the new land development, but may
2 be paid in installments based on a schedule established pursuant
3 to this subsection.

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

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

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

24 (5) The impact fee ordinance or resolution shall provide
25 that a developer is entitled to a credit against an impact fee in
26 an amount equal to the cost of the off-site improvement, or
27 contributions of land, money, or services for the off-site

1 improvement contributed or previously contributed, paid, or
2 legally committed to by the developer or by his or her predeces-
3 sor in interest as a condition of any new land development permit
4 issued by the governing body.

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

11 (a) Whether a legally enforceable act of the governing body
12 authorizes the specific new land development for which a determi-
13 nation is sought.

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

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

1 would be inequitable to deny the petitioner the opportunity to
2 complete the previously-approved new land development.

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

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

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

23 (3) The governing body shall use 90% or more of the revenue
24 collected from impact fees exclusively for off-site improvements
25 within the traffic improvement zone from which the impact fees
26 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
3 highways, 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 in interest-bearing
10 accounts the money on deposit in the impact fund that is not
11 immediately necessary for expenditure as provided in this act.
12 All income derived from the accounts shall be credited to the
13 impact fund.

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

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

25 (b) The petition contains the following:

26 (i) A notarized sworn statement that the petitioner is the
27 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 off-site improvements by the governing body. The
13 purpose of this review is to analyze the effects of inflation on
14 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 an
26 impact fee ordinance or resolution adopted under this act.