

HOUSE BILL No. 4142

February 3, 1999, Introduced by Rep. Jannick and referred to the Committee on Local Government and Urban Policy.

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) "Person" means an individual, partnership, corporation,
5 association, governmental entity, including but not limited to a
6 governing body, or other legal entity.

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

18 (j) "Traffic improvement plan" means a plan established
19 under section 7.

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

25 Sec. 5. A governing body, by ordinance or resolution, may
26 levy and collect an impact fee from a developer subject to the
27 requirements of this act.

1 Sec. 7. (1) A governing body shall not adopt an impact fee
2 ordinance or resolution unless the governing body has established
3 a traffic improvement plan.

4 (2) A traffic improvement plan shall do all of the
5 following:

6 (a) Identify 1 or more traffic improvement zones. A govern-
7 ing body may enter into an agreement with another governing body
8 to identify 1 or more traffic improvement zones.

9 (b) Identify those segments of the city or village street
10 system, county road system, or state highway system that need
11 improvement, or may need improvement within 5 years after the
12 date of the plan, due to present or future traffic congestion.

13 (c) Identify off-site improvements within traffic improve-
14 ment zones.

15 (d) Set forth anticipated methods of financing the road
16 improvements, including but not limited to the following:

17 (i) The portion of the road improvements expected to be paid
18 for by impact fees, which shall not exceed a pro rata share of
19 reasonably anticipated costs of the road improvements necessary
20 to serve the increased traffic generated by the new land
21 development.

22 (ii) The portion of the road improvements expected to be
23 paid from special assessments or other fees, if any, against
24 property benefited by the road improvements.

25 (iii) The portion of the road improvements expected to be
26 paid from other sources.

1 (3) To establish a traffic improvement plan, the governing
2 body shall hold a public hearing on, adopt, and obtain approval
3 of a proposed traffic improvement plan as provided in this
4 section.

5 (4) Before establishing a traffic improvement plan, a gov-
6 erning body shall publish notice of a public hearing on the pro-
7 posed traffic improvement plan in the same manner provided by law
8 or charter for a public hearing on an ordinance. If the govern-
9 ing body is a county road agency, the county road agency shall
10 publish notice of the proposed traffic improvement plan not less
11 than 2 weeks before the date of the hearing.

12 (5) A traffic improvement plan adopted by a county road
13 agency shall be reviewed and approved by resolutions of the gov-
14 erning bodies of not less than 2/3 of the cities and villages
15 within the county in which traffic improvement zones are wholly
16 or partially located. The review by the governing body of a city
17 or village shall be limited to traffic improvement zones con-
18 tained in the traffic improvement plan that are located wholly or
19 partially within that particular city or village.

20 (6) A traffic improvement plan of a county road agency shall
21 be reviewed and approved by resolution of each township board
22 with regard to those provisions, if any, in the plan that require
23 a portion of the cost of a road improvement to be borne by that
24 township or from impact fees, special assessments, or other
25 charges to be imposed by that township.

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

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

9 Sec. 9. (1) Before adopting an impact fee ordinance or res-
10 olution, the governing body shall hold a public hearing on the
11 impact fee ordinance or resolution. The governing body shall
12 publish a notice of the public hearing as provided by law or
13 charter for public hearings on ordinances. If the governing body
14 is a county road agency, the county road agency shall publish
15 notice of the proposed impact fee resolution not less than 2
16 weeks before the date of the public hearing.

17 (2) A resolution of a county road agency imposing an impact
18 fee shall be concurred in by a majority of the county board of
19 commissioners before the impact fee may be imposed.

20 (3) A governing body may enter into an agreement with
21 another governing body to levy, collect, and regulate the dispo-
22 sition of impact fees in a manner consistent with this act.

23 Sec. 11. (1) An impact fee ordinance or resolution shall
24 set forth a schedule of impact fees. The schedule of impact fees
25 shall be uniform within each traffic improvement zone with regard
26 to each type or class of new land development. The schedule of
27 impact fees shall bear a reasonable relationship to the increased

1 traffic attributable to the new land development and the cost of
2 the road improvements attributable to the increased traffic gen-
3 erated by that new land development. The schedule of impact fees
4 may vary with regard to different segments or classes of high-
5 ways, streets, or roads and with regard to the proportionate
6 impact of new land development on the existing traffic carried by
7 those segments or classes of highways, streets, or roads. An
8 impact fee shall be assessed only once during the period of the
9 new land development, but may be paid in installments based on a
10 schedule established pursuant to this subsection.

11 (2) The impact fee ordinance or resolution shall set forth
12 when the impact fee is to be paid and the information required to
13 accompany the impact fee.

14 (3) The impact fee ordinance or resolution shall provide a
15 procedure for determining an alternative impact fee if the devel-
16 oper believes that the cost of an off-site improvement is less
17 than the impact fee established in the impact fee ordinance or
18 resolution.

19 (4) The impact fee ordinance or resolution may provide that
20 the governing body and a developer may enter into an impact fee
21 agreement designed to establish a just and equitable impact fee,
22 or its equivalent in the form of contributed right-of-way or
23 other appropriate equivalent, instead of the impact fee set forth
24 in the impact fee ordinance or resolution. The impact fee agree-
25 ment may provide that the developer shall be reimbursed from
26 impact fees subsequently paid by another developer. The
27 governing body shall approve an impact fee agreement only if the

1 governing body finds that the impact fee agreement will apportion
2 the burden of expenditures for off-site improvements in a just
3 and equitable manner.

4 (5) The impact fee ordinance or resolution shall provide
5 that a developer is entitled to a credit against an impact fee in
6 an amount equal to the cost of the off-site improvement, or con-
7 tributions of land, money, or services for the off-site improve-
8 ment contributed or previously contributed, paid, or legally com-
9 mitted to by the developer or by his or her predecessor in inter-
10 est as a condition of any new land development permit issued by
11 the governing body.

12 Sec. 13. (1) A developer that received a new land develop-
13 ment permit before adoption of an impact fee ordinance or resolu-
14 tion may petition the governing body for an exemption from the
15 impact fees assessed pursuant to an impact fee ordinance or
16 resolution. A petition shall be evaluated by the governing body
17 based on the following criteria:

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

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

25 (c) Whether it is inequitable to deny the petitioner the
26 opportunity to complete the new land development in a manner
27 consistent with the conditions of the permit by requiring the

1 developer to comply with the requirements of the impact fee
2 ordinance or resolution. For the purposes of this subdivision,
3 consideration of whether the injury suffered by the petitioner
4 outweighs the public cost of allowing the new land development to
5 proceed without payment of the impact fee shall be considered as
6 a factor in determining whether it would be inequitable to deny
7 the petitioner the opportunity to complete the new land
8 development.

9 (2) If the permit contains conditions with respect to
10 off-site improvements, the developer may request a modification
11 of the permit in order to bring the previously approved condi-
12 tions into compliance with the impact fee ordinance or resolution
13 adopted pursuant to this act. A modification of the permit is
14 not a substantial change under a city or village planned develop-
15 ment ordinance or a substantial deviation under state law.

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

23 (2) The governing body shall use impact fund revenue solely
24 for the purpose of off-site improvements determined to be needed
25 to serve traffic generated within the traffic improvement zone.

26 (3) Impact fee revenue shall not be expended on a particular
27 off-site improvement unless the governing body has identified

1 sources of funding for right-of-way acquisition and construction
2 of improvements needed to overcome existing or future service
3 deficiencies for the particular off-site improvement not attrib-
4 utable to the proposed new land development.

5 (4) The governing body shall use 90% or more of the impact
6 fund revenue exclusively for off-site improvements within the
7 traffic improvement zone from which the impact fees were
8 collected.

9 (5) The governing body may use not more than 10% of the
10 impact fund revenue for off-site improvements on highways,
11 streets, or roads that provide access to the traffic improvement
12 zone from which the impact fees were collected.

13 (6) The governing body shall use amounts withdrawn from an
14 impact fund solely as provided by this section. The disbursement
15 of revenue from an impact fund shall occur only upon the approval
16 of a majority of the members of the governing body.

17 (7) The governing body shall invest in interest-bearing
18 accounts the money on deposit in the impact fund that is not
19 immediately necessary for expenditure as provided in this act.
20 All income derived from the accounts shall be credited to the
21 impact fund.

22 Sec. 17. The impact fee ordinance or resolution shall pro-
23 vide that the impact fees collected shall be returned to the
24 present owner of the new land development if actual physical work
25 has not commenced on the off-site improvement by the last day of
26 the calendar quarter that ends immediately following the
27 expiration of 5 years from the date the impact fees were

1 collected by the governing body, subject to the following
2 procedure:

3 (a) The present owner shall file a petition with the govern-
4 ing body for the refund within 1 year following the last day of
5 the calendar quarter that ends immediately following the expira-
6 tion of 5 years from the date on which the fee was collected.

7 (b) The petition shall contain the following:

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

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

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

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

17 Sec. 19. A governing body shall annually review an impact
18 fee ordinance or resolution adopted by that governing body. The
19 review shall consider trip generation rates, trip lengths, and
20 actual construction and right-of-way acquisition costs for work
21 contracted for off-site improvements by the governing body. In
22 the review, the governing body shall do all of the following:

23 (a) Analyze the effects of inflation on the actual costs of
24 road improvements and the impact fees charged to support these
25 improvements.

1 (b) Review and revise, if necessary, the off-site
2 improvements encompassed by the impact fee ordinance or
3 resolution.

4 (c) Review and revise, if necessary, the size, shape, and
5 location of the traffic improvement zones identified in the traf-
6 fic improvement plan of the governing body.

7 (d) Ensure that the impact fees charged against new land
8 development do not exceed the new land development's pro rata
9 share of the reasonably anticipated costs of off-site improve-
10 ments necessitated solely by that new land development.

11 Sec. 21. A person may bring a civil action against any
12 person that violates an impact fee ordinance or resolution
13 adopted under this act.