



HOUSE BILL No. 4758

May 11, 1993, Introduced by Reps. Bullard, Gire, Berman, Dalman, Jondahl, Brackenridge, Saunders, Crissman, Vorva and Stille 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
6 and duties of a board of county road commissioners pursuant to

1 county charter in a county that does not have a board of county
2 road commissioners.

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

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

7 (i) The legislative body of a city.

8 (ii) The legislative body of a village.

9 (iii) The township board of a township.

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

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

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

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

25 (g) "Off-site improvement" means a road improvement necessi-
26 tated by that new land development and located off the premises
27 of that new land development.

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

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

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

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

21 (2) Before adopting an impact fee ordinance or resolution,
22 the governing body shall hold a public hearing on the impact fee
23 ordinance or resolution. The governing body shall publish a
24 notice of the public hearing as provided by law or charter for
25 public hearings on ordinances. A county road agency shall pub-
26 lish notice of the proposed impact fee resolution not less than 2
27 weeks before the date of the public hearing. A resolution of a

1 county road agency imposing an impact fee shall be concurred in
2 by a majority of the county board of commissioners before the
3 impact fee may be imposed.

4 (3) A governing body may enter into an agreement with
5 another governing body to levy, collect, and regulate the dispo-
6 sition of impact fees.

7 (4) Impact fees shall not be expended on a particular road
8 improvement unless the governing body has identified sources of
9 funding for right-of-way acquisition and construction of improve-
10 ments needed to overcome existing or future service deficiencies
11 for the particular road improvement not attributable to the pro-
12 posed new land development.

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

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

21 (3) A traffic improvement plan shall identify those segments
22 of the city or village street system, county road system, or
23 state highway system that need improvement, or may need improve-
24 ment within 5 years after the date of the plan, due to present or
25 future traffic congestion. The plan shall identify off-site
26 improvements within traffic improvement zones.

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

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

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

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

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

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

24 (7) A traffic improvement plan of a county road agency shall
25 be reviewed and approved by resolution of each township board
26 with regard to those provisions, if any, in the plan that require
27 a portion of the cost of a road improvement to be borne by that

1 township or from impact fees, special assessments, or other
2 charges to be imposed by that township.

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

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

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

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

1 be paid in installments based on a schedule established pursuant
2 to this subsection.

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

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

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

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

1 legally committed to by the developer or by his or her
2 predecessor in interest as a condition of any new land develop-
3 ment permit issued by the governing body.

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

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

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

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

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

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

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

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

25 (4) The governing body may use not more than 10% of the rev-
26 enue collected from impact fees for road improvements on

1 highways, streets, or roads that provide access to the traffic
2 improvement zone from which the impact fees were collected.

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

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

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

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

23 (b) The petition contains the following:

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

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

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

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

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

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