

HOUSE BILL No. 4974

July 16, 2003, Introduced by Reps. Kolb, Tobocman, Rivet, Minore, Jannick and Gielegem and referred to the Committee on Land Use and Environment.

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 "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 development
4 and any successor in interest to that new land development.

5 (c) "Governing body" means any of the following:

6 (i) The legislative body of a city.

7 (ii) The legislative body of a village.

8 (iii) The township board of a township.

9 (iv) With respect to a roadway improvement, a county road
10 agency that acts only with the concurrence of the county board of
11 commissioners.

12 (d) "Impact fee" means a charge 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 under section 15.

16 (f) "Infrastructure improvement" means the construction,
17 reconstruction, replacement, extension, or enlargement of a
18 roadway, a component of a public sewer system, a component of a
19 public water supply system, or another capital facility.

20 Infrastructure improvement includes, but is not limited to,
21 associated design work, plan preparation, and property
22 acquisition.

23 (g) "Infrastructure improvement plan" means a plan
24 established under section 7.

25 (h) "Infrastructure improvement zone" means a designated area
26 with distinct boundaries in which new land development is
27 expected to occur and in which a particular type of off-site

1 improvement will be required to serve that new land development.
2 An infrastructure improvement zone may cross jurisdictional
3 boundaries.

4 (i) "New land development" means the construction,
5 reconstruction, or expansion of a building or a complex of
6 buildings, or the improvement of a recreational area, that will
7 result in an increase of traffic on a roadway near the building,
8 complex of buildings, or recreational area. However, new land
9 development does not include the construction, reconstruction, or
10 expansion of residential property or a residential development if
11 the property or development has a value of less than
12 \$2,000,000.00.

13 (j) "Off-site improvement" means an infrastructure
14 improvement necessitated by new land development and located off
15 the premises of that new land development.

16 (k) "Person" means an individual, partnership, corporation,
17 association, governmental entity, including but not limited to a
18 governing body, or other legal entity.

19 (l) "Public sewer system" means a sewerage system as defined
20 in section 4101 of the natural resources and environmental
21 protection act, 1994 PA 451, MCL 324.4101.

22 (m) "Public water supply system" means a system of pipes and
23 structures through which water is obtained and distributed to the
24 public, including wells and well structures, intakes, and cribs,
25 pumping stations, treatment plants, reservoirs, storage tanks and
26 appurtenances, collectively or severally, actually used or
27 intended for use for the purpose of furnishing water to the

1 public for household or drinking purposes.

2 (n) "Roadway" means a city or village street, county road, or
3 state highway.

4 (o) "Roadway improvement" means an infrastructure improvement
5 involving a roadway.

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

9 Sec. 7. (1) A governing body shall not adopt an impact fee
10 ordinance or resolution unless the governing body has established
11 a separate infrastructure improvement plan for each type of
12 infrastructure for which an impact fee will be collected.

13 (2) Each infrastructure improvement plan shall do all of the
14 following:

15 (a) Identify 1 or more infrastructure improvement zones for
16 the particular type of infrastructure covered by the
17 infrastructure improvement plan. A governing body may enter into
18 an agreement with another governing body to identify 1 or more
19 infrastructure improvement zones.

20 (b) Identify those parts of the city or village street
21 system, county road system, state highway system, public sewer
22 system, or public water supply system, or other capital facility
23 that need improvement, or may need improvement within 5 years
24 after the date of the plan, due to present or future levels of
25 use.

26 (c) Identify off-site improvements within infrastructure
27 improvement zones.

1 (d) Set forth anticipated methods of financing the off-site
2 improvements, including but not limited to the following:

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

8 (ii) The portion of the off-site improvements expected to be
9 paid from special assessments or other fees, if any, against
10 property benefited by the off-site improvements.

11 (iii) The portion of the off-site improvements expected to be
12 paid from other sources.

13 (3) To establish an infrastructure improvement plan, the
14 governing body shall hold a public hearing on, adopt, and obtain
15 approval of a proposed infrastructure improvement plan as
16 provided in this section.

17 (4) Before establishing an infrastructure improvement plan, a
18 governing body shall publish notice of a public hearing on the
19 proposed infrastructure improvement plan in the same manner
20 provided by law or charter for a public hearing on an ordinance.
21 If the governing body is a county road agency, the county road
22 agency shall publish notice of the proposed infrastructure
23 improvement plan in a newspaper of general circulation in the
24 county not less than 2 weeks before the date of the hearing.

25 (5) An infrastructure improvement plan for roadway
26 improvements adopted by a county road agency shall be reviewed by
27 the governing bodies of the cities and villages within the county

1 in which infrastructure improvement zones are wholly or partially
2 located. The infrastructure improvement plan shall not take
3 effect unless it is approved by resolutions of at least 2/3 of
4 those governing bodies. The review and approval by the governing
5 body of a city or village shall be limited to infrastructure
6 improvement zones contained in the infrastructure improvement
7 plan that are located wholly or partially within the reviewing
8 city or village.

9 (6) An infrastructure improvement plan of a county road
10 agency for roadway improvements shall be reviewed by, and shall
11 not take effect unless approved by, each township board with
12 regard to those provisions, if any, in the plan that require a
13 portion of the cost of a road improvement to be borne by that
14 township or from impact fees, special assessments, or other
15 charges to be imposed by that township.

16 (7) An infrastructure improvement plan of a township for
17 roadway improvements shall be reviewed by, and shall not take
18 effect unless approved by, the county road agency of the county
19 in which the township is located.

20 (8) An infrastructure improvement plan of a city, village, or
21 county road agency that identifies road improvements needed on a
22 segment of a state highway and methods of financing those road
23 improvements shall be reviewed by, and shall not take effect
24 unless approved by, the state transportation commission.

25 Sec. 9. (1) Before adopting an impact fee ordinance or
26 resolution, the governing body shall hold a public hearing on the
27 impact fee ordinance or resolution. The governing body shall

1 publish a notice of the public hearing as provided by law or
2 charter for public hearings on ordinances. If the governing body
3 is a county road agency, the county road agency shall publish
4 notice of the proposed impact fee resolution in a newspaper of
5 general circulation in the county not less than 2 weeks before
6 the date of the public hearing.

7 (2) A resolution of a county road agency imposing an impact
8 fee shall not take effect unless concurred in by a majority of
9 the county board of commissioners.

10 (3) A governing body may enter into an agreement with another
11 governing body to levy, collect, and regulate the disposition of
12 impact fees in a manner consistent with this act.

13 Sec. 11. (1) An impact fee ordinance or resolution shall set
14 forth a schedule of impact fees. The schedule of impact fees
15 shall be uniform within each infrastructure improvement zone with
16 regard to each type or class of new land development. The
17 schedule of impact fees shall bear a reasonable relationship to
18 the increased infrastructure use attributable to the new land
19 development and the cost of the infrastructure improvements
20 attributable to that increased use. The schedule of impact fees
21 shall vary with regard to different types of infrastructure and
22 with regard to the proportionate impact of each type or class of
23 new land development on the level of use of that type of
24 infrastructure.

25 (2) The impact fee ordinance or resolution shall set forth
26 when the impact fee is to be paid and the information required to
27 accompany the impact fee. An impact fee shall be assessed only

1 once during the period of the new land development, but may be
2 paid in installments based on a schedule if so provided in the
3 impact fee ordinance or resolution.

4 (3) The impact fee ordinance or resolution shall provide a
5 procedure for determining an alternative impact fee if the
6 developer believes that the impact fee established in the impact
7 fee ordinance or resolution exceeds a pro rata share of
8 reasonably anticipated costs of off-site improvements necessary
9 to serve the increased use generated by the new land
10 development.

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 real property, or other appropriate equivalent, instead of
16 the impact fee set forth in the impact fee ordinance or
17 resolution. The impact fee agreement may provide that the
18 developer shall be reimbursed from impact fees subsequently paid
19 by another developer. The governing body shall approve an impact
20 fee agreement only if the governing body finds that the impact
21 fee agreement will apportion the burden of expenditures for
22 off-site improvements in a just and equitable manner.

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

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

4 Sec. 13. (1) A developer that received a new land
5 development permit before adoption of an impact fee ordinance or
6 resolution may petition the governing body for an exemption from
7 the impact fees assessed under an impact fee ordinance or
8 resolution. A petition shall be evaluated by the governing body
9 based on the following criteria:

10 (a) Whether a legally enforceable act of the governing body
11 authorizes the specific new land development for which a
12 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 new land development in a manner
19 consistent with the conditions of the permit by requiring the
20 developer to comply with the requirements of the impact fee
21 ordinance or resolution. For the purposes of this subdivision,
22 consideration of whether the injury suffered by the petitioner
23 outweighs the public cost of allowing the new land development to
24 proceed without payment of the impact fee shall be considered as
25 a factor in determining whether it would be inequitable to deny
26 the petitioner the opportunity to complete the new land
27 development.

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

9 Sec. 15. (1) A governing body that levies and collects
10 impact fees under this act shall create an impact fund for each
11 infrastructure improvement zone identified in the infrastructure
12 improvement plan. A governing body shall deposit all impact fees
13 in the impact fund for the appropriate type of infrastructure
14 created for the infrastructure improvement zone in which the land
15 development is located. The revenue in an impact fund shall be
16 kept separate from other revenue of the city, village, township,
17 or county road agency.

18 (2) The governing body shall use impact fund revenue solely
19 for the purpose of off-site improvements of the type for which
20 the impact fee was collected needed to serve infrastructure
21 demand generated within the infrastructure improvement zone.

22 (3) Impact fund revenue shall not be expended on a particular
23 off-site improvement unless the governing body has identified
24 sources of funding for property acquisition and construction of
25 improvements needed to overcome existing or future service
26 deficiencies for the particular off-site improvement not
27 attributable to the proposed new land development.

1 (4) The governing body shall use 90% or more of the impact
2 fund revenue exclusively for off-site improvements of the type
3 for which the impact fees were collected and within the
4 infrastructure improvement zone from which the impact fees were
5 collected.

6 (5) The governing body may use not more than 10% of the
7 impact fund revenue for off-site improvements of the type for
8 which the impact fees were collected and that provide access to
9 or otherwise serve the infrastructure improvement zone from which
10 the impact fees were collected.

11 (6) The governing body shall use impact fund revenue only as
12 provided by this section and only upon the approval of a majority
13 of the members of the governing body.

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

19 Sec. 17. The impact fee ordinance or resolution shall
20 provide that the impact fees collected shall be returned to the
21 present owner of the new land development if actual physical work
22 has not commenced on an off-site improvement described in
23 section 15(4) by the last day of the calendar quarter that ends
24 immediately following the expiration of 5 years from the date the
25 impact fees were collected by the governing body, subject to the
26 following procedure:

27 (a) The present owner shall file a petition with the

1 governing body for the refund within 1 year following the last
2 day of the calendar quarter that ends immediately following the
3 expiration of 5 years from the date on which the fee was
4 collected.

5 (b) The petition shall contain the following:

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

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

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

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

15 Sec. 19. A governing body shall annually review an impact
16 fee ordinance or resolution adopted by that governing body. The
17 review shall consider levels of infrastructure use and actual
18 costs of construction and of acquisition of right-of-way and
19 other property for work contracted for off-site improvements by
20 the governing body. In the review, the governing body shall do
21 all of the following:

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

25 (b) Review and revise, if necessary, the off-site
26 improvements encompassed by the impact fee ordinance or
27 resolution.

1 (c) Review and revise, if necessary, the size, shape, and
2 location of the infrastructure improvement zones identified in
3 the infrastructure improvement plans of the governing body.

4 (d) Ensure that the impact fees charged against new land
5 development for a particular type of off-site improvement do not
6 exceed the new land development's pro rata share of the
7 reasonably anticipated costs of off-site improvements of that
8 type necessitated solely by that new land development.

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