



AN ACT REVISING LOCAL GOVERNMENT IMPACT FEE LAWS; REQUIRING IMPACT FEE COLLECTIONS TO BE ACCOUNTED FOR IN SEPARATE PROPRIETARY FUNDS AND RESTRICTED TO THE SPECIFIC PUBLIC FACILITY FOR WHICH THE IMPACT FEE WAS COLLECTED; ALLOWING FOR PROCEEDINGS TO BE BROUGHT AGAINST A GOVERNMENTAL ENTITY; SECTION 7-6-1603, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 7-6-1603, MCA, is amended to read:

"7-6-1603. Collection and expenditure of impact fees -- refunds or credits -- mechanism for appeal required -- cause of action. (1) The collection and expenditure of impact fees must comply with this part. The collection and expenditure of impact fees must be reasonably related to the benefits accruing to the development paying the impact fees. The ordinance or resolution adopted by the governmental entity must include the following requirements:

(a) ~~Upon collection, impact fees~~ Impact fees collected for a public facility must be deposited in a special proprietary fund, ~~which must be invested with all interest accruing to the fund~~ created specifically for each public facility as identified in the service area report. Funds must be invested with all interest accruing to the fund. Impact fees collected for a specific public facility may not be transferred to a different fund and must be spent and accounted for solely for the public facility as identified in the service area report.

(b) A governmental entity may impose impact fees on behalf of local districts.

(c) (i) If the impact fees are not collected or spent in accordance with the impact fee ordinance or resolution or in accordance with 7-6-1602, any impact fees that were collected must be refunded to the person who owned the property at the time that the refund was due the impact fee in question was paid.

(ii) If a written request is submitted as provided for in subsection (9), the governmental entity shall

refund any impact fee due under subsection (1)(c)(i) within 90 days.

(iii) The governmental entity may not impose conditions when issuing a refund pursuant to this part.

(d) Impact fees may only be used to acquire, construct, or improve the specific public facility project for which they were collected and may only be expended in compliance with the service area report.

(2) All impact fees imposed pursuant to the authority granted in this part must be paid no earlier than the date of issuance of a building permit if a building permit is required for the development or no earlier than the time of wastewater or water service connection or well or septic permitting.

(3) A governmental entity may recoup costs of excess capacity in existing capital facilities, when the excess capacity has been provided in anticipation of the needs of new development, by requiring impact fees for that portion of the facilities constructed for future users. The need to recoup costs for excess capacity must have been documented pursuant to 7-6-1602 in a manner that demonstrates the need for the excess capacity. This part does not prevent a governmental entity from continuing to assess an impact fee that recoups costs for excess capacity in an existing facility. The impact fees imposed to recoup the costs to provide the excess capacity must be based on the governmental entity's actual cost of acquiring, constructing, or upgrading the facility and must be no more than a proportionate share of the costs to provide the excess capacity.

(4) Governmental entities may accept the dedication of land or the construction of public facilities in lieu of payment of impact fees if:

(a) the need for the dedication or construction is clearly documented pursuant to 7-6-1602;

(b) the land proposed for dedication for the public facilities to be constructed is determined to be appropriate for the proposed use by the governmental entity;

(c) formulas or procedures for determining the worth of proposed dedications or constructions are established as part of the impact fee ordinance or resolution; and

(d) a means to establish credits against future impact fee revenue has been created as part of the adopting ordinance or resolution if the dedication of land or construction of public facilities is of worth in excess of the impact fee due from an individual development.

(5) Impact fees may not be imposed for remodeling, rehabilitation, or other improvements to an existing structure or for rebuilding a damaged structure unless there is an increase in units that increase service

demand as described in 7-6-1602(2)(j). If impact fees are imposed for remodeling, rehabilitation, or other improvements to an existing structure or use, only the net increase between the old and new demand may be imposed.

(6) This part does not prevent a governmental entity from granting refunds or credits:

(a) that it considers appropriate and that are consistent with the provisions of 7-6-1602 and this chapter; or

(b) in accordance with a voluntary agreement, consistent with the provisions of 7-6-1602 and this chapter, between the governmental entity and the individual or entity being assessed the impact fees.

(7) An impact fee represents a fee for service payable by all users creating additional demand on the facility.

(8) An impact fee ordinance or resolution must include a mechanism whereby a person charged an impact fee may appeal the charge if the person believes an error has been made.

(9) Any person or entity who is owed refunded impact fees as provided in this part may request in writing from the governmental entity that prompt payment be concluded. A person or entity who submitted a written request pursuant to this subsection may bring a cause of action against the governmental entity in a court of competent jurisdiction for failure to comply with this part. If a claimant prevails in an action brought against a governmental entity pursuant to this subsection, the court shall award the claimant payment of all amounts due, court costs, expert witness fees, and attorney fees incurred by the claimant. If the claimant is unsuccessful, the court shall award the governmental entity court costs, expert witness fees, and attorney fees."

Section 2. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 3. Effective date. [This act] is effective January 1, 2024.

- END -

I hereby certify that the within bill,
SB 142, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2023.

Speaker of the House

Signed this _____ day
of _____, 2023.

SENATE BLL NO. 142

INTRODUCED BY K. REGIER

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