SENATE BILL NO. 368

INTRODUCED BY BOHLINGER, FORRESTER, GLASER, KEENAN, LAIBLE, RASER, F. THOMAS

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA IMPACT FEE ACT; AUTHORIZING CERTAIN LOCAL GOVERNMENT ENTITIES TO IMPOSE IMPACT FEES BY ORDINANCE OR RESOLUTION, SUBJECT TO CERTAIN REQUIREMENTS; LIMITING IMPACT FEES TO A PROPORTIONATE SHARE OF SYSTEM IMPROVEMENT COSTS; PROHIBITING GOVERNMENT ENTITIES FROM IMPOSING IMPACT FEES EXCEPT AS SPECIFICALLY AUTHORIZED BY LAW; PRESCRIBING PROCEDURES AND CONDITIONS FOR ADOPTION AND IMPLEMENTATION OF AN IMPACT FEE ORDINANCE OR RESOLUTION; PROVIDING FOR THE DETERMINATION OF IMPACT FEES; REQUIRING FINANCIAL REPORTS AND PROVIDING FOR ACCOUNTING PROCEDURES FOR IMPACT FEES; ~~LIMITING~~ PROHIBITING A LOCAL GOVERNMENT WITH SELF-GOVERNING POWERS FROM ~~ASSESSING FEES FOR FUNDING IMPROVEMENTS TO ROADS OR STREETS~~ IMPOSING IMPACT FEES, EXCEPT AS SPECIFICALLY AUTHORIZED BY LAW; ~~REQUIRING THAT ANY CHARGE THAT IS NOT ASSESSED AGAINST ALL USERS OF A COUNTY WATER OR SEWER DISTRICT OR A MUNICIPAL SEWER OR WATER SYSTEM MUST BE ASSESSED IN COMPLIANCE WITH THE PROVISIONS OF THE ACT;~~ PROHIBITING A GOVERNING BODY FROM IMPOSING AN IMPACT FEE AS A CONDITION OF SUBDIVISION APPROVAL EXCEPT BY ADOPTION OF AN IMPACT FEE ORDINANCE OR RESOLUTION IN ACCORDANCE WITH THE ACT; AMENDING SECTIONS 2-7-503, 7-1-111, ~~7-13-2301, 7-13-4304~~, AND 76-3-501, ~~AND 76-3-510,~~ MCA; AND PROVIDING AN APPLICABILITY DATE."

WHEREAS, it is the intent of the Legislature to:

(1) ensure that adequate public facilities are available to serve new growth and development;

(2) promote orderly growth and development by establishing uniform standards for local governments to require that those who benefit from new growth and development pay a proportionate share of the cost of new public facilities needed to serve that new growth and development;

(3) establish minimum standards for the adoption of impact fee ordinances or resolutions by local government entities;

(4) ensure that those who benefit from new growth and development are required to pay no more than their proportionate share of the cost of public facilities needed to serve new growth and development and to prevent duplicate and ad hoc monetary assessments as a condition of development approval;

(5) ensure the availability of sufficient infrastructure; and

(6) empower local government entities by providing express authority to adopt ordinances or resolutions to impose impact fees.

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 14] may be cited as the "Montana Impact Fee Act".

NEW SECTION. **Section 2. Purpose.** The purpose of [sections 1 through 14] is to:

(1) provide an equitable IMPACT FEE program for planning and financing the public facilities needed to serve new growth and development in a manner that does not unduly~~:~~

~~(a) restrict or inhibit growth and development; or~~

~~(b) adversely affect housing affordability~~;

(2) promote and accommodate orderly growth and development; and

(3) protect the public health, safety, and general welfare of Montana citizens.

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 14], the following definitions apply:

(1) "Appropriate" means to obligate legally by contract or otherwise commit to use by appropriation or other official act of a local government entity.

(2) "Capital improvement" means an improvement, by new construction OR ACQUISITION, with ~~a~~ AN EXPECTED MINIMUM useful life of 10 years or more that increases the capacity of a public facility to provide services.

(3) (a) "Connection charge" means a charge for the actual cost of connecting a property to a public water or a public sewage system, including labor and materials involved in making ~~pipe~~ SYSTEM connections and installation of ~~water~~ SERVICE meters.

(b) The term does not include system improvement costs, costs for land acquisition, engineering, design, or upgrading, or updating, expanding, repairing, or maintaining ~~existing or new~~ public facilities NOT SPECIFICALLY ASSOCIATED WITH MAKING THE SERVICE CONNECTION.

(4) "Developer" means a person or legal entity that is undertaking development.

(5) "Development" means construction or installation of a building or structure, a change in use of a

building or structure, or a change in the use, character, or appearance of land~~, which~~ THAT USES THE EXISTING CAPACITY OF PUBLIC FACILITIES OR creates additional demand or need for public facilities.

(6) "Development approval" means written authorization from a local government entity that authorizes the commencement of development.

(7) "Facilities plan" means a plan that meets the requirements of [section 6]. A facilities plan may be included in a capital improvements plan, growth policy, or similar facilities planning document.

(8) "Fee payer" means a person who pays or who is required to pay an impact fee.

(9) "Growth policy" means a policy adopted pursuant to Title 76, chapter 1.

(10) (a) "Impact fee" means a monetary assessment required as a condition of development approval to pay for a proportionate share of system improvement costs, INCLUDING THE COST OF ADMINISTERING THE PROGRAM AND COSTS INCURRED BY THE IMPACT FEE ADVISORY COMMITTEE ESTABLISHED UNDER [SECTION 5].

(b) The term does not include:

(i) a charge or fee to pay for administration, plan review, or inspection costs associated with a permit required for development;

(ii) a connection charge; ~~or~~

(III) THE COST OF DEVELOPING THE IMPACT FEE STUDY, SUBSEQUENT UPDATES TO THE STUDY, OR THE ORDINANCE; OR

~~(iii)~~(IV) any other fee specifically authorized by law, INCLUDING BUT NOT LIMITED TO USER FEES, SPECIAL IMPROVEMENT DISTRICT ASSESSMENTS, AND COSTS OF ONGOING MAINTENANCE.

(11) "Land use assumptions" means projections of land use, population, and density of population and land use for each service area over a period of 20 years or more.

(12) "Local government entity" has the meaning provided in 7-6-602 and includes a charter form of government.

~~(13) "Present value" means the total current monetary value of past, present, or future payments, contributions, or dedications of goods, services, materials, construction, or money.~~

~~(14)~~(13) "Project" means a particular development on an identified parcel of land.

~~(15)~~(14) "Project improvement" means site improvements and facilities that are planned and designed to provide service for a project and that are necessary for the use and convenience of the occupants or users of the project.

~~(16)~~(15) "Proportionate share" means ~~that~~ THE portion of a system improvement cost~~, which is specifically and uniquely attributable to the specific need or identifiable portion of a need for a system improvement, that:~~

~~(a) is created by a development; and~~

~~(b) will directly benefit the development~~ THAT IS ROUGHLY PROPORTIONAL TO THE NEED THAT IS ATTRIBUTABLE TO THE DEVELOPMENT.

~~(17)~~(16) "Public facility" means ~~any of the following facilities, if publicly owned:~~

~~(a) a water facility, including a water supply production, treatment, storage, or distribution facility;~~;

~~(b) a transportation facility, including a road, street, bridge, or local component of a state or federal highway and an associated appurtenant right-of-way, traffic signal, or landscaping; or~~

~~(c) a sewage facility, including a sewage collection, treatment, or disposal facility~~

(A) WATER SUPPLY PRODUCTION, TREATMENT, STORAGE, AND DISTRIBUTION FACILITIES;

(B) WASTEWATER AND SOLID WASTE COLLECTION, TREATMENT, AND DISPOSAL FACILITIES;

(C) ROADS, STREETS, AND BRIDGES, INCLUDING RIGHTS-OF-WAY, TRAFFIC SIGNALS, AND LANDSCAPING;

(D) STORM WATER COLLECTION, RETENTION, DETENTION, TREATMENT, AND DISPOSAL FACILITIES AND FLOOD CONTROL FACILITIES;

(E) PARKS, EXCLUDING THE COSTS OF LAND ACQUISITION; AND

(F) POLICE, EMERGENCY MEDICAL, RESCUE, AND FIRE PROTECTION FACILITIES.

~~(18)~~(17) "Service area" means a geographic area defined on the basis of sound planning or engineering standards by a local government entity or by interlocal agreement in which specific public facilities provide services to development.

~~(19)~~(18) "Service unit" means a standardized measure of consumption, use, generation, or discharge attributable to an individual unit of development, calculated for a type of public facility in accordance with generally accepted planning or engineering standards.

~~(20)~~(19) "System improvement" means a capital improvement to a public facility that is:

(a) identified in the facilities plan; and

(b) necessary to serve development in a service area.

~~(21)~~(20) (a) "System improvement cost" means the actual capital cost or a reasonable estimate of the capital cost for a system improvement that is supported by ~~sound engineering studies~~ A FACILITIES PLAN. The term includes design, acquisition, CONSTRUCTION, and engineering costs.

(b) The term does not include costs for:

(i) repairing, operating, or maintaining existing or new public facilities; or

(ii) upgrading, updating, expanding, replacing, or correcting deficiencies in existing public facilities to better serve existing needs, including achieving compliance with more stringent safety, efficiency, environmental,

or regulatory standards;

(iii) administering or operating the local government entity THAT ARE UNRELATED TO THE ADMINISTRATION OF THE IMPACT FEE PROGRAM;

(iv) principal and interest, other finance charges on bonds, or other indebtedness, except financial obligations issued by or on behalf of the local government entity to finance system improvements identified in the facilities plan;

(v) purchasing equipment or machinery with a useful life of less than 7 years or vehicles, books, furniture, consumable supplies, or computers; or

(vi) training, contingencies, or services, except for engineering or legal services specifically related to design, FINANCING, or acquisition of a public facility for development.

~~(22)~~(21) "Type of public facility" means:

(a) a water facility described in subsection ~~(17)(a)~~ (16)(A);

(b) a ~~transportation facility described in subsection (17)(b); or~~

~~(c) a sewage facility described in subsection (17)(c)~~ WASTEWATER FACILITY DESCRIBED IN SUBSECTION (16)(B);

(C) A TRANSPORTATION FACILITY DESCRIBED IN SUBSECTION (16)(C);

(D) A STORM WATER FACILITY DESCRIBED IN SUBSECTION (16)(D);

(E) A PARKS FACILITY DESCRIBED IN SUBSECTION (16)(E); OR

(F) A POLICE OR EMERGENCY FACILITY DESCRIBED IN SUBSECTION (16)(F).

NEW SECTION. **Section 4. Impact fees -- authority -- requirements for ordinance or resolution.** (1) A local government entity that has adopted a facilities plan pursuant to [section 6] may impose an impact fee by ordinance or resolution, subject to the requirements of [sections 1 through 14].

(2) A unit of government may only require a monetary assessment to pay for public facilities as a condition of development approval as ~~specifically~~ authorized by law.

(3) An impact fee may not exceed the amount determined as provided in [section 8].

~~(4) After payment of impact fees or execution of an agreement for payment of impact fees, an impact fee may not be increased and an additional impact fee may not be assessed unless there is an increase in the total number of service units described in the written statement provided by the local government entity at the time the impact fees are assessed. If there is an increase in the total number of service units, additional impact fees for the additional service units must be determined as provided in [section 8].~~

~~(5)~~(4) An ordinance or resolution authorizing the imposition of an impact fee must:

(a) require payment of the fee no earlier than:

(i) the date of issuance of a building permit if a building permit is required for the development; ~~or~~

(ii) the date of issuance of the development approval if a building permit is not required for the development; OR

(III) THE TIME OF WASTEWATER OR WATER SERVICE CONNECTION OR WELL OR SEPTIC PERMITTING;

~~(b) require the local government entity to provide a written statement, at the time the impact fees are assessed, that:~~

~~(i) describes factors considered under [section 8];~~

~~(ii) describes the system improvements for which the impact fee is intended to be used;~~

~~(iii) describes the total number of service units subject to the development approval;~~

~~(iv) identifies the service area for the system improvement or, for a transportation facility, the area authorized pursuant to [section 8];~~

~~(c)~~(B) establish guidelines for individual assessment of impact fees;

~~(d)~~(C) provide for the granting of credits and refunds in accordance with [sections 9 through 11];

~~(e)~~(D) prohibit the expenditure of impact fees except in accordance with [section 10];

~~(f)~~(E) provide for a refund of impact fees to the owner of record in accordance with [section 11];

~~(g)~~(F) require that the local government entity provide notice to the fee payer, at the time of payment of the impact fee, that the owner of record may be eligible for a refund as provided in [section 11]. The notice must describe the conditions of eligibility for a refund.

~~(h)~~(G) provide for administrative appeals ~~and mediation in accordance with [section 12]~~;

~~(i)~~(H) include a schedule of ESTIMATED system improvement costs for each service unit for various types of land use for each service area; ~~and~~

(I) PROVIDE FOR AN ANNUAL INFLATIONARY INDEX ADJUSTMENT TO THE MAXIMUM IMPACT FEES ALLOWED PURSUANT TO [SECTION 8(2)]; AND

(j) provide an exemption from impact fees for the following activities:

(i) rebuilding an equivalent amount of floor space for a structure that was destroyed by fire or other catastrophe;

(ii) remodeling or repairing a structure when the remodel or repair does not result in an increase in the number of service units;

(iii) replacing a residential unit, including a manufactured home, with another residential unit on the same

lot, if the replacement does not result in an increase in the number of service units;

(iv) placing a temporary construction trailer or office on a lot;

(v) constructing an addition to a residential structure if the addition does not result in an increase in the number of service units; and

(vi) adding uses that are typically accessory to residential, commercial, or industrial uses, unless it is demonstrated that the use creates ~~a significant~~ AN impact on the capacity of system improvements.

~~(6)~~(5) A local government entity may make final approval of a project contingent upon the payment of, or an agreement to pay, impact fees that are assessed as provided in [sections 1 through 14].

NEW SECTION. **Section 5. Impact fee advisory committee.** (1) A local government entity that intends to propose an impact fee ordinance or resolution shall establish an impact fee advisory committee ~~prior to the development of a facilities plan~~.

(2) An impact fee advisory committee must be composed of five or more members appointed by the governing body of the local government entity. Elected officials ~~or employees~~ of the local government entity may not serve on the impact fee advisory committee. ~~At least 40% of the members of the impact fee advisory committee must be active in the business of development, building, or other real estate-related professional work~~ MEMBERSHIP ON THE ADVISORY COMMITTEE MUST INCLUDE AT LEAST ONE ACTIVE BUILDER, ONE ACTIVE DEVELOPER, AND ONE ACTIVE REALTOR.

(3) The impact fee advisory committee shall serve in an advisory capacity to the governing body of the local government entity and shall:

(a) advise the local government entity regarding the ~~development of land use assumptions~~ IMPACT FEE PROGRAM AND HOW IT SHOULD BE COORDINATED WITH OR GUIDED BY LAND USE ASSUMPTIONS CREATED BY THE GROWTH POLICY;

(b) review and file written comments regarding the facilities plan and any proposed revisions to the facilities plan;

~~(c) monitor and evaluate implementation of the facilities plan;~~

~~(d)~~(C) report to the local government entity at least once each year regarding:

(i) the facilities plan; and

(ii) any perceived inequities in implementing the facilities plan or in imposing the impact fees; and

~~(e)~~(D) advise the local government entity of the need to update or revise the land use assumptions, the facilities plan, or impact fees.

(4) The local government entity shall make available to the advisory committee, upon request, all financial and accounting information and available reports related to the land use assumptions, the facilities plan, and the impact fee ordinance or resolution.

(5) The local government entity shall provide administrative support to the impact fee advisory committee.

NEW SECTION. **Section 6. Facilities plan.** (1) Each local government entity that intends to impose an impact fee shall CONDUCT AND adopt ONE OR MORE STUDIES CONTAINING ALL OF THE ELEMENTS OF THIS SECTION. COLLECTIVELY, THIS INFORMATION MUST BE KNOWN, FOR THE PURPOSES OF [SECTIONS 1 THROUGH 14], AS a facilities plan.

(2) The facilities plan must be prepared by qualified professionals in fields relating to finance, engineering, planning, and transportation, in consultation with the impact fee advisory committee established under [section 5].

(3) The facilities plan must include:

(a) land use assumptions that are in accordance with a growth policy adopted by the local government entity;

(b) a general description of all existing public facilities;

(c) a defined service area for each public facility;

(d) a description of the existing deficiencies for all public facilities and a reasonable estimate of all costs for correcting the deficiencies, including costs for upgrading, updating, improving, expanding, or replacing these facilities to meet existing needs;

(e) a plan to develop the funding resources necessary to correct the deficiencies described in subsection (3)(d);

(f) an analysis of the total capacity, the level of current use, and commitments for use of capacity of existing public facilities. The analysis must be prepared by ~~a~~ AN APPROPRIATE professional ~~engineer licensed under Title 37, chapter 67, part 3~~.

(g) a definitive table establishing a service unit for each type of public facility;

(h) a table establishing the ratio of a service unit that is attributable to various types of land uses, including residential, commercial, agricultural, and industrial land uses;

(i) the total number of service units and a description of all system improvements necessary to serve development, projected over a reasonable period of time not to exceed 20 years. The service units and system

improvements described must be:

(i) necessitated by and attributable to new development in each service area; and

(ii) in accordance with the land use assumptions.

(j) system improvement costs for the system improvements described in the plan;

(k) identification of all sources and amounts of funding available to the local government entity for the financing of system improvements;

(l) if the proposed system improvements include the improvement of public facilities under the jurisdiction of another government entity, the plan must specify the reasonable share of funding to be borne by each government entity under an interlocal agreement adopted pursuant to Title 7, chapter 11, part 1. A local government entity authorized to impose impact fees may not assume more than its reasonable share of funding joint improvements.

~~(m) a schedule setting forth estimated dates, based on the best available information, for commencing and completing construction of all improvements identified in the facilities plan.~~

(4) A local government entity that imposes an impact fee must update the facilities plan at least once every ~~5~~ 10 years. The ~~5-year~~ 10-YEAR period commences on the date of the original adoption of the facilities plan. The facilities plan must be updated in accordance with the procedures provided in this section.

(5) At least one public hearing must be held before adoption, revision, update, or repeal of a facilities plan. Notice of the hearing must be given as provided in 7-1-2121 or 7-1-4127. The notice must include a statement that the local government entity shall make available FOR REVIEW to the public, upon request, a copy of the proposed facilities plan or proposed revisions to the plan.

(6) If the local government entity proposes a significant revision to a facilities plan before the plan is adopted, further notice must be provided and a hearing must be held before the local government entity adopts the revised plan.

NEW SECTION. **Section 7. Impact fee adoption procedure -- public hearing required.** (1) A local government entity shall conduct a public hearing prior to adoption of a resolution or ordinance authorizing the imposition of impact fees. The hearing must be held after adoption of OR SIGNIFICANT UPDATE TO a facilities plan.

(2) If the local government entity makes a significant revision to the impact fee ordinance or resolution, further notice must be provided and a hearing must be held before the local government entity adopts the ordinance or resolution with the revision.

(3) (a) Except as provided in subsections (3)(b) and (3)(c), nothing in [sections 1 through 14] alters the

procedures established in law for the adoption of an ordinance or resolution by a local government entity.

(b) An impact fee ordinance or resolution may not be adopted as an emergency measure.

(c) An impact fee resolution may not take effect earlier than 30 days after adoption of the resolution.

NEW SECTION. **Section 8. Determination of impact fees.** (1) All calculations used to determine impact fees must be:

(a) based on the land use assumptions, tables, costs, and other data included in the most recent facilities plan adopted by the local government entity; and

(b) performed according to a methodology that complies with subsection (4).

(2) Subject to ~~subsection~~ SUBSECTIONS (3) AND (4), an impact fee may not exceed THE LESSER OF $2.50 A SQUARE FOOT FOR RESIDENTIAL BUILDINGS OR $10 A SQUARE FOOT FOR COMMERCIAL BUILDINGS OR:

(a) the amount determined by dividing the system improvement costs by the total number of service units projected for all development in the service area and multiplying this amount by the total number of service units for the development; and

(b) the proportionate share after the government considers the following:

(i) all credits required under [section 9(1)];

(ii) payments for system improvements reasonably anticipated to be made by or as a result of the development in the form of user fees, debt service payments, or taxes; and

(iii) all other available sources of funding the system improvements.

(3) (a) Except as provided in subsection (3)(b), an impact fee for a transportation facility may only be assessed to pay for system improvements within:

(i) 1/2 mile from the development for a city or town; or

(ii) 3 miles from the development for a county.

(b) (I) An impact fee for a transportation facility may be assessed to pay for a proportionate share of system improvement costs for system improvements outside of the areas authorized under subsection (3)(a), if:

(A) the governing body demonstrates in writing that impacts attributable to the development would significantly impair the ability of the local government entity to provide adequate services related to public health and safety outside of the authorized area~~. This written demonstration is subject to appeal under [section 12].~~; OR

(B) THE DEVELOPER AND THE GOVERNING BODY AGREE TO AN ASSESSMENT OF SYSTEM IMPROVEMENT COSTS OUTSIDE OF THE AREAS AUTHORIZED UNDER SUBSECTION (3)(A).

(II) THE WRITTEN DEMONSTRATION PROVIDED FOR IN SUBSECTION (3)(B)(I) IS SUBJECT TO APPEAL UNDER

[SECTION 12].

(4) The methodology for determination of impact fees must be:

(a) based on generally accepted ~~full-cost~~ accounting principles to ensure that the true costs and benefits of development are taken into consideration; and

(b) developed by ~~an independent and neutral~~ A QUALIFIED party.

(5) THE AMOUNTS PER SQUARE FOOT FOR RESIDENTIAL AND COMMERCIAL BUILDINGS PROVIDED IN SUBSECTION (2) MAY BE ADJUSTED ANNUALLY FOR INFLATION.

NEW SECTION. **Section 9. Calculation of credit for impact fees -- reimbursement to developer.** (1) (a) In the calculation of impact fees for a particular project, credit or reimbursement must be given for~~:~~

~~(i)~~ the present value of any system improvements or ~~contribution or dedication of land or~~ FOR money required by a local government entity from a developer for system improvements of the same type of public facility for which the impact fee is collected~~; and~~

~~(ii) the benefit to the local government entity from increased tax revenue for projects designated for commercial use. The credit must be based on the assessed value of the development~~.

(b) Credit or reimbursement may not be given for project improvements.

(2) If a developer is required to construct, fund, or contribute to system improvements in excess of the project's proportionate share of system improvement costs, the developer must receive a credit on future impact fees or be reimbursed, at the ~~developer's~~ LOCAL GOVERNMENT'S choice, for the excess construction, funding, or contribution. The credit or reimbursement must be paid from or attributed to impact fees paid by future development that impacts the system improvements constructed, funded, or contributed by the developer.

(3) If credit or reimbursement is due to the developer pursuant to this section, the local government entity shall enter into a written agreement with the fee payer, negotiated in good faith, before the construction, funding, or contribution occurs. The agreement must provide for the amount of credit or the amount of time and form of reimbursement.

NEW SECTION. **Section 10. Impact fee accounting requirements -- restrictions on expenditures.** (1) Separate accounts must be maintained for impact fees for each type of public facility and for each service area for which impact fees are collected. Interest earned on impact fees must be applied to the account on which it is earned and expended as provided in this section.

(2) Impact fees may be expended only for:

(a) the type of public facility for which the fee was collected; and

(b) system improvements within the area identified in the written statement issued at the time of impact fee assessment.

(3) A local government entity that imposes impact fees shall ~~include in its~~ PREPARE AN AUDITED financial report~~, prepared pursuant to 2-7-503, a report~~ describing the amount of impact fees collected, appropriated, or expended during the preceding year by type of public facility and by service area.

(4) Impact fees must be ~~expended~~ OBLIGATED within 3 years from the date they were collected. Impact fees that are not ~~expended~~ OBLIGATED within 3 years from the date they were collected must be refunded as provided in [section 11].

(5) An interlocal agreement may not permit expenditure of impact fees by a local government entity that is not authorized to impose impact fees.

NEW SECTION. **Section 11. Refund of impact fee to owner of record.** (1) (a) A local government entity shall refund the impact fee plus interest, as provided in subsection (1)(b), to the owner of record of property for which an impact fee has been paid if:

(i) the property is not served by the system improvement for which the impact fee was collected;

(ii) a building permit or permit for installation of a manufactured home is denied or abandoned; or

(iii) the fee was not OBLIGATED OR expended in accordance with [section 10].

(b) A refund of an impact fee must include the pro rata portion of interest earned while the impact fee was on deposit in the impact fee account.

(2) The local government entity shall mail a refund that is required under this section to the owner of record within 90 days after it is determined that a refund is required.

(3) An owner of record of property on which an impact fee has been paid may submit a written demand for a refund to the local government entity stating the reasons for and the amount of the refund. The local government entity shall respond in writing to the refund demand within 30 days of receipt of the refund demand. The local government entity's response must either admit that the requested refund is accurate or give specific and detailed justification for its decision to deny the refund.

~~(4) A person who has submitted a written demand for a refund of impact fees under this section has standing to sue for a refund if:~~

~~(a) there has not been a timely payment of a refund pursuant to subsection (2);~~

~~(b) there has not been a timely response to the refund demand; or~~

~~(c) the person demanding the refund disagrees with the local government entity's response to the refund demand.~~

NEW SECTION. **Section 12. Appeals -- protest ~~-- mediation~~.** (1) A local government entity that adopts an impact fee ordinance or resolution shall provide for administrative appeals by the developer or fee payer from discretionary action or inaction by or on behalf of the local government entity.

(2) (a) A fee payer may pay an impact fee under protest in order to obtain a development approval.

(b) A fee payer who pays an impact fee under protest is not estopped from:

(i) exercising the right of appeal pursuant to the ordinance or resolution or this section; or

(ii) receiving a refund of any amount that has been ~~illegally~~ IMPROPERLY collected.

~~(c) Instead of making a payment of impact fees under protest, a fee payer may, at the fee payer's option, post a bond or submit an irrevocable letter of credit for the amount of impact fees due, pending the outcome of an appeal.~~

~~(3) A local government entity that adopts an impact fee ordinance or resolution shall provide for mediation by a qualified independent party to address a disagreement related to the impact fee, upon voluntary agreement by the fee payer and the local government entity. The voluntary mediation must be allowed at any time during the appeal process. Participation in mediation does not preclude the fee payer from pursuing other remedies provided for in this section. Mediation costs must be shared equally by the fee payer and the local government entity.~~

~~(4) Any person or entity owning property within a service area or any organization, association, or corporation representing the interest of persons or entities owning property within a service area may file a declaratory judgment action challenging the validity of an impact fee or the administration of the impact fee program.~~

~~(5) A judge may award reasonable attorney fees and costs to the prevailing party in any action brought under this section.~~

NEW SECTION. **Section 13. Private agreements.** Nothing in [sections 1 through 14] prevents or prohibits a private agreement between a property owner or developer and the state or another government entity with regard to the construction or installation of a system improvement that provides for:

(1) a credit or reimbursement for a system improvement cost incurred by a developer, including an interproject transfer of a credit; or

(2) reimbursement for a project improvement that is used or shared by more than one project.

NEW SECTION. **Section 14. Applicability of existing ordinances and resolutions -- limitations.** (1) Notwithstanding another provision of law, after a local government entity has adopted an ordinance or resolution that imposes impact fees for a type of public facility under [sections 1 through 14], a requirement for a system improvement for that type of public facility may only be imposed as a condition of a development approval as provided in the ordinance or resolution.

(2) An impact fee ordinance or resolution does not apply to a development or development approval if any of the following occurred before the effective date of the ordinance or resolution:

(a) issuance of a building permit;

(b) issuance of a certificate of occupancy;

(c) commencement of construction in compliance with applicable law or regulation; or

(d) approval of a preliminary plat IN CASES WHEN THE SUBDIVISION OCCURS AFTER THE IMPOSITION OF THE IMPACT FEE.

Section 15. Section 2-7-503, MCA, is amended to read:

"2-7-503. Financial reports and audits of local government entities. (1) The governing body or managing or executive officer of a local government entity, other than a school district or associated cooperative, shall ensure that a financial report is made every year. A school district or associated cooperative shall comply with the provisions of 20-9-213. The financial report must cover the preceding fiscal year, be in a form prescribed by the department, and be completed within 6 months of the end of the reporting period. If the governing body has collected impact fees under [sections 1 through 14], the report must include the information required under [section 10]. The local government entity shall submit the financial report to the department for review.

(2) The department shall prescribe a uniform reporting system for all local government entities subject to financial reporting requirements, other than school districts. The superintendent of public instruction shall prescribe the reporting requirements for school districts.

(3) (a) The governing body or managing or executive officer of each local government entity receiving revenue or financial assistance in the period covered by the financial report in excess of $200,000 shall cause an audit to be made at least every 2 years. The audit must cover the entity's preceding 2 fiscal years. The audit must commence within 9 months from the close of the last fiscal year of the audit period. The audit must be completed and submitted to the department for review within 1 year from the close of the last fiscal year covered

by the audit.

(b) The governing body or managing or executive officer of a local government entity that does not meet the criteria established in subsection (3)(a) shall at least once every 4 years, if directed by the department, or, in the case of a school district, if directed by the department at the request of the superintendent of public instruction, cause a financial review, as defined by department rule, to be conducted of the financial statements of the entity for the preceding fiscal year.

(4) An audit conducted in accordance with this part is in lieu of any financial or financial and compliance audit of an individual financial assistance program that a local government is required to conduct under any other state or federal law or regulation. If an audit conducted pursuant to this part provides a state agency with the information that it requires to carry out its responsibilities under state or federal law or regulation, the state agency shall rely upon and use that information to plan and conduct its own audits or reviews in order to avoid a duplication of effort.

(5) In addition to the audits required by this section, the department may at any time conduct or contract for a special audit or review of the affairs of any local government entity referred to in this part. The special audit or review must, to the extent practicable, build upon audits performed pursuant to this part.

(6) The fee for the special audit or review must be a charge based upon the costs incurred by the department in relation to the special audit or review. The audit fee must be paid by the local government entity to the department of revenue and must be deposited in the enterprise fund to the credit of the department."

Section 16. Section 7-1-111, MCA, is amended to read:

"7-1-111. Powers denied. A local government unit with self-government powers is prohibited from exercising the following:

(1) any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;

(2) any power that applies to or affects the provisions of 7-33-4128 or Title 39 (labor, collective bargaining for public employees, unemployment compensation, or workers' compensation), except that subject to those provisions, it may exercise any power of a public employer with regard to its employees;

(3) any power that applies to or affects the public school system, except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power that it is required by law to exercise regarding the public school system;

(4) any power that prohibits the grant or denial of a certificate of public convenience and necessity;

(5) any power that establishes a rate or price otherwise determined by a state agency;

(6) any power that applies to or affects any determination of the department of environmental quality with regard to any mining plan, permit, or contract;

(7) any power that applies to or affects any determination by the department of environmental quality with regard to a certificate of environmental compatibility and public need;

(8) any power that defines as an offense conduct made criminal by state statute, that defines an offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of $500, 6 months' imprisonment, or both, except as specifically authorized by statute;

(9) any power that applies to or affects the right to keep or bear arms, except that a local government has the power to regulate the carrying of concealed weapons;

(10) any power that applies to or affects a public employee's pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;

(11) any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 37 (professions and occupations) as prerequisites to the carrying on of a profession or occupation;

(12) any power that applies to or affects Title 75, chapter 7, part 1 (streambeds), or Title 87 (fish and wildlife); ~~and~~

(13) ~~except as specifically authorized by law, any power that assesses a rate, fee, or charge for funding improvements to roads or streets~~ ANY POWER TO IMPOSE AN IMPACT FEE OTHER THAN AS AUTHORIZED UNDER [SECTIONS 1 THROUGH 14]; and

~~(13)~~(14) any power that applies to or affects landlords, as defined in 70-24-103, when that power is intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title 70, chapters 24 and 25. This subsection is not intended to restrict a local government's ability to require landlords to comply with ordinances or provisions that are applicable to all other businesses or residences within the local government's jurisdiction."

~~**Section 17.** Section 7-13-2301, MCA, is amended to read:~~

~~**"7-13-2301. Establishment of charges for services -- payment of charges.** (1) The board of directors shall fix all water and sewer rates and shall, through the general manager, collect the sewer charges and the charges for the sale and distribution of water to all users.~~

~~(2) The board, in furnishing water, sewer service, other services, and facilities, shall review, at least once~~

~~every 2 years, and from time to time fix the rate, fee, toll, rent, or other charge for the services, facilities, and benefits directly afforded by the facilities, taking into account services provided and direct benefits received, that will be sufficient in each year to provide income and revenue adequate, with the collections of any special assessments levied pursuant to 7-13-2280 through 7-13-2289 and appropriated, for:~~

~~(a) the payment of the reasonable expense of operation and maintenance of the facilities;~~

~~(b) administration of the district;~~

~~(c) the payment of principal and interest on any bonded or other indebtedness of the district; and~~

~~(d) the establishment or maintenance of any required reserves, including reserves needed for expenditures for depreciation and replacement of facilities, as may be determined necessary from time to time by the board or as covenanted in the ordinance or resolution authorizing the outstanding bonds of the district.~~

~~(3) A person or entity may not use any facility without paying the rate established for the facility. In the event of nonpayment, the board may order the discontinuance of water or sewer service, or both, to the property and may require that all delinquent charges, interest, penalties, and deposits be paid before restoration of the service.~~

~~(4) (a) If the board has ordered discontinuance of service as provided in subsection (3) and the person or entity who received the service has not made full payment of all delinquent charges, interest, penalties, and deposits, then a district may elect to have its delinquent charges for water or sewer services collected as a tax against the property by following the procedures of this subsection (4). If a charge for services is due and payable in a fiscal year and is not paid by the end of the fiscal year, the general manager shall, by July 15 of the succeeding fiscal year, give notice to the owners of the property to which the service was provided. The notice must be in writing and:~~

~~(i) must specify the charges owed, including any interest and penalty;~~

~~(ii) must specify that the amount due must be paid by August 15 or it will be levied as a tax against the property;~~

~~(iii) must state that the district may institute suit in any court of competent jurisdiction to recover the amount due; and~~

~~(iv) may be served on the owner personally or by letter addressed to the post-office address of the owner as recorded in the county assessor's office.~~

~~(b) On September 1 of each year, the general manager shall certify and file with the county assessor a list of all property, including legal descriptions, on which arrearages remain unpaid. The list must include the amount of each arrearage, including interest and penalty. The county assessor shall assess the amount owed~~

~~as a tax against each lot or parcel with an arrearage. If the property on which arrearages remain unpaid contains a mobile home, the amount owed must be assessed as a tax against the owner of the mobile home. If the mobile home for which arrearages remain unpaid is no longer on the property, the amount owed must be assessed as a tax against the property.~~

~~(5) In addition to collecting delinquent charges in the same manner as a tax, a district may bring suit in any court of competent jurisdiction to collect amounts due as a debt owed to the district.~~

~~(6) Notwithstanding any other section of part 22 or this part or any limitation imposed in part 22 or this part, when the board has applied for and received from the federal government any money for the construction, operation, and maintenance of facilities, the board may adopt a system of charges and rates to require that each recipient of facility services pays its proportionate share of the costs of operation, maintenance, and replacement and may require industrial users of facilities to pay the portion of the cost of construction of the facilities that is allocable to the treatment of that industrial user's wastes.~~

~~(7) Any rate, fee, toll, rent, or other charge that is not assessed against all users of the district on a monthly basis must comply with the provisions of [sections 1 through 14].~~"

~~**Section 18.** Section 7-13-4304, MCA, is amended to read:~~

~~"**7-13-4304. Authority to charge for services.** (1) The governing body of a municipality operating a municipal water or sewer system shall fix and establish, by ordinance or resolution, and collect rates, rentals, and charges for the services, facilities, and benefits directly or indirectly afforded by the system, taking into account services provided and benefits received.~~

~~(2) Sewer charges may take into consideration the quantity of sewage produced and its concentration and water pollution qualities in general and the cost of disposal of sewage and storm waters. The charges may be fixed on the basis of water consumption or any other equitable basis the governing body considers appropriate. The rates for charges may be fixed in advance or otherwise and shall~~ must ~~be uniform for like services in all parts of the municipality. If the governing body determines that the sewage treatment or storm water disposal prevents pollution of sources of water supply, the sewer charges may be established as a surcharge on the water bills of water consumers or on any other equitable basis of measuring the use and benefits of the facilities and services.~~

~~(3) An original charge for the connecting sewerline between the lot line and the sewer main may be assessed when the connecting sewerline is installed~~ and only as provided in [sections 1 through 14]~~.~~

~~(4) The water and sewer rates, charges, or rentals shall~~ must ~~be as nearly as possible equitable in~~

~~proportion to the services and benefits rendered. A rate, charge, or rental that is not assessed against all users of the system on a monthly basis must be assessed in accordance with the provisions of [sections 1 through 14].~~"

Section 17. Section 76-3-501, MCA, is amended to read:

"76-3-501. Local subdivision regulations. (1) Before July 1, 1974, the governing body of every county, city, and town shall adopt and provide for the enforcement and administration of subdivision regulations reasonably providing for the orderly development of their jurisdictional areas; for the coordination of roads within subdivided land with other roads, both existing and planned; for the dedication of land for roadways and for public utility easements; for the improvement of roads; for the provision of adequate open spaces for travel, light, air, and recreation; for the provision of adequate transportation, water, and drainage; subject to the provisions of 76-3-511, for the regulation of sanitary facilities; for the avoidance or minimization of congestion; and for the avoidance of subdivision which would involve unnecessary environmental degradation and the avoidance of danger of injury to health, safety, or welfare by reason of natural hazard or the lack of water, drainage, access, transportation, or other public services or would necessitate an excessive expenditure of public funds for the supply of such services.

(2) Review and approval or disapproval of a subdivision under this chapter may occur only under those regulations in effect at the time an application for approval of a preliminary plat or for an extension under 76-3-610 is submitted to the governing body.

(3) A governing body may impose an impact fee as a condition of subdivision approval only by adoption of an impact fee ordinance or resolution in accordance with [sections 1 through 14]."

~~**Section 20.** Section 76-3-510, MCA, is amended to read:~~

~~**"76-3-510. Payment for extension of capital facilities.** A local government may require a subdivider to pay or guarantee payment for part or all of the costs of extending capital facilities related to public health and safety, including but not limited to public roads, sewer lines, water supply lines, and storm drains to a subdivision. The costs must reasonably reflect the expected impacts directly attributable to the subdivision. A payment that is required in the form of a monetary assessment to pay for the cost of extending a public facility, as defined in [section 3], may be imposed only by adoption of an impact fee ordinance or resolution in accordance with [sections 1 through 14]. A local government may not require a subdivider to pay or guarantee payment for part or all of the costs of constructing or extending capital facilities related to education."~~

NEW SECTION. **Section 18. Codification instruction.** [Sections 1 through 14] are intended to be codified as an integral part of Title 7, chapter 11, and the provisions of Title 7, chapter 11, apply to [sections 1 through 14].

NEW SECTION. **Section 19. 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.

NEW SECTION. **Section 20. Transition -- applicability -- saving.** (1) Except as provided in subsection (2), an ordinance or resolution that imposes impact fees must be in compliance with the provisions of [sections 1 through 14] or repealed by October 1, 2004. Except when the ordinance or resolution is repealed, the local government entity shall establish an impact fee advisory committee in accordance with [section 14] to ensure compliance with the provisions of [sections 1 through 14].

(2) [Sections 1 through 14] do not apply to impact fees that are pledged for the payment of bonds before [the effective date of this act].

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