

HOUSE BILL NO. 573
INTRODUCED BY R. ERICKSON

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT THE PAYMENT FOR EXTENSION OF FACILITIES UNDER TITLE 76, CHAPTER 3, PART 1, MCA, DOES NOT PROHIBIT A LOCAL GOVERNMENT FROM USING IMPACT FEES FOR OTHER FACILITIES AS PROVIDED IN TITLE 7, CHAPTER 6, PART 16, MCA; AMENDING SECTIONS 7-6-1602 AND 76-3-510, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 7-6-1602, MCA, is amended to read:

"7-6-1602. Calculation of impact fees -- documentation required -- ordinance or resolution -- requirements for impact fees. (1) For each public facility for which an impact fee is imposed, the governmental entity shall prepare and approve documentation that:

- (a) describes existing conditions of the facility;
- (b) establishes level of service standards;
- (c) forecasts future additional needs for service for a defined period of time;
- (d) identifies capital improvements necessary to meet future needs for service;
- (e) identifies those capital improvements needed for continued operation and maintenance of the facility;
- (f) makes a determination as to whether one service area or more than one service area is necessary to establish a correlation between impact fees and benefits;
- (g) makes a determination as to whether one service area or more than one service area for transportation facilities is needed to establish a correlation between impact fees and benefits;
- (h) establishes the methodology and time period over which the governmental entity will assign the proportionate share of capital costs for expansion of the facility to provide service to new development within each service area;
- (i) establishes the methodology that the governmental entity will use to exclude operations and maintenance costs and correction of existing deficiencies from the impact fee;
- (j) establishes the amount of the impact fee that will be imposed for each unit of increased service demand; and

(k) has a component of the budget of the governmental entity that:

- (i) schedules construction of public facility capital improvements to serve projected growth;
- (ii) projects costs of the capital improvements;
- (iii) allocates collected impact fees for construction of the capital improvements; and
- (iv) covers at least a 5-year period and is reviewed and updated at least every 2 years.

(2) The data sources and methodology supporting adoption and calculation of an impact fee must be available to the public upon request.

(3) The amount of each impact fee imposed must be based upon the actual cost of public facility expansion or improvements or reasonable estimates of the cost to be incurred by the governmental entity as a result of new development. The calculation of each impact fee must be in accordance with generally accepted accounting principles.

(4) The ordinance or resolution adopting the impact fee must include a time schedule for periodically updating the documentation required under subsection (1).

(5) An impact fee must meet the following requirements:

(a) The amount of the impact fee must be reasonably related to and reasonably attributable to the development's share of the cost of infrastructure improvements made necessary by the new development.

(b) The impact fees imposed may not exceed a proportionate share of the costs incurred or to be incurred by the governmental entity in accommodating the development. The following factors must be considered in determining a proportionate share of public facilities capital improvements costs:

(i) the need for public facilities capital improvements required to serve new development; and

(ii) consideration of 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, taxes, and other available sources of funding the system improvements.

(c) Costs for correction of existing deficiencies in a public facility may not be included in the impact fee.

(d) New development may not be held to a higher level of service than existing users unless there is a mechanism in place for the existing users to make improvements to the existing system to match the higher level of service.

(e) Impact fees may not include expenses for operations and maintenance of the facility.

(6) The payment for extension of facilities under Title 76, chapter 3, part 1, does not prohibit a local government from using impact fees for public facilities as provided in 7-6-1601 through 7-6-1604."

Section 2. Section 76-3-510, MCA, is amended to read:

"76-3-510. Payment for extension of capital facilities. (1) 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.

(2) ~~A~~ Except as provided in subsection (3), 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.

(3) Subsection (2) does not prohibit a local government from using impact fees, as provided in Title 7, chapter 6, part 16, for public facilities."

NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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