

SENATE BILL NO. 142

INTRODUCED BY K. REGIER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LOCAL GOVERNMENT IMPACT FEE LAWS; REQUIRING THE COMMUNITY DEVELOPMENT DIVISION OF THE DEPARTMENT OF COMMERCE TO OVERSEE THE COLLECTION AND ADMINISTRATION OF IMPACT FEES; REQUIRING THAT INDEPENDENT FIRMS PREPARE SERVICE AREA REPORTS; ADDING CIRCUMSTANCES WHEN GOVERNMENTAL ENTITIES MUST REFUND IMPACT FEES; AMENDING REQUIREMENTS FOR PUBLIC FACILITY PROJECTS AND IMPACT FEE COLLECTION; ALLOWING FOR PROCEEDINGS TO BE BROUGHT AGAINST A GOVERNMENTAL ENTITY; PROVIDING THAT A PORTION OF ADMINISTRATIVE FEES BE PAID TO THE DEPARTMENT; REVISING DEFINITIONS; PROVIDING RULEMAKING AUTHORITY; SUPERSEDING THE UNFUNDED MANDATE LAWS; AMENDING SECTIONS 7-6-1601, 7-6-1602, 7-6-1603, AND 90-1-103, MCA; AND PROVIDING DELAYED EFFECTIVE DATE."

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

Section 1. Section 7-6-1601, MCA, is amended to read:

"7-6-1601. Definitions. As used in this part, the following definitions apply:

(1) (a) "Capital improvements" means improvements, land, and equipment with a useful life of 10 years or more that increase or improve the service capacity of a public facility.

(b) The term does not include consumable supplies.

(2) "Connection charge" means the actual cost of connecting a property to a public utility system and is limited to the labor, materials, and overhead involved in making connections and installing meters.

(3) "Department" means the department of commerce provided for in 2-15-1801.

~~(3)~~(4) "Development" means construction, renovation, or installation of a building or structure, a change in use of a building or structure, or a change in the use of land when the construction, installation, or other action creates additional demand for public facilities.

~~(4)~~(5) "Governmental entity" means a county, city, town, or consolidated government.

1 ~~(5)~~(6) (a) "Impact fee" means any charge imposed upon development by a governmental entity as
 2 part of the development approval process to fund the additional service capacity required by the development
 3 from which it is collected. An impact fee may include a fee for the administration of the impact fee not to exceed
 4 5% of the total impact fee collected.

5 (b) The term does not include:

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

8 (ii) a connection charge;

9 (iii) any other fee authorized by law, including but not limited to user fees, special improvement
 10 district assessments, fees authorized under Title 7 for county, municipal, and consolidated government sewer
 11 and water districts and systems, and costs of ongoing maintenance; or

12 (iv) onsite or offsite improvements necessary for new development to meet the safety, level of
 13 service, and other minimum development standards that have been adopted by the governmental entity.

14 (c) Within 60 days of the collection of an impact fee, the governmental entity shall remit 20% of the
 15 administration fee provided in subsection (6)(a), if collected, to the department for administrative purposes.

16 (7) "Independent firm" means an engineering firm or other professional firm with appropriate
 17 qualifications determined and approved by the department to prepare service area reports as required in 7-6-
 18 1602 and reports as required in subsection (10)(f) of this section;

19 (8) "Long-term transportation plan" means a plan that:

20 (a) identifies unique transportation service areas and details the needs of each service area;

21 (b) identifies the public facility project or projects within each service area for which impact fees are
 22 sought to be imposed;

23 (c) is applicable for at least 20 years from the date of adoption; and

24 (d) is updated at least every 5 years.

25 ~~(6)~~(9) "Proportionate share" means that portion of the cost of capital system improvements that
 26 reasonably relates to the service demands and needs of the project. A proportionate share must take into
 27 account the limitations provided in 7-6-1602.

28 ~~(7)~~(10) "Public facilities" means:

- 1 (a) a water supply production, treatment, storage, or distribution facility;
- 2 (b) a wastewater collection, treatment, or disposal facility;
- 3 (c) a transportation facility, including roads, streets, bridges, rights-of-way, traffic signals, and
- 4 landscaping only if the governmental entity has adopted a long-term transportation plan that requires all impact
- 5 fees used for transportation facilities to be consistent with the long-term transportation plan;
- 6 (d) a storm water collection, retention, detention, treatment, or disposal facility or a flood control
- 7 facility;
- 8 (e) a police, emergency medical rescue, or fire protection facility; and
- 9 (f) other facilities approved by the department by application:
- 10 (i) providing documentation as required in 7-6-1602; and
- 11 (ii) including a report from a qualified, independent firm approved by the department that identifies
- 12 and documents with specificity the connection between the public facility project or projects for which the impact
- 13 fees are sought and the benefits to the properties on which the impact fee is sought to be imposed
- 14 for which documentation is prepared as provided in 7-6-1602 that have been approved as part of an
- 15 impact fee ordinance or resolution by:
- 16 (i) ~~a two-thirds majority of the governing body of an incorporated city, town, or consolidated local~~
- 17 ~~government; or~~
- 18 (ii) ~~a unanimous vote of the board of county commissioners of a county government."~~

Section 2. 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) (a) For each public facility for which an impact fee is imposed, the governmental entity shall prepare and approve a service area report.

(b) A service area report must be:

- (i) prepared, along with any amendments to the service area report, by an independent firm paid for by the governmental entity;
- (ii) updated at minimum every 5 years with updates prepared by an independent firm paid for by the governmental entity; and

1 (iii) posted, along with any available updates or amendments, on the appropriate governmental
2 entity's website, if the governmental entity has an active website, no later than 30 days after the service area
3 plan is approved, updated, or amended.

4 (2) The service area report is a written analysis that must:

5 (a) describe existing conditions of the facility;

6 (b) establish level-of-service standards;

7 (c) forecast future additional needs for service for a defined period of time;

8 (d) identify capital improvements necessary to meet future needs for service;

9 (e) identify those capital improvements needed for continued operation and maintenance of the
10 facility;

11 (f) make a determination as to whether one service area or more than one service area is
12 necessary to establish a correlation between impact fees and benefits;

13 (g) make a determination as to whether one service area or more than one service area for
14 transportation facilities is needed to establish a correlation between impact fees and benefits;

15 (h) establish the methodology and time period over which the governmental entity will assign the
16 proportionate share of capital costs for expansion of the facility to provide service to new development within
17 each service area;

18 (i) establish the methodology that the governmental entity will use to exclude operations and
19 maintenance costs and correction of existing deficiencies from the impact fee;

20 (j) establish the amount of the impact fee that will be imposed for each unit of increased service
21 demand; and

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

23 (i) schedules construction of public facility capital improvements to serve projected growth;

24 (ii) projects costs of the capital improvements;

25 (iii) allocates collected impact fees for construction of the capital improvements; and

26 (iv) covers at least a 5-year period and is reviewed and updated at least every 5 years.

27 (3) The service area report is a written analysis that must:

28 (a) be consistent with the capital improvement plan;

1 **(b)** contain documentation of sources and methodology used for purposes of subsection (2); and

2 **(c)** ~~must~~ document how each impact fee meets the requirements of subsection ~~(7)~~ **(8)**.

3 **(4)** The service area report may only include public facility projects:

4 **(a)** identified in a capital improvement plan adopted by the governing body of the governmental
5 entity;

6 **(b)** with a start date not more than 3 years from the date the service area plan is approved and a
7 defined completion date not more than 5 years after the date the service area plan is approved; and

8 **(c)** accompanied by an independent engineering study that identifies the costs and benefits of the
9 project, if the public facility project costs more than \$1 million, paid for and approved by the governmental
10 entity.

11 ~~(4)~~**(5)** The service area report that supports adoption and calculation of an impact fee must be
12 available to the public upon request.

13 ~~(5)~~**(6)** The amount of each impact fee imposed must be based upon the actual cost of public facility
14 expansion or improvements or reasonable estimates of the cost to be incurred by the governmental entity as a
15 result of new development. The calculation of each impact fee must be in accordance with generally accepted
16 accounting principles.

17 ~~(6)~~**(7)** The ordinance or resolution adopting the impact fee must include a time schedule for
18 periodically updating the documentation required under subsection (2).

19 ~~(7)~~**(8)** An impact fee must meet the following requirements:

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

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

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

26 **(ii)** consideration of payments for system improvements reasonably anticipated to be made by or
27 as a result of the development in the form of user fees, debt service payments, taxes, and other available
28 sources of funding the system improvements.

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

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

6 (e) Impact fees may not include expenses for operations and maintenance of the facility."
7

8 **Section 3.** Section 7-6-1603, MCA, is amended to read:

9 **"7-6-1603. Collection and expenditure of impact fees -- refunds or credits -- mechanism for**
10 **appeal required.** (1) The collection and expenditure of impact fees must comply with this part. The collection
11 and expenditure of impact fees must be reasonably related to the benefits accruing to the development paying
12 the impact fees. The ordinance or resolution adopted by the governmental entity must include the following
13 requirements:

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

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

21 (c) If the impact fees are not collected or spent in accordance with the impact fee ordinance or
22 resolution or in accordance with 7-6-1602, any impact fees that were collected must be refunded within 90 days
23 of the determination that the impact fees were not collected or spent correctly as provided in this part to the
24 person who owned the property at the time that the refund was due the impact fee in question was paid. The
25 governmental entity may not impose conditions when issuing a refund pursuant to this part.

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

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

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

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

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

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

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

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

22 (5) Impact fees may not be imposed for remodeling, rehabilitation, or other improvements to an
23 existing structure or for rebuilding a damaged structure unless there is an increase in units that increase service
24 demand as described in 7-6-1602(2)(j). If impact fees are imposed for remodeling, rehabilitation, or other
25 improvements to an existing structure or use, only the net increase between the old and new demand may be
26 imposed.

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

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

1 chapter; or

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

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

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

8 (9) If a public facility project is abandoned by a governmental entity, the governmental entity shall
9 refund the total amount of impact fees collected for the abandoned project. If the actual cost of a public facility
10 project is 80% or less of the total cost of the project estimated in the service area report, a portion of the impact
11 fees that is proportionate to the cost difference must be refunded. Refunds allowed under this subsection must
12 occur within 90 days after the governmental entity abandons the public facility project or determines the public
13 facility project overfunded.

14 (10) All refunds allowed under this section must be paid to the person who paid the impact fee for
15 the public facility project in question. If the person who paid the impact fee cannot be located within 12 months
16 of a determination that a refund as provided in this section is required, the refund must be paid to the
17 department for administrative costs."

18

19 **NEW SECTION. Section 4. Governmental entities with high impact fee collection --**

20 **documentation and audit required -- legal redress and cause of action.** (1) This section applies to
21 governmental entities that collect more than \$100,000 in total impact fees in a single fiscal year.

22 (2) The governmental entity shall submit to the department:

23 (a) a copy of each new service area report and the supporting capital improvement plan required
24 in 7-6-1602 within 30 days of the adoption of the service area report; and

25 (b) written evidence and a supporting capital improvement plan within 30 days of any service area
26 report being updated, amended, modified, or terminated. Any modification to a service area report must
27 conform with all requirements provided in 7-6-1602.

28 (3) The governmental entity shall include with the information submitted to the department as

1 required in subsection (2) an affidavit addressed to the department and signed by the presiding officer, mayor,
2 manager, or chief executive officer and the chief financial officer of the governmental entity attesting under
3 penalty of perjury that the material submitted complies with the requirements of this part.

4 (4) The governmental entity shall submit to the department, within 30 days after the completion of
5 the governmental entity's annual audit as required in Title 2, chapter 7, part 5, a separate report prepared by
6 the governmental entity's independent auditor detailing all impact fees collected and spent during a fiscal year
7 as identified in 7-6-1603(1)(d). The report required in this subsection (4) must be accompanied with an affidavit
8 addressed to the department and signed by the presiding officer, mayor, manager, or chief executive officer
9 and the chief financial officer of the governmental entity attesting under penalty of perjury that the report is
10 accurate and that all collections and expenditures of impact fees during the fiscal year are in compliance with
11 the provisions of this part.

12 (5) The governmental entity shall:

13 (a) respond within 30 days to any department inquiry and request for further information related to
14 the report required in subsection (4); and

15 (b) publish within 30 days of the submission to the department the report required in subsection (4)
16 on the governmental entity's website, if the governmental entity has an active website.

17 (6) (a) If the department determines that a governmental entity has collected or expended impact
18 fees in violation of this part or has failed to refund impact fees timely as required in 7-6-1603, the department
19 shall notify the governmental entity in writing of the determination.

20 (b) Within 90 days of the receipt of notification by the department as provided in subsection (6)(a),
21 the governmental entity shall:

22 (i) pay to the persons or entities entitled to a refund pursuant to 7-6-1603 the amount of impact
23 fees incorrectly collected or not refunded, including any related and proportionate amount of administrative fees
24 collected as allowed in 7-6-1601; and

25 (ii) provide to the department and make available for public inspection and copying a list of all
26 persons who paid impact fees determined to be incorrectly collected or not refunded as required in 7-6-1603
27 and the amount each person is owed in refunded impact fees.

28 (7) Any person or entity who is owed refunded impact fees as provided in this part may request in

1 writing from the governmental entity and the department that prompt payment be concluded.

2 (8) If a governmental entity fails to comply with the requirements of this part, the department may,
3 within 180 days of receiving a written request as provided in subsection (7), initiate proceedings against the
4 governmental entity in a court of competent jurisdiction to recover amounts due and to enforce compliance with
5 this part. If the department prevails in the proceeding:

6 (a) the department shall recover from the responsible governmental entity court costs, expert
7 witness fees, and attorney fees incurred by the department; and

8 (b) the court shall require that any incorrectly collected or refunded impact fees be promptly
9 refunded by the governmental entity as required in this part.

10 (9) If the department fails to timely initiate proceedings as provided in subsection (8), a person who
11 submitted a written request as provided in subsection (7) may bring a cause of action against the governmental
12 entity in a court of competent jurisdiction for failure to comply with this part. If a claimant prevails in an action
13 brought against a governmental entity pursuant to this subsection, the court shall award the claimant payment
14 of all amounts due, court costs, expert witness fees, and attorney fees incurred by the claimant. If the claimant
15 is unsuccessful, the court shall award the governmental entity court costs, expert witness fees, and attorney
16 fees.

17
18 **NEW SECTION. Section 5. Department -- rights, duties, and rulemaking.** (1) The department may
19 promulgate rules to implement and enforce this part.

20 (2) The department retains the right to approve or reject any application for a public facility project
21 as provided in 7-6-1601(10)(f). If the department approves a project application for which impact fees are
22 collected, any person from whom impact fees are collected for the project approved by the department may
23 seek legal redress.

24 (3) The department may conduct duties to carry out this part, including but not limited to receiving
25 and approving applications, receiving reports and affidavits, and initiating legal proceedings.

26
27 **Section 6.** Section 90-1-103, MCA, is amended to read:

28 **"90-1-103. Functions of department of commerce -- community development.** (1) The

1 department of commerce shall:

2 (a) cooperate with and provide technical assistance to county, municipal, state, and regional
3 planning commissions, zoning commissions, parks or recreation boards, community development groups,
4 community action agencies, and similar agencies created for the purposes of aiding and encouraging orderly,
5 productive, and coordinated development of the communities of the state;

6 (b) assist the governor in coordinating the activities of state agencies that have an impact on
7 solution of community development problems and implementation of community plans;

8 (c) serve as a clearinghouse for information, data, and other materials that may be helpful or
9 necessary to local governments to discharge their responsibilities and provide information on available federal
10 and state financial and technical assistance;

11 (d) carry out continuing studies and analyses of the problems faced by communities within the
12 state and develop those recommendations for administrative or legislative action as appear necessary. In
13 carrying out the studies and analyses and in providing technical assistance to communities, the department
14 shall pay particular attention to the planning and financing of public facilities and to the problems of
15 metropolitan, suburban, and other areas in which economic and population factors are rapidly changing.

16 (e) administer the federal community development block grant program and adopt rules to
17 implement the program; and

18 (f) oversee the collection, implementation, and expenditure of local impact fees to fund capital
19 improvements as provided in Title 7, chapter 6, part 16.

20 (2) In partial fulfillment of its duties under subsection (1), by January 1, 2003, the department shall
21 have developed and published examples of subdivision regulations that provide incentives for and remove
22 disincentives to cluster development. The examples need not be limited to the local option cluster development
23 regulations authorized in 76-3-509 and may include any cluster development regulations that are authorized
24 under Title 76, chapter 3. In developing the examples of regulations, the department shall seek the advice of
25 interested parties. The department shall provide technical assistance to local governments that are developing
26 cluster development regulations, as provided in subsection (1)(a)."

27
28 NEW SECTION. Section 7. Transition. (1) All governmental entities that have enacted one or more

1 ordinances or resolutions providing for impact fees shall amend the ordinances or resolutions and the most
2 recent service area reports to bring them into compliance with [this act] on or before January 31, 2024.

3 (2) Copies and other evidence of ordinances or resolutions and service area reports must be
4 submitted along with a compliance affidavit to the department on or before January 31, 2024.

5 (3) The department may reject a submission of the materials from a governmental entity as
6 required in this section if the department considers the submission to be noncompliant with [this act]. If the
7 department rejects a submission pursuant to this subsection, the governmental entity that submitted the
8 materials may not collect impact fees for the public facility until the submitted materials are corrected and the
9 department approves the submission as compliant with [this act].

10

11 NEW SECTION. Section 8. Unfunded mandate laws superseded. The provisions of [this act]
12 expressly supersede and modify the requirements of 1-2-112 through 1-2-116.

13

14 NEW SECTION. Section 9. Codification instruction. [Sections 4 and 5] are intended to be codified
15 as an integral part of Title 7, chapter 6, part 16, and the provisions of Title 7, chapter 6, part 16, apply to
16 [sections 4 and 5].

17

18 NEW SECTION. Section 10. Severability. If a part of [this act] is invalid, all valid parts that are
19 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
20 the part remains in effect in all valid applications that are severable from the invalid applications.

21

22 NEW SECTION. Section 11. Effective date. [This act] is effective January 1, 2024.

23

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