

1 SENATE BILL NO. 142

2 INTRODUCED BY K. REGIER

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LOCAL GOVERNMENT IMPACT FEE LAWS;
5 REQUIRING THE COMMUNITY DEVELOPMENT DIVISION OF THE DEPARTMENT OF COMMERCE TO
6 OVERSEE THE COLLECTION AND ADMINISTRATION OF IMPACT FEES; REQUIRING THAT
7 INDEPENDENT FIRMS PREPARE SERVICE AREA REPORTS; ADDING CIRCUMSTANCES WHEN
8 GOVERNMENTAL ENTITIES MUST REFUND IMPACT FEES; AMENDING REQUIREMENTS FOR PUBLIC
9 FACILITY PROJECTS AND IMPACT FEE COLLECTION; REQUIRING IMPACT FEE COLLECTIONS TO BE
10 ACCOUNTED FOR IN SEPARATE PROPRIETARY FUNDS AND RESTRICTED TO THE SPECIFIC PUBLIC
11 FACILITY FOR WHICH THE IMPACT FEE WAS COLLECTED; ALLOWING FOR PROCEEDINGS TO BE
12 BROUGHT AGAINST A GOVERNMENTAL ENTITY; PROVIDING THAT A PORTION OF ADMINISTRATIVE
13 FEES BE PAID TO THE DEPARTMENT; REVISING DEFINITIONS; PROVIDING RULEMAKING AUTHORITY;
14 SUPERSEDING THE UNFUNDED MANDATE LAWS; AMENDING SECTIONS 7-6-1601, 7-6-1602, SECTION
15 7-6-1603; AND 90-1-103, MCA; AND PROVIDING DELAYED EFFECTIVE DATE."

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18
19 **Section 1.** Section 7-6-1601, MCA, is amended to read:

20 **~~7-6-1601.~~ Definitions.** As used in this part, the following definitions apply:

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

23 (b) ~~The term does not include consumable supplies.~~

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

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

27 (3)(4) ~~"Development" means construction, renovation, or installation of a building or structure, a~~

Amendment - 1st Reading/2nd House-blue - Requested by: Jill Cohenour - (H) Local Government

- 2023

68th Legislature 2023

Drafter: Laura Sankey Keip, 406-444-4410

SB0142.002.001

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

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

5 ~~(ii) — consideration of payments for system improvements reasonably anticipated to be made by or~~
6 ~~as a result of the development in the form of user fees, debt service payments, taxes, and other available~~
7 ~~sources of funding the system improvements.~~

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

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

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

14
15 **Section 1.** Section 7-6-1603, MCA, is amended to read:

16 **"7-6-1603. Collection and expenditure of impact fees -- refunds or credits -- mechanism for**
17 **appeal required -- CAUSE OF ACTION.** (1) The collection and expenditure of impact fees must comply with this
18 part. The collection and expenditure of impact fees must be reasonably related to the benefits accruing to the
19 development paying the impact fees. The ordinance or resolution adopted by the governmental entity must
20 include the following requirements:

21 ~~(a) Upon collection, impact fees~~ Impact fees collected for a public facility project must be deposited
22 in a special proprietary fund, which must be invested with all interest accruing to the fund created specifically for
23 each public facility with individual projects accounted for within each fund AS IDENTIFIED IN THE SERVICE AREA
24 REPORT. Funds must be invested with all interest accruing to the fund. Impact fees collected for a specific public
25 facility may not be transferred to a different account-FUND and must be spent and accounted for solely for the
26 projects in the public facility as identified in the service area report.

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

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1 (c) (i) If the impact fees are not collected or spent in accordance with the impact fee ordinance or
2 resolution or in accordance with 7-6-1602, any impact fees that were collected must be refunded within 90 days
3 of the determination that the impact fees were not collected or spent correctly as provided in this part to the
4 person who owned the property at the time ~~that the refund was due~~ the impact fee in question was paid.

5 (ii) IF A WRITTEN REQUEST IS SUBMITTED AS PROVIDED FOR IN SUBSECTION (9), THE GOVERNMENTAL
6 ENTITY SHALL REFUND ANY IMPACT FEE DUE UNDER SUBSECTION (1)(C)(I) WITHIN 90 DAYS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 ~~(10) — All refunds allowed under this section must be paid to the person who paid the impact fee for~~
27 ~~the public facility project in question. If the person who paid the impact fee cannot be located within 12 months~~

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1 ~~of a determination that a refund as provided in this section is required, the refund must be paid to the~~
2 ~~department for administrative costs.~~

3 (9) ANY PERSON OR ENTITY WHO IS OWED REFUNDED IMPACT FEES AS PROVIDED IN THIS PART MAY
4 REQUEST IN WRITING FROM THE GOVERNMENTAL ENTITY THAT PROMPT PAYMENT BE CONCLUDED. A PERSON OR ENTITY
5 WHO SUBMITTED A WRITTEN REQUEST PURSUANT TO THIS SUBSECTION MAY BRING A CAUSE OF ACTION AGAINST THE
6 GOVERNMENTAL ENTITY IN A COURT OF COMPETENT JURISDICTION FOR FAILURE TO COMPLY WITH THIS PART. IF A
7 CLAIMANT PREVAILS IN AN ACTION BROUGHT AGAINST A GOVERNMENTAL ENTITY PURSUANT TO THIS SUBSECTION, THE
8 COURT SHALL AWARD THE CLAIMANT PAYMENT OF ALL AMOUNTS DUE, COURT COSTS, EXPERT WITNESS FEES, AND
9 ATTORNEY FEES INCURRED BY THE CLAIMANT. IF THE CLAIMANT IS UNSUCCESSFUL, THE COURT SHALL AWARD THE
10 GOVERNMENTAL ENTITY COURT COSTS, EXPERT WITNESS FEES, AND ATTORNEY FEES."

11
12 NEW SECTION. Section 4. — Governmental entities with high impact fee collection --

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

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

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

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

21 (3) — The governmental entity shall include with the information submitted to the department as
22 required in subsection (2) an affidavit addressed to the department and signed by the presiding officer, mayor,
23 manager, or chief executive officer and the chief financial officer of the governmental entity attesting under
24 penalty of perjury that the material submitted complies with the requirements of this part.

25 (4) — The governmental entity shall submit to the department, within 30 days after the completion of
26 the governmental entity's annual audit as required in Title 2, chapter 7, part 5, a separate report prepared by
27 the governmental entity's independent auditor detailing all impact fees collected and spent during a fiscal year