

SENATE BILL NO. 133

INTRODUCED BY G. HERTZ

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LOCAL GOVERNMENT IMPACT FEE LAWS; REMOVING THE ALLOWED ADMINISTRATION FEE; REQUIRING THAT IMPACT FEES NOT INCREASE MORE THAN THE RATE OF INFLATION; REVISING DEFINITIONS; AND AMENDING SECTIONS 7-6-1601 AND 7-6-1602, MCA."

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) "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) "Governmental entity" means a county, city, town, or consolidated government.

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

(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;

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

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

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

(7) "Public facilities" means:

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

(b) a wastewater collection, treatment, or disposal facility;

(c) a transportation facility, including roads, streets, bridges, rights-of-way, and traffic signals, and landscaping;

(d) a storm water collection, retention, detention, treatment, or disposal facility or a flood control facility; and

(e) a police, emergency medical rescue, or fire protection facility; and

(f) ~~other facilities for which documentation is prepared as provided in 7-6-1602 that have been approved as part of an impact fee ordinance or resolution by:~~

~~(i) a two-thirds majority of the governing body of an incorporated city, town, or consolidated local government; or~~

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

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

# Amendment - 1st Reading-white - Requested by: Greg Hertz - (H) Local Government

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Drafter: Maddie Krezowski,

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- 1 (a) describe existing conditions of the facility;
- 2 (b) establish level-of-service standards;
- 3 (c) forecast future additional needs for service for a defined period of time;
- 4 (d) identify capital improvements necessary to meet future needs for service;
- 5 (e) identify those capital improvements needed for continued operation and maintenance of the
- 6 facility;
- 7 (f) make a determination as to whether one service area or more than one service area is
- 8 necessary to establish a correlation between impact fees and benefits;
- 9 (g) make a determination as to whether one service area or more than one service area for
- 10 transportation facilities is needed to establish a correlation between impact fees and benefits;
- 11 (h) establish the methodology and time period over which the governmental entity will assign the
- 12 proportionate share of capital costs for expansion of the facility to provide service to new development within
- 13 each service area;
- 14 (i) establish the methodology that the governmental entity will use to exclude operations and
- 15 maintenance costs and correction of existing deficiencies from the impact fee;
- 16 (j) establish the amount of the impact fee that will be imposed for each unit of increased service
- 17 demand; and
- 18 (k) have a component of the budget of the governmental entity that:
  - 19 (i) schedules construction of public facility capital improvements to serve projected growth;
  - 20 (ii) projects costs of the capital improvements;
  - 21 (iii) allocates collected impact fees for construction of the capital improvements; and
  - 22 (iv) covers at least a 5-year period and is reviewed and updated at least every 5 years.
- 23 (3) The service area report is a written analysis that must contain documentation of sources and
- 24 methodology used for purposes of subsection (2) and must document how each impact fee meets the
- 25 requirements of subsection (7).
- 26 (4) The service area report that supports adoption and calculation of an impact fee must be
- 27 available to the public upon request.
- 28 (5) (a) The Pursuant to subsection (5)(b), the amount of each impact fee imposed must be based

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

4 (b) The initial amount of an impact fee calculated pursuant to this section may not be increased  
5 more than the rate of inflation as determined by the ~~consumer price index, U.S. city average, all urban~~  
6 ~~consumers producer price index by commodity, all commodities~~, using the 1982-84 base of 100, as published  
7 by the bureau of labor statistics of the United States department of labor. ~~The inflation rate must be determined~~  
8 ~~by comparing the most recently published month producer price index by commodity, all commodities,~~  
9 ~~compared to the same month in the prior year.~~

10 (6) The ordinance or resolution adopting the impact fee must include a time schedule for  
11 periodically updating the documentation required under subsection (2).

12 (7) An impact fee must meet the following requirements:

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

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

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

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

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

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

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

28 - END -