

**House Bill 4020**

**Sponsor: Rep. Ruth Ann Jamnick**

**Committee: Land Use and Environment**

**Complete to 2-13-01**

**A SUMMARY OF HOUSE BILL 4020 AS INTRODUCED 1-25-01**

The bill would create the Traffic Impact Fee Enabling Act under which local units of governments in counties with populations of 400,000 or more could levy and collect an impact fee from developers, with the money raised from the fees to be used solely for the purpose of making off-site road improvements made necessary by new land development. (Counties with a population of 400,000 or more include Genesee, Kent, Macomb, Oakland, and Wayne.)

The term “new land development” would refer to the construction, reconstruction, or expansion of buildings or the improvement of a recreational area that would result in the increase of traffic on nearby highways, streets, or roads. The term would not apply, however, to residential property or a residential development with a value of less than \$2 million.

Under the bill, a city, village, or township, or a county road agency acting with the concurrence of the county commissioners, could adopt an impact fee ordinance or resolution establishing a schedule of impact fees. The fees would have to bear a reasonable relationship to the increased traffic attributable to new land development and the cost of new road improvements attributable to the increased traffic and would have to be uniform within each traffic improvement zone with regard to each type or class of new land development. Such an ordinance or resolution could not be adopted unless the local unit had first established a traffic improvement plan. (The term “county road agency” would refer to a board of county road commissioners or an individual or entity exercising the same powers in a county without a board of road commissioners.) Both the adoption of an impact fee ordinance or resolution and the adoption of a traffic improvement plan would require public hearings. A resolution of a county road agency imposing an impact fee would require the concurrence of the majority of the county board of commissioners.

Traffic Improvement Plan. A traffic improvement plan proposed by a county road agency would require the review and approval of at least two-thirds of the cities and villages within the county (with the review by each local unit limited to the improvements proposed within that unit) and by each township board in the county with regard to provisions that required a portion of the cost of road improvement to be borne by a particular township or from impact fees or special assessments imposed by that township. A township’s traffic improvement plan would have to be reviewed by the county road agency, and the plan of a city, village, or county that identified needed improvements on a segment of a state highway would have to be reviewed and approved by the State Transportation Commission.

A traffic improvement plan would have to identify one or more traffic improvement zones and identify segments of the city or village street system, county road system, or state highway

system in need of improvement, or that might be in need of improvement, within five years due to present or future traffic congestion. The plan would also have to identify off-site improvements within traffic improvement zones and set forth anticipated methods of financing those improvements, including impact fees and special assessments. (Impact fees could not exceed a pro rata share of reasonably anticipated costs of improvements necessary to serve the increased traffic generated by new land development.) A “traffic improvement zone” would be a designated area within distinct boundaries in which new land development was expected to occur and in which off-site improvements would be needed to serve the development. A traffic improvement zone could cross jurisdictional boundaries.

Impact Fees. The impact fee ordinance or resolution would have to set forth when the fee was to be paid and the information required to accompany the fee. An ordinance or resolution would have to contain a procedure for determining an alternative impact fee in cases in which the developer believed the cost of off-site improvements were less than the fee established in the ordinance. Further, the ordinance or resolution could permit a local governing body and a developer to enter into an impact fee agreement designed to establish a just and equitable impact fee, or its equivalent in the form of contributed right-of-way or other appropriate equivalent, instead of the impact fee set forth in the ordinance or resolution. The agreement could provide that the developer be reimbursed from impact fees subsequently paid by another development. The ordinance or resolution also would have to provide that a developer was entitled to a credit against an impact fee in an amount equal to the cost of an off-site improvement, or contributions of land, money, or services for the improvement contributed or previously contributed, paid, or legally committed to by the developer or his or her predecessor in interest as a condition of any new land development permit issued by the governing body.

Fee Exemption. A developer that had received a new land development permit before the adoption of an impact fee ordinance or resolution would be able to petition the local governing body for an exemption from impact fees. A petition would be evaluated based on whether a legally enforceable act of the governing body authorized the specific new land development; whether the petitioner had made or incurred expenditures or obligations reasonably equivalent to the impact fee; and whether it was inequitable to deny the petitioner the opportunity to complete the development in a manner consistent with the permit by requiring compliance with the impact fee ordinance or resolution. The local board would have to consider whether the injury suffered by the petitioner outweighed the public cost of allowing the new land development to proceed without payment of the impact fee in determining whether it would be inequitable to deny the developer the opportunity to complete the development. Further, if a permit contained conditions with respect to off-site improvements, a developer could request a modification of the permit in order to bring the previously approved conditions into compliance with the impact fee ordinance or resolution. (Such a modification would not be considered a substantial change under a city or village planned development ordinance or a substantial deviation under state law.)

Return of Fee. Impact fees collected would be returned to the present owner of the new land development if actual physical work had not begun on the off-site improvement by the last day of the calendar quarter that ended immediately after the expiration of five years from the date of collection. The present owner would have to file a petition seeking the refund within one year of

that date. Money would be returned with interest paid at the average rate of one-year treasury bills for the immediately preceding 12-month period.

Impact Fee Fund. A governing body that levied and collected impact fees would be required to create an impact fund for each traffic improvement zone. All impact fees collected would have to be deposited in such a fund and kept separate from other revenue. Impact fee revenue would have to be used solely for off-site improvements to serve traffic generated by new development, and revenue could not be spent unless the local unit had identified sources of funding for right-of-way acquisition and construction of improvements needed to overcome existing or future service deficiencies for the particular off-site improvement that were not attributable to the proposed new development. The local governing body would have to use 90 percent or more of the impact fund revenue exclusively for off-site improvements within the zone from which they were collected and could use up to 10 percent for improvements on highways, streets, or roads providing access to the zone from which revenue was collected. Disbursements of money from a revenue fund would require a majority vote of the local governing body.

Annual Review of Impact Fee. A local governing body would be required to review annually an impact fee ordinance or resolution. The review would have to consider trip generation rates, trip lengths, and actual construction and right-of-way acquisition costs for work contracted for off-site improvements. In the review, the local governing body would be required to analyze the effects of inflation on costs; review and revise, if necessary, the off-site improvements; review and revise, if necessary, the size, shape, and location of traffic improvement zones; and ensure that the fees charged did not exceed the new land development's pro rata share of the reasonably anticipated costs of off-site improvements.

Civil Action. The bill would specify that a person could bring a civil action against someone who violated an impact fee ordinance or resolution.

Analyst: C. Couch

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