

# HOUSE BILL No. 6571

December 6, 2002, Introduced by Rep. Kolb and referred to the Committee on Land Use and Environment.

A bill to authorize governing bodies located within certain counties to levy and collect impact fees on developers to defray the cost of certain improvements required by land development; to provide for certain credits and exemptions; to allow the governing bodies to enter into agreements relating to impact fees; to prescribe powers and duties of the governing bodies; to prescribe the powers and duties of certain state agencies and officers; to create certain funds; and to prescribe remedies.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 1. This act shall be known and may be cited as the  
2 "impact fee enabling act".

3       Sec. 3. As used in this act:

4       (a) "County road agency" means a board of county road  
5 commissioners or an individual or entity exercising the powers  
6 and duties of a board of county road commissioners pursuant to

1 county charter in a county that does not have a board of county  
2 road commissioners.

3 (b) "Developer" means a person proposing new land develop-  
4 ment and any successor in interest to that new land development.

5 (c) "Governing body" means any of the following:

6 (i) The legislative body of a city.

7 (ii) The legislative body of a village.

8 (iii) The township board of a township.

9 (iv) With respect to a roadway improvement, a county road  
10 agency that acts only with the concurrence of the county board of  
11 commissioners.

12 (d) "Impact fee" means an amount to defray a portion of the  
13 cost of an off-site improvement.

14 (e) "Impact fund" means a fund created by a governing body  
15 under section 15.

16 (f) "Infrastructure improvement" means the construction,  
17 reconstruction, replacement, extension, or enlargement of a road-  
18 way, a component of a public sewer system, a component of a  
19 public water supply system, or another capital facility.

20 Infrastructure improvement includes, but is not limited to, the  
21 cost of design and construction, plan preparation, and property  
22 acquisition.

23 (g) "Infrastructure improvement plan" means a plan estab-  
24 lished under section 7.

25 (h) "Infrastructure improvement zone" means a designated  
26 area with distinct boundaries in which new land development is  
27 expected to occur and in which a particular type of off-site

1 improvement will be required to serve that new land development.  
2 An infrastructure improvement zone may cross jurisdictional  
3 boundaries.

4 (i) "New land development" means the construction, recon-  
5 struction, or expansion of a building or a complex of buildings,  
6 or the improvement of a recreational area, that will result in  
7 the increase of traffic on a highway, street, or road near the  
8 building, complex of buildings, or recreational area. However,  
9 new land development does not include the construction, recon-  
10 struction, or expansion of residential property or a residential  
11 development if the property or development has a value of less  
12 than \$2,000,000.00.

13 (j) "Off-site improvement" means an infrastructure improve-  
14 ment necessitated by new land development and located off the  
15 premises of that new land development.

16 (k) "Person" means an individual, partnership, corporation,  
17 association, governmental entity, including but not limited to a  
18 governing body, or other legal entity.

19 (l) "Public sewer system" means a sewerage system as defined  
20 in section 4101 of the natural resources and environmental pro-  
21 tection act, 1994 PA 451, MCL 324.4101.

22 (m) "Public water supply system" means a system of pipes and  
23 structures through which water is obtained and distributed to the  
24 public, including wells and well structures, intakes, and cribs,  
25 pumping stations, treatment plants, reservoirs, storage tanks and  
26 appurtenances, collectively or severally, actually used or

1 intended for use for the purpose of furnishing water to the  
2 public for household or drinking purposes.

3 (n) "Roadway" means a city or village street, county road,  
4 or state highway.

5 (o) "Roadway improvement" means an infrastructure improve-  
6 ment involving a roadway.

7 Sec. 5. A governing body, by ordinance or resolution, may  
8 levy and collect an impact fee from a developer subject to the  
9 requirements of this act.

10 Sec. 7. (1) A governing body shall not adopt an impact fee  
11 ordinance or resolution unless the governing body has established  
12 a separate infrastructure improvement plan for each type of  
13 infrastructure for which an impact fee will be collected.

14 (2) Each infrastructure improvement plan shall do all of the  
15 following:

16 (a) Identify 1 or more infrastructure improvement zones for  
17 the particular type of infrastructure covered by the infrastruc-  
18 ture improvement plan. A governing body may enter into an agree-  
19 ment with another governing body to identify 1 or more infra-  
20 structure improvement zones.

21 (b) Identify those parts of the city or village street  
22 system, county road system, state highway system, public sewer  
23 system, or public water supply system, or other capital facility  
24 that need improvement, or may need improvement within 5 years  
25 after the date of the plan, due to present or future levels of  
26 use.

1 (c) Identify off-site improvements within infrastructure  
2 improvement zones.

3 (d) Set forth anticipated methods of financing the off-site  
4 improvements, including but not limited to the following:

5 (i) The portion of the off-site improvements expected to be  
6 paid for by impact fees, which shall not exceed a pro rata share  
7 of reasonably anticipated costs of the off-site improvements nec-  
8 essary to serve the increased use generated by the new land  
9 development.

10 (ii) The portion of the off-site improvements expected to be  
11 paid from special assessments or other fees, if any, against  
12 property benefited by the off-site improvements.

13 (iii) The portion of the off-site improvements expected to  
14 be paid from other sources.

15 (3) To establish an infrastructure improvement plan, the  
16 governing body shall hold a public hearing on, adopt, and obtain  
17 approval of a proposed infrastructure improvement plan as pro-  
18 vided in this section.

19 (4) Before establishing an infrastructure improvement plan,  
20 a governing body shall publish notice of a public hearing on the  
21 proposed infrastructure improvement plan in the same manner pro-  
22 vided by law or charter for a public hearing on an ordinance. If  
23 the governing body is a county road agency, the county road  
24 agency shall publish notice of the proposed infrastructure  
25 improvement plan not less than 2 weeks before the date of the  
26 hearing.

1 (5) An infrastructure improvement plan for roadway  
2 improvements adopted by a county road agency shall be reviewed  
3 and approved by resolutions of the governing bodies of not less  
4 than 2/3 of the cities and villages within the county in which  
5 infrastructure improvement zones are wholly or partially  
6 located. The review by the governing body of a city or village  
7 shall be limited to infrastructure improvement zones contained in  
8 the infrastructure improvement plan that are located wholly or  
9 partially within that particular city or village.

10 (6) An infrastructure improvement plan of a county road  
11 agency for roadway improvements shall be reviewed and approved by  
12 resolution of each township board with regard to those provi-  
13 sions, if any, in the plan that require a portion of the cost of  
14 a road improvement to be borne by that township or from impact  
15 fees, special assessments, or other charges to be imposed by that  
16 township.

17 (7) An infrastructure improvement plan of a township for  
18 roadway improvements shall be reviewed and approved by the county  
19 road agency of the county in which the township is located.

20 (8) An infrastructure improvement plan of a city, village,  
21 or county road agency that identifies road improvements needed on  
22 a segment of a state highway and methods of financing those road  
23 improvements shall be reviewed and approved by the state trans-  
24 portation commission.

25 Sec. 9. (1) Before adopting an impact fee ordinance or res-  
26 olution, the governing body shall hold a public hearing on the  
27 impact fee ordinance or resolution. The governing body shall

1 publish a notice of the public hearing as provided by law or  
2 charter for public hearings on ordinances. If the governing body  
3 is a county road agency, the county road agency shall publish  
4 notice of the proposed impact fee resolution not less than 2  
5 weeks before the date of the public hearing.

6 (2) A resolution of a county road agency imposing an impact  
7 fee shall be concurred in by a majority of the county board of  
8 commissioners before the impact fee may be imposed.

9 (3) A governing body may enter into an agreement with  
10 another governing body to levy, collect, and regulate the dispo-  
11 sition of impact fees in a manner consistent with this act.

12 Sec. 11. (1) An impact fee ordinance or resolution shall  
13 set forth a schedule of impact fees. The schedule of impact fees  
14 shall be uniform within each infrastructure improvement zone with  
15 regard to each type or class of new land development. The sched-  
16 ule of impact fees shall bear a reasonable relationship to the  
17 increased infrastructure use attributable to the new land devel-  
18 opment and the cost of the infrastructure improvements attribut-  
19 able to that increased use. The schedule of impact fees shall  
20 vary with regard to different types of infrastructure and with  
21 regard to the proportionate impact of new land development on the  
22 level of use of that type of infrastructure. An impact fee shall  
23 be assessed only once during the period of the new land develop-  
24 ment, but may be paid in installments based on a schedule estab-  
25 lished pursuant to this subsection.

1 (2) The impact fee ordinance or resolution shall set forth  
2 when the impact fee is to be paid and the information required to  
3 accompany the impact fee.

4 (3) The impact fee ordinance or resolution shall provide a  
5 procedure for determining an alternative impact fee if the devel-  
6 oper believes that the cost of an off-site improvement is less  
7 than the impact fee established in the impact fee ordinance or  
8 resolution.

9 (4) The impact fee ordinance or resolution may provide that  
10 the governing body and a developer may enter into an impact fee  
11 agreement designed to establish a just and equitable impact fee,  
12 or its equivalent in the form of contributed right-of-way or  
13 other real property, or other appropriate equivalent, instead of  
14 the impact fee set forth in the impact fee ordinance or  
15 resolution. The impact fee agreement may provide that the devel-  
16 oper shall be reimbursed from impact fees subsequently paid by  
17 another developer. The governing body shall approve an impact  
18 fee agreement only if the governing body finds that the impact  
19 fee agreement will apportion the burden of expenditures for  
20 off-site improvements in a just and equitable manner.

21 (5) The impact fee ordinance or resolution shall provide  
22 that a developer is entitled to a credit against an impact fee in  
23 an amount equal to the cost of the off-site improvement, or con-  
24 tributions of right-of-way or other real property, money, or  
25 services for the off-site improvement contributed or previously  
26 contributed, paid, or legally committed to by the developer or by



1 his or her predecessor in interest as a condition of any new land  
2 development permit issued by the governing body.

3       Sec. 13. (1) A developer that received a new land develop-  
4 ment permit before adoption of an impact fee ordinance or resolu-  
5 tion may petition the governing body for an exemption from the  
6 impact fees assessed under an impact fee ordinance or  
7 resolution. A petition shall be evaluated by the governing body  
8 based on the following criteria:

9       (a) Whether a legally enforceable act of the governing body  
10 authorizes the specific new land development for which a determi-  
11 nation is sought.

12       (b) Whether the petitioner has made or incurred expenditures  
13 or obligations in reliance upon the authorizing act described in  
14 subdivision (a) that are reasonably equivalent to the impact fee  
15 required by the impact fee ordinance or resolution.

16       (c) Whether it is inequitable to deny the petitioner the  
17 opportunity to complete the new land development in a manner con-  
18 sistent with the conditions of the permit by requiring the devel-  
19 oper to comply with the requirements of the impact fee ordinance  
20 or resolution. For the purposes of this subdivision, considera-  
21 tion of whether the injury suffered by the petitioner outweighs  
22 the public cost of allowing the new land development to proceed  
23 without payment of the impact fee shall be considered as a factor  
24 in determining whether it would be inequitable to deny the peti-  
25 tioner the opportunity to complete the new land development.

26       (2) If the permit contains conditions with respect to  
27 off-site improvements, the developer may request a modification

1 of the permit in order to bring the previously approved  
2 conditions into compliance with the impact fee ordinance or reso-  
3 lution adopted pursuant to this act. A modification of the  
4 permit is not a substantial change under a city or village  
5 planned development ordinance or a substantial deviation under  
6 state law.

7       Sec. 15. (1) A governing body that levies and collects  
8 impact fees under this act shall create an impact fund for each  
9 infrastructure improvement zone identified under section 7. A  
10 governing body shall deposit all impact fees in the impact fund  
11 for the appropriate type of infrastructure created for the infra-  
12 structure improvement zone in which the land development is  
13 located. The revenue in an impact fund shall be kept separate  
14 from other revenue of the city, village, township, or county road  
15 agency.

16       (2) The governing body shall use impact fund revenue solely  
17 for the purpose of off-site improvements of the type for which  
18 the impact fee was collected needed to serve infrastructure  
19 demand generated within the infrastructure improvement zone.

20       (3) Impact fee revenue shall not be expended on a particular  
21 off-site improvement unless the governing body has identified  
22 sources of funding for property acquisition and construction of  
23 improvements needed to overcome existing or future service defi-  
24 ciencies for the particular off-site improvement not attributable  
25 to the proposed new land development.

26       (4) The governing body shall use 90% or more of the impact  
27 fund revenue exclusively for off-site improvements of the type

1 for which the impact fees were collected and within the  
2 infrastructure improvement zone from which the impact fees were  
3 collected.

4 (5) The governing body may use not more than 10% of the  
5 impact fund revenue for off-site improvements of the type for  
6 which the impact fees were collected and that provide access to  
7 or otherwise serve the infrastructure improvement zone from which  
8 the impact fees were collected.

9 (6) The governing body shall use amounts withdrawn from an  
10 impact fund solely as provided by this section. The disbursement  
11 of revenue from an impact fund shall occur only upon the approval  
12 of a majority of the members of the governing body.

13 (7) The governing body shall invest in interest-bearing  
14 accounts the money on deposit in the impact fund that is not  
15 immediately necessary for expenditure as provided in this act.  
16 All income derived from the accounts shall be credited to the  
17 impact fund.

18 Sec. 17. The impact fee ordinance or resolution shall pro-  
19 vide that the impact fees collected shall be returned to the  
20 present owner of the new land development if actual physical work  
21 has not commenced on an off-site improvement described in  
22 section 15(4) by the last day of the calendar quarter that ends  
23 immediately following the expiration of 5 years from the date the  
24 impact fees were collected by the governing body, subject to the  
25 following procedure:

26 (a) The present owner shall file a petition with the  
27 governing body for the refund within 1 year following the last

1 day of the calendar quarter that ends immediately following the  
2 expiration of 5 years from the date on which the fee was  
3 collected.

4 (b) The petition shall contain the following:

5 (i) A notarized sworn statement that the petitioner is the  
6 present owner of the property.

7 (ii) A certified copy of the latest recorded deed.

8 (iii) A copy of the most recent ad valorem property tax bill  
9 for the property.

10 (c) Upon approval of the governing body, the money shall be  
11 returned to the petitioner with interest paid at the average rate  
12 of 1-year United States treasury bills for the 12-month period  
13 immediately preceding the month in which the money is returned.

14 Sec. 19. A governing body shall annually review an impact  
15 fee ordinance or resolution adopted by that governing body. The  
16 review shall consider levels of infrastructure use and actual  
17 costs of construction and of acquisition of right-of-way and  
18 other property for work contracted for off-site improvements by  
19 the governing body. In the review, the governing body shall do  
20 all of the following:

21 (a) Analyze the effects of inflation on the actual costs of  
22 infrastructure improvements and the impact fees charged to sup-  
23 port these infrastructure improvements.

24 (b) Review and revise, if necessary, the off-site improve-  
25 ments encompassed by the impact fee ordinance or resolution.

1 (c) Review and revise, if necessary, the size, shape, and  
2 location of the infrastructure improvement zones identified in  
3 the infrastructure improvement plans of the governing body.

4 (d) Ensure that the impact fees charged against new land  
5 development for a particular type of off-site improvement do not  
6 exceed the new land development's pro rata share of the reason-  
7 ably anticipated costs of off-site improvements of that type  
8 necessitated solely by that new land development.

9 Sec. 21. A person may bring a civil action against any  
10 person that violates an impact fee ordinance or resolution  
11 adopted under this act.