



**House
Legislative
Analysis
Section**

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TRANSPORTATION; IMPACT FEES

House Bill 4722 (Substitute H-1)
Second Analysis (10-26-87)

RECEIVED

Sponsor: Rep. Maxine Berman
Committee: Transportation

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THE APPARENT PROBLEM:

Public Act 438 of 1982 established a temporary formula for the distribution of fuel and weight taxes deposited in the Michigan Transportation Fund, and set up a task force to recommend a new distribution formula. The distribution formula has been extended several times, most recently until October 30, 1987. In addition to a recommendation for a new distribution formula, an ad hoc legislative committee has been working on a series of recommendations for alternative ways to pay for road construction and other transportation needs. One proposal calls for allowing local governments to assess "impact fees" on people responsible for new land development when that development necessitates public improvements such as road or sidewalk construction or upgrading.

THE CONTENT OF THE BILL:

The bill would create a new act to allow a local government or a county road agency within a county with a population over 400,000 to defray a portion of the costs of a road improvement by levying and collecting an impact fee from the person responsible for the new land development which made the improvement necessary. The term "new land development" would include construction, reconstruction, or expansion of any building, or the improvement of a recreational area, which will result in the increase of traffic on a road, street, or highway within a local area. However, the term does not include residential properties or developments with a value of less than \$2,000,000. A governing body could enter into agreements with other governing bodies to levy, collect, and regulate the disposition of traffic impact fees. Impact fees could not be expended on a road improvement unless the governing body had identified sources of funding for right-of-way acquisition and construction of improvements needed to overcome existing service deficiencies or future service deficiencies for a particular road improvement which deficiency was not attributable to proposed new land development.

Before adopting an ordinance establishing a traffic impact fee, a local government would adopt a traffic improvement plan identifying one or more traffic improvement zones. A traffic improvement plan would identify segments of a city, village, or county road system or a state highway system that needed improvement (or may need improvement within five years after the date of the plan) due to present or future traffic congestion. The plan would identify road improvements within traffic improvement zones that were needed to serve new growth and development. The plan would set forth anticipated methods of financing road improvements, including but not limited to: the portion expected to be paid for by traffic impact fees (which would not exceed a pro rata share of reasonably anticipated costs of improvements necessary to serve the increased traffic generated by new growth and development); the portion expected to be paid from special assessments or other fees, if any, against property benefited by the new land development; and the portion expected to be paid from other sources. A city or village master plan, comprehensive plan, or capital improvements plan could be adopted or

amended to meet the requirements for a traffic improvement plan instead of adopting a separate one.

A traffic improvement plan adopted by a county road agency would be reviewed and agreed to by at least 2/3 of the governing body of the local unit within the county with respect to the traffic improvement zone contained in the plan that was located within the particular city or village. A traffic improvement plan of a township would be reviewed and approved by the county road agency. A traffic improvement plan of a local unit or county road agency which identified road improvements needed on a segment of a state highway and methods of financing those improvements would be reviewed and approved by the state transportation commission. A governing body could enter into agreements with other governing bodies to provide for the creation of one or more traffic improvement zones.

Under the bill, the schedule of traffic impact fees would be uniform within each traffic improvement zone with regard to type or class of new land development and would bear reasonable relationship to the increased traffic attributable to those developments and the resulting cost of road improvements. Fees could vary with regard to different segments or classes of roads and with regard to the proportionate impact of new land developments on the existing traffic carried by those segments or classes of roads. A fee would be assessed only once during the period of development, but could be paid in installments based on a schedule established according to the bill. An ordinance or county road agency resolution would set forth when the fee would be paid and the information required to accompany the fee. The ordinance or resolution would provide a procedure for determining an alternative fee if the developer believed that the cost of off-site improvements needed to serve the proposed new land development was less than the fee established in the ordinance or resolution. Ordinances and resolutions could provide that local units and developers could enter into impact fee agreements designed to establish a just and equitable fee, or its equivalent in the form of contributed right-of-way or other appropriate equivalent, instead of the fee set forth in the ordinances or resolutions. The agreement could provide that the developer would be reimbursed from impact fees paid by subsequent land developments. The local unit could approve an impact fee agreement only if it found that the agreement would apportion the burden of expenditures for road improvements in a just and equitable manner. Ordinances would provide that developers would be entitled to a credit against a traffic impact fee in an amount equal to the cost of off-site road improvements, or contributions of land, money, or services for off-site improvements contributed or previously contributed, paid, or legally committed to by the developer in interest as a condition of any development permit issued by the governing body.

Impact fees collected by a local unit would be deposited in a traffic impact fund which would be kept separate from other revenue. There would be one traffic impact fund

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established for each traffic improvement zone created. The funds collected from traffic impact fees would be used solely for the purpose of road improvements needed to serve traffic generated within the traffic improvement zone. At least 90 percent of the funds collected from traffic impact fees would be used exclusively for road improvements within the traffic improvement zone. Not more than ten percent of the funds collected from traffic impact fees could be used for improvements on roads which provided access to a traffic improvement zone. Disbursement of funds would require the approval of the local unit. Any money on deposit in the fund not immediately necessary for expenditure would be invested in interest-bearing accounts. All income derived would be credited to the traffic impact fund.

A developer could petition a local unit for an exemption from impact fees in interest of land which had received a development permit. A petition would be evaluated by the governing body based on the following criteria: 1) there currently existed a legally enforceable act of a local unit authorizing the specific development for which a determination was being sought; 2) expenditures or obligations made or incurred in accordance with the authorizing act were reasonably equivalent to the fees required by the ordinance; and 3) it would be inequitable to deny the petitioner the opportunity to complete the previously approved land development by requiring the developer to comply with the requirements of the impact fee ordinance. Consideration of whether the injury suffered by the petitioner outweighed the public cost of allowing the development to proceed without payment of an impact fee would be considered as a factor in determining whether it would be inequitable to deny the petitioner the opportunity to complete the previously approved development. If a previously approved land development contained conditions with respect to traffic impact or off-site road improvements, the developer could request a modification of the prior approval in order to bring the previously approved conditions into compliance with the ordinance adopted according to the bill. Any modification of prior approval to development permits would not be considered substantial change under a city or village planned development ordinance or a substantial deviation under state law.

Ordinances would provide that fees collected could be returned to the present owner of new land development if actual physical work had not commenced on the site of the road improvement by the end of the calendar quarter immediately following five years from the date the fees were received. The owner of the land development would have to follow procedures stated in the bill when petitioning a local unit for a refund. The petition would have to be made within one year following the end of the calendar quarter immediately following five years from the date on which the fee was received. Upon approval by the local unit, the money would be returned to the petitioner with interest paid at the average rate of one-year United States treasury bills for the 12-month period immediately preceding the month in which the money was to be returned.

Impact fee ordinances would be reviewed by local units annually. The review would consider trip generation rates, trip lengths, and actual construction and right-of-way acquisition costs for work contracted for by the governing body. The purpose of the review would be: to analyze the effects of inflation on the actual costs of road improvements and the fees charged to support the improvements, to review and revise the road improvements encompassed by the ordinance if necessary, to review and revise the size, shape and location of the traffic improvement zones located within the governing body, and to ensure that the fees charged against new land development generating

traffic would not exceed the pro rata share for the reasonably anticipated costs of road improvements necessitated solely by new land development.

The bill would provide that a person or a local unit could bring civil action against any person or local unit violating the provisions of an ordinance or resolution adopted according to the bill.

The bill is tie-barred to other bills in the transportation funding package, including Senate Bills 152, 154, 156, 157, 321, 495 and House Bills 4169 and 4735.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have no fiscal implications to the state. (10-26-87)

ARGUMENTS:

For:

A recent Coopers & Lybrand transportation fiscal study for the legislature projected a shortfall of \$17.7 billion in the amount of money needed to meet transportation funding requirements statewide through 1994. In addition to the questions regarding state distribution of existing transportation revenue sources, there exists a critical need for alternative sources of revenue for transportation purposes. Local governments, in particular, lack sufficient means of financing the construction, maintenance and upgrading of roads. The bill would allow local governments to assess an "impact fee" on developers whose new land developments necessitated road construction projects. The impact fee, already in use in several other states, is, in effect, a user fee paid by those who would benefit from proposed road improvements. For example, a developer proposing to build a shopping mall would be assessed a fee to help defray the costs of additional traffic lanes added to the roads approaching the property. The concept of impact fees is very similar to that of special assessments, for which there is ample precedent in Michigan law. Rather than levy additional property taxes on the population as a whole, why not allow local governments to assess the costs of such traffic improvements against those who would most benefit?

Against:

Impact fees assessed against developers of property would constitute a hidden tax, which would no doubt result in increased costs to users and consumers of the developed property. The fees would apply not just to lucrative new commercial developments, but also to new residential subdivisions, which would add considerably to the cost of each home built. In some areas, this could force up the cost of housing to the point where it becomes scarce. Further, some contend that the fees would be a discriminatory tax which could be challenged on constitutional grounds. The imposition of impact fees would raise the cost of doing business in Michigan, thus discouraging economic development just when state policymakers are making concerted efforts to improve the business climate.

Response: The \$2 million minimum on developments will decrease the chances of the impact fees negatively affecting residential areas. Most developments in residential areas will not top the \$2 million mark. If new development did top \$2 million then there would probably be substantial road improvement costs to a local unit and costs to consumers would increase dramatically anyway. However, impact fees would give local units a chance to recoup road improvement costs by making developers pay their fair share of the costs of improvements. Many developers already recognize the fact that new developments lead to increased traffic problems and often

contribute money to local units in order to ease traffic problems. It seems unlikely that the assessment of impact fees would result in dramatic cost increases for homeowners or consumers.

Against:

The \$2 million minimum for new developments is not fair. It destroys the uniformity of the bill. The intent behind the legislation is to make developers responsible for their fair share of the generation of new traffic and road improvements needed in anticipation of the additional traffic. Taxpayers will have to pay a greater proportion of road improvements if the \$2 million minimum is imposed.

Against:

The way the bill is currently written, it could affect Michigan State Housing Development Authority (MSHDA) developments. In many instances MSHDA is exempt from legislation such as that proposed by the bill because of its public service mission. However, if local units adopted impact fee ordinances which did not exclude MSHDA, the fees would add additional costs to the authority's developments.

POSITIONS:

The Department of Transportation supports the bill. (10-22-87)

The Michigan Municipal League supports the concept of the bill, but strongly opposes the \$2 million minimum on developments. (10-22-87)

The Michigan Townships Association supports the concept of the bill. (10-21-87)

The Michigan Association of Counties supports the bill. (10-21-87)

The Biltmore Properties Corporation supports the concept of the bill. (10-21-87)

The Michigan Association of Realtors strongly opposes the bill. (10-21-87)

The Michigan Association of Home Builders adamantly opposes the bill. (10-21-87).