

**SENATE BILL NO. 2390**

Introduced by

Senators Heitkamp, Mathern

Representative Gulleason

1 A BILL for an Act to create and enact a chapter to 40-64 of the North Dakota Century Code,  
2 relating to city development impact fees.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** Chapter 40-64 of the North Dakota Century Code is created and enacted  
5 as follows:

6 **40-64-01. Definitions.** As used in this chapter:

- 7 1. "Building permit fee" means the fees charged to enforce the uniform codes  
8 adopted pursuant to the North Dakota state building code or equivalent local  
9 ordinance.
- 10 2. "Capital facilities plan" means the plan required by section 40-64-02.
- 11 3. "Development activity" means any construction or expansion of a building,  
12 structure, or use, any change in use of a building or structure, or any changes in  
13 the use of land that creates additional demand and need for public facilities.
- 14 4. "Development approval" means any written authorization from a city that  
15 authorizes the commencement of development activity.
- 16 5. "Enactment" means a municipal ordinance.
- 17 6. "Hook-up fees" means reasonable fees, not in excess of the approximate average  
18 costs to the city, for services provided for and directly attributable to the connection  
19 to utility services, including gas, water, sewer, power, or other municipal utility  
20 services.
- 21 7. a. "Impact fee" means a payment of money imposed upon development activity  
22 as a condition of development approval.

- 1                   b. "Impact fee" does not mean a tax, a special assessment, a building permit  
2                   fee, a hook-up fee, a fee for project improvements except as provided in  
3                   subdivision c, or other reasonable permit or application fee.
- 4                   c. "Impact fee" may include a project improvement that has been approved by  
5                   agreement between the city and the owner of the property against which the  
6                   impact fee is being charged.
- 7           8.    a. "Project improvements" means site improvements and facilities that are:  
8                   (1) Planned and designed to provide service for development resulting  
9                   from a development activity; and  
10                  (2) Necessary for the use and convenience of the occupants or users of  
11                  development resulting from a development activity.
- 12                  b. "Project improvements" does not mean system improvements.
- 13           9. "Proportionate share" means the cost of public facility improvements that are  
14                  roughly proportionate and reasonably related to the service demands and needs of  
15                  any development activity.
- 16           10. "Public facilities" means only the following capital facilities that have a life  
17                  expectancy of ten or more years and are owned or operated by or on behalf of a  
18                  city:
- 19                  a. Water rights and water supply, treatment, and distribution facilities;  
20                  b. Wastewater collection and treatment facilities;  
21                  c. Storm water, drainage, and flood control facilities;  
22                  d. Municipal power facilities;  
23                  e. Roadway facilities;  
24                  f. Parks, recreation facilities, open space, and trails; and  
25                  g. Public safety facilities.
- 26           11.   a. "Public safety facility" means a building constructed or leased to house police,  
27                  fire, or other public safety entities.
- 28                  b. "Public safety facility" does not mean a jail, prison, or other place of  
29                  involuntary incarceration.

- 1           12.   a.   "Roadway facilities" means streets or roads that have been designated on an  
2   officially adopted subdivision plat, roadway plan, or general plan of a political  
3   subdivision, together with all necessary appurtenances.
- 4   b.   "Roadway facilities" includes associated improvements to federal or state  
5   roadways only when the associated improvements:  
6   (1)   Are necessitated by the new development; and  
7   (2)   Are not funded by the state or federal government.
- 8   c.   "Roadway facilities" does not mean federal or state roadways.
- 9           13.   a.   "Service area" means a geographic area designated by a city on the basis of  
10    sound planning or engineering principles in which a defined set of public  
11    facilities provide service within the area.
- 12    b.   "Service area" may include the entire city.
- 13          14.   a.   "System improvements" means:  
14    (1)   Existing public facilities that are designed to provide services to service  
15    areas within the community at large; and  
16    (2)   Future public facilities identified in a capital facilities plan that are  
17    intended to provide services to service areas within the community at  
18    large.
- 19    b.   "System improvements" does not mean project improvements.

20    **40-64-02. Impact fees - Analysis - Capital facilities plan - Notice of plan -**

21    **Summary - Exemptions.**

- 22           1.    a.   Each city shall comply with the requirements of this chapter before  
23    establishing or modifying any impact fee.
- 24    b.   A city may not:  
25    (1)   Establish any impact fees that are not authorized by this chapter; or  
26    (2)   Impose or charge any other fees as a condition of development  
27    approval unless those fees are a reasonable charge for the service  
28    provided.
- 29          2.    a.   Before imposing impact fees, each city shall prepare a capital facilities plan.
- 30    b.   Before preparing a capital facilities plan for facilities proposed on land located  
31    within the city, the city shall publish notice of its intent to prepare a capital

- 1 facilities plan providing the public at least thirty days to submit comments.
- 2 The notice shall be published in the official newspaper of the city at least once
- 3 each week for two successive weeks. The comment period shall begin to run
- 4 the day following the date of first publication. The notice shall:
- 5 (1) Indicate that the city or private entity intends to prepare a capital
- 6 facilities plan;
- 7 (2) Describe or provide a map of the geographic area where the proposed
- 8 capital facilities will be located; and
- 9 (3) Invite the public to submit comments or provide information for the city
- 10 to consider in the process of preparing, adopting, and implementing a
- 11 capital facilities plan concerning:
- 12 (a) Impacts that the facilities proposed in the capital facilities plan
- 13 may have on the affected entity; and
- 14 (b) Facilities or uses of land that the affected entity is planning or
- 15 considering that may conflict with the facilities proposed in the
- 16 capital facilities plan.
- 17 c. The capital facilities plan shall identify:
- 18 (1) Demands placed upon existing public facilities by new development
- 19 activity; and
- 20 (2) The proposed means by which the city will meet those demands.
- 21 d. The governing body of the city shall hold a public hearing prior to adoption of
- 22 the proposed capital facilities plan.
- 23 e. Notice of the time and place of the public hearing, containing a description of
- 24 the property involved in the plan by street address, legal description or map, a
- 25 brief description of the nature of the plan being proposed and the location
- 26 where the plan may be viewed shall be published in the official newspaper of
- 27 the city at least once each week for two successive weeks.
- 28 g. Cities with a population or serving a population of less than five thousand as
- 29 of the last federal census need not comply with the capital facilities plan
- 30 requirements of this part, but shall ensure that the impact fees imposed by
- 31 them are based upon a reasonable plan.

- 1           3. In preparing the plan, each city shall generally consider all revenue sources,  
2           including impact fees, to finance the impacts on system improvements.
- 3           4. A city may only impose impact fees on development activities when its plan for  
4           financing system improvements establishes that impact fees are necessary to  
5           achieve an equitable allocation to the costs borne in the past and to be borne in the  
6           future, in comparison to the benefits already received and yet to be received.
- 7           5. a. Each city imposing impact fees shall prepare a written analysis of each impact  
8           fee that:
- 9                 (1) Identifies the impact on system improvements required by the  
10                development activity;
- 11               (2) Demonstrates how those impacts on system improvements are  
12                reasonably related to the development activity;
- 13               (3) Estimates the proportionate share of the costs of impacts on system  
14                improvements that are reasonably related to the new development  
15                activity; and
- 16               (4) Based upon those factors and the requirements of this chapter,  
17                identifies how the impact fee was calculated.
- 18           b. In analyzing whether or not the proportionate share of the costs of public  
19           facilities are reasonably related to the new development activity, the city shall  
20           identify, if applicable:
- 21               (1) The cost of existing public facilities;
- 22               (2) The manner of financing existing public facilities, such as user charges,  
23                special assessments, bonded indebtedness, general taxes, or federal  
24                grants;
- 25               (3) The relative extent to which the newly developed properties and the  
26                other properties in the city have already contributed to the cost of  
27                existing public facilities, by such means as user charges, special  
28                assessments, or payment from the proceeds of general taxes;
- 29               (4) The relative extent to which the newly developed properties and the  
30                other properties in the city will contribute to the cost of existing public  
31                facilities in the future;

- 1 (5) The extent to which the newly developed properties are entitled to a  
2 credit because the city is requiring their developers or owners, by  
3 contractual arrangement or otherwise, to provide common facilities,  
4 inside or outside the proposed development, that have been provided  
5 by the city and financed through general taxation or other means, apart  
6 from user charges, in other parts of the city;
- 7 (6) Extraordinary costs, if any, in servicing the newly developed properties;  
8 and
- 9 (7) The time-price differential inherent in fair comparisons of amounts paid  
10 at different times.
- 11 c. Each city that prepares a written analysis under this subsection shall also  
12 prepare a summary of the written analysis, designed to be understood by a  
13 lay person.

14 **40-64-03. Impact fees - Enactment - Required provisions.**

- 15 1. a. Each city wishing to impose impact fees shall pass an impact fee enactment.  
16 b. The impact fee imposed by that enactment may not exceed the highest fee  
17 justified by the impact fee analysis performed pursuant to section 40-64-02.  
18 c. In calculating the impact fee, each city may include:
- 19 (1) The construction contract price;  
20 (2) The cost of acquiring land, improvements, materials, and fixtures;  
21 (3) The cost for planning, surveying, and engineering fees for services  
22 provided for and directly related to the construction of the system  
23 improvements;  
24 (4) The remaining balance of special assessments for public improvements  
25 in the area being developed; and  
26 (5) Debt service charges, if the city might use impact fees as a revenue  
27 stream to pay the principal and interest on bonds, notes, or other  
28 obligations issued to finance the costs of the system improvements.
- 29 2. The impact fee enactment shall contain:
- 30 a. A provision establishing one or more service areas within which it shall  
31 calculate and impose impact fees for various land use categories;

- 1           b.    Either:
  - 2               (1)    A schedule of impact fees for each type of development activity that
  - 3               specifies the amount of the impact fee to be imposed for each type of
  - 4               system improvement; or
  - 5               (2)    The formula that the city will use to calculate each impact fee;
- 6           c.    A provision authorizing the city to adjust the standard impact fee at the time
- 7               the fee is charged to:
  - 8               (1)    Respond to unusual circumstances in specific cases; and
  - 9               (2)    Ensure that the impact fees are imposed fairly; and
- 10          d.    A provision governing calculation of the amount of the impact fee to be
- 11               imposed on a particular development that permits adjustment of the amount of
- 12               the fee based upon studies and data submitted by the developer.
- 13          3.    The city may include a provision in the impact fee enactment that:
  - 14               a.    Exempts low-income housing and other development activities with broad
  - 15               public purposes from impact fees and establishes one or more sources of
  - 16               funds other than impact fees to pay for that development activity;
  - 17               b.    Imposes an impact fee for public facility costs previously incurred by a city to
  - 18               the extent that new growth and development will be served by the previously
  - 19               constructed improvement; and
  - 20               c.    Allows a credit against impact fees for any dedication of land for, improvement
  - 21               to, or new construction of, any system improvements provided by the
  - 22               developer if the facilities:
    - 23               (1)    Are identified in the capital facilities plan; and
    - 24               (2)    Are required by the city as a condition of approving the development
    - 25               activity.
- 26          4.    Except as provided in subdivision b of subsection 3, the city may not impose an
- 27               impact fee to cure deficiencies in public facilities serving existing development.
- 28          5.    Notwithstanding the requirements and prohibitions of this chapter, a city may
- 29               impose and assess an impact fee for environmental mitigation.
- 30          6.    The governing body of the city shall hold a public hearing prior to approval of the
- 31               impact fee enactment.

1           7. Notice of the time and place of the public hearing, containing a description of the  
2           service area affected by the impact fee enactment by street address, legal  
3           description or map, a brief description of the impact fee enactment being proposed  
4           and the location where the proposed impact fee enactment, the written analysis  
5           and summary analysis required by section 40-64-02 may be viewed shall be  
6           published in the official newspaper of the city at least once each week for two  
7           successive weeks.

8           8. In the event the total impact fee being proposed is less than two hundred thousand  
9           dollars, the governing body may consider and approve the proposed capital  
10          facilities plan and impact fee enactment at a combined public hearing.

11          **40-64-04. Greater notice requirements - Challenge of notice - No planning**  
12 **commission involvement.** A city may adopt an ordinance establishing greater notice  
13 requirements than those required by this section. If notice given is not challenged by filing a  
14 protest of the form or manner of notice with the governing body of the city within thirty days from  
15 the date of the meeting for which the notice was given, the notice is considered adequate and  
16 proper. Nothing contained in this chapter may be construed to require a hearing before or  
17 involvement by a planning commission in the capital facilities planning or impact fee enactment  
18 process.

19          **40-64-05. Impact fees - Accounting.** Each city collecting impact fees shall:

- 20          1. Establish separate interest-bearing ledger accounts for each type of public facility  
21             for which an impact fee is collected;  
22          2. Deposit impact fee receipts in the appropriate ledger account;  
23          3. Retain the interest earned on each fund or account in the fund or account; and  
24          4. At the end of each fiscal year, prepare a report on each fund or account showing:  
25             a. The source and amount of all moneys collected, earned, and received by the  
26                fund or account; and  
27             b. Each expenditure from the fund or account.

28          **40-64-06. Impact fees - Expenditure.**

- 29          1. A city may expend impact fees only for:  
30             a. System improvements for public facilities identified in the capital facilities plan;  
31             and



1                   b.   System improvements for the specific public facility type for which the fee was  
2                   collected.

3           2.   a.   Except as provided in subdivision b, a city shall expend or encumber the  
4                   impact fees for a permissible use within six year of their receipt.

5                   b.   A city may hold the fees for longer than six years if it identifies, in writing:

6                   (1)   An extraordinary and compelling reason why the fees should be held  
7                   longer than six years; and

8                   (2)   An absolute date by which the fees will be expended.

9           **40-64-07. Refunds.** A city shall refund any impact fees paid by a developer, plus  
10 interest earned, when:

11           1.   The developer does not proceed with the development activity and has filed a  
12                   written request for a refund;

13           2.   The fees have not been spent or encumbered; and

14           3.   No impact has resulted.

15           **40-64-08. Impact fees - Appeals.** Any person or entity residing in or owning property  
16 within a service area, and any organization, association, or corporation representing the  
17 interests of persons or entities owning property within a service area may appeal the enactment  
18 of the impact fee pursuant to chapter 28-34.