

Introduced by

1 A BILL for an Act to provide for city and county development impact fees; and to create and  
2 enact a new subsection to section 11-11-14 of the North Dakota Century Code, relating to the  
3 powers of a board of county commissioners.

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

5 **SECTION 1.** A new subsection to section 11-11-14 of the North Dakota Century Code  
6 is created and enacted as follows:

7 To impose impact fees by resolution as a city may in accordance with sections 2  
8 through 6 of this Act.

9 **SECTION 2. Definitions.** As used in sections 2 through 6 of this Act:

- 10 1. "Building permit fee" means the fees charged to enforce the uniform codes  
11 adopted pursuant to the North Dakota state building code or equivalent local  
12 ordinance.
- 13 2. "Development activity" means any construction or expansion of a building,  
14 structure, or use, any change in use of a building or structure, or any change in the  
15 use of land that creates additional demand and need for public facilities.
- 16 3. "Development approval" means any written authorization from a city that  
17 authorizes the commencement of development activity.
- 18 4. "Hookup fees" means reasonable fees, not in excess of the approximate average  
19 costs to the city, for services provided for and directly attributable to the connection  
20 to utility services, including gas, water, sewer, power, or other municipal utility  
21 services.
- 22 5. "Impact fee" means a payment of money imposed upon development activity as a  
23 condition of development approval. The term does not include a tax, a special  
24 assessment, a building permit fee, a hookup fee, or a fee for project improvements,

1           except the term may include a project improvement that has been approved by  
2           agreement between the city and the owner of the property against which the  
3           impact fee is being charged or other reasonable permit or application fee.

4           6. "Project improvements" means site improvements and facilities that are planned  
5           and designed to provide service for development resulting from a development  
6           activity and are necessary for the use and convenience of the occupants or users  
7           of development resulting from a development activity. The term does not include  
8           system improvements.

9           7. "Public facilities" means the following capital facilities that have a life expectancy of  
10           ten or more years and are owned or operated by or on behalf of a city:

11           a. Water rights and water supply, treatment, and distribution facilities;

12           b. Wastewater collection and treatment facilities;

13           c. Storm water, drainage, and flood control facilities;

14           d. Municipal power facilities;

15           e. Roadway facilities;

16           f. Parks, recreation facilities, open space, and trails; and

17           g. Public safety facilities.

18           8. "Public safety facility" means a building constructed or leased to house police, fire,  
19           or other public safety entities. The term does not include a jail, prison, or other  
20           place of involuntary incarceration.

21           9. "Roadway facilities" means streets or roads that have been designated on an  
22           officially adopted subdivision plat, roadway plan, or general plan of a political  
23           subdivision, together with all necessary appurtenances. The term includes  
24           associated improvements to federal or state roadways if the associated  
25           improvements are necessitated by the new development and are not funded by the  
26           state or federal government. The term does not include federal or state highways.

27           10. "System improvements" means existing public facilities that are designed to  
28           provide services to service areas within the community at large and future public  
29           facilities that are intended to provide services to service areas within the  
30           community at large. The term does not include project improvements.

31           **SECTION 3. City development impact fees.**

- 1           1. A city may establish impact fees. To impose impact fees, a city shall pass an  
2           impact fee ordinance.
- 3           2. The impact fee ordinance must contain:
- 4           a. A provision establishing one or more service areas within which the ordinance  
5           determines and imposes impact fees for various land use categories and  
6           either:
- 7           (1) A schedule of impact fees for each type of development activity that  
8           specifies the amount of the impact fee to be imposed for each type of  
9           system improvement; or
- 10          (2) The formula that the city will use to calculate each impact fee.
- 11          b. A provision authorizing the city to adjust the standard impact fee at the time  
12          the fee is charged to respond to unusual circumstances in specific cases and  
13          ensure that the impact fees are imposed fairly.
- 14          c. A provision governing calculation of the amount of the impact fee to be  
15          imposed on a particular development that permits adjustment of the amount of  
16          the fee based upon studies and data submitted by the developer.
- 17          3. The impact fee ordinance may contain:
- 18          a. A provision exempting low-income housing and other development activities  
19          with broad public purposes from impact fees and establishes one or more  
20          sources of funds other than impact fees to pay for that development activity.
- 21          b. A provision imposing an impact fee for public facility costs previously incurred  
22          by a city to the extent that new growth and development will be served by the  
23          previously constructed improvement.
- 24          c. A provision allowing a credit against impact fees for any dedication of land for,  
25          improvement to, or new construction of any system improvements provided by  
26          the developer if the facilities are identified in the capital facilities plan and are  
27          required by the city as a condition of approving the development activity.
- 28          4. In calculating the impact fee, a city may include:
- 29          a. The construction contract price;
- 30          b. The cost of acquiring land, improvements, materials, and fixtures;

- 1           c. The cost for planning, surveying, and engineering fees for services provided  
2           for and directly related to the construction of the system improvements;  
3           d. The remaining balance of special assessments for public improvements in the  
4           area being developed;  
5           e. Debt service charges if the city might use impact fees as a revenue stream to  
6           pay the principal and interest on bonds, notes, or other obligations issued to  
7           finance the costs of the system improvements; and  
8           f. An administrative fee, which may not exceed fifteen percent of the costs of  
9           development activity.

10           **SECTION 4. Impact fees - Expenditure.**

- 11           1. A city may not expend impact fees for anything other than system improvements  
12           for public facilities identified in the capital facilities plan and system improvements  
13           for the specific public facility type for which the fee was collected.  
14           2. A city must expend or encumber the impact fees for a permissible use within six  
15           years of receipt of the fees unless the city identifies in writing an extraordinary and  
16           compelling reason why the fees should be held longer than six years and an  
17           absolute date by which the fees will be expended.

18           **SECTION 5. Refunds.** A city shall refund any impact fees paid by a developer, plus  
19           any interest earned, if the developer does not proceed with the development activity and has  
20           filed a written request for a refund, the fees have not been spent or encumbered, and the  
21           impact has not resulted.

22           **SECTION 6. Impact fees - Appeals.** A person or a representative of that person  
23           residing in or owning property within a service area may appeal the enactment of the impact fee  
24           pursuant to chapter 28-34.