

By Mrs. Parente of Milford, petition of Marie J. Parente and other members of the House relative to impact fees as regulatory conditions for the approval of developments in cities and towns. Local Affairs.

**The Commonwealth of Massachusetts**

In the Year One Thousand Nine Hundred and Ninety-Seven.

AN ACT RELATIVE TO IMPACT FEES AS REGULATORY CONDITIONS FOR DEVELOPMENTAL APPROVAL.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. The General Laws are hereby amended by  
2 inserting after Chapter 40N, the following new Chapter 40 O enti-  
3 tled:— Impact Fees As Regulatory Conditions For Development  
4 Approval.

5 DEFINITIONS

6 “Capital improvement”: an improvement with a useful life of  
7 ten years or more, created by new construction or other action,  
8 which increases the demand for service capacity of a public  
9 facility.

10 “Capital improvement plan”: a plan developed in conjunction  
11 with a “Comprehensive Plan or Master Plan” and adopted and/or  
12 amended pursuant to MGL Chapter 41 Section 81D. The plan  
13 shall define existing infrastructure and proposed improvements  
14 and stating the principles to which future development should pro-  
15 ceed. Included in the plan shall be:

16 (a). a listing, identifying public facilities and necessary  
17 improvements or expansion that will be necessitated because of  
18 future growth,

19 (b)existing and anticipated needs and improvements and a  
20 schedule of capital improvements that will meet the anticipated  
21 need for system improvements and a description of anticipated  
22 funding sources for each required improvement.

23 (c) The plan shall be for a minimum of five years of projected  
24 growth.

25 “Comprehensive Plan or Master Plan”: the plan that is adopted  
26 and amended pursuant to MGL Chapter 41 Section 81D.

27 “Construction”: any land clearance, drilling, dredging, filling,  
28 grading or erection of, or addition to any buildings structures or  
29 any other activity that directly creates additional demand for a  
30 particular public facility or facilities.

31 “Credits”: the present value of past and/or anticipated future  
32 payments toward the capital improvement costs for a public  
33 facility for which an impact fee is being assessed and paid.

34 “Developer”: person, corporation, organization, or other legal  
35 entity constructing or creating new development.

36 “Development”: the carrying out of any building or mining  
37 operation, the making of any material change in the use or appear-  
38 ance in any structure or land or dividing the land into two or more  
39 parcels.

40 “Development approval”: written authorization from a municipi-  
41 tality which authorizes the commencement of construction.

42 “Impact fees”: regulatory conditions for development approval  
43 that require that charges are imposed upon new development by  
44 local government to fund the proportionate share of the public  
45 facilities capital improvements required by the new development.

46 “Encumber”: to legally obligate by contract or otherwise  
47 commit to use by appropriation or official act.

48 “Fee payer”: the person or the person in successor interest who  
49 pays the impact fee. The right to a refund shall be deemed to run  
50 with the land.

51 “Municipal planning agency”: the local planning board, plan-  
52 ning department or other municipal agency or official as desig-  
53 nated by the development impact fee ordinance to be responsible  
54 for the administration of the impact fee program.

55 “Offsets”: the amount of money by which impact should be  
56 reduced to fairly reflect the value of land dedications or other  
57 physical improvements provided by the developer.

58 “Present value”: the current value of past, present and future  
59 payments, contributions or dedications of goods, services, mate-  
60 rials, construction or money.

61 “Proportionate share”: that share or portion, of the total public  
62 facility and capital improvement costs based on the master or  
63 comprehensive plan and the capital improvements plan, which are  
64 reasonably attributable to, or caused by development, less any  
65 credits or offsets for construction and/or dedication or capital  
66 improvements, past or future payments toward capital improve-  
67 ment costs made or reasonably anticipated to be made in the  
68 future by new development in the form of user fees, taxes or other  
69 payments toward capital improvement costs. Credits for past or  
70 future payments toward capital improvement costs shall be  
71 adjusted to present value in order to make fair comparisons of  
72 monetary amounts paid or received at different times.

73 “Public facilities’ capital improvement costs” shall include, but  
74 not be limited to:

75 (a) capital improvement costs associated with the reconstruction  
76 or construction of a new or expanded facility, and shall include  
77 equipment, land acquisition, land improvement, design and engi-  
78 neering costs related thereto including court awards and costs,  
79 attorney fees and expert witness fees.

80 (b) Financing costs for the retirement of bonds, notes or other  
81 finance system improvements may be included as system  
82 improvement costs.

83 (c) The costs shall not include routine and periodic mainte-  
84 nance expenditures or personnel, training or other operating costs.

85 “Reasonable benefit”: a benefit received from the provision of  
86 a public facility capital improvement which is greater than that to  
87 be received by the general public within the jurisdiction imposing  
88 impact fees. The receipt of an incidental benefit by other develop-  
89 ments shall not be constructed as denying a “reasonable benefit”  
90 to new development.

91 “Service area”: a geographic area defined by a municipality or  
92 intergovernmental agreement which a defined set of public facili-  
93 ties provides service to development within the area.

## 1 SECTION 2. Authority

2 (a) Cities and towns that adopt the provisions of this act, may  
3 collect impact fees for development in accordance with the  
4 requirements set forth herein. No fees shall be collected prior to  
5 the adoption of a development impact fee ordinance or by-law

6 passed by the legislative body and based on an approved local  
7 comprehensive plan or master plan and a capital improvement  
8 plan. That portion of a project which has a valid building permit  
9 issued prior to the effective date, shall not be subject to impact  
10 fees so long as the building permit remains valid.

11 (b) Cities and towns participating in regional or subregional  
12 planning agencies, may jointly assess and collect impact fees for  
13 regional public facilities necessary to accommodate growth  
14 according for regional or subregional plans, subject to an intermu-  
15 nicipal agreement.

16 (c) Impact fees may be imposed only for those types of public  
17 facilities identified in the capital improvement plan.

18 (d) Payment of an impact fee in accordance with this statute  
19 shall be deemed compliance with any requirements for adequate  
20 provisions established by the municipal planning.

21 (e) The expenses incurred for qualified staff including any  
22 qualified engineer, planner, architect, or financial consultant, for  
23 preparing or updating the capital facilities growth plan; and on  
24 going administrative cost provided that such administrative costs  
25 shall not exceed three percent of the development impact fee col-  
26 lected can be added to the capital improvement costs.

### 1 SECTION 3. Adoption

2 Before a city or town can adopt an impact fee ordinance or by-  
3 law the following conditions must be met:

4 (a) The master or comprehensive plan pursuant to MGL c 41  
5 s 81 D shall be adopted by the municipality and a Capital  
6 Facilities Plan which shall be approved will review the compo-  
7 nents of the master plan and shall further identify the needs for the  
8 types of public facilities for which the impact fee is levied. The  
9 capital facilities plan shall distinguish current existing needs from  
10 new development needs and shall contain components which  
11 describe the inventory of existing facilities, the identification of  
12 the level of service standards, the projected level of service stan-  
13 dards against which the fee is to be levied, and the projection of  
14 community needs. The data sources and methodology upon which  
15 the impact fee is based shall be made available to the public.

16 (b) The amount of the impact fee imposed shall be based upon  
17 the proportionate costs of actual capital costs incurred or to be  
18 incurred by the local government as a result of new development.

19 (c) An impact fee shall be determined to meet the following cri-  
20 teria:

21 1. The expansion of public facilities, for which an impact fee is  
22 to be charged, must be reasonably related to the needs created by  
23 any new development.

24 2. The impact fees imposed upon the development must not  
25 exceed a proportionate share of the costs incurred or to be  
26 incurred by the local government in accommodating the develop-  
27 ment. In determining a proportionate share of public facility cap-  
28 ital improvement costs, the following factors shall be considered:

29 a. The need for new capital improvements required to serve  
30 new development based on a capital improvement plan that shows  
31 (a) any current deficiencies which may exist in existing capital  
32 facilities that serve existing development and the means by which  
33 existing deficiencies will be eliminated within a reasonable period  
34 of time by means other than impact fees to be paid by new devel-  
35 opment and (b) any additional demands that are anticipated to be  
36 placed on specific capital facilities by new development.

37 b. The availability of other means or sources of revenue to fund  
38 capital improvements including, but not limited to, user charges,  
39 taxes, intergovernmental transfers and other revenue, and special  
40 taxation and assessments;

41 c. The cost of existing capital improvements;

42 d. The methods by which the existing capital improvements  
43 were financed;

44 e. The extent to which the developments required to pay impact  
45 fees have already contributed to the cost of existing capital  
46 improvements for which there was no reasonable benefit to new  
47 development and any credits or offsets that may be due new  
48 development because of such past contribution;

49 f. The extent to which new development required to pay impact  
50 fees will contribute to the costs of existing capital improvements  
51 in the future through user fees, debt service payments, or other  
52 payments which may be reasonably anticipated and any credits or  
53 offsets that may be due new development because of such future  
54 contributions;

- 55 g. The extent to which new developments are required as a con-  
56 dition of development or construction approval to construct and /  
57 or dedicate capital improvements and any offsets that may be due  
58 new development because of such construction and dedications;
- 59 h. The present value of past and future payments toward the  
60 costs of existing or future capital improvements made by develop-  
61 ments required to pay impact fees, any credits or offsets that may  
62 be due new development because of anticipated future benefits to  
63 be received.

1 SECTION 4. Establishment of the Impact Fee Ordinance

2 When the conditions in Section 3 have been met, an impact fee  
3 by-law or ordinance may be adopted by the municipality. The  
4 ordinance or by-law shall be adopted pursuant to the provisions of  
5 MGL Chapter 40A Section 5 and the notice shall clearly state that  
6 the hearing is for the purpose of adopting an impact fee ordinance.

7 (a). The amount of impact fee and credits shall be based on a  
8 formula and methodology that is defined in the capital facilities  
9 and master or comprehensive plan.

10 (b). The amount of the fee for a specific project shall be deter-  
11 mined at the time an application is made for a building permit or  
12 the time of site plan approvals, subdivision approvals, or approval  
13 of a special permit and the fee shall be payable at the time of  
14 development approval.

15 (c). The planning department may chose to select the time of  
16 assessment and collection and determine either that the entire fee  
17 or credit to the development is due at the time of development  
18 approval or certificate of occupancy is granted, or if the develop-  
19 ment is to be constructed in a phased sequence, the planning  
20 agency may determine the fees and credits based solely upon that  
21 segment of the development for which the developer is about to  
22 commence construction.

23 (d). Local governments may require the establishment of  
24 service areas for collection and expenditure of impact fees. Any  
25 service area established must be appropriate to the nature of the  
26 particular public facility. Local governments shall be required to  
27 establish a rationale for the establishment of or lack of service

28 zones, which will be reduced to writing and disclosed to the appli-  
29 cant and at the public hearing on the adoption of fees.

30 (e). The local ordinance may place a statutory cap on the  
31 amount of impact fees that can be assessed and define and set  
32 thresholds for development and /or changes to existing structures  
33 that shall incur an impact fee.

34 (f). The local ordinance may establish a formula for the use of  
35 credits, in lieu of payment of impact fees. Any credits shall be  
36 directly proportionate to the impact of the improvement, as deter-  
37 mined in the capital facilities plan.

38 (g) The local ordinance may exempt all or part of a particular  
39 development project from impact fees provided that such project  
40 is determined to create extraordinary public benefit to the local  
41 government; provided that the public policy that supports the  
42 exemptions contained in a local comprehensive or master plan;  
43 and provided that the exempt development's proportionate share  
44 of capital improvement costs is funded through a revenue source  
45 other than development impact fees.

46 (h). All impact fees when collected must be deposited in a  
47 special trust fund, which shall be invested with all interest  
48 accruing to the fund. Expenditure may be made without appropria-  
49 tion by the Chief administrative officer with approval of the plan-  
50 ning agency only for those purposes that were authorized under  
51 the impact fee ordinance.

52 (j). Unless otherwise negotiated with the developer as defined  
53 in Section 5 (c), all fees shall be encumbered for a period of eight  
54 years.

#### 1 SECTION 5. Collection of Fees

2 (a). Notice of the planning agency's determination of the appli-  
3 cation and amount of the impact fees shall be mailed to first class  
4 postage paid to the developer, with a copy filed with the munic-  
5 ipal clerk. No such fee shall be effective until said notice is filed  
6 with the city or town clerk and twenty days have elapsed without  
7 notice of an appeal. If an appeal is filed no payment shall be  
8 required until a court has issued a final decree sustaining the  
9 municipal planning agency's decision.

10 (b). The municipality may provide for a negotiated agreement  
11 with the fee payer as to the time and method of paying the impact

12 fee, including the use of an installment payment plan with interest  
13 charges accruing by the developer. The municipality may develop  
14 regulations for the securing of the payment including the use of  
15 the lien provision of Massachusetts General Law.

16 (c). If a municipality determines that a fee payer will be allowed  
17 to phase in the payments of impact fees, the time period to allow  
18 for payment of refunds can be extended by an equal amount of  
19 time.

#### 1 SECTION 6. Appeals

2 Any fee payer aggrieved by the municipal planning agency's  
3 determination of an impact fee or credit, may appeal the decision  
4 to Superior Court, or to the Land Court, provided such appeal is  
5 entered within thirty days after the planning agency has filed its  
6 determination of the amount of impact fee with the municipal  
7 clerk.

8 The court shall hear all pertinent evidence and determine the  
9 facts, including the dollar amount of the impact fee, the method-  
10 ology used to determine the fee, the justification of the fee based  
11 upon the capital facilities plan, shall annul such decision if it is  
12 found to exceed the authority of the planning agency, or make  
13 such other decree as justice and equity may require. The foregoing  
14 remedy shall be exclusive and shall have all the rights and appeals  
15 as in other equity cases.

#### 1 SECTION 7. Refunds

2 1. Upon completion of the project or if the encumbrance of the  
3 fee did not occur within the time frames of Section 4, the fee  
4 payer or the successor in interest will be eligible for a refund.

5 a. Upon the completion of the project the planning agency will  
6 recalculate the impact fee based on the actual cost of the improve-  
7 ment and conduct an outside audit on the program. If the fee that  
8 was paid exceeds the actual costs by more than 5%, the difference  
9 shall be refunded with interest to the feepayers or successor in  
10 title.

11 b. Within thirty days after the completion of the audit, the chief  
12 financial officer shall publish in a newspaper of general circula-  
13 tion and shall send to the payer of the fee at his last known  
14 mailing list, a notification of the right to apply for a refund.

15 c. The fee payer seeking a refund must file an application for a  
16 refund with the planning board within 6 months, from the date of  
17 right to file a refund occurs.

18 d. All refunds not claimed after six months from the date that  
19 right to claim a refund arises, shall be transferred to the general  
20 fund and may be used for any public purpose. No notice require-  
21 ment is required if no money is available for refunds.

22 e. If the municipality charged the fee payer more than the pro-  
23 portional cost of the capital improvement costs, the municipality  
24 will refund to the feepayer any money with interest collected that  
25 was in excess of the proportional share of the costs.

26 2. In the event that a building permit is abandoned, the fees  
27 paid to date will be retained by the municipality.

28 3. The seller of any property who has a notice of the imposition  
29 of an impact fee shall provide notice to the buyer by certified mail  
30 of the amount of impact fee due. If the seller fails to do so, he is  
31 liable to the buyer for any impact fee that becomes due after con-  
32 veyance of land.

33 4. All issues and proceedings under this section may be  
34 advanced for a speedy trial over other civil actions and proceed-  
35 ings.

#### 1 SECTION 8. Recoupment

2 A local government may recoup costs of excess capacity in  
3 existing capital facilities, where such capacity has been provided  
4 in anticipation of the needs of new development, by requiring  
5 impact fees for that portion of the facilities constructed for future  
6 users. The fees imposed to recoup such costs must be based upon  
7 the local government's actual cost of acquiring and/or con-  
8 structing the facility and must be no more than a proportionate  
9 share of such costs.

10 Local governments requiring the payment of impact fees shall  
11 incorporate such fee requirements within their broader system of  
12 development and land use regulations in such manner, that any  
13 new development either collectively or individually, is not  
14 required to pay or otherwise contribute more than a proportionate  
15 share of capital improvement costs.

1 SECTION 9. Limitations

2 Beginning one year after the adoption of this statute, a local  
3 government shall not include, as a condition of development  
4 approval, any requirement that a developer contribute or pay for  
5 land acquisition or construction or expansion of public facilities or  
6 portions thereof unless the local government has adopted an  
7 impact fee ordinance that requires all other similar, by the nature  
8 of the impact or the land use category, new developments to con-  
9 tribute a proportionate share of funds, land or public facilities nec-  
10 essary to accommodate any impacts through the payment of  
11 impact fees.

1 SECTION 10. Severability

2 In the event that any provision of application of this act is held  
3 to be invalid, it is the legislative intent that other provisions and  
4 applications hereof shall not be thereby affected.

1 SECTION 11. Effective Date

2 This act shall take effect on January 1, 1999.

1 SECTION 12. Auditing

2 There shall be an independent audit of the impact fee account  
3 pursuant to Massachusetts General Laws. Each year the planning  
4 board shall issue an annual report that shall include an accounting  
5 of proceeds and distribution of impact fee accounts. A copy of  
6 said report shall also be furnished to the Department of Revenue.  
7 The fee payer shall be furnished an audited final accounting of the  
8 proceeds and distribution of their funds at the conclusion of the  
9 eight year period.

10 Chapter 44 of Massachusetts General Law is amended by  
11 inserting a new Section 53G:—

12 Establishment of an Impact Fee Account:

13 Notwithstanding the provisions of section fifty-three, any city  
14 or town, which accepts the provisions of this section shall estab-  
15 lish a special account known as the Impact Fee Account. This  
16 account shall be located in the office of the treasurer and shall be  
17 kept separate and apart from all other moneys. All receipts and  
18 interest earned from the imposition of development impact fees  
19 shall be deposited in the account. The principal and interest

20 thereon shall be expended at the direction of the chief executive  
21 after approval from the planning board. The municipal finance  
22 officer shall submit annually a report of all development impact  
23 fee accounts to the chief executive officer, city council, board of  
24 alderman or board of selectmen, and the Department of Revenue.

