

CHAPTER 7

**GOVERNMENT - LOCAL**

**SENATE BILL 01S2-015**

BY SENATOR(S) Hernandez, Perlmutter, Anderson, Dyer, Fitz-Gerald, Matsunaka, Nichol, and Teck;  
also REPRESENTATIVE(S) Spence and Stafford.

**AN ACT**

**CONCERNING LAND DEVELOPMENT CHARGES THAT MAY BE IMPOSED BY LOCAL GOVERNMENTS.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** 29-20-102, Colorado Revised Statutes, is amended to read:

**29-20-102. Legislative declaration.** (1) The general assembly hereby finds and declares that in order to provide for planned and orderly development within Colorado and a balancing of basic human needs of a changing population with legitimate environmental concerns, the policy of this state is to clarify and provide broad authority to local governments to plan for and regulate the use of land within their respective jurisdictions. Nothing in this article shall serve to diminish the planning functions of the state or the duties of the division of planning.

(2) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT LOCAL GOVERNMENTS WILL BE BETTER ABLE TO PROPERLY PLAN FOR GROWTH AND SERVE NEW RESIDENTS IF THEY ARE AUTHORIZED TO IMPOSE IMPACT FEES AS A CONDITION OF APPROVAL OF DEVELOPMENT PERMITS. HOWEVER, IMPACT FEES AND OTHER DEVELOPMENT CHARGES CAN AFFECT GROWTH AND DEVELOPMENT PATTERNS OUTSIDE A LOCAL GOVERNMENT'S JURISDICTION, AND UNIFORM IMPACT FEE AUTHORITY AMONG LOCAL GOVERNMENTS WILL ENCOURAGE PROPER GROWTH MANAGEMENT.

**SECTION 2.** 29-20-103 (1), Colorado Revised Statutes, is amended, and the said 29-20-103 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**29-20-103. Definitions.** As used in this article, unless the context otherwise requires:

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

(1) ~~"Local government" means a county, home rule or statutory city, town, territorial charter city, or city and county~~ "DEVELOPMENT PERMIT" MEANS ANY PRELIMINARY OR FINAL APPROVAL OF AN APPLICATION FOR REZONING, PLANNED UNIT DEVELOPMENT, CONDITIONAL OR SPECIAL USE PERMIT, SUBDIVISION, DEVELOPMENT OR SITE PLAN, OR SIMILAR APPLICATION FOR NEW CONSTRUCTION.

(1.5) "LOCAL GOVERNMENT" MEANS A COUNTY, HOME RULE OR STATUTORY CITY, TOWN, TERRITORIAL CHARTER CITY, OR CITY AND COUNTY.

**SECTION 3.** The introductory portion to 29-20-104 (1), Colorado Revised Statutes, is amended to read:

**29-20-104. Powers of local governments.** (1) ~~Without limiting or superseding~~ EXCEPT AS EXPRESSLY PROVIDED IN SECTION 29-20-104.5, THE POWER AND AUTHORITY GRANTED BY THIS SECTION SHALL NOT LIMIT any power or authority presently exercised or previously granted. Each local government within its respective jurisdiction has the authority to plan for and regulate the use of land by:

**SECTION 4.** Article 20 of title 29, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**29-20-104.5. Impact fees.** (1) PURSUANT TO THE AUTHORITY GRANTED IN SECTION 29-20-104 (1) (g) AND AS A CONDITION OF ISSUANCE OF A DEVELOPMENT PERMIT, A LOCAL GOVERNMENT MAY IMPOSE AN IMPACT FEE OR OTHER SIMILAR DEVELOPMENT CHARGE TO FUND EXPENDITURES BY SUCH LOCAL GOVERNMENT ON CAPITAL FACILITIES NEEDED TO SERVE NEW DEVELOPMENT. NO IMPACT FEE OR OTHER SIMILAR DEVELOPMENT CHARGE SHALL BE IMPOSED EXCEPT PURSUANT TO A SCHEDULE THAT IS:

- (a) LEGISLATIVELY ADOPTED;
- (b) GENERALLY APPLICABLE TO A BROAD CLASS OF PROPERTY; AND
- (c) INTENDED TO DEFRAY THE PROJECTED IMPACTS ON CAPITAL FACILITIES CAUSED BY PROPOSED DEVELOPMENT.

(2) A LOCAL GOVERNMENT SHALL QUANTIFY THE REASONABLE IMPACTS OF PROPOSED DEVELOPMENT ON EXISTING CAPITAL FACILITIES AND ESTABLISH THE IMPACT FEE OR DEVELOPMENT CHARGE AT A LEVEL NO GREATER THAN NECESSARY TO DEFRAY SUCH IMPACTS DIRECTLY RELATED TO PROPOSED DEVELOPMENT. NO IMPACT FEE OR OTHER SIMILAR DEVELOPMENT CHARGE SHALL BE IMPOSED TO REMEDY ANY DEFICIENCY IN CAPITAL FACILITIES THAT EXISTS WITHOUT REGARD TO THE PROPOSED DEVELOPMENT.

(3) ANY SCHEDULE OF IMPACT FEES OR OTHER SIMILAR DEVELOPMENT CHARGES ADOPTED BY A LOCAL GOVERNMENT PURSUANT TO THIS SECTION SHALL INCLUDE PROVISIONS TO ENSURE THAT NO INDIVIDUAL LANDOWNER IS REQUIRED TO PROVIDE ANY SITE SPECIFIC DEDICATION OR IMPROVEMENT TO MEET THE SAME NEED FOR CAPITAL FACILITIES FOR WHICH THE IMPACT FEE OR OTHER SIMILAR DEVELOPMENT CHARGE IS IMPOSED.

(4) AS USED IN THIS SECTION, THE TERM "CAPITAL FACILITY" MEANS ANY IMPROVEMENT OR FACILITY THAT:

(a) IS DIRECTLY RELATED TO ANY SERVICE THAT A LOCAL GOVERNMENT IS AUTHORIZED TO PROVIDE;

(b) HAS AN ESTIMATED USEFUL LIFE OF FIVE YEARS OR LONGER; AND

(c) IS REQUIRED BY THE CHARTER OR GENERAL POLICY OF A LOCAL GOVERNMENT PURSUANT TO A RESOLUTION OR ORDINANCE.

(5) ANY IMPACT FEE OR OTHER SIMILAR DEVELOPMENT CHARGE SHALL BE COLLECTED AND ACCOUNTED FOR IN ACCORDANCE WITH PART 8 OF ARTICLE 1 OF THIS TITLE. NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, A LOCAL GOVERNMENT MAY WAIVE AN IMPACT FEE OR OTHER SIMILAR DEVELOPMENT CHARGE ON THE DEVELOPMENT OF LOW- OR MODERATE- INCOME HOUSING OR AFFORDABLE EMPLOYEE HOUSING AS DEFINED BY THE LOCAL GOVERNMENT.

(6) NO IMPACT FEE OR OTHER SIMILAR DEVELOPMENT CHARGE SHALL BE IMPOSED ON ANY DEVELOPMENT PERMIT FOR WHICH THE APPLICANT SUBMITTED A COMPLETE APPLICATION BEFORE THE ADOPTION OF A SCHEDULE OF IMPACT FEES OR OTHER SIMILAR DEVELOPMENT CHARGES BY THE LOCAL GOVERNMENT PURSUANT TO THIS SECTION. NO IMPACT FEE OR OTHER SIMILAR DEVELOPMENT CHARGE IMPOSED ON ANY DEVELOPMENT ACTIVITY SHALL BE COLLECTED BEFORE THE ISSUANCE OF THE DEVELOPMENT PERMIT FOR SUCH DEVELOPMENT ACTIVITY. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PROHIBIT A LOCAL GOVERNMENT FROM DEFERRING COLLECTION OF AN IMPACT FEE OR OTHER SIMILAR DEVELOPMENT CHARGE UNTIL THE ISSUANCE OF A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY.

(7) ANY PERSON OR ENTITY THAT OWNS OR HAS AN INTEREST IN LAND THAT IS OR BECOMES SUBJECT TO A SCHEDULE OF FEES OR CHARGES ENACTED PURSUANT TO THIS SECTION SHALL, BY FILING AN APPLICATION FOR A DEVELOPMENT PERMIT, HAVE STANDING TO FILE AN ACTION FOR DECLARATORY JUDGMENT TO DETERMINE WHETHER SUCH SCHEDULE COMPLIES WITH THE PROVISIONS OF THIS SECTION. AN APPLICANT FOR A DEVELOPMENT PERMIT WHO BELIEVES THAT A LOCAL GOVERNMENT HAS IMPROPERLY APPLIED A SCHEDULE OF FEES OR CHARGES ADOPTED PURSUANT TO THIS SECTION TO THE DEVELOPMENT APPLICATION MAY PAY THE FEE OR CHARGE IMPOSED AND PROCEED WITH DEVELOPMENT WITHOUT PREJUDICE TO THE APPLICANT'S RIGHT TO CHALLENGE THE FEE OR CHARGE IMPOSED UNDER RULE 106 OF THE COLORADO RULES OF CIVIL PROCEDURE. IF THE COURT DETERMINES THAT A LOCAL GOVERNMENT HAS EITHER IMPOSED A FEE OR CHARGE ON A DEVELOPMENT THAT IS NOT SUBJECT TO THE LEGISLATIVELY ENACTED SCHEDULE OR IMPROPERLY CALCULATED THE FEE OR CHARGE DUE, IT MAY ENTER JUDGMENT IN FAVOR OF THE APPLICANT FOR THE AMOUNT OF ANY FEE OR CHARGE WRONGLY COLLECTED WITH INTEREST THEREON FROM THE DATE COLLECTED.

(8) (a) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT THE MATTERS ADDRESSED IN THIS SECTION ARE MATTERS OF STATEWIDE CONCERN.

(b) THIS SECTION SHALL NOT PROHIBIT ANY LOCAL GOVERNMENT FROM IMPOSING IMPACT FEES OR OTHER SIMILAR DEVELOPMENT CHARGES PURSUANT TO A SCHEDULE

THAT WAS LEGISLATIVELY ADOPTED BEFORE OCTOBER 1, 2001, SO LONG AS THE LOCAL GOVERNMENT COMPLIES WITH SUBSECTIONS (3), (5), (6), AND (7) OF THIS SECTION. ANY AMENDMENT OF SUCH SCHEDULE ADOPTED AFTER OCTOBER 1, 2001, SHALL COMPLY WITH ALL OF THE REQUIREMENTS OF THIS SECTION.

(9) IF ANY PROVISION OF THIS SECTION IS HELD INVALID, SUCH INVALIDITY SHALL INVALIDATE THIS SECTION IN ITS ENTIRETY, AND TO THIS END THE PROVISIONS OF THIS SECTION ARE DECLARED TO BE NONSEVERABLE.

**SECTION 5.** 29-20-202 (2), Colorado Revised Statutes, is amended to read:

**29-20-202. Definitions.** As used in this part 2, unless the context otherwise requires:

(2) "Local government" has the same meaning as set forth in ~~section 29-20-103(1)~~ SECTION 29-20-103 (1.5).

**SECTION 6.** 29-20-203 (1), Colorado Revised Statutes, is amended to read:

**29-20-203. Conditions on land-use approvals.** (1) In imposing conditions upon the granting of land-use approvals, no local government shall require an owner of private property to dedicate real property to the public, or pay money OR PROVIDE SERVICES to a public entity in an amount that is determined on an individual and discretionary basis, unless there is an essential nexus between the dedication or payment and a legitimate local government interest, and the dedication or payment is roughly proportional both in nature and extent to the impact of the proposed use or development of such property. This section shall not apply to any legislatively formulated assessment, fee, or charge that is imposed on a broad class of property owners by a local government.

**SECTION 7.** 29-20-204, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**29-20-204. Remedy for enforcement against a private property owner.**  
(4) AN OWNER MAY PROCEED WITH DEVELOPMENT WITHOUT PREJUDICE TO THAT OWNER'S RIGHT TO PURSUE THE REMEDY PROVIDED BY THIS SECTION.

**SECTION 8. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: November 6, 2001