

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 256

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1 RELATING TO DEVELOPMENT IMPACT FEES; AMENDING SECTION 67-8204, IDAHO CODE,  
2 TO PROVIDE FOR A REFUND WITH INTEREST OF CERTAIN DEVELOPMENT IMPACT FEES  
3 AND TO MAKE A TECHNICAL CORRECTION; AND DECLARING AN EMERGENCY AND PRO-  
4 VIDING AN EFFECTIVE DATE.  
5

6 Be It Enacted by the Legislature of the State of Idaho:

7 SECTION 1. That Section 67-8204, Idaho Code, be, and the same is hereby  
8 amended to read as follows:

9 67-8204. MINIMUM STANDARDS AND REQUIREMENTS FOR DEVELOPMENT IMPACT  
10 ~~FEES~~ FEE ORDINANCES. Governmental entities which comply with the require-  
11 ments of this chapter may impose by ordinance development impact fees as a  
12 condition of development approval on all developments.

13 (1) A development impact fee shall not exceed a proportionate share  
14 of the cost of system improvements determined in accordance with section  
15 67-8207, Idaho Code. Development impact fees shall be based on actual system  
16 improvement costs or reasonable estimates of such costs.

17 (2) A development impact fee shall be calculated on the basis of levels  
18 of service for public facilities adopted in the development impact fee ordi-  
19 nance of the governmental entity that are applicable to existing development  
20 as well as new growth and development. The construction, improvement, ex-  
21 pansion or enlargement of new or existing public facilities for which a de-  
22 velopment impact fee is imposed must be attributable to the capacity demands  
23 generated by the new development.

24 (3) A development impact fee ordinance shall specify the point in the  
25 development process at which the development impact fee shall be collected.  
26 The development impact fee may be collected no earlier than the commencement  
27 of construction of the development, or the issuance of a building permit or a  
28 manufactured home installation permit, or as may be agreed by the developer  
29 and the governmental entity.

30 (4) A development impact fee ordinance shall be adopted in accordance  
31 with the procedural requirements of section 67-8206, Idaho Code.

32 (5) A development impact fee ordinance shall include a process whereby  
33 the governmental agency shall allow the developer, upon request by the de-  
34 veloper, to provide a written individual assessment of the proportionate  
35 share of development impact fees under the guidelines established by this  
36 chapter which shall be set forth in the ordinance. The individual assessment  
37 process shall permit consideration of studies, data, and any other relevant  
38 information submitted by the developer to adjust the amount of the fee. The  
39 decision by the governmental agency on an application for an individual as-  
40 sessment shall include an explanation of the calculation of the impact fee,  
41 including an explanation of factors considered under section 67-8207, Idaho

1 Code, and shall specify the system improvement(s) for which the impact fee is  
2 intended to be used.

3 (6) A development impact fee ordinance shall provide a process whereby  
4 a developer shall receive, upon request, a written certification of the  
5 development impact fee schedule or individual assessment for a particular  
6 project, which shall establish the development impact fee so long as there is  
7 no material change to the particular project as identified in the individ-  
8 ual assessment application, or the impact fee schedule. The certification  
9 shall include an explanation of the calculation of the impact fee including  
10 an explanation of factors considered under section 67-8207, Idaho Code. The  
11 certification shall also specify the system improvement(s) for which the  
12 impact fee is intended to be used.

13 (7) A development impact fee ordinance shall include a provision for  
14 credits in accordance with the requirements of section 67-8209, Idaho Code.

15 (8) A development impact fee ordinance shall include a provision pro-  
16 hibiting the expenditure of development impact fees except in accordance  
17 with the requirements of section 67-8210, Idaho Code.

18 (9) A development impact fee ordinance may provide for the imposition  
19 of a development impact fee for system improvement costs incurred subsequent  
20 to adoption of the ordinance to the extent that new growth and development  
21 will be served by the system improvements.

22 (10) A development impact fee ordinance may exempt all or part of a par-  
23 ticular development project from development impact fees provided that such  
24 project is determined to create affordable housing, provided that the pub-  
25 lic policy which supports the exemption is contained in the governmental en-  
26 tity's comprehensive plan and provided that the exempt development's pro-  
27 portionate share of system improvements is funded through a revenue source  
28 other than development impact fees.

29 (11) A development impact fee ordinance shall provide that development  
30 impact fees shall only be spent for the category of system improvements for  
31 which the fees were collected and either within or for the benefit of the ser-  
32 vice area in which the project is located.

33 (12) A development impact fee ordinance shall provide for a refund of  
34 development impact fees in accordance with the requirements of section  
35 67-8211, Idaho Code.

36 (13) A development impact fee ordinance shall establish for a procedure  
37 for timely processing of applications for determination by the governmental  
38 entity regarding development impact fees applicable to a project, individ-  
39 ual assessment of development impact fees, credits or reimbursements to be  
40 allowed or paid under section 67-8209, Idaho Code, and extraordinary impact.

41 (14) A development impact fee ordinance shall specify when an applica-  
42 tion for an individual assessment of development impact fees shall be per-  
43 mitted to be made by a developer or fee payer. An application for an individ-  
44 ual assessment of development impact fees shall be permitted sufficiently in  
45 advance of the time that the developer or fee payer may seek a building permit  
46 or related permits so that the issuance of a building permit or related per-  
47 mits will not be delayed.

48 (15) A development impact fee ordinance shall provide for appeals re-  
49 garding development impact fees in accordance with the requirements of sec-  
50 tion 67-8212, Idaho Code.

1 (16) A development impact fee ordinance must provide a detailed de-  
2 scription of the methodology by which costs per service unit are determined.  
3 The development impact fee per service unit may not exceed the amount de-  
4 termined by dividing the costs of the capital improvements described in  
5 section 67-8208(1) (f), Idaho Code, by the total number of projected service  
6 units described in section 67-8208(1) (g), Idaho Code. If the number of new  
7 service units projected over a reasonable period of time is less than the  
8 total number of new service units shown by the approved land use assumptions  
9 at full development of the service area, the maximum impact fee per service  
10 unit shall be calculated by dividing the costs of the part of the capital  
11 improvements necessitated by and attributable to the projected new service  
12 units described in section 67-8208(1) (g), Idaho Code, by the total projected  
13 new service units described in that section.

14 (17) A development impact fee ordinance shall include a schedule of de-  
15 velopment impact fees for various land uses per unit of development. The or-  
16 dinance shall provide that a developer shall have the right to elect to pay a  
17 project's proportionate share of system improvement costs by payment of de-  
18 velopment impact fees according to the fee schedule as full and complete pay-  
19 ment of the development project's proportionate share of system improvement  
20 costs, except as provided in section 67-8214(3), Idaho Code.

21 (18) After payment of the development impact fees or execution of an  
22 agreement for payment of development impact fees, additional development  
23 impact fees or increases in fees may not be assessed unless the number of  
24 service units increases or the scope or schedule of the development changes.  
25 In the event of an increase in the number of service units or schedule of the  
26 development changes, the additional development impact fees to be imposed  
27 are limited to the amount attributable to the additional service units or  
28 change in scope of the development.

29 (19) No system for the calculation of development impact fees shall be  
30 adopted which subjects any development to double payment of impact fees.

31 (20) A development impact fee ordinance shall exempt from development  
32 impact fees the following activities:

33 (a) Rebuilding the same amount of floor space of a structure which was  
34 destroyed by fire or other catastrophe, providing the structure is re-  
35 built and ready for occupancy within two (2) years of its destruction;

36 (b) Remodeling or repairing a structure which does not increase the  
37 number of service units;

38 (c) Replacing a residential unit, including a manufactured home, with  
39 another residential unit on the same lot, provided that the number of  
40 service units does not increase;

41 (d) Placing a temporary construction trailer or office on a lot;

42 (e) Constructing an addition on a residential structure which does not  
43 increase the number of service units; and

44 (f) Adding uses that are typically accessory to residential uses, such  
45 as tennis courts or clubhouse, unless it can be clearly demonstrated  
46 that the use creates a significant impact on the capacity of system im-  
47 provements.

48 (21) A development impact fee will be assessed for installation of a  
49 modular building, manufactured home or recreational vehicle unless the

1 fee payer can demonstrate by documentation such as utility bills and tax  
2 records, either:

3 (a) That a modular building, manufactured home or recreational vehicle  
4 was legally in place on the lot or space prior to the effective date of  
5 the development impact fee ordinance; or

6 (b) That a development impact fee has been paid previously for the in-  
7 stallation of a modular building, manufactured home or recreational ve-  
8 hicle on that same lot or space.

9 (22) A development impact fee ordinance shall include a process for  
10 dealing with a project which has extraordinary impacts.

11 (23) A development impact fee ordinance shall provide for the calcula-  
12 tion of a development impact fee in accordance with generally accepted ac-  
13 counting principles. A development impact fee shall not be deemed invalid  
14 because payment of the fee may result in an incidental benefit to owners or  
15 developers within the service area other than the person paying the fee.

16 (24) A development impact fee ordinance shall include a description of  
17 acceptable levels of service for system improvements.

18 (25) Any provision of a development impact fee ordinance that is incon-  
19 sistent with the requirements of this chapter shall be null and void and that  
20 provision shall have no legal effect. A partial invalidity of a development  
21 impact fee ordinance shall not affect the validity of the remaining portions  
22 of the ordinance that are consistent with the requirements of this chapter.  
23 Any development impact fee imposed, charged, or required by a governmental  
24 entity that is found to be null and void for being inconsistent with the pro-  
25 visions of this chapter or in violation of any other law must be refunded in  
26 full to the fee payers that were wrongfully charged such fee. The refunded  
27 amount shall include interest on the fee amount from the date of the fee pay-  
28 ment at the legal rate of interest pursuant to section 28-22-104, Idaho Code.

29 SECTION 2. An emergency existing therefor, which emergency is hereby  
30 declared to exist, this act shall be in full force and effect on and after  
31 July 1, 2023.