LD 1246, Resolve Directing the Department of Economic and Community Development to Convene a Working Group to Review the Process for Setting Impact Fees: A Report to the Joint Select Committee on Housing and Economic Development

P.L. 2025, Ch. 85.

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Introduction

The first special session of the 132nd Legislature enacted L.D. 1246 “Resolve, Directing the Department of Economic and Community Development (DECD) to convene a working group to review the process of setting impact fees," sponsored by Representative Traci Gere (Appendix B). The legislation charged DECD (through the Housing Opportunity Program), in collaboration with the Governor’s Office of Policy Innovation and the Future, and the Maine Office of Community Affairs, with convening a working group to study the process by which municipalities impose impact fees under Title 30-A, M.R.S §4354.

The working group consisted of representatives from municipalities, developers, municipal attorneys, regional councils of government, the Maine Municipal Association, the Governor’s Office of Policy Innovation and the Future, the Maine Office of Community Affairs, and more. A list of stakeholder group participants and collaborators is available in Appendix A.

The working group met six times in October, November, and December 2025. The working group examined the impact fee laws in 30-A, M.R.S. §4354. They reviewed the original provisions before the 132nd Legislature made changes on September 24, 2025. They also considered the amendments introduced at that time. The working group reviewed the existing processes by which municipalities within the working group, as well as those not engaged in the working group, establish and impose impact fees. The working group also reviewed state-level statutory enabling act provisions for impact fees across select states.

The working group reached consensus on several recommendations, including increased technical assistance for municipalities and developers to establish municipal impact fee ordinances and to adopt best practices for their use, and the need for better data collection and tracking of existing municipal impact fee ordinances adopted across the state. The working group discussed several statutory changes to 30-A, M.R.S. §4354, regarding a municipality's ability to use funds collected.

The working group did not always reach a clear consensus on key details of possible recommendations, due in part to challenges bridging the divide between the sometimes-competing needs and wants of municipal partners and those of development professionals. While the group agreed that changes to the mechanics by which municipalities collect and use impact fee revenue would be helpful, there were multiple proposed solutions for amending the statute to ensure that municipalities and developers felt the process was meaningful, fair, and allowed for consistent implementation of municipal capital improvement plans. The recommendations laid out in this report represent a balanced approach to improving the usage of impact fees across the State.

New statutory requirements under P.L, 2025 (Ch. 480)

The first special session of the 132nd Legislature enacted P.L. 2025, Ch. 480, “An Act to Address Maine’s Housing Crisis by Limiting Municipal Impact Fees on Housing Development” to address concerns around the way municipal impact fees were assessed against new development. The amended statutory provisions were enacted on September 24th, 2025. As of that date, municipalities are required to establish a policy document that describes how the municipality determines whether a development necessitates an infrastructure improvement and how the developer's share of the cost of that improvement is determined.

Additionally, a change was made to the way municipalities collect impact fees. The amendment requires that a municipal impact fee ordinance establish a reasonable schedule under which the municipality must encumber the funds, in a manner consistent with the capital investment component of the comprehensive plan. It is worth noting that this statutory change modified the terminology for impact fee collection and subsequent use and added a requirement to encumber the funds within 360 days of receipt. Recommendations on additional legislative action, particular to this modification, are detailed in a subsequent section of this report.

Legal requirements of impact fees

Impact fees are charges levied on new development to generate revenue to fund capital improvements necessitated by increased development pressure on the community (Clancy Mullen, Duncan Associates, *State Impact Fee Enabling Acts*, www.impactfees.com, 9/15/2018). These fees allow municipalities to recover costs for infrastructure construction or improvement projects following residential or commercial development. Impact fees were established as a legal mechanism to allow new development to share the burden of infrastructure costs necessitated by that development and the resulting expanded infrastructure demands driven by population growth and increased economic development. Impact fees are based on the legal theory of government exaction and require a rational nexus between the conditions imposed on the new development by the municipality and the demand placed on infrastructure from expected growth from the development. The fees must cover a reasonable share of the anticipated cost of infrastructure improvements made necessary by the new development. (Clancy, *State Impact Fee Enabling Acts*, pg. 1)

Impact fee adoption in Maine

Maine first established impact fees in 1987 through the Comprehensive Planning and Land Use Regulation Act (Mullen, Duncan Associates, *State Impact Fee Enabling Acts*, pg. 1). Municipal impact fees must be "reasonably related" to the development's share of improvement costs, as required by law (30-A M.R.S. §4354 (2) (B)). A municipal impact fee ordinance must establish a reasonable schedule under which the municipality is required to use the funds in a manner consistent with the capital investment component of the municipality's comprehensive plan. Funds collected through a municipal impact fee ordinance must be used to establish specific infrastructure facilities, including water and wastewater facilities, solid waste facilities, public safety facilities, road and traffic control devices, parks and open space, and school facilities. A municipality may impose the fee either before or after completing the infrastructure improvements; however, there must be a nexus between the capital improvements and the impact from development, as necessitated by the new development. Additionally, the fee must be proportional to the impact on infrastructure expected from the new development.

Adoption of municipal impact fee ordinances in Maine varies. Larger municipalities may be more likely to adopt them given additional development pressures and the costs of implementing and managing impact fee collection processes. Many municipalities enact ordinances that allow them to charge fees for all statutorily permitted uses. In contrast, others adopt an impact fee ordinance to fund a specific capital improvement, such as a public safety building or a local road improvement.

Impact fee adoption in other states

There are approximately twenty-nine states that have, in some capacity, local or regional assessment of impact fees. Most states that allow the collection of impact fees have adopted statutory provisions that authorize municipalities to collect them. (Mullen, *State Impact Fee Enabling Acts*, pg. 1) The authority to levy fees varies by state and may be granted to municipalities or counties. All enabling statutory provisions require that a legal nexus exists between the conditions imposed on the development and the government's legitimate interest in the parcel. A list of state impact fee enabling acts can be found in Appendix B.

The working group reviewed the statutory provisions enabling local impact fee ordinances from several states, including Florida, Idaho, New Hampshire, Texas, Vermont, and Washington. Review of these statutory provisions included researching any "sunset" timing mechanisms in various statutes to require funds be used within a particular timeframe, the lexicon and verbiage utilized to convey how funds were expected to be used, as well as any provisions that grant preference or restrict usage based on a particular feature (i.e., an affordable housing preference).

The working group focused on provisions regarding when to use the collected funds and on the terminology for separating those funds from a municipality's general account. The working group reviewed several states' statutory provisions to understand why some states use a "sunset" provision as a deadline for spending funds (usually within 5-10 years). The working group could not reach consensus on the timing of a sunset provision; however, a recommendation follows below to amend Maine statutes to add such a provision. Review also focused on terminology dictating how funds could be used, as several states utilize similar, but differing terms from Maine statutes, including "earmark", "deposit", "designate", and "allocate".

The need for additional technical assistance and data tracking

The working group found it challenging to determine how many municipalities have adopted impact fees. No state agency or partner organization is tracking municipal adoption of an impact fee ordinance. Additionally, there is limited historical information available regarding municipal impact adoption. There is no consistent way to determine how many municipalities have adopted an impact fee ordinance; however, a review of available ordinances suggests the number is in double digits. To provide better technical assistance and best-practice examples, a state agency or partner organization needs to establish a tracking mechanism to determine how many municipalities have adopted impact fee ordinances.

Another challenge noted early in the working groups' process was the lack of cohesive technical assistance from a state agency regarding impact fees. The State Planning Office released an Impact Fee Manual (Appendix B) in 2003. While this manual is very comprehensive and conveys invaluable, detailed information about what impact fees are and how to establish a local ordinance, the document is now over 20 years old. There was consensus within the group that an updated technical assistance guide would be helpful to municipalities, especially given the need to incorporate recent statutory changes from the 132nd Legislature.

The working group also determined that it would be helpful to provide additional technical assistance to municipalities and developers to help them better understand what an impact fee is and how it is used. Several discussion points were shared regarding the challenge for developers to determine whether an impact fee would be levied during the permitting process, as well as the difficulty of understanding the timing of the development review or permitting process when an impact fee would be charged. Recent legislative changes requiring municipalities to create a

formal policy document on impact fees may help ease the burden of "unplanned fees" on developers. Additional guidance and best practices for municipalities on crafting an impact fee ordinance and the timing in which to levy fees against development will also help developers feel more certain about the process.

Recommendations related to technical assistance and data tracking

Recommendation 1

- The working group recommends that a state agency or partner organization review and update the State Planning Office's 2003 Impact Fee Manual. The updated manual should focus on recent legislative changes to state statutes regarding impact fees and highlight best practices for drafting a municipal impact fee ordinance. It may be helpful to develop a model ordinance that municipalities can use when adopting their own impact fee ordinances.

Recommendation 2

- The working group recommends that a state agency or partner organization establish an inventory of municipalities across the state that have adopted impact fee ordinances. This inventory could include municipalities that currently levy impact fees, those that have adopted impact fee ordinances in the past but no longer have a codified ordinance, and, if possible, municipalities that may be interested in adopting impact fee ordinances that have not yet adopted an ordinance. This inventory should be included in the updated technical assistance document, and it is recommended that the inventory be reviewed and updated every few years. The inventory could serve as a basis for best-practice case reviews, including successes and challenges faced in adopting ordinances, if municipal partners are willing to share information with the agency responsible for this process.

Recommendation 3

- The working group recommends that a state agency or partner organization develop training courses and best practices, in addition to the recommendations in Recommendation 1. These training courses should highlight best practices for developing an impact fee ordinance, as well as the nexus between a legally defensible ordinance and the fees charged to the development. The trainings should be curated for two distinct audiences- municipalities that want to adopt an ordinance or refine an existing ordinance, and developers, building trades professionals, and other interested parties who wish to understand more about impact fee ordinances. These training courses should include information on how to determine whether a fee levied against a project is an impact fee, as well as the nexus between the fee and the proposed project. The trainings should also highlight best practices for the timing of levying the fee during the permitting process (i.e., once the project has received approval, once the permits have been filed, or at some other point). No determination was made as to the frequency of these courses.

Recommendation 4

- The working group recommends increasing the standardization of municipal impact fee ordinances to ease the burden of varying fee schedules and methods in the type of impact fees being levied in support of development. More synchrony between the timing of the permit process in which the fee was charged, the nexus to the development's impacts, and

the "end result" of the fee would help raise greater awareness of proper impact fee use. This standardization should be included as part of the best practice components of the technical assistance suite recommended in this section, to be carried out by a state agency and its partner organizations. This could include, but is not limited to, the drafting of a model ordinance that municipalities could adopt.

Recommended statutory changes to 30-A, M.R.S. §4354

The working group spent considerable time discussing possible recommendations regarding the statutory provisions of 30-A, M.R.S. §4354. Discussion centered on the best approach to ensure the nexus between levied impact fees and development, the timing of when impact fees should be utilized, and how to best ensure that the fees collected are separated from traditional municipal revenue sources. The working group reviewed existing municipal ordinances in Maine, current and former statutory provisions under Maine's home rule authority, and statutory provisions in multiple states.

During its review, the working group determined that the word "encumber", as amended by recent statutory changes to 30-A, M.R.S. §4354 (2) (c), poses challenges for municipalities in understanding how to adequately utilize funds received through impact fees. The term "encumbering funds" has several meanings: either as a formal commitment to secure a product or service through a contract, such as a purchase order or legal agreement, or as a commitment to fund a future project. This requirement by itself may not prove to be too burdensome to municipalities; however, this requirement, with the addition of a timeframe requiring commitment of funds within approximately one year, may be unrealistic for many municipalities, as projects funded through impact fees may be complex, long-term goals as detailed in the municipality's capital improvement plan. Additional clarity is needed to ensure municipalities can use funds collected through impact fees correctly, as recommended later in the report.

For instance, this change in terminology may require a municipality that intends to utilize impact fees to address public safety concerns to shift the usage of impact fees from a larger purchase, such as a new emergency vehicle, to smaller purchases, such as purchasing personal protective equipment or other items that may usually be included in an annual budget instead of the longer range capital plan. As another example, this change to impact fee collection may require a municipality that intends to utilize impact fees collected over a decade to address waste water treatment plant capacity upgrades to instead seek to float a bond to cover the entire amount in the year before the upgrades are needed or increase taxes over a decade to slowly build up the savings that the impact fee would have raised.

In both instances above, the municipality may not be able to adequately defend the legal nexus between the impact fee charged and the required use of the funds for capital improvements as detailed in the comprehensive plan. Additionally, this change will shift large capital improvement projects solely onto taxpayers, as municipalities will have to fund all large capital planning expenses through bonding or reserves rather than offsetting a portion through impact fee collections.

Several states utilize similar, but differing terms in their enabling act provisions, including "earmark", "deposit", "designate", and "allocate". (Mullen, *Summary of State Impact Fee Enabling Acts*, pg. 3) Terms such as "earmark" or "designate" require the intended funds to be allocated for a particular use, but do not require a contract or purchase order. If the recent statutory amendment intended to require a municipality to have secured a good or service

through a purchase order or have a signed legal contract, then "encumber" is the correct term to utilize. However, if the amendment were instead intended to ensure that a municipality will, within a specific period, specify an intended use for the funds without immediately contracting those funds, then a less formal term such as "designate" or "earmark" would be more appropriate. No consensus was reached on appropriate terminology for a statutory amendment; however, the working group recommends that the Maine Office of Community Affairs or a partner agency monitor municipal use of impact fees to understand if a legislative amendment or agency rulemaking should be recommended in the future to add clarity to the use of impact fees.

The working group also reviewed the timing requirements of the statues in other states. As noted earlier in the report, there was considerable discussion about a municipality's ability to use impact fees effectively within the current one-year timeframe. The working group concluded that 360 days is insufficient time for a municipality to use funds collected through an impact fee.

To ensure that funds are spent appropriately, some states, such as Washington (Mullen, *Summary of State Impact Fee Enabling Acts*, pg. 319), require that all funds allocated but unspent after five years be returned to the developer. The use of "sunsetting" the funds gives developers and the public the knowledge that funds will be spent in a timely fashion, but also in a manner consistent with capital improvement plans and other longer-range planning exercises. The need for a definitive timeline for returning unspent funds to developers was a central position that the working group heard from developers.

The working group determined that adding a sunset provision to the schedule of uses as detailed in 30-A, M.R.S. §4354 (2) (d) would allow for greater transparency between the municipality and the developer. The working group recommends requiring funds collected through impact fees to be used within a five-year period.

Additionally, a plurality of the working group recommends extending the timeframe for using funds for longer-range projects This subset of the working group recommends adding a provision to the recommended language above that allows a municipality to extend the period of use by up to five additional years if the funds collected through impact fees are applied to a project listed in an unexpired Comprehensive Plan found consistent under 30-A, M.R.S. §4326. Some group members opposed this addition, primarily because some developers are concerned that longer timeframes make it harder to ensure funds are used in compliance with the law.

Recommendation 5

- The working group recommends that the legislature add a "sunset" date to 30-A, M.R.S. §4354 (2) (d), to clarify the period in which funds should be utilized. This provision should specify that funds collected through impact fees must be used within five years. Additional recommendations include adding a provision that allows a municipality to extend the period by up to 5 additional years if the funds are applied to a project listed in a Comprehensive Plan with an unexpired consistency status under 30-A, M.R.S. §4326.

Conclusion

Impact fee usage across Maine varies by municipality and region; that usage is unclear due to a lack of data tracking and technical assistance. The recommendations in this report emphasize the need for additional technical assistance and data-tracking mechanisms. Updating the 2003 Impact Fee Manual and creating training and other materials to assist municipalities, developers,

and the public in understanding the best use of impact fee ordinances will lead to more well-defined municipal ordinances and greater clarity between municipalities and developers. Additionally, statutory provisions governing the use of funds collected through impact fees are unclear and could be better structured to provide guidance to municipalities and developers alike. Enhanced technical assistance, along with modifications to the existing statutory requirements for impact fees, will lead to a notable reduction in confusion about impact fee use across the state and will simplify the development process for both municipal operations and developers.

Appendix A: Member List and Acknowledgements

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Additional thanks to members of several municipalities and developers who assisted with brief conversations and/or data collection for the Housing Opportunity Program for this working group.

Appendix B: Bibliography and Recent Legislation Regarding Impact Fees

Impact Fee Manual, State Planning Office, January 2003

National Association of Home Builders, Impact Fees by State, 2025

Summary of State Impact Fee Enabling Acts, Duncan Associates, 2018

L.D. 1246 , "Resolve, Directing the Department of Economic and Community Development (DECD) to convene a working group to review the process of setting impact fees"

LD 1498, " An Act to Address Maine's Housing Crisis by Limiting Municipal Impact Fees on Housing Development"

M.R.S Title 30-A, Chapter 187, §4354. Impact fees