

ENROLLED SENATE
BILL NO. 708

By: Jolley and Sykes of the
Senate

and

Nelson, Hickman, Pittman
and Stiles of the House

An Act relating to local government capital improvements; authorizing municipalities to implement development fees; defining term; providing procedures and requirements for implementation and collection of development fees; specifying scope of fee; requiring process for collection and maintenance of development fees; providing for credits or adjustments to development fees and procedures related thereto; providing procedures for accounting for development fee proceeds; stating test to be used by court in any challenge to a development fee; clarifying rights of payor; capping certain fees; clarifying municipal authority; providing for codification; and providing an effective date.

SUBJECT: Municipal development fees

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 895 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. Municipalities that adopt ordinances, resolutions, or regulations for the implementation and collection of development fees shall provide that such development fees are adopted and governed pursuant to the provisions of this section. As used in this section:

1. "Development fee" means any payment of money imposed, in whole or in part, as a condition of approval of any building permit, plat approval, or zoning change, to the extent the fee is to pay for public infrastructure systems that are attributable to new development or to expand or modify existing development;

2. "Expanded or modified development" is one in which the expansion or modification results in an increased demand or

increased impact upon the public infrastructure system as compared to the demand or impact prior to the expansion or modifications;

3. "Public infrastructure system" includes any real property improvement, fixture, or accession that is included within, but not limited to, any of the following categories of public systems:

- a. water systems, including supply, production, treatment, and distribution facilities,
- b. wastewater systems, including collection, treatment, and disposal facilities,
- c. street systems, including roads, streets, boulevards, bridges, sidewalks, bicycle routes, drainage, traffic signals and systems, traffic control devices and signage, traffic calming devices, landscaping associated with street rights-of-way, and any local components of county, state, or federal highways to the extent and to the proportionate cost that the local components are not funded by state or federal grants or other state or federal permanent funding sources,
- d. storm water systems, including collection, retention, detention, treatment, channelization, disposal, discharge, flood control, and bank and shoreline protection facilities,
- e. parks systems, including parks, open spaces, trails, bicycle paths, and natural recreation areas and related facilities,
- f. public safety systems, including police, fire, emergency medical, and rescue facilities,
- g. solid waste systems, including facilities,
- h. public transportation systems, including facilities, and
- i. public capital improvement communications facilities; and

4. "Public infrastructure system costs" means capital improvements that have a projected useful life of at least ten (10) years or more, and that result in an increase or expansion to the functional service capacity of that public infrastructure system.

B. New development and expanded or modified existing development may only be charged the development fee for capital improvement costs for increases or expansion to the capacity of public infrastructure systems attributable to that development.

1. Development fees shall not exceed a clear, ascertainable, and reasonably determined proportionate share of the cost of capital improvement to the public infrastructure system attributable to the expansion or increase in functional service capacity generated, or to be generated by, the development being charged the fee. There shall be a clearly established functional nexus between the purpose and amount of the development fee being charged and the development against which the fee is charged. In determining the development fee, the municipality shall make a documented effort to quantify the projected impact from development and determine that the proposed development fee is reasonably and roughly proportional to the nature and extent of the impact of development.

2. Development fees cannot be adopted or used to fund repairs, maintenance, restorations, refurbishments, alterations, improvements, or fixes to existing public infrastructure systems in any way that does not result in an increase or expansion in the functional service capacity of the system which is available to serve new or expanded existing growth and development in the applicable service area.

3. The development fees shall be based on actual system improvement costs or reliable, ascertainable and reasonable projected estimates of the costs. Any estimates of costs shall be based upon factual and historically realized costs for similar system capital improvements.

4. Development fees may only be imposed to recover or fund the costs of public infrastructure system capital improvements, including, but not limited to, the cost of real property interest acquisitions, rights-of-ways, capital improvements, design, construction, inspection, and capital improvement construction administration, related to one or more public infrastructure systems.

C. A municipal development fee ordinance, resolution, or regulation shall provide for the following:

1. A schedule of development fees specifying the development fee for various land uses per unit of development, the purpose for the development fee, and termination of the development fee when the applicable public infrastructure system has been fully funded and

the expanded or modified development has no additional impact on the public infrastructure system; and

2. A component capital improvement plan that:
 - a. lists public infrastructure system capital projects or facility expansions that are necessitated by development of various land uses in designated areas,
 - b. provides reasonable notice to developers of specific public infrastructure system impacts from development of various land uses within the area of the development, and
 - c. delineates the property locations that are clearly served by the public infrastructure system that will be funded through the development fee.

In the alternative, a municipality may establish one or more service areas for the collection of development fees. As used in this section, "service area" means a geographic area defined by a municipality in which a defined public infrastructure system provides service to developments within that service area. Service areas shall be carefully drawn so as to include only property locations that are clearly served by the cost of capital improvements that increase or expand the functional service capacity of the public infrastructure system that will be funded through the development fee that is associated with the service area. The determinations regarding the establishment of one or more service areas will be a matter of legislative determination and discretion. Different public infrastructure systems may have different and separately defined service areas unique to each system's coverage. The development fees within a particular service area may be different as applied to different types of land uses; and

3. An adoption process that provides for at least the following before any development fees, capital improvement plan, service plan, or creation of service areas shall become effective:

- a. a public hearing before the municipal planning commission. Notice of the time, date and place of the hearing shall be published in a newspaper of general circulation in the municipality at least fifteen (15) days prior to the hearing,
- b. a subsequent public hearing before the municipal governing body. Notice of the time, date and place of the hearing shall be published in a newspaper of

general circulation in the municipality at least fifteen (15) days prior to the hearing.

All duly enacted ordinances, resolutions, or regulations existing at the time of the effective date of this section shall remain in full force and effect; provided, no existing impact or development fees shall be amended, modified, or renewed except in accordance with this act.

D. The development fees collected pursuant to a component capital improvement plan or within a service area, and any interest on the funds, shall be spent only for capital improvements that expand or increase the functional service capacity of that particular public infrastructure system to serve the area encompassing the development or only within that service area from which the funds were collected.

1. Every assessment of a development fee shall be in writing and a copy shall be provided to the developer and property owner(s) affected, as such names and addresses of the property owner(s) are provided by the developer. The assessment shall specify the purpose or service area for which the development fee is being collected, the basis for calculation of the assessment, and the amount of the assessment. No development fee collected for one purpose shall be devoted to another purpose except as hereinafter provided.

2. If the purpose, component capital improvement plan, or service area is changed or redrawn, or if a development spans more than one component capital improvement plan or service area, the development fees collected prior to the change shall be spent proportionately pursuant to the new purpose or within the new component capital improvement plan or service area or areas that encompass the development at the time of expenditure from which the fee was originally collected. Any change or expansion in a purpose, component capital improvement plan, or service area shall be done through the full hearing process as set forth in paragraph 3 of subsection C of this section.

E. Each municipality shall present an annual report to its governing body on:

1. The collection, investment, and expenditure of development-fee funds as separately reported upon for each development capital project or service area, and each public infrastructure system for each development capital project or in each service area;

2. The recovery of costs from development-fee revenues; and

3. Estimates of the timing of system-capacity-expansion improvements, as such construction is funded by development fees.

If the municipality determines that the development fees as collected within a service area are no longer needed or desired for the purpose for which they were collected, the municipality may either refund the collected fees to the current owners of the property within the development for which the fees were paid, or proceed through the hearing process as set forth in paragraph 3 of subsection C of this section in order to adopt a new purpose for the fees.

F. Municipalities may establish a process for the collection of development fees to occur at a point in time no earlier than the issuance of a building permit.

G. Municipalities may enter into written agreements with developers to construct capital improvements to expand or increase the functional service capacity of a public infrastructure system within the designated development area or to serve a service area and provide a credit against or an adjustment to payment of all or part of the development fee for that system and that development. The credit or adjustment may not exceed the cost of the capital improvement or the amount of the development fee that would have been collected from that developer for the development and that system. No credit or adjustment will be carried over or transferred to a different development, a subsequent development, a subsequent change to that development, or against a development fee for a different system.

H. Nothing in this section will:

1. Preclude a municipality from requiring the developer to donate or dedicate real property or capital improvements, or to install, construct, operate, maintain, or repair capital improvements; or

2. Require a credit against or an adjustment to a development fee for contribution of, or to the cost of, any real property or capital improvement provided by a developer if the direct cost of the specific contribution is not specifically and directly included in the calculation of the applicable development fees.

I. No credit or adjustment shall be carried over from one development to a development at a different location. No credit or adjustment will be carried over from one development to a subsequent development at the same location, unless the development fee

collected previously is for the same purpose, making any subsequent collection a repeat charge for the same purpose.

J. Development fees shall be deemed dedicated and restricted revenues and therefore shall require accounting for development proceeds as restricted funds. Interest earned on development fees shall be considered funds of the account on which it is earned and shall be subject to all restrictions placed on the use of development fees under the provisions of this section. The accounting records and details thereof shall be maintained as public records of the municipality, be accessible to the public through open records requests, and include at least the following information, as relates both to each development capital project or service area and each public infrastructure system for each development capital project or within each service area:

1. The receipt of development fees;
2. The development capital project or service area from which the development fee was collected;
3. The accumulation of interest on the development fee funds;
4. The type of public infrastructure system for which the funds were collected;
5. The cost of the capital improvements to which the development fees were applied; and
6. The dates when development fee funds were expended to fund, or applied to reimburse, the cost of capital improvements to public infrastructure systems.

K. Any ordinance, resolution, or regulation adopted in compliance with this section which is thereafter challenged in any future court action shall be reviewed through rational-basis scrutiny, such that it shall be upheld if it substantially complies with this section and if the municipality documented reasonably conceivable facts that provided a rational basis for the adoption.

L. No municipality is required to adopt development fees and it is within the discretion of the municipality as to whether development fees should be considered for adoption. Any municipal development fee ordinance, resolution, or regulation may provide for appeal to the governing body for exemption of all or part of particular development projects from development fees if:

1. The projects are determined to create desirable economic development, quality jobs, a type of desirable land use that is in short supply within the municipality, or affordable housing; or

2. The exempt development project's proportionate share of the system expansion improvements is funded through a revenue source other than development fees.

M. Any payment of a development fee by a payor shall not be deemed to have waived the standing or rights of the payor to later challenge or protest the payment as being invalid and not required.

N. A municipality may not recover the public infrastructure system costs as a development fee by way of connection fees, hook-up fees or other fees in any manner that results in charges beyond the public infrastructure system cost that the development fee already collected. Any connection fees, hook-up fees or any other fees charged by a municipality as related to the cost of capital improvements necessary to increase or expand the functional service capacity of public infrastructure systems shall be determined relative to the functional service capacity actually being provided or made available to the fee payor, and any amounts in excess thereof shall be considered development fees and may only be applied if put forth in accordance with this section. Nothing herein shall prevent a municipality to separately impose and collect connection fees, hook-up fees or any other fees that are reasonably related in character and amount charged to the costs of regulation of the activities for which the fees were enacted or enforcement of municipal health or safety codes.

O. This section shall not prohibit municipalities from self-funding capital improvements by use of pay-back agreements utilizing recoupment districts or lease-purchase agreements in order to finance improvements to public infrastructure systems, by borrowing or on a cash basis, so long as such procedures are utilized in a manner that is consistent with the requirements of this section to the extent such procedures pertain to development fees. Nothing in this section shall limit, regulate, or prohibit a municipality from investing public resources in public infrastructure systems in anticipation of development, recovering those public resources through proportional reimbursement payments equal to the total cost of the public investment in those public infrastructure systems, and subsequently expending the proceeds from those reimbursement payments for any purpose determined by the jurisdiction.

SECTION 2. This act shall become effective November 1, 2011.

Passed the Senate the 3rd day of May, 2011.

Presiding Officer of the Senate

Passed the House of Representatives the 21st day of April, 2011.

Presiding Officer of the House
of Representatives