

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 SUBCOMMITTEE RECOMMENDATION
4 FOR ENGROSSED

5 SENATE BILL NO. 805

By: Aldridge of the Senate

and

Liebmann of the House

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8 SUBCOMMITTEE RECOMMENDATION

9 [cities and towns - development fees - recoverable
10 costs - fee amounts - public infrastructure systems
11 - service areas - judicial review - appeals process
12 - codification -
13 effective date]

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

18 SECTION 1. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 22-160 of Title 11, unless there
20 is created a duplication in numbering, reads as follows:

21 A. Municipalities and counties may adopt ordinances,
22 resolutions, or regulations for the implementation and collection of
23 development fees to fund or recover only the cost of capital
24 improvements necessary to increase or expand the functional service

1 capacity of public infrastructure systems as defined in this act. A
2 "development fee" means any payment of money, imposed, in whole or
3 in part, as a condition of approval upon any building permit, plat
4 approval, or zoning change, to the extent such fee is to pay for
5 public infrastructure system costs that are attributable to new
6 development or to expanded or modified existing development. This
7 act is intended to set forth the requirements by which all such
8 development fees are established and collected to fund public
9 infrastructure system improvements. All such fees and collections
10 by any municipality or county must be adopted and governed pursuant
11 to the provisions of this act.

12 1. Municipalities and counties may only adopt and create
13 development fees to fund or recover capital improvement costs for
14 increases or expansion of public infrastructure systems caused by
15 and attributable to new development or to expanded or modified
16 existing development(s).

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

21 3. An expanded or modified development is one in which the
22 expansion or modification results in an increased demand or
23 increased impact upon the public infrastructure system as compared
24 to the demand or impact prior to the expansion or modifications.

1 4. A municipal or county development fee ordinance, resolution,
2 or regulation must include a schedule of development fees specifying
3 the development fee for various land uses per unit of development as
4 applied on a delineated service area by service area basis.

5 5. Development fees shall not exceed a clear, ascertainable,
6 and reasonably determined proportionate share of the cost of capital
7 improvement to the public infrastructure system attributable to the
8 expansion or increase in functional service capacity generated, or
9 to be generated by, the development being charged such fee. There
10 must be a clearly established functional nexus between the purpose
11 and amount of the development fee being charged and the development
12 against which such fee is charged.

13 6. A municipal or county development fee ordinance, resolution,
14 or regulation may only be adopted:

- 15 a. after it is presented in a public meeting to the
16 municipal or county planning commission, in such cases
17 as one exists, and
- 18 b. after it is presented at two subsequent advance
19 noticed public meetings to be held by the municipal or
20 county governing body in regard to the proposed
21 ordinance, resolution or regulation. The second
22 meeting in front of the governing body shall be held
23 at least two (2) weeks after introduction at the first
24 meeting, and shall provide for public comment in a

1 public hearing. All duly enacted ordinances,
2 resolutions, or regulations existing at the time of
3 the effective date of this act shall remain in full
4 force and effect, provided no existing impact or
5 development fees shall be reinstated, extended,
6 amended, modified, or renewed except in accordance
7 with this act.

8 7. Capital improvements funded through development fees must
9 qualify as public infrastructure system improvements that have a
10 projected useful life of at least ten (10) years or more, and that
11 result in an increase or expansion to the functional service
12 capacity of that public infrastructure system.

13 8. Development fees cannot be used to fund repairs,
14 maintenance, restorations, refurbishments, or fixes to existing
15 public infrastructure systems in any such way that does not result
16 in an increase or expansion in such system's functional service
17 capacity which is available to serve new, or expanded existing,
18 growth and development in the applicable service area.

19 9. Development fees may only be used to fund or recover the
20 cost of capital improvements to public infrastructure systems that
21 create increased or expanded functional service capacity which is
22 available to serve new, or expanded existing, growth and development
23 in the applicable service area.

1 B. Should a municipality or county adopt development fees, such
2 development fees shall be based on actual system improvement costs,
3 or reliable, ascertainable, and reasonable estimates of such costs,
4 and the development fees must have a reasonable functional nexus to
5 the development being charged. Such estimates of costs should be
6 based upon factual and historically realized costs for similar
7 system capital improvements. Development fees shall be reasonably
8 calculated to recover or fund only the costs of public
9 infrastructure system capital improvements, including the cost of
10 real property interests acquisitions, rights-of-way, capital
11 improvements, design, construction, inspection, and capital
12 improvement construction administration, related to one or more of
13 the following public infrastructure systems:

14 1. Water systems including supply, production, treatment, and
15 distribution facilities;

16 2. Wastewater systems including collection, treatment, and
17 disposal facilities;

18 3. Street systems including roads, streets, boulevards,
19 bridges, sidewalks, bicycle routes, and drainage, and also including
20 traffic signals and systems, traffic control devices and signage,
21 traffic calming devices, landscaping associated with street right-
22 of-way, and any local components of county, state or federal
23 highways to the extent such local components are not funded by state
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1 or federal grants or other state or federal permanent funding
2 sources;

3 4. Storm water systems including collection, retention,
4 detention, treatment, channelization, disposal, discharge, flood
5 control, and bank and shoreline protection facilities;

6 5. Parks systems including parks, open space, trails, bicycle
7 paths, and natural recreation areas and related facilities;

8 6. Public safety systems including police, fire, emergency
9 medical, and rescue facilities;

10 7. Solid waste systems including facilities; and

11 8. Public transportation systems including facilities.

12 C. Municipalities and counties must establish one or more
13 service areas for the collection of development fees. "Service
14 area" means a geographic area defined by a municipality or county in
15 which a defined public infrastructure system provides service to
16 developments within that service area. Service areas shall be
17 carefully drawn so as to only include property locations that are
18 clearly served by the cost of capital improvements that increase or
19 expand the functional service capacity of the public infrastructure
20 system that will be funded through the development fee that is
21 associated with that service area. The determinations regarding the
22 establishment of one or more service areas will be a matter of
23 legislative determination and discretion. Different public
24 infrastructure systems may have different and separately defined

1 service areas unique to each system's coverage. The development
2 fees within a particular service area may be different as applied to
3 different types of land uses.

4 D. The development fees collected within a service area, and
5 any interest on such funds, must be spent only for capital
6 improvements that expand or increase the functional service capacity
7 of that particular public infrastructure system, and only within
8 that service area encompassing the development from which the funds
9 were collected. In the event the service area is changed or redrawn
10 or should a development span more than one service area, then the
11 development fees collected prior to such change must be spent
12 proportionately within the new service area or areas that encompass
13 the development at the time of expenditure from which the fee was
14 collected originally. Any change or expansion in a service area
15 must be done through the full hearings process as set forth in
16 paragraph 6 of subsection A of this section.

17 E. Subsequent to collection of development fees within any
18 service area, the governing body of the municipality or the county
19 at an open public meeting of the governing body shall make a
20 legislative determination on the sequence of expenditure of
21 development fee funds in each service area to reimburse or pay the
22 costs of capital improvements to expand or increase the functional
23 service capacity of a public infrastructure system. However, such
24 legislative determination shall not have the effect in any way of

1 changing the purpose or intent of the development fees as they were
2 collected at the time of collection. Every enactment of a
3 development fee shall specify distinctly the purpose for which the
4 development fee is being collected, and no development fee collected
5 for one purpose shall be devoted to another purpose.

6 F. Prior to collection of any development fees, each
7 municipality or county shall establish a process whereby development
8 fees shall be collected and maintained as segregated and restricted
9 funds in interest-bearing accounts, and expended within a reasonable
10 and prompt time after the associated system expansion improvement is
11 fully funded. Each municipality or county shall present an annual
12 report to its governing body on:

13 1. The collection, investment, and expenditure of development
14 fee funds as separately reported upon for each service area, and
15 each public infrastructure system in each service area;

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

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

19 In the event that the municipality or county determines that the
20 development fees as collected within a service area are no longer
21 needed or desired for the purpose for which they were collected, the
22 municipality or county may either refund the collected fees to the
23 current owners of the property within the development for which the
24 fees were paid, or proceed through the hearings process as put forth

1 in paragraph 6 of subsection A of this section in order to adopt a
2 new purpose for such fees.

3 G. Municipalities and counties may establish a process for the
4 collection of development fees to occur at a point in time no
5 earlier than the issuance of a building permit.

6 H. Municipalities and counties may enter into written
7 agreements with developers to construct capital improvements to
8 expand or increase the functional service capacity of a public
9 infrastructure system to serve a service area and provide a credit
10 against or an adjustment to payment of all or part of the
11 development fee for that system and that development. The credit or
12 adjustment may not exceed the cost of the capital improvement. The
13 credit or adjustment may not exceed the amount of the development
14 fee that would have been collected from that developer for that
15 development and that system. No credit or adjustment will be
16 carried over or transferred to a different development, a subsequent
17 development, a subsequent change to that development, or against a
18 development fee for a different system.

19 I. Development fees applicable to expanded or modified existing
20 developments shall be based on the increase in the impact of the
21 proposed expanded or modified existing development in terms of
22 whether it increases or will increase service demands upon public
23 infrastructure systems, as compared to the impact of the legal and
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1 authorized portions of the existing development as determined at the
2 time of the proposed modification to the existing development.

3 J. Nothing in this act will preclude a municipality or a county
4 from requiring the developer to donate or dedicate real property or
5 capital improvements or to install, construct, operate, maintain, or
6 repair capital improvements. Nothing in this act will require a
7 credit against or an adjustment to a development fee for
8 contribution of, or to the cost of, any real property or capital
9 improvement provided by a developer if the direct cost of such
10 specific contribution is not specifically and directly included in
11 the calculation of the applicable development fees.

12 K. No credit or adjustment shall be carried over from one
13 development to a development at a different location. No credit or
14 adjustment will be carried over from one development to a subsequent
15 development at the same location, unless the development fee
16 collected previously is for the same purpose and thus the subsequent
17 collection would be a repeat charge for the same purpose.

18 L. Development fees shall be deemed as dedicated revenues and
19 therefore shall require separate accounting for development proceeds
20 as restricted funds. Interest earned on development fees shall be
21 considered funds of the account on which it is earned and shall be
22 subject to all restrictions placed on the use of development fees
23 under the provisions of this act. The accounting records and
24 details thereof shall be maintained as public records of the

1 municipality or county and readily accessible to the public through
2 open records requests, and shall include at least the following
3 information, as relates both to each service area and each public
4 infrastructure system within each service area:

5 1. The receipt of development fees;

6 2. The service area from which the development fee was
7 collected;

8 3. The accumulation of interest on the development fee funds;

9 4. The type of public infrastructure system for which the funds
10 were collected;

11 5. The cost of the capital improvements to which the
12 development fees were applied; and

13 6. The dates when development fee funds were expended to fund,
14 or applied to reimburse, the cost of capital improvements to public
15 infrastructure systems.

16 M. Any ordinance, resolution, or regulation adopted in
17 compliance with this act, which is thereafter challenged in any
18 future court action, shall be reviewed through rational basis
19 scrutiny, such that it shall be upheld if it fully complies with
20 this act and if the municipality or county documented reasonably
21 conceivable facts that provided a rational basis for such adoption.

22 N. No municipality or county is ever required to adopt
23 development fees and it is in the discretion of the municipality or
24 county as to whether such fees should be considered for adoption.

1 Any municipal or county development fee ordinance, resolution or
2 regulation may provide for appeal to the governing body for
3 exemption of all or part of particular development projects from
4 development fees if:

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

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

12 0. Development fees must be intended to address only the
13 reasonably estimated impact of new development or expanded or
14 modified existing development on the public infrastructure system of
15 the government. Therefore, a municipality or county may only charge
16 a development fee that is no more than the proportionate cost of the
17 capital improvements that are associated with the impact of new
18 development or expanded or modified existing development. In
19 determining the development fee, the municipality or county must
20 make a documented effort to quantify the projected impact from
21 development and determine that the proposed development fee is
22 roughly proportional to the nature and extent of the impact of
23 development.

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

4 Q. A municipality or county may not recover the public
5 infrastructure system costs as a development fee by way of developer
6 impact fees, developer connection fees, developer hook-up fees, or
7 other developer fees in any manner that results in charges beyond
8 the public infrastructure system cost that the development fee
9 already collected. Furthermore, any impact fees, hook-up fees,
10 connection fees, or any other fees charged by a municipality or
11 county as related to the cost of capital improvements necessary to
12 increase or expand the functional service capacity of a public
13 infrastructure system, shall be determined relative to the
14 functional service capacity actually being provided or made
15 available to the fee payor, and any amounts in excess thereof shall
16 be considered development fees and thus may only be applied if put
17 forth in accordance with this act.

18 SECTION 2. This act shall become effective November 1, 2010.

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