

1 ENGROSSED SENATE
2 BILL NO. 805

By: Aldridge of the Senate
and
Liebmann of the House

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7 [Oklahoma New Development Impact Fee Act - Committee -
8 codification -
9 effective date]
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11 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

15 A. This act shall be known and may be cited as the "Oklahoma
16 New Development Impact Fee Act".

17 B. The Oklahoma Legislature finds that an equitable, fair, and
18 reasonable program for planning and financing public facilities
19 needed to serve new growth and development is necessary in order to
20 promote and accommodate orderly growth and development and to
21 protect the public health, safety, and general welfare of the
22 citizens of the State of Oklahoma. It is the intent of this act to:

23 1. Ensure that adequate public facilities are available to
24 serve new growth and development;

1 2. Promote orderly growth and development by establishing
2 uniform standards by which municipalities and counties may choose to
3 require that new growth and development pay a reasonable and
4 ascertainable proportionate share of the cost of new public
5 facilities needed to serve specified new growth and development;

6 3. Establish minimum standards for the adoption of new
7 development impact fee ordinances and regulations by municipalities
8 and counties; and

9 4. Ensure that new growth and development is not discouraged
10 and is required to pay no more than its proportionate share of the
11 cost of public facilities needed to serve specifically identified
12 new growth and development and to prevent duplicate and ad hoc
13 development exactions that are not reasonably associated with the
14 ascertainable impact of new development.

15 SECTION 2. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 22-161 of Title 11, unless there
17 is created a duplication in numbering, reads as follows:

18 As used in the Oklahoma New Development Impact Fee Act:

19 1. "Capital improvement" means a public improvement with a
20 useful life of ten (10) years or more, by new construction or other
21 action, which increases the functional service capacity of a public
22 facility;

23 2. "Capital improvements element" means a component of a
24 comprehensive plan that must be adopted pursuant to Section 43-103

1 of Title 11 of the Oklahoma Statutes, and that sets out specific
2 projected needs for system improvements during a defined planning
3 horizon established in the comprehensive plan, a comprehensive
4 schedule of public capital improvements that will meet the
5 anticipated need for system improvements, and a detailed description
6 of anticipated funding sources for each required improvement;

7 3. "Comprehensive plan" has the same meaning as provided for in
8 Section 43-103 of Title 11 of the Oklahoma Statutes;

9 4. "Developer" means any person or legal entity undertaking
10 development of land, or filing for final platting and/or subdivision
11 of lands, or any person or legal entity filing for a building
12 construction permit;

13 5. "Development" means any new construction or expansion of a
14 building or structure, or any final platting of land, any of which
15 clearly and ascertainably creates additional demand and need for
16 public facilities not already funded or under construction by the
17 municipality or county;

18 6. "Development approval" means any written authorization from
19 a municipality or county that authorizes the commencement of
20 development;

21 7. "Development exaction" means a requirement attached to a
22 development approval or other municipal or county action approving
23 or authorizing a particular development, including but not limited
24 to, a final plat and/or building permit, which requirement compels

1 the payment, dedication, or contribution of goods, services, land,
2 or money as a condition of approval;

3 8. "Development impact fee" means a payment of money imposed
4 upon development as a condition of development approval to pay for a
5 proportionate share of the cost of public facilities system
6 improvements needed to serve new growth and development;

7 9. "Encumber" means to legally obligate by contract or
8 otherwise to use, by appropriation or other official act of a
9 municipality or county, collected development impact fees towards
10 public facilities system improvements;

11 10. "Fee payor" means that person who pays a development impact
12 fee, or his or her successor in interest where the right or
13 entitlement to any refund of previously paid development impact fees
14 which is required by this act has been expressly transferred or
15 assigned to the successor in interest. In the absence of an express
16 transfer or assignment of the right or entitlement to any refund of
17 previously paid development impact fees, the right or entitlement
18 shall be deemed "not to run with the land";

19 11. "Governmental entity" means any water authority, water and
20 sewer authority, or water or wastewater authority created by or
21 pursuant to any act of the Oklahoma Legislature;

22 12. "Level of service" means a quantifiable measure of the
23 relationship between service capacity of any public road, street,
24 highway, traffic signal, or bridge and service demand for public

1 facilities in terms of demand to capacity ratios, the comfort and
2 convenience of use or service of public facilities, or both;

3 13. "Present value" means the current value of past, present,
4 or future payments, contributions or dedications of goods, services,
5 materials, construction, or money;

6 14. "Project" means a particular development on an identified
7 parcel of land;

8 15. "Project improvements" means site improvements and
9 facilities that are planned and designed as part of a particular
10 development project and that are necessary for the use and
11 convenience of the occupants or users of the project and are not
12 public facilities system improvements. The character of all such
13 improvements shall control a determination of whether an improvement
14 is a project improvement or public facilities system improvement and
15 the physical location of the improvement on site or off site shall
16 not be considered determinative of whether an improvement is a
17 project improvement or a public facilities system improvement. If
18 an improvement or facility provides or will provide more than
19 incidental service or facilities capacity to persons other than just
20 the users or occupants of the particular project, then the
21 improvement or facility shall be deemed a public facilities system
22 improvement and shall not be considered a project improvement. No
23 improvement or facility included in a plan for public facilities

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1 approved by the governing body of the municipality or county shall
2 be considered a project improvement;

3 16. "Proportionate share" means that portion of the cost of
4 public facilities system improvements that are clearly,
5 ascertainably, and reasonably related to the functional service
6 demands and needs of the project within the defined service area;

7 17. "Public facilities" means the only public facilities system
8 improvements that a municipality or county may adopt development
9 impact fees in relation to, and includes only:

- 10 a. water supply production, treatment, and distribution
11 facilities,
- 12 b. waste-water collection, treatment, and disposal
13 facilities,
- 14 c. roads, streets, and bridges, including rights of way,
15 traffic signals, landscaping, and any local components
16 of state or federal highways,
- 17 d. storm-water collection, retention, detention,
18 treatment, and disposal facilities, and flood control
19 facilities,
- 20 e. parks, open space, and natural recreation areas, and
- 21 f. public safety facilities, including police, fire,
22 emergency medical, and rescue facilities;

23 18. "Service area" means a geographic area defined by a
24 municipality and/or county in which a defined set of public

1 facilities provide service to developments within the area. Service
2 areas shall be designated based on sound planning and established
3 engineering principles, and shall be carefully defined so as to only
4 include locations of developments that are clearly served by public
5 facilities associated with the service area;

6 19. "System improvement costs" means costs incurred to provide
7 additional public facilities capacity needed to serve new growth and
8 development for planning, design and construction, land acquisition,
9 land improvement, design and engineering related thereto, including
10 the cost of constructing or reconstructing system improvements or
11 facility expansions, including but not limited to, the construction
12 contract price, surveying and engineering fees, and related land
13 acquisition costs. Projected interest charges and other finance
14 costs may be included if the impact fees are to be used for the
15 payment of principal and interest on bonds, notes, or other
16 financial obligations issued by or on behalf of the municipality or
17 county to finance the public capital improvements element but such
18 costs do not include routine and periodic maintenance expenditures,
19 personnel training, and other operating costs; and

20 20. "System improvements" means public capital improvements
21 that are public facilities and are designed to provide service to
22 the community at large, in contrast to "project improvements".
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1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 22-162 of Title 11, unless there
3 is created a duplication in numbering, reads as follows:

4 A. Municipalities and counties which have adopted a
5 comprehensive plan, pursuant to Section 43-103 of Title 11 of the
6 Oklahoma Statutes, and updated each such plan at least within a time
7 frame of once every five (5) years, containing specific planned
8 public capital improvements elements are hereby authorized the
9 power, if they so choose, to impose by ordinance and regulation
10 development impact fees as a condition of developmental approval on
11 all development pursuant to and in accordance with the provisions of
12 the Oklahoma New Development Impact Fee Act. Development exactions
13 for public facilities shall be imposed by municipalities and
14 counties only by way of development impact fees imposed pursuant to
15 the provisions of the act. No development impact fees or exactions
16 may be imposed upon any project for other than the public facilities
17 as defined herein.

18 B. Notwithstanding any other provision of this act, that
19 portion of a project for which a valid building permit has been
20 issued prior to the effective date of a municipal or county
21 development impact fee ordinance or regulation shall not be subject
22 to development impact fees so long as the building permit remains
23 valid and construction is commenced and is pursued according to the
24 terms of the permit.

1 SECTION 4. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 22-163 of Title 11, unless there
3 is created a duplication in numbering, reads as follows:

4 A. A development impact fee shall not exceed a clearly
5 determined and ascertainable proportionate share of the cost of
6 public facilities system improvements as related to the development
7 being charged such a fee.

8 B. Development impact fees shall be proportionately calculated
9 and imposed on the basis of service areas.

10 C. A municipal or county development impact fee ordinance or
11 regulation shall provide that development impact fees shall be
12 collected not earlier in the development process than the issuance
13 of a building permit authorizing construction of a building or
14 structure; provided, however, that development impact fees for
15 public facilities of storm-water collection, retention, detention,
16 treatment, and disposal facilities, and flood control facilities,
17 may be collected at the time of a development approval that
18 authorizes site construction or improvement which requires such
19 public facilities.

20 D. A municipal or county development impact fee ordinance or
21 regulation shall include a schedule of impact fees specifying the
22 development impact fee for various land uses per unit of development
23 on a service area by service area basis.

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1 E. A municipal or county development impact fee ordinance or
2 regulation may only be adopted after such ordinance or regulaton is
3 presented for consideration to the municipal or county planning
4 commission, in such cases as one exists, and then after two duly
5 advance noticed public hearings to be held by the municipal or
6 county governing body in regard to the proposed ordinance or
7 regulation. The second hearing shall be held at least two (2) weeks
8 after the first hearing, and shall provide for public comment.

9 F. A municipal or county development impact fee ordinance or
10 regulaton shall provide for a process whereby a developer may
11 receive a certification of the development impact fee schedule or
12 individual assessment for a particular project, which shall
13 establish the development impact fee for a period of at least one
14 (1) year from the date of certification.

15 G. A municipal or county development impact fee ordinance or
16 regulation may only provide for the imposition of a development
17 impact fee for system improvement costs to be incurred in the future
18 by a municipality or county proportionately to the extent that new
19 growth and development will be clearly, directly, and adequately
20 served by the future constructed system improvements.

21 H. No municipality or county is required to instigate
22 development impact fees, and a municipal or county development
23 impact fee ordinance or regulation may provide for administrative
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1 exemption of all or part of particular development projects from
2 development impact fees if:

3 1. Such projects are determined to create desirable economic
4 development, employment growth, a type of use that is in short
5 supply within the municipality or county, or affordable housing;

6 2. The public policy which supports the exemption is contained
7 in the municipality's or county's comprehensive plan; and

8 3. The exempt development project's proportionate share of the
9 system improvement is funded through a revenue source other than
10 development impact fees.

11 I. A municipal or county development impact fee ordinance or
12 regulation shall provide that development impact fees shall only be
13 spent for the category of system improvements for which the fees
14 were collected and only within the service area in which the project
15 for which the fees were paid is located.

16 J. A municipal or county development impact fee ordinance or
17 regulation shall provide that, in the event a building permit is
18 abandoned, credit shall be given for the present value of the
19 development impact fee against future development impact fees for
20 the same parcel of land.

21 K. A municipal or county development impact fee ordinance or
22 regulation shall provide for appeals from administrative
23 determinations regarding development impact fees in accordance with
24 the requirements of Section 9 of this act.

1 L. Development impact fees shall be based on actual system
2 improvement costs, or reliable, ascertainable, and reasonable
3 estimates of such costs.

4 M. Development impact fees shall be calculated on a basis which
5 is net of credits for the present value of revenues that will be
6 generated by new growth and development based on historical funding
7 patterns and that are anticipated to be available to pay for system
8 improvements, including taxes, assessments, user fees, and
9 intergovernmental transfers.

10 SECTION 5. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 22-164 of Title 11, unless there
12 is created a duplication in numbering, reads as follows:

13 A. Prior to the adoption of a development impact fee ordinance
14 or regulation, a municipality or county adopting any new development
15 impact fee program shall establish a Development Impact Fee Advisory
16 Committee, and prior to the first hearing on any proposed
17 development impact fee, the Development Impact Fee Advisory
18 Committee shall have reviewed, considered, and voted to recommend
19 approval or rejection of the proposed ordinance or regulation in one
20 public meeting, which shall be open to public comment.

21 B. Such committee shall be composed of not less than five (5)
22 nor more than ten (10) persons who are residents of the applicable
23 municipality or county, and appointed by the governing authority of
24 the municipality or county, and at least fifty percent (50%) of the

1 membership shall be representatives from the development, building,
2 or real estate industries.

3 C. The Development Impact Fee Advisory Committee shall serve in
4 an advisory capacity to assist and advise the governing body of the
5 municipality or county with regard to the adoption of a development
6 impact fee ordinance or regulation.

7 SECTION 6. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 22-165 of Title 11, unless there
9 is created a duplication in numbering, reads as follows:

10 A. In the calculation of development impact fees for a
11 particular project, credit shall be given for the present value of
12 any construction of improvements or contribution or dedication of
13 land or money required or accepted by a municipality or county from
14 a developer or his or her predecessor in title or interest for
15 system improvements of the category for which the development impact
16 fee is being collected.

17 B. In the event that a developer enters into an agreement with
18 a county or municipality to construct, fund, or contribute system
19 improvements such that the amount of the credit created by such
20 construction, funding, or contribution is in excess of the
21 development impact fees which would otherwise have been paid for the
22 development project, the developer shall be reimbursed for such
23 excess construction, funding, or contribution from development
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1 impact fees paid by other development located in the service area
2 which is benefited by such improvements.

3 SECTION 7. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 22-166 of Title 11, unless there
5 is created a duplication in numbering, reads as follows:

6 A. An ordinance or regulation imposing development impact fees
7 shall provide that all development impact fee funds shall be
8 maintained in one or more specifically identified and segregated
9 interest-bearing accounts. Detailed accounting records shall be
10 maintained for each category of public facilities system
11 improvements and the service area in which the fees are collected.
12 Interest earned on development impact fees shall be considered funds
13 of the account on which it is earned and shall be subject to all
14 restrictions placed on the use of development impact fees under the
15 provisions of the Oklahoma New Development Impact Fee Act. The
16 accounting records and details thereof shall be readily accessible
17 to the public through open records requests, and shall include at
18 least the following information:

19 1. The accounting records to be maintained shall specify the
20 address of each property which paid development impact fees, the
21 amount of fees paid in each category in which fees were collected,
22 and the date that such fees were paid;

23 2. As to any exemptions granted, the accounting records to be
24 maintained shall specify the address of each property for which

1 exemptions were granted, the reason for which such exemption was
2 granted, and the revenue source from which the exempt development's
3 proportionate share of the system improvements is to be paid; and

4 3. A detailed ledger of all system improvements expenses paid
5 out of the account, and where such system improvements were
6 installed, what systems improvements were installed, and other
7 details necessary to determine the circumstances of such
8 expenditure.

9 B. Expenditures of development impact fees shall be made only
10 for the category of system improvements and in the service area for
11 which the development impact fee was imposed as shown by the public
12 capital improvements element and as authorized by the Oklahoma New
13 Development Impact Fee Act. Development impact fees shall not be
14 used to pay for any purpose that does not involve public facilities
15 system improvements that create additional service available to
16 serve new growth and development in the applicable service area.

17 C. Development impact fees collected for roads, streets,
18 bridges, including rights of way, traffic signals, landscaping, or
19 any local components of state or federal highways shall be expended
20 to fund, in whole or in part, only public facilities system
21 improvement projects:

22 1. That have been identified in the public capital improvements
23 element of the municipality's comprehensive development plan; and
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1 2. That are chosen by a municipality after consideration of the
2 following factors:

3 a. the proximity of the proposed system improvements to
4 developments within the service area which have
5 generated the development impact fees collected for
6 roads, streets, bridges, including rights of way,
7 traffic signals, landscaping, or any local components
8 of state or federal highways, and

9 b. the proposed system improvements which will have the
10 greatest effect on level of service for roads,
11 streets, bridges, including rights of way, traffic
12 signals, landscaping, or any local components of state
13 or federal highways impacted by the developments which
14 have paid such impact fees.

15 D. As part of its annual audit process, a municipality or
16 county shall prepare an annual report describing the amount of any
17 development impact fees collected, encumbered, and used during the
18 preceding year by category of public facility and service area. The
19 portion of the annual report relating to development impact fees
20 collected for roads, streets, bridges, including rights of way,
21 traffic signals, landscaping, or any local components of state or
22 federal highways shall be referred to such municipality's most
23 recently constituted Development Impact Fee Advisory Committee which
24 shall report to the governing body of such municipality any

1 perceived inequities in the expenditure of impact fees collected for
2 roads, streets, bridges, including rights of way, traffic signals,
3 landscaping, or any local components of state or federal highways.

4 SECTION 8. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 22-167 of Title 11, unless there
6 is created a duplication in numbering, reads as follows:

7 A. Any municipality or county that adopts a development impact
8 fee ordinance or regulation shall provide for refunds in accordance
9 with the following provisions:

10 1. Upon the request of an owner of property on which a
11 development impact fee has been paid, a municipality or county shall
12 refund the development impact fee if capacity is available and
13 service is denied, or if the municipality or county, after
14 collecting the fee when service is not available, has failed to
15 encumber the development impact fee or commence construction within
16 five (5) years after the date that the fee was collected. In
17 determining whether any particular development impact fee has been
18 encumbered, development impact fees shall be considered encumbered
19 on a first-in, first-out basis;

20 2. When the right to a refund exists due to a failure to
21 encumber development impact fees, the municipality or county shall
22 provide written notice of entitlement to a refund to all such
23 feepayers in the applicable service area by way of two successive
24 publications of such notice over two (2) consecutive weeks in the

1 Sunday local newspaper of largest circulation, beginning within
2 thirty (30) days after the expiration of the five-year period after
3 the date that the development impact fees were first collected
4 within such service area, and such notice shall contain the heading
5 "Notice of Entitlement to Development Impact Fee Refund";

6 3. An application for a refund shall be made within:

7 a. one (1) year of publication of the notice of
8 entitlement to a refund under this section, or

9 b. three (3) years after any particular development
10 impact fee is due a refund, whichever comes later in
11 time;

12 4. A refund shall include a refund of a pro rata share of
13 interest actually earned on the unused or excess development impact
14 fee collected;

15 5. All refunds shall be made to the feepayor within sixty (60)
16 days after it is determined by a municipality or county that a
17 sufficient proof of claim for a refund has been made; and

18 6. The feepayor shall have standing to sue in district county
19 court for a refund under the provisions of the Oklahoma New
20 Development Impact Fee Act if there has been a timely application
21 for a refund and the refund has been denied or has not been made
22 within ninety (90) days of submission of the application for refund
23 to the collecting municipality or county. The prevailing party in
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1 any such action shall be awarded reasonable attorney fees and costs
2 of said action.

3 SECTION 9. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 22-168 of Title 11, unless there
5 is created a duplication in numbering, reads as follows:

6 A. A municipality or county that adopts a development impact
7 fee ordinance or regulation shall provide for administrative appeals
8 to the governing body or such other body as designated in the
9 ordinance or regulation of a determination of the development impact
10 fees for a particular project.

11 B. A developer may pay a development impact fee under protest
12 in order to obtain a development approval and/or building permit. A
13 developer making such payment shall not be estopped from exercising
14 the right of appeal provided by the Oklahoma New Development Impact
15 Fee Act, nor shall such developer be estopped from receiving a
16 refund of any amount deemed to have been illegally collected.

17 C. A municipality or county development impact fee ordinance or
18 regulation may also provide for the resolution of disputes over the
19 development impact fee by binding arbitration through the American
20 Arbitration Association or otherwise.

21 SECTION 10. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 22-169 of Title 11, unless there
23 is created a duplication in numbering, reads as follows:

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1 The Oklahoma New Development Impact Fee Act shall not repeal any
2 existing laws authorizing a municipality or county to impose fees or
3 require contributions or property dedications for public capital
4 improvements; provided, however, that all local ordinances or
5 resolutions imposing development exactions for system improvements
6 of any kind shall be brought into conformance with this act no later
7 than one (1) year from the effective date of this act.

8 SECTION 11. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 22-170 of Title 11, unless there
10 is created a duplication in numbering, reads as follows:

11 A. Nothing in the Oklahoma New Development Impact Fee Act shall
12 prevent a municipality or county from requiring a developer to
13 construct reasonable project improvements in conjunction with a
14 development project.

15 B. Nothing in this act shall be construed to prevent or
16 prohibit private agreements between property owners or developers
17 and municipalities, counties, or other governmental entities in
18 regard to the construction or installation of system improvements
19 and providing for credits or reimbursements for system improvement
20 costs incurred by a developer including interproject transfers of
21 credits or providing for reimbursement for project improvement costs
22 which are used or shared by more than one development project.

23 C. Nothing in this act shall limit a municipality, county, or
24 other governmental entity which provides water or sewer service from

1 collecting a reasonable and proportionate share of the capital cost
2 of water or sewer facilities by way of hook-up or connection fees as
3 a condition of water or sewer service to new or existing users,
4 provided that the charged amount of any hook-up and/or connection
5 fees shall be determined relative to the service actually provided
6 to the feepayor and any amounts in excess thereof shall be
7 considered development impact fees and thus may only be applied if
8 put forth in accordance with this act. Furthermore, the development
9 impact fee ordinance or regulation of a municipality or county or
10 other governmental entity that collects development impact fees
11 pursuant to this act shall include a provision for credit for such
12 hook-up or connection fees collected by the municipality or county
13 to the extent that such hook-up or connection fee is collected to
14 pay for system improvements. Imposition of such hook-up or
15 connection fees by any governmental entity to pay for system
16 improvements either existing or new shall be consistent with the
17 public capital improvement element of the comprehensive plan and
18 shall be subject to the approval of each county, municipality, or
19 combination thereof which appoints the governing body of such
20 entity. The adoption, imposition, collection, and expenditure of
21 such fees for system improvements by any governmental entity shall
22 be subject to the same procedures applicable to the adoption,
23 imposition, collection, and expenditure of development impact fees
24 by a county.

1 SECTION 12. This act shall become effective November 1, 2009.

2 Passed the Senate the 11th day of March, 2009.

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4 _____
5 Presiding Officer of the Senate

6 Passed the House of Representatives the ____ day of _____,
7 2009.

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9 _____
10 Presiding Officer of the House
11 of Representatives