

3 Senate Bill No. 805

4 SENATE BILL NO. 805 - By: Aldridge of the Senate and Liebmann of the
5 House.

6 An Act relating to cities and towns; creating the Oklahoma
7 New Development Impact Fee Act; providing short title;
8 stating intent; defining terms; authorizing certain
9 municipalities which have adopted certain plan to impose
10 certain fees; setting standards for development impact fee;
11 establishing the Development Impact Fee Advisory Committee;
12 stating purpose of committee; setting membership; clarifying
13 certain methods of establishing credits against certain fee;
14 setting accounting procedures for collected impact fees;
15 requiring certain report; providing for administrative
16 appeals and arbitration; prohibiting effect of act;
17 providing for construction; providing for codification; and
18 providing an effective date.

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

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

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

25 B. The Oklahoma Legislature finds that an equitable, fair, and
26 reasonable program for planning and financing public facilities
27 needed to serve new growth and development is necessary in order to
28 promote and accommodate orderly growth and development and to
29 protect the public health, safety, and general welfare of the
30 citizens of the State of Oklahoma. It is the intent of this act to:

- 1 1. Ensure that adequate public facilities are available to
2 serve new growth and development;
- 3 2. Promote orderly growth and development by establishing
4 uniform standards by which municipalities and counties may choose to
5 require that new growth and development pay a reasonable and
6 ascertainable proportionate share of the cost of new public
7 facilities needed to serve specified new growth and development;
- 8 3. Establish minimum standards for the adoption of new
9 development impact fee ordinances and regulations by municipalities
10 and counties; and
- 11 4. Ensure that new growth and development is not discouraged
12 and is required to pay no more than its proportionate share of the
13 cost of public facilities needed to serve specifically identified
14 new growth and development and to prevent duplicate and ad hoc
15 development exactions that are not reasonably associated with the
16 ascertainable impact of new development.

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

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

- 21 1. "Capital improvement" means a public improvement with a
22 useful life of ten (10) years or more, by new construction or other

1 action, which increases the functional service capacity of a public
2 facility;

3 2. "Capital improvements element" means a component of a
4 comprehensive plan that must be adopted pursuant to Section 43-103
5 of Title 11 of the Oklahoma Statutes, and that sets out specific
6 projected needs for system improvements during a defined planning
7 horizon established in the comprehensive plan, a comprehensive
8 schedule of public capital improvements that will meet the
9 anticipated need for system improvements, and a detailed description
10 of anticipated funding sources for each required improvement;

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

13 4. "Developer" means any person or legal entity undertaking
14 development of land, or filing for final platting and/or subdivision
15 of lands, or any person or legal entity filing for a building
16 construction permit;

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

1 6. "Development approval" means any written authorization from
2 a municipality or county that authorizes the commencement of
3 Development;

4 7. "Development exaction" means a requirement attached to a
5 development approval or other municipal or county action approving
6 or authorizing a particular development, including but not limited
7 to, a final plat and/or building permit, which requirement compels
8 the payment, dedication, or contribution of goods, services, land,
9 or money as a condition of approval;

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

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

18 10. "Feepayer" means that person who pays a development impact
19 fee, or his or her successor in interest where the right or
20 entitlement to any refund of previously paid development impact fees
21 which is required by this act has been expressly transferred or
22 assigned to the successor in interest. In the absence of an express
23 transfer or assignment of the right or entitlement to any refund of

1 previously paid development impact fees, the right or entitlement
2 shall be deemed "not to run with the land";

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

6 12. "Level of service" means a quantifiable measure of the
7 relationship between service capacity of any public road, street,
8 highway, traffic signal, or bridge and service demand for public
9 facilities in terms of demand to capacity ratios, the comfort and
10 convenience of use or service of public facilities, or both;

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

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

16 15. "Project improvements" means site improvements and
17 facilities that are planned and designed as part of a particular
18 development project and that are necessary for the use and
19 convenience of the occupants or users of the project and are not
20 public facilities system improvements. The character of all such
21 improvements shall control a determination of whether an improvement
22 is a project improvement or public facilities system improvement and
23 the physical location of the improvement on site or off site shall

1 not be considered determinative of whether an improvement is a
2 project improvement or a public facilities system improvement. If
3 an improvement or facility provides or will provide more than
4 incidental service or facilities capacity to persons other than just
5 the users or occupants of the particular project, then the
6 improvement or facility shall be deemed a public facilities system
7 improvement and shall not be considered a project improvement. No
8 improvement or facility included in a plan for public facilities
9 approved by the governing body of the municipality or county shall
10 be considered a project improvement;

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

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

- 18 a. water supply production, treatment, and distribution
19 facilities,
20 b. waste-water collection, treatment, and disposal
21 facilities,

- 1 c. roads, streets, and bridges, including rights of way,
- 2 traffic signals, landscaping, and any local components
- 3 of state or federal highways,
- 4 d. storm-water collection, retention, detention,
- 5 treatment, and disposal facilities, and flood control
- 6 facilities,
- 7 e. parks, open space, and natural recreation areas, and
- 8 f. public safety facilities, including police, fire,
- 9 emergency medical, and rescue facilities;

10 18. "Service area" means a geographic area defined by a
11 municipality and/or county in which a defined set of public
12 facilities provide service to developments within the area. Service
13 areas shall be designated based on sound planning and established
14 engineering principles, and shall be carefully defined so as to only
15 include locations of developments that are clearly served by public
16 facilities associated with the service area;

17 19. "System improvement costs" means costs incurred to provide
18 additional public facilities capacity needed to serve new growth and
19 development for planning, design and construction, land acquisition,
20 land improvement, design and engineering related thereto, including
21 the cost of constructing or reconstructing system improvements or
22 facility expansions, including but not limited to, the construction
23 contract price, surveying and engineering fees, and related land

1 acquisition costs. Projected interest charges and other finance
2 costs may be included if the impact fees are to be used for the
3 payment of principal and interest on bonds, notes, or other
4 financial obligations issued by or on behalf of the municipality or
5 county to finance the public capital improvements element but such
6 costs do not include routine and periodic maintenance expenditures,
7 personnel training, and other operating costs; and

8 20. "System improvements" means public capital improvements
9 that are public facilities and are designed to provide service to
10 the community at large, in contrast to "project improvements".

11 SECTION 3. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 22-162 of Title 11, unless there
13 is created a duplication in numbering, reads as follows:

14 A. Municipalities and counties which have adopted a
15 comprehensive plan, pursuant to Section 43-103 of Title 11 of the
16 Oklahoma Statutes, and updated each such plan at least within a time
17 frame of once every five (5) years, containing specific planned
18 public capital improvements elements are hereby authorized the
19 power, if they so choose, to impose by ordinance and regulation
20 development impact fees as a condition of developmental approval on
21 all development pursuant to and in accordance with the provisions of
22 the Oklahoma New Development Impact Fee Act. Development exactions
23 for public facilities shall be imposed by municipalities and

1 counties only by way of development impact fees imposed pursuant to
2 the provisions of the act. No development impact fees or exactions
3 may be imposed upon any project for other than the public facilities
4 as defined herein.

5 B. Notwithstanding any other provision of this act, that
6 portion of a project for which a valid building permit has been
7 issued prior to the effective date of a municipal or county
8 development impact fee ordinance or regulation shall not be subject
9 to development impact fees so long as the building permit remains
10 valid and construction is commenced and is pursued according to the
11 terms of the permit.

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

15 A. A development impact fee shall not exceed a clearly
16 determined and ascertainable proportionate share of the cost of
17 public facilities system improvements as related to the development
18 being charged such a fee.

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

21 C. A municipal or county development impact fee ordinance or
22 regulation shall provide that development impact fees shall be
23 collected not earlier in the development process than the issuance

1 of a building permit authorizing construction of a building or
2 structure; provided, however, that development impact fees for
3 public facilities of storm-water collection, retention, detention,
4 treatment, and disposal facilities, and flood control facilities,
5 may be collected at the time of a development approval that
6 authorizes site construction or improvement which requires such
7 public facilities.

8 D. A municipal or county development impact fee ordinance or
9 regulation shall include a schedule of impact fees specifying the
10 development impact fee for various land uses per unit of development
11 on a service area by service area basis.

12 E. A municipal or county development impact fee ordinance or
13 regulation may only be adopted after such ordinance or regulation is
14 presented for consideration to the municipal or county planning
15 commission, in such cases as one exists, and then after two duly
16 advance noticed public hearings to be held by the municipal or
17 county governing body in regard to the proposed ordinance or
18 regulation. The second hearing shall be held at least two (2) weeks
19 after the first hearing, and shall provide for public comment.

20 F. A municipal or county development impact fee ordinance or
21 regulation shall provide for a process whereby a developer may
22 receive a certification of the development impact fee schedule or
23 individual assessment for a particular project, which shall

1 establish the development impact fee for a period of at least one
2 (1) year from the date of certification.

3 G. A municipal or county development impact fee ordinance or
4 regulation may only provide for the imposition of a development
5 impact fee for system improvement costs to be incurred in the future
6 by a municipality or county proportionately to the extent that new
7 growth and development will be clearly, directly, and adequately
8 served by the future constructed system improvements.

9 H. No municipality or county is required to instigate
10 development impact fees, and a municipal or county development
11 impact fee ordinance or regulation may provide for administrative
12 exemption of all or part of particular development projects from
13 development impact fees if:

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

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

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

22 I. A municipal or county development impact fee ordinance or
23 regulation shall provide that development impact fees shall only be

1 spent for the category of system improvements for which the fees
2 were collected and only within the service area in which the project
3 for which the fees were paid is located.

4 J. A municipal or county development impact fee ordinance or
5 regulation shall provide that, in the event a building permit is
6 abandoned, credit shall be given for the present value of the
7 development impact fee against future development impact fees for
8 the same parcel of land.

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

13 L. Development impact fees shall be based on actual system
14 improvement costs, or reliable, ascertainable, and reasonable
15 estimates of such costs.

16 M. Development impact fees shall be calculated on a basis which
17 is net of credits for the present value of revenues that will be
18 generated by new growth and development based on historical funding
19 patterns and that are anticipated to be available to pay for system
20 improvements, including taxes, assessments, user fees, and
21 intergovernmental transfers.

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

4 A. Prior to the adoption of a development impact fee ordinance
5 or regulation, a municipality or county adopting any new development
6 impact fee program shall establish a Development Impact Fee Advisory
7 Committee, and prior to the first hearing on any proposed
8 development impact fee, the Development Impact Fee Advisory
9 Committee shall have reviewed, considered, and voted to recommend
10 approval or rejection of the proposed ordinance or regulation in one
11 public meeting, which shall be open to public comment.

12 B. Such committee shall be composed of not less than five (5)
13 nor more than ten (10) persons who are residents of the applicable
14 municipality or county, and appointed by the governing authority of
15 the municipality or county, and at least fifty (50%) percent of the
16 membership shall be representatives from the development, building,
17 or real estate industries.

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

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

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

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

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

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

14 1. The accounting records to be maintained shall specify the
15 address of each property which paid development impact fees, the
16 amount of fees paid in each category in which fees were collected,
17 and the date that such fees were paid;

18 2. As to any exemptions granted, the accounting records to be
19 maintained shall specify the address of each property for which
20 exemptions were granted, the reason for which such exemption was
21 granted, and the revenue source from which the exempt development's
22 proportionate share of the system improvements is to be paid; and

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

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

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

19 1. That have been identified in the public capital improvements
20 element of the municipality's comprehensive development plan; and

21 2. That are chosen by a municipality after consideration of the
22 following factors:

- 1 a. the proximity of the proposed system improvements to
2 developments within the service area which have
3 generated the development impact fees collected for
4 roads, streets, bridges, including rights of way,
5 traffic signals, landscaping, or any local components
6 of state or federal highways, and
- 7 b. the proposed system improvements which will have the
8 greatest effect on level of service for roads,
9 streets, bridges, including rights of way, traffic
10 signals, landscaping, or any local components of state
11 or federal highways impacted by the developments which
12 have paid such impact fees.

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

1 roads, streets, bridges, including rights of way, traffic signals,
2 landscaping, or any local components of state or federal highways.

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

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

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

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

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:

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.

1 C. Nothing in this act shall limit a municipality, county, or
2 other governmental entity which provides water or sewer service from
3 collecting a reasonable and proportionate share of the capital cost
4 of water or sewer facilities by way of hook-up or connection fees as
5 a condition of water or sewer service to new or existing users,
6 provided that the charged amount of any hook-up and/or connection
7 fees shall be determined relative to the service actually provided
8 to the feepayor and any amounts in excess thereof shall be
9 considered development impact fees and thus may only be applied if
10 put forth in accordance with this act. Furthermore, the development
11 impact fee ordinance or regulation of a municipality or county or
12 other governmental entity that collects development impact fees
13 pursuant to this act shall include a provision for credit for such
14 hook-up or connection fees collected by the municipality or county
15 to the extent that such hook-up or connection fee is collected to
16 pay for system improvements. Imposition of such hook-up or
17 connection fees by any governmental entity to pay for system
18 improvements either existing or new shall be consistent with the
19 public capital improvement element of the comprehensive plan and
20 shall be subject to the approval of each county, municipality, or
21 combination thereof which appoints the governing body of such
22 entity. The adoption, imposition, collection, and expenditure of
23 such fees for system improvements by any governmental entity shall

1 be subject to the same procedures applicable to the adoption,
2 imposition, collection, and expenditure of development impact fees
3 by a county.

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

5 COMMITTEE REPORT BY: COMMITTEE ON GENERAL GOVERNMENT, dated 2-16-09
6 - DO PASS, As Coauthored.