STATE OF OKLAHOMA

2nd Session of the 52nd Legislature (2010)

HOUSE BILL 3194 By: Hickman

AS INTRODUCED

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

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 22-160 of Title 11, unless there is created a duplication in numbering, reads as follows:

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

B. The Oklahoma Legislature finds that an equitable, fair, and reasonable program for planning and financing public facilities

needed to serve new growth and development is necessary in order to promote and accommodate orderly growth and development and to protect the public health, safety, and general welfare of the citizens of the State of Oklahoma. It is the intent of this act to:

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

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

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

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

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

As used in the Oklahoma New Development Impact Fee Act:

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

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

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

4. “Developer” means any person or legal entity undertaking development of land, or filing for final platting and/or subdivision of lands, or any person or legal entity filing for a building construction permit;

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

6. “Development approval” means any written authorization from a municipality or county that authorizes the commencement of Development;

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

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

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

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

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

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

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

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

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

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

project improvement or a public facilities system improvement. If an improvement or facility provides or will provide more than incidental service or facilities capacity to persons other than just the users or occupants of the particular project, then the improvement or facility shall be deemed a public facilities system improvement and shall not be considered a project improvement. No improvement or facility included in a plan for public facilities approved by the governing body of the municipality or county shall be considered a project improvement;

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

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

a. water supply production, treatment, and distribution facilities,

b. waste-water collection, treatment, and disposal facilities,

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

d. storm-water collection, retention, detention, treatment, and disposal facilities, and flood control facilities,

e. parks, open space, and natural recreation areas, and

f. public safety facilities, including police, fire, emergency medical, and rescue facilities;

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

19. "System improvement costs" means costs incurred to provide additional public facilities capacity needed to serve new growth and development for planning, design and construction, land acquisition, land improvement, design and engineering related thereto, including the cost of constructing or reconstructing system improvements or facility expansions, including but not limited to, the construction contract price, surveying and engineering fees, and related land acquisition costs. Projected interest charges and other finance costs may be included if the impact fees are to be used for the payment of principal and interest on bonds, notes, or other financial obligations issued by or on behalf of the municipality or

county to finance the public capital improvements element but such costs do not include routine and periodic maintenance expenditures, personnel training, and other operating costs; and

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

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

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

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

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

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

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

C. A municipal or county development impact fee ordinance or regulation shall provide that development impact fees shall be collected not earlier in the development process than the issuance of a building permit authorizing construction of a building or structure; provided, however, that development impact fees for public facilities of storm-water collection, retention, detention, treatment, and disposal facilities, and flood control facilities, may be collected at the time of a development approval that

authorizes site construction or improvement which requires such public facilities.

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

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

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

G. A municipal or county development impact fee ordinance or regulation may only provide for the imposition of a development impact fee for system improvement costs to be incurred in the future by a municipality or county proportionately to the extent that new

growth and development will be clearly, directly, and adequately served by the future constructed system improvements.

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

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

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

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

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

J. A municipal or county development impact fee ordinance or regulation shall provide that, in the event a building permit is abandoned, credit shall be given for the present value of the

development impact fee against future development impact fees for the same parcel of land.

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

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

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

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

A. Prior to the adoption of a development impact fee ordinance or regulation, a municipality or county adopting any new development impact fee program shall establish a Development Impact Fee Advisory Committee, and prior to the first hearing on any proposed development impact fee, the Development Impact Fee Advisory Committee shall have reviewed, considered, and voted to recommend

approval or rejection of the proposed ordinance or regulation in one public meeting, which shall be open to public comment.

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

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

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

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

B. In the event that a developer enters into an agreement with a county or municipality to construct, fund, or contribute system

improvements such that the amount of the credit created by such construction, funding, or contribution is in excess of the development impact fees which would otherwise have been paid for the development project, the developer shall be reimbursed for such excess construction, funding, or contribution from development impact fees paid by other development located in the service area which is benefited by such improvements.

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

A. An ordinance or regulation imposing development impact fees shall provide that all development impact fee funds shall be maintained in one or more specifically identified and segregated interest-bearing accounts. Detailed accounting records shall be maintained for each category of public facilities system improvements and the service area in which the fees are collected. Interest earned on development impact 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 impact fees under the provisions of the Oklahoma New Development Impact Fee Act. The accounting records and details thereof shall be readily accessible to the public through open records requests, and shall include at least the following information:

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

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

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

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

C. Development impact fees collected for roads, streets, bridges, including rights of way, traffic signals, landscaping, or

any local components of state or federal highways shall be expended to fund, in whole or in part, only public facilities system improvement projects:

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

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

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

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

D. As part of its annual audit process, a municipality or county shall prepare an annual report describing the amount of any development impact fees collected, encumbered, and used during the preceding year by category of public facility and service area. The portion of the annual report relating to development impact fees

collected for roads, streets, bridges, including rights of way, traffic signals, landscaping, or any local components of state or federal highways shall be referred to such municipality's most recently constituted Development Impact Fee Advisory Committee which shall report to the governing body of such municipality any perceived inequities in the expenditure of impact fees collected for roads, streets, bridges, including rights of way, traffic signals, landscaping, or any local components of state or federal highways.

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

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

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

2. When the right to a refund exists due to a failure to encumber development impact fees, the municipality or county shall provide written notice of entitlement to a refund to all such feepayors in the applicable service area by way of two successive publications of such notice over two (2) consecutive weeks in the Sunday local newspaper of largest circulation, beginning within thirty (30) days after the expiration of the five-year period after the date that the development impact fees were first collected within such service area, and such notice shall contain the heading "Notice of Entitlement to Development Impact Fee Refund";

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

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

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

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

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

6. The feepayor shall have standing to sue in district county court for a refund under the provisions of the Oklahoma New

Development Impact Fee Act if there has been a timely application for a refund and the refund has been denied or has not been made within ninety (90) days of submission of the application for refund to the collecting municipality or county. The prevailing party in any such action shall be awarded reasonable attorney fees and costs of said action.

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

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

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

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

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

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

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

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

B. Nothing in this act shall be construed to prevent or prohibit private agreements between property owners or developers and municipalities, counties, or other governmental entities in regard to the construction or installation of system improvements and providing for credits or reimbursements for system improvement costs incurred by a developer including interproject transfers of

credits or providing for reimbursement for project improvement costs which are used or shared by more than one development project.

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

such fees for system improvements by any governmental entity shall be subject to the same procedures applicable to the adoption, imposition, collection, and expenditure of development impact fees by a county.

SECTION 12. This act shall become effective November 1, 2010.

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