

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE BILL NO. 708

By: Jolley and Sykes of the
Senate

3
4 and

5 Nelson and Hickman of the
House

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7
8 [local government capital improvements - development
9 fees - procedures for accounting - codification -
effective date]

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12 AUTHORS: Add the following House Coauthors: Pittman and Stiles

13 AMENDMENT NO. 1. Strike the stricken title, enacting clause and
14 entire bill and insert

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

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

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

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

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

15 2. "Expanded or modified development" is one in which the
16 expansion or modification results in an increased demand or
17 increased impact upon the public infrastructure system as compared
18 to the demand or impact prior to the expansion or modifications;

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

22 a. water systems, including supply, production,
23 treatment, and distribution facilities,

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- 1 b. wastewater systems, including collection, treatment,
2 and disposal facilities,
- 3 c. street systems, including roads, streets, boulevards,
4 bridges, sidewalks, bicycle routes, drainage, traffic
5 signals and systems, traffic control devices and
6 signage, traffic calming devices, landscaping
7 associated with street rights-of-way, and any local
8 components of county, state, or federal highways to
9 the extent and to the proportionate cost that the
10 local components are not funded by state or federal
11 grants or other state or federal permanent funding
12 sources,
- 13 d. storm water systems, including collection, retention,
14 detention, treatment, channelization, disposal,
15 discharge, flood control, and bank and shoreline
16 protection facilities,
- 17 e. parks systems, including parks, open spaces, trails,
18 bicycle paths, and natural recreation areas and
19 related facilities,
- 20 f. public safety systems, including police, fire,
21 emergency medical, and rescue facilities,
- 22 g. solid waste systems, including facilities,
- 23 h. public transportation systems, including facilities,
24 and

1 i. public capital improvement communications facilities;
2 and

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

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

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

23 2. Development fees cannot be adopted or used to fund repairs,
24 maintenance, restorations, refurbishments, alterations,

1 improvements, or fixes to existing public infrastructure systems in
2 any way that does not result in an increase or expansion in the
3 functional service capacity of the system which is available to
4 serve new or expanded existing growth and development in the
5 applicable service area.

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

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

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

20 1. A schedule of development fees specifying the development
21 fee for various land uses per unit of development, the purpose for
22 the development fee, and termination of the development fee when the
23 applicable public infrastructure system has been fully funded and
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1 the expanded or modified development has no additional impact on the
2 public infrastructure system; and

3 2. A component capital improvement plan that:

- 4 a. lists public infrastructure system capital projects or
5 facility expansions that are necessitated by
6 development of various land uses in designated areas,
7 b. provides reasonable notice to developers of specific
8 public infrastructure system impacts from development
9 of various land uses within the area of the
10 development, and
11 c. delineates the property locations that are clearly
12 served by the public infrastructure system that will
13 be funded through the development fee.

14 In the alternative, a municipality may establish one or more
15 service areas for the collection of development fees. As used in
16 this section, "service area" means a geographic area defined by a
17 municipality in which a defined public infrastructure system
18 provides service to developments within that service area. Service
19 areas shall be carefully drawn so as to include only property
20 locations that are clearly served by the cost of capital
21 improvements that increase or expand the functional service capacity
22 of the public infrastructure system that will be funded through the
23 development fee that is associated with the service area. The
24 determinations regarding the establishment of one or more service

1 areas will be a matter of legislative determination and discretion.
2 Different public infrastructure systems may have different and
3 separately defined service areas unique to each system's coverage.
4 The development fees within a particular service area may be
5 different as applied to different types of land uses; and

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

9 a. a public hearing before the municipal planning
10 commission. Notice of the time, date and place of the
11 hearing shall be published in a newspaper of general
12 circulation in the municipality at least fifteen (15)
13 days prior to the hearing,

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

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

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

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

16 2. If the purpose, component capital improvement plan, or
17 service area is changed or redrawn, or if a development spans more
18 than one component capital improvement plan or service area, the
19 development fees collected prior to the change shall be spent
20 proportionately pursuant to the new purpose or within the new
21 component capital improvement plan or service area or areas that
22 encompass the development at the time of expenditure from which the
23 fee was originally collected. Any change or expansion in a purpose,
24 component capital improvement plan, or service area shall be done

1 through the full hearing process as set forth in paragraph 3 of
2 subsection C of this section.

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

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

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

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

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

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

23 G. Municipalities may enter into written agreements with
24 developers to construct capital improvements to expand or increase

1 the functional service capacity of a public infrastructure system
2 within the designated development area or to serve a service area
3 and provide a credit against or an adjustment to payment of all or
4 part of the development fee for that system and that development.
5 The credit or adjustment may not exceed the cost of the capital
6 improvement or the amount of the development fee that would have
7 been collected from that developer for the development and that
8 system. No credit or adjustment will be carried over or transferred
9 to a different development, a subsequent development, a subsequent
10 change to that development, or against a development fee for a
11 different system.

12 H. Nothing in this section will:

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

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

22 I. No credit or adjustment shall be carried over from one
23 development to a development at a different location. No credit or
24 adjustment will be carried over from one development to a subsequent

1 development at the same location, unless the development fee
2 collected previously is for the same purpose, making any subsequent
3 collection a repeat charge for the same purpose.

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

- 16 1. The receipt of development fees;
- 17 2. The development capital project or service area from which
18 the development fee was collected;
- 19 3. The accumulation of interest on the development fee funds;
- 20 4. The type of public infrastructure system for which the funds
21 were collected;
- 22 5. The cost of the capital improvements to which the
23 development fees were applied; and

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

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

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

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

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

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

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

18 O. This section shall not prohibit municipalities from self-
19 funding capital improvements by use of pay-back agreements utilizing
20 recoupment districts or lease-purchase agreements in order to
21 finance improvements to public infrastructure systems, by borrowing
22 or on a cash basis, so long as such procedures are utilized in a
23 manner that is consistent with the requirements of this section to
24 the extent such procedures pertain to development fees. Nothing in

1 this section shall limit, regulate, or prohibit a municipality from
2 investing public resources in public infrastructure systems in
3 anticipation of development, recovering those public resources
4 through proportional reimbursement payments equal to the total cost
5 of the public investment in those public infrastructure systems, and
6 subsequently expending the proceeds from those reimbursement
7 payments for any purpose determined by the jurisdiction.

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

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

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Presiding Officer of the House of
Representatives

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Passed the Senate the ____ day of _____, 2011.

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Presiding Officer of the Senate

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1 ENGROSSED SENATE
2 BILL NO. 708

By: Jolley and Sykes of the
Senate

3 and

4 Nelson and Hickman of the
5 House

6
7 [local government capital improvements - development
8 fees - procedures for accounting - codification -
9 effective date]
10

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

12 SECTION 3. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 895 of Title 62, unless there is
14 created a duplication in numbering, reads as follows:

15 A. Municipalities that adopt ordinances, resolutions, or
16 regulations for the implementation and collection of development
17 fees to fund or recover only the cost of capital improvements
18 necessary to increase or expand the functional service capacity of
19 public infrastructure systems shall do so as specified in this
20 section. As used in this section, "development fee" means any
21 payment of money imposed, in whole or in part, as a condition of
22 approval of any building permit, plat approval, or zoning change, to
23 the extent the fee is to pay for public infrastructure system costs
24 that are attributable to new development or to expand or modify

1 existing development. All development fees and collection of
2 development fees by any municipality shall be adopted and governed
3 pursuant to the following requirements:

4 1. Municipalities may only adopt and create development fees to
5 fund or recover capital improvement costs for increases or expansion
6 of public infrastructure systems caused by and attributable to new
7 development or to expand or modify existing development;

8 2. New development and expanded or modified existing
9 development may only be charged the development fee for capital
10 improvement costs for increases or expansion to the capacity of
11 public infrastructure systems attributable to that development. An
12 expanded or modified development is one in which the expansion or
13 modification results in an increased demand or increased impact upon
14 the public infrastructure system as compared to the demand or impact
15 prior to the expansion or modifications;

16 3. A municipal development fee ordinance, resolution, or
17 regulation shall include a schedule of development fees specifying
18 the development fee for various land uses per unit of development as
19 applied on a delineated service area by service area basis;

20 4. Development fees shall not exceed a clear, ascertainable,
21 and reasonably determined proportionate share of the cost of capital
22 improvement to the public infrastructure system attributable to the
23 expansion or increase in functional service capacity generated, or
24 to be generated by, the development being charged the fee. There

1 shall be a clearly established functional nexus between the purpose
2 and amount of the development fee being charged and the development
3 against which the fee is charged;

4 5. A municipal development fee ordinance, resolution, or
5 regulation may only be adopted:

- 6 a. after it is presented in a public meeting to the
7 municipal planning commission, in such cases as one
8 exists, and
- 9 b. after it is presented at two subsequent advance notice
10 public meetings to be held by the municipal governing
11 body in regard to the proposed ordinance, resolution,
12 or regulation. The second meeting in front of the
13 governing body shall be held at least two weeks after
14 introduction at the first meeting and shall provide
15 for public comment in a public hearing. All duly
16 enacted ordinances, resolutions, or regulations
17 existing at the time of the effective date of this
18 section shall remain in full force and effect,
19 provided no existing impact or development fees shall
20 be reinstated, extended, amended, modified, or
21 renewed except in accordance with this act;

22 6. Capital improvements funded through development fees shall
23 qualify as public infrastructure system improvements that have a
24 projected useful life of at least ten (10) years or more, and that

1 result in an increase or expansion to the functional service
2 capacity of that public infrastructure system;

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

9 8. Development fees may only be used to fund or recover the
10 cost of capital improvements to public infrastructure systems that
11 create increased or expanded functional service capacity which is
12 available to serve new or expanded existing growth and development
13 in the applicable service area.

14 B. If a municipality adopts development fees, the development
15 fees shall be based on actual system improvement costs or reliable,
16 ascertainable and reasonable estimates of the costs, and the
17 development fees shall have a reasonable functional nexus to the
18 development being charged. Any estimates of costs shall be based
19 upon factual and historically realized costs for similar system
20 capital improvements. Development fees shall be reasonably
21 calculated to recover or fund only the costs of public
22 infrastructure system capital improvements, including the cost of
23 real property interest acquisitions, rights-of-ways, capital
24 improvements, design, construction, inspection, and capital

1 improvement construction administration, related to one or more of
2 the following public infrastructure systems:

3 1. Water systems, including supply, production, treatment, and
4 distribution facilities;

5 2. Wastewater systems, including collection, treatment, and
6 disposal facilities;

7 3. Street systems, including roads, streets, boulevards,
8 bridges, sidewalks, bicycle routes, drainage, traffic signals and
9 systems, traffic control devices and signage, traffic calming
10 devices, landscaping associated with street rights of way, and any
11 local components of county, state, or federal highways to the extent
12 the local components are not funded by state or federal grants or
13 other state or federal permanent funding sources;

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

17 5. Parks systems, including parks, open spaces, trails, bicycle
18 paths, and natural recreation areas and related facilities;

19 6. Public safety systems, including police, fire, emergency
20 medical, and rescue facilities;

21 7. Solid waste systems, including facilities; and

22 8. Public transportation systems, including facilities.

23 C. Municipalities shall establish one or more service areas for
24 the collection of development fees. As used in this section,

1 "service area" means a geographic area defined by a municipality in
2 which a defined public infrastructure system provides service to
3 developments within that service area. Service areas shall be
4 carefully drawn so as to include only property locations that are
5 clearly served by the cost of capital improvements that increase or
6 expand the functional service capacity of the public infrastructure
7 system that will be funded through the development fee that is
8 associated with the service area. The determinations regarding the
9 establishment of one or more service areas will be a matter of
10 legislative determination and discretion. Different public
11 infrastructure systems may have different and separately defined
12 service areas unique to each system's coverage. The development
13 fees within a particular service area may be different as applied to
14 different types of land uses.

15 D. The development fees collected within a service area, and
16 any interest on the funds, shall be spent only for capital
17 improvements that expand or increase the functional service capacity
18 of that particular public infrastructure system, and only within
19 that service area encompassing the development from which the funds
20 were collected. If the service area is changed or redrawn, or if a
21 development spans more than one service area, the development fees
22 collected prior to the change shall be spent proportionately within
23 the new service area or areas that encompass the development at the
24 time of expenditure from which the fee was originally collected.

1 Any change or expansion in a service area shall be done through the
2 full hearing process as set forth in paragraph 5 of subsection A of
3 this section.

4 E. Subsequent to collection of development fees within any
5 service area, the governing body of the municipality, at an open
6 public meeting of the governing body, shall make a legislative
7 determination on the sequence of expenditure of development fee
8 funds in each service area to reimburse or pay the costs of capital
9 improvements to expand or increase the functional service capacity
10 of a public infrastructure system. However, the legislative
11 determination shall not have the effect in any way of changing the
12 purpose or intent of the development fees as they were collected at
13 the time of collection. Every enactment of a development fee shall
14 specify the purpose for which the development fee is being
15 collected, and no development fee collected for one purpose shall be
16 devoted to another purpose.

17 F. Prior to collection of any development fees, each
18 municipality shall establish a process whereby development fees
19 shall be collected and maintained as segregated and restricted funds
20 in interest bearing accounts, and expended within a reasonable and
21 prompt time after the associated system expansion improvement is
22 fully funded. Each municipality shall present an annual report to
23 its governing body on:

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

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

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

7 If the municipality determines that the development fees as
8 collected within a service area are no longer needed or desired for
9 the purpose for which they were collected, the municipality may
10 either refund the collected fees to the current owners of the
11 property within the development for which the fees were paid, or
12 proceed through the hearing process as set forth in paragraph 5 of
13 subsection A of this section in order to adopt a new purpose for the
14 fees.

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

18 H. Municipalities may enter into written agreements with
19 developers to construct capital improvements to expand or increase
20 the functional service capacity of a public infrastructure system to
21 serve a service area and provide a credit against or an adjustment
22 to payment of all or part of the development fee for that system and
23 that development. The credit or adjustment may not exceed the cost
24 of the capital improvement or the amount of the development fee that

1 would have been collected from that developer for the development
2 and that system. No credit or adjustment will be carried over or
3 transferred to a different development, a subsequent development, a
4 subsequent change to that development, or against a development fee
5 for a different system.

6 I. Development fees applicable to expanded or modified existing
7 developments shall be based on the increase in the impact of the
8 proposed expanded or modified existing development in terms of
9 whether it increases or will increase service demands upon public
10 infrastructure systems, as compared to the impact of the legal and
11 authorized portions of the existing development as determined at the
12 time of the proposed modification to the existing development.

13 J. Nothing in this section will:

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

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

23 K. No credit or adjustment shall be carried over from one
24 development to a development at a different location. No credit or

1 adjustment will be carried over from one development to a subsequent
2 development at the same location, unless the development fee
3 collected previously is for the same purpose, making any subsequent
4 collection a repeat charge for the same purpose.

5 L. Development fees shall be deemed dedicated revenues and
6 therefore shall require separate accounting for development proceeds
7 as restricted funds. Interest earned on development fees shall be
8 considered funds of the account on which it is earned and shall be
9 subject to all restrictions placed on the use of development fees
10 under the provisions of this section. The accounting records and
11 details thereof shall be maintained as public records of the
12 municipality, be readily accessible to the public through open
13 records requests, and include at least the following information, as
14 relates both to each service area and each public infrastructure
15 system within each service area:

- 16 1. The receipt of development fees;
- 17 2. The service area from which the development fee was
18 collected;
- 19 3. The accumulation of interest on the development fee funds;
- 20 4. The type of public infrastructure system for which the funds
21 were collected;
- 22 5. The cost of the capital improvements to which the
23 development fees were applied; and

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

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

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

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

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

22 O. Development fees shall be intended to address only the
23 reasonably estimated impact of new development or expanded or
24 modified existing development on the public infrastructure system of

1 the government. Therefore, a municipality may only charge a
2 development fee that is no more than the proportionate cost of the
3 capital improvements that are associated with the impact of new
4 development or expanded or modified existing development. In
5 determining the development fee, the municipality shall make a
6 documented effort to quantify the projected impact from development
7 and determine that the proposed development fee is roughly
8 proportional to the nature and extent of the impact of development.

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

12 Q. A municipality may not recover the public infrastructure
13 system costs as a development fee by way of impact fees, connection
14 fees, hook-up fees or other fees in any manner that results in
15 charges beyond the public infrastructure system cost that the
16 development fee already collected. Any impact fees, connection
17 fees, hook-up fees or any other fees charged by a municipality as
18 related to the cost of capital improvements necessary to increase or
19 expand the functional service capacity of public infrastructure
20 systems shall be determined relative to the functional service
21 capacity actually being provided or made available to the fee payor,
22 and any amounts in excess thereof shall be considered development
23 fees and may only be applied if put forth in accordance with this
24 section.

1 R. This section shall not prohibit municipalities from
2 utilizing recoupment districts or lease-purchase agreements in order
3 to finance improvements to public infrastructure systems, so long as
4 such procedures are not utilized in a manner that circumvents the
5 requirements of this section as it pertains to development fees.

6 SECTION 4. This act shall become effective November 1, 2011.

7 Passed the Senate the 8th day of March, 2011.

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Presiding Officer of the Senate

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11 Passed the House of Representatives the ____ day of _____,

12 2011.

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Presiding Officer of the House
of Representatives

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