

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 708

6 By: Jolley

7 COMMITTEE SUBSTITUTE

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

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

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

25 A. Municipalities that adopt ordinances, resolutions, or
26 regulations for the implementation and collection of development
27 fees to fund or recover only the cost of capital improvements
28 necessary to increase or expand the functional service capacity of

1 public infrastructure systems shall do so as specified in this
2 section. As used in this section, "development fee" means any
3 payment of money imposed, in whole or in part, as a condition of
4 approval of any building permit, plat approval, or zoning change, to
5 the extent the fee is to pay for public infrastructure system costs
6 that are attributable to new development or to expand or modify
7 existing development. All development fees and collection of
8 development fees by any municipality shall be adopted and governed
9 pursuant to the following requirements:

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

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

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

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

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

- 13 a. after it is presented in a public meeting to the
14 municipal planning commission, in such cases as one
15 exists, and
- 16 b. after it is presented at two subsequent advance notice
17 public meetings to be held by the municipal governing
18 body in regard to the proposed ordinance, resolution,
19 or regulation. The second meeting in front of the
20 governing body shall be held at least two weeks after
21 introduction at the first meeting and shall provide
22 for public comment in a public hearing. All duly
23 enacted ordinances, resolutions, or regulations
24 existing at the time of the effective date of this

1 section shall remain in full force and effect,
2 provided no existing impact or development fees shall
3 be reinstated, extended, amended, modified, or
4 renewed except in accordance with this act;

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

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

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

21 B. If a municipality adopts development fees, the development
22 fees shall be based on actual system improvement costs or reliable,
23 ascertainable and reasonable estimates of the costs, and the
24 development fees shall have a reasonable functional nexus to the

1 development being charged. Any estimates of costs shall be based
2 upon factual and historically realized costs for similar system
3 capital improvements. Development fees shall be reasonably
4 calculated to recover or fund only the costs of public
5 infrastructure system capital improvements, including the cost of
6 real property interest acquisitions, rights-of-ways, capital
7 improvements, design, construction, inspection, and capital
8 improvement construction administration, related to one or more of
9 the following public infrastructure systems:

10 1. Water systems, including supply, production, treatment, and
11 distribution facilities;

12 2. Wastewater systems, including collection, treatment, and
13 disposal facilities;

14 3. Street systems, including roads, streets, boulevards,
15 bridges, sidewalks, bicycle routes, drainage, traffic signals and
16 systems, traffic control devices and signage, traffic calming
17 devices, landscaping associated with street rights of way, and any
18 local components of county, state, or federal highways to the extent
19 the local components are not funded by state or federal grants or
20 other state or federal permanent funding sources;

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

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

3 6. Public safety systems, including police, fire, emergency
4 medical, and rescue facilities;

5 7. Solid waste systems, including facilities; and

6 8. Public transportation systems, including facilities.

7 C. Municipalities shall establish one or more service areas for
8 the collection of development fees. As used in this section,
9 "service area" means a geographic area defined by a municipality in
10 which a defined public infrastructure system provides service to
11 developments within that service area. Service areas shall be
12 carefully drawn so as to include only property locations that are
13 clearly served by the cost of capital improvements that increase or
14 expand the functional service capacity of the public infrastructure
15 system that will be funded through the development fee that is
16 associated with the service area. The determinations regarding the
17 establishment of one or more service areas will be a matter of
18 legislative determination and discretion. Different public
19 infrastructure systems may have different and separately defined
20 service areas unique to each system's coverage. The development
21 fees within a particular service area may be different as applied to
22 different types of land uses.

23 D. The development fees collected within a service area, and
24 any interest on the funds, shall be spent only for capital

1 improvements that expand or increase the functional service capacity
2 of that particular public infrastructure system, and only within
3 that service area encompassing the development from which the funds
4 were collected. If the service area is changed or redrawn, or if a
5 development spans more than one service area, the development fees
6 collected prior to the change shall be spent proportionately within
7 the new service area or areas that encompass the development at the
8 time of expenditure from which the fee was originally collected.
9 Any change or expansion in a service area shall be done through the
10 full hearing process as set forth in paragraph 5 of subsection A of
11 this section.

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

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

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

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

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

14 If the municipality determines that the development fees as
15 collected within a service area are no longer needed or desired for
16 the purpose for which they were collected, the municipality may
17 either refund the collected fees to the current owners of the
18 property within the development for which the fees were paid, or
19 proceed through the hearing process as set forth in paragraph 5 of
20 subsection A of this section in order to adopt a new purpose for the
21 fees.

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

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

13 I. Development fees applicable to expanded or modified existing
14 developments shall be based on the increase in the impact of the
15 proposed expanded or modified existing development in terms of
16 whether it increases or will increase service demands upon public
17 infrastructure systems, as compared to the impact of the legal and
18 authorized portions of the existing development as determined at the
19 time of the proposed modification to the existing development.

20 J. Nothing in this section will:

21 1. Preclude a municipality from requiring the developer to
22 donate or dedicate real property or capital improvements, or to
23 install, construct, operate, maintain, or repair capital
24 improvements; or

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

6 K. No credit or adjustment shall be carried over from one
7 development to a development at a different location. No credit or
8 adjustment will be carried over from one development to a subsequent
9 development at the same location, unless the development fee
10 collected previously is for the same purpose, making any subsequent
11 collection a repeat charge for the same purpose.

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

23 1. The receipt of development fees;

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

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

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

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

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

11 M. Any ordinance, resolution, or regulation adopted in
12 compliance with this section which is thereafter challenged in any
13 future court action shall be reviewed through rational basis
14 scrutiny, such that it shall be upheld if it fully complies with
15 this section and if the municipality documented reasonably
16 conceivable facts that provided a rational basis for the adoption.

17 N. No municipality is required to adopt development fees and it
18 is within the discretion of the municipality as to whether
19 development fees should be considered for adoption. Any municipal
20 development fee ordinance, resolution, or regulation may provide for
21 appeal to the governing body for exemption of all or part of
22 particular development projects from development fees if:

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

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

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

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

21 Q. A municipality may not recover the public infrastructure
22 system costs as a development fee by way of impact fees, connection
23 fees, hook-up fees or other fees in any manner that results in
24 charges beyond the public infrastructure system cost that the

1 development fee already collected. Any impact fees, connection
2 fees, hook-up fees or any other fees charged by a municipality as
3 related to the cost of capital improvements necessary to increase or
4 expand the functional service capacity of public infrastructure
5 systems shall be determined relative to the functional service
6 capacity actually being provided or made available to the fee payor,
7 and any amounts in excess thereof shall be considered development
8 fees and may only be applied if put forth in accordance with this
9 section.

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

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

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