

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE

4 FOR ENGROSSED

5 SENATE BILL NO. 708

By: Jolley and Sykes of the  
Senate

6 and

7 Nelson and Hickman of the  
8 House

9  
10 COMMITTEE SUBSTITUTE

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

24 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 895 of Title 62, unless there is  
created a duplication in numbering, reads as follows:

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

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

11       2. "Expanded or modified development" is one in which the  
12 expansion or modification results in an increased demand or  
13 increased impact upon the public infrastructure system as compared  
14 to the demand or impact prior to the expansion or modifications;

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

18           a. water systems, including supply, production,  
19           treatment, and distribution facilities,

20           b. wastewater systems, including collection, treatment,  
21           and disposal facilities,

22           c. street systems, including roads, streets, boulevards,  
23           bridges, sidewalks, bicycle routes, drainage, traffic  
24           signals and systems, traffic control devices and

1 signage, traffic calming devices, landscaping  
2 associated with street rights of way, and any local  
3 components of county, state, or federal highways to  
4 the extent the local components are not funded by  
5 state or federal grants or other state or federal  
6 permanent funding sources,

7 d. storm water systems, including collection, retention,  
8 detention, treatment, channelization, disposal,  
9 discharge, flood control, and bank and shoreline  
10 protection facilities,

11 e. parks systems, including parks, open spaces, trails,  
12 bicycle paths, and natural recreation areas and  
13 related facilities,

14 f. public safety systems, including police, fire,  
15 emergency medical, and rescue facilities,

16 g. solid waste systems, including facilities,

17 h. public transportation systems, including facilities,  
18 and

19 i. public capital improvement communications facilities;  
20 and

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

1 B. New development and expanded or modified existing  
2 development may only be charged the development fee for capital  
3 improvement costs for increases or expansion to the capacity of  
4 public infrastructure systems attributable to that development.

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

17 2. Development fees cannot be adopted or used to fund repairs,  
18 maintenance, restorations, refurbishments, alterations,  
19 improvements, or fixes to existing public infrastructure systems in  
20 any way that does not result in an increase or expansion in the  
21 functional service capacity of the system which is available to  
22 serve new or expanded existing growth and development in the  
23 applicable service area.

24

1           3. The development fees shall be based on actual system  
2 improvement costs or reliable, ascertainable and reasonable  
3 estimates of the costs. Any estimates of costs shall be based upon  
4 factual and historically realized costs for similar system capital  
5 improvements.

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

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

15           1. A schedule of development fees specifying the development  
16 fee for various land uses per unit of development, the purpose for  
17 the development fee, the sequence of expenditures to be made with  
18 the development fees, and termination of the development fee when  
19 the applicable public infrastructure system has been fully funded;  
20 and

21           2. A component capital improvement plan that:

22           a. lists public infrastructure system capital projects or  
23 facility expansions that are necessitated by  
24 development of various land uses in designated areas,

1           b. provides reasonable notice to developers of specific  
2           public infrastructure system impacts from development  
3           of various land uses within the area of the  
4           development, and

5           c. delineates the property locations that are clearly  
6           served by the public infrastructure system that will  
7           be funded through the development fee.

8           In the alternative, a municipality may establish one or more  
9           service areas for the collection of development fees. As used in  
10          this section, "service area" means a geographic area defined by a  
11          municipality in which a defined public infrastructure system  
12          provides service to developments within that service area. Service  
13          areas shall be carefully drawn so as to include only property  
14          locations that are clearly served by the cost of capital  
15          improvements that increase or expand the functional service capacity  
16          of the public infrastructure system that will be funded through the  
17          development fee that is associated with the service area. The  
18          determinations regarding the establishment of one or more service  
19          areas will be a matter of legislative determination and discretion.  
20          Different public infrastructure systems may have different and  
21          separately defined service areas unique to each system's coverage.  
22          The development fees within a particular service area may be  
23          different as applied to different types of land uses; and  
24

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

4           a. a public hearing before the municipal planning  
5 commission. Notice of the time, date and place of the  
6 hearing shall be published in a newspaper of general  
7 circulation in the municipality at least fifteen (15)  
8 days prior to the hearing,

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

14           All duly enacted ordinances, resolutions, or regulations  
15 existing at the time of the effective date of this section shall  
16 remain in full force and effect; provided, no existing impact or  
17 development fees shall be reinstated, extended, amended, modified,  
18 or renewed except in accordance with this act.

19           D. The development fees collected pursuant to a component  
20 capital improvement plan or within a service area, and any interest  
21 on the funds, shall be spent only for capital improvements that  
22 expand or increase the functional service capacity of that  
23 particular public infrastructure system to serve the area  
24

1 encompassing the development or only within that service area from  
2 which the funds were collected.

3 1. Every assessment of a development fee shall be in writing  
4 and a copy shall be provided to the developer and property owner(s)  
5 affected, as such names and addresses of the property owner(s) are  
6 provided by the developer. The assessment shall specify the purpose  
7 or service area for which the development fee is being collected,  
8 the applicable land-use category, the basis for calculation of the  
9 assessment, the amount of the assessment and the sequence of  
10 expenditure of development-fee funds. No development fee collected  
11 for one purpose shall be devoted to another purpose.

12 2. If the purpose, component capital improvement plan, or  
13 service area is changed or redrawn, or if a development spans more  
14 than one component capital improvement plan or service area, the  
15 development fees collected prior to the change shall be spent  
16 proportionately pursuant to the new purpose or within the new  
17 component capital improvement plan or service area or areas that  
18 encompass the development at the time of expenditure from which the  
19 fee was originally collected. Any change or expansion in a purpose,  
20 component capital improvement plan, or service area shall be done  
21 through the full hearing process as set forth in paragraph 3 of  
22 subsection C of this section.

23 E. Each municipality shall present an annual report to its  
24 governing body on:

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

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

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

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

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

19 G. Municipalities may enter into written agreements with  
20 developers to construct capital improvements to expand or increase  
21 the functional service capacity of a public infrastructure system  
22 within the designated development area or to serve a service area  
23 and provide a credit against or an adjustment to payment of all or  
24 part of the development fee for that system and that development.

1 The credit or adjustment may not exceed the cost of the capital  
2 improvement or the amount of the development fee that would have  
3 been collected from that developer for the development and that  
4 system. No credit or adjustment will be carried over or transferred  
5 to a different development, a subsequent development, a subsequent  
6 change to that development, or against a development fee for a  
7 different system.

8 H. Nothing in this section will:

9 1. Preclude a municipality from requiring the developer to  
10 donate or dedicate real property or capital improvements, or to  
11 install, construct, operate, maintain, or repair capital  
12 improvements; or

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

18 I. No credit or adjustment shall be carried over from one  
19 development to a development at a different location. No credit or  
20 adjustment will be carried over from one development to a subsequent  
21 development at the same location, unless the development fee  
22 collected previously is for the same purpose, making any subsequent  
23 collection a repeat charge for the same purpose.

24

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

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

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

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

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

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

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

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

1 public infrastructure system cost that the development fee already  
2 collected. Any connection fees, hook-up fees or any other fees  
3 charged by a municipality as related to the cost of capital  
4 improvements necessary to increase or expand the functional service  
5 capacity of public infrastructure systems shall be determined  
6 relative to the functional service capacity actually being provided  
7 or made available to the fee payor, and any amounts in excess  
8 thereof shall be considered development fees and may only be applied  
9 if put forth in accordance with this section. Nothing herein shall  
10 prevent a municipality to separately impose and collect connection  
11 fees, hook-up fees or any other fees that are reasonably related in  
12 character and amount charged to the costs of regulation of the  
13 activities for which the fees were enacted or enforcement of  
14 municipal health or safety codes.

15 O. This section shall not prohibit municipalities from  
16 utilizing recoupment districts or lease-purchase agreements in order  
17 to finance improvements to public infrastructure systems, so long as  
18 such procedures are not utilized in a manner that circumvents the  
19 requirements of this section as it pertains to development fees.

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

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22 53-1-7487 EK 04/07/11

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