

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                                   STATE OF OKLAHOMA

3                                   1st Session of the 53rd Legislature (2011)

4 COMMITTEE SUBSTITUTE  
5 FOR ENGROSSED  
6 SENATE BILL NO. 708

By: Jolley and Sykes of the  
Senate

and

Nelson, Hickman and Pittman  
of the House

11                                   COMMITTEE SUBSTITUTE

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

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

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

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

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

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

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

21 a. water systems, including supply, production,  
22 treatment, and distribution facilities,  
23  
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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 the local components are not funded by  
10                  state or federal grants or other state or federal  
11                  permanent funding sources,
- 12          d.   storm water systems, including collection, retention,  
13                  detention, treatment, channelization, disposal,  
14                  discharge, flood control, and bank and shoreline  
15                  protection facilities,
- 16          e.   parks systems, including parks, open spaces, trails,  
17                  bicycle paths, and natural recreation areas and  
18                  related facilities,
- 19          f.   public safety systems, including police, fire,  
20                  emergency medical, and rescue facilities,
- 21          g.   solid waste systems, including facilities,
- 22          h.   public transportation systems, including facilities,  
23                  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.

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

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

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

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

22           1. A schedule of development fees specifying the development  
23 fee for various land uses per unit of development, the purpose for  
24

1 the development fee, the sequence of expenditures to be made with  
2 the development fees, and termination of the development fee when  
3 the applicable public infrastructure system has been fully funded;  
4 and

5 2. A component capital improvement plan that:

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

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

1 of the public infrastructure system that will be funded through the  
2 development fee that is associated with the service area. The  
3 determinations regarding the establishment of one or more service  
4 areas will be a matter of legislative determination and discretion.  
5 Different public infrastructure systems may have different and  
6 separately defined service areas unique to each system's coverage.  
7 The development fees within a particular service area may be  
8 different as applied to different types of land uses; and

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

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

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

22 All duly enacted ordinances, resolutions, or regulations  
23 existing at the time of the effective date of this section shall

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

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

11 1. Every assessment of a development fee shall be in writing  
12 and a copy shall be provided to the developer and property owner(s)  
13 affected, as such names and addresses of the property owner(s) are  
14 provided by the developer. The assessment shall specify the purpose  
15 or service area for which the development fee is being collected,  
16 the applicable land-use category, the basis for calculation of the  
17 assessment, the amount of the assessment and the sequence of  
18 expenditure of development-fee funds. No development fee collected  
19 for one purpose shall be devoted to another purpose.

20 2. If the purpose, component capital improvement plan, or  
21 service area is changed or redrawn, or if a development spans more  
22 than one component capital improvement plan or service area, the  
23 development fees collected prior to the change shall be spent

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1 proportionately pursuant to the new purpose or within the new  
2 component capital improvement plan or service area or areas that  
3 encompass the development at the time of expenditure from which the  
4 fee was originally collected. Any change or expansion in a purpose,  
5 component capital improvement plan, or service area shall be done  
6 through the full hearing process as set forth in paragraph 3 of  
7 subsection C of this section.

8 E. Each municipality shall present an annual report to its  
9 governing body on:

- 10 1. The collection, investment, and expenditure of development-  
11 fee funds as separately reported upon for each development capital  
12 project or service area, and each public infrastructure system for  
13 each development capital project or in each service area;
- 14 2. The recovery of costs from development-fee revenues; and
- 15 3. Estimates of the timing of system-capacity-expansion  
16 improvements, as such construction is funded by development fees.

17 If the municipality determines that the development fees as  
18 collected within a service area are no longer needed or desired for  
19 the purpose for which they were collected, the municipality may  
20 either refund the collected fees to the current owners of the  
21 property within the development for which the fees were paid, or  
22 proceed through the hearing process as set forth in paragraph 3 of  
23  
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1 subsection C of this section in order to adopt a new purpose for the  
2 fees.

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

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

19 H. Nothing in this section will:

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

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

- 1 1. The receipt of development fees;
- 2 2. The development capital project or service area from which
- 3 the development fee was collected;
- 4 3. The accumulation of interest on the development fee funds;
- 5 4. The type of public infrastructure system for which the funds
- 6 were collected;
- 7 5. The cost of the capital improvements to which the
- 8 development fees were applied; and
- 9 6. The dates when development fee funds were expended to fund,
- 10 or applied to reimburse, the cost of capital improvements to public
- 11 infrastructure systems.

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

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

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

10 N. A municipality may not recover the public infrastructure  
11 system costs as a development fee by way of connection fees, hook-up  
12 fees or other fees in any manner that results in charges beyond the  
13 public infrastructure system cost that the development fee already  
14 collected. Any connection fees, hook-up fees or any other fees  
15 charged by a municipality as related to the cost of capital  
16 improvements necessary to increase or expand the functional service  
17 capacity of public infrastructure systems shall be determined  
18 relative to the functional service capacity actually being provided  
19 or made available to the fee payor, and any amounts in excess  
20 thereof shall be considered development fees and may only be applied  
21 if put forth in accordance with this section. Nothing herein shall  
22 prevent a municipality to separately impose and collect connection  
23 fees, hook-up fees or any other fees that are reasonably related in

1 character and amount charged to the costs of regulation of the  
2 activities for which the fees were enacted or enforcement of  
3 municipal health or safety codes.

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

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

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11 COMMITTEE REPORT BY: COMMITTEE ON ECONOMIC DEVELOPMENT, TOURISM AND  
12 FINANCIAL SERVICES, dated 04-07-2011 - DO PASS, As Amended and  
13 Coauthored.

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