

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 2127

By: Hickman

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5  
6 AS INTRODUCED

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

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

25 SECTION 1. NEW LAW A new section of law to be codified  
26 in the Oklahoma Statutes as Section 22-160 of Title 11, unless there  
27 is created a duplication in numbering, reads as follows:

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

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

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

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

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

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

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

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

24 As used in the Oklahoma New Development Impact Fee Act:

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

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

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

15        4. "Developer" means any person or legal entity undertaking  
16 development of land, or filing for final platting and/or subdivision  
17 of lands, or any person or legal entity filing for a building  
18 construction permit;

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

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1       6. "Development approval" means any written authorization from  
2 a municipality or county that authorizes the commencement of  
3 development;

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

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

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

18       10. "Fee payor" means that person who pays a development impact  
19 fee, or his or her successor in interest where the right or  
20 entitlement to any refund of previously paid development impact fees  
21 which is required by this act has been expressly transferred or  
22 assigned to the successor in interest. In the absence of an express  
23 transfer or assignment of the right or entitlement to any refund of  
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1 previously paid development impact fees, the right or entitlement  
2 shall be deemed "not to run with the land";

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

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

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

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

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

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

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

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

- 17 a. water supply production, treatment, and distribution  
18 facilities,
- 19 b. wastewater collection, treatment, and disposal  
20 facilities,
- 21 c. roads, streets, and bridges, including rights-of-way,  
22 traffic signals, landscaping, and any local components  
23 of state or federal highways,

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- d. storm-water collection, retention, detention, treatment, and disposal facilities, and flood control facilities,
- e. parks, open space, and natural recreation areas, and
- f. public safety facilities, including police, fire, emergency medical, and rescue facilities;

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

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

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

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

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

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

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

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

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

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

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

1 authorizes site construction or improvement which requires such  
2 public facilities.

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

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

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

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

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

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

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

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

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

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

21 J. A municipal or county development impact fee ordinance or  
22 regulation shall provide that, in the event a building permit is  
23 abandoned, credit shall be given for the present value of the  
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1 development impact fee against future development impact fees for  
2 the same parcel of land.

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

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

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

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

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

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

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

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

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

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

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

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

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

11 A. An ordinance or regulation imposing development impact fees  
12 shall provide that all development impact fee funds shall be  
13 maintained in one or more specifically identified and segregated  
14 interest-bearing accounts. Detailed accounting records shall be  
15 maintained for each category of public facilities system  
16 improvements and the service area in which the fees are collected.  
17 Interest earned on development impact fees shall be considered funds  
18 of the account on which it is earned and shall be subject to all  
19 restrictions placed on the use of development impact fees under the  
20 provisions of the Oklahoma New Development Impact Fee Act. The  
21 accounting records and details thereof shall be readily accessible  
22 to the public through open records requests, and shall include at  
23 least the following information:

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

11           3. An application for a refund shall be made within:  
12           a. one (1) year of publication of the notice of  
13           entitlement to a refund under this section, or  
14           b. three (3) years after any particular development  
15           impact fee is due a refund, whichever comes later in  
16           time;

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

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

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

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

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

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

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

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

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

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

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

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

18 B. Nothing in this act shall be construed to prevent or  
19 prohibit private agreements between property owners or developers  
20 and municipalities, counties, or other governmental entities in  
21 regard to the construction or installation of system improvements  
22 and providing for credits or reimbursements for system improvement  
23 costs incurred by a developer including interproject transfers of  
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1 credits or providing for reimbursement for project improvement costs  
2 which are used or shared by more than one development project.

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

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

4 SECTION 12. This act shall become effective November 1, 2011.

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