

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003
4

As Engrossed: H3/31/03

A Bill

SENATE BILL 620

5 By: Senators Bisbee, J. Jeffress
6 By: Representatives Ledbetter, Jackson, Anderson
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For An Act To Be Entitled

9 AN ACT TO AMEND ARKANSAS CODE TITLE 14, CHAPTER
10 56, SUBCHAPTER 1 TO ADD AN ADDITIONAL SECTION TO
11 AUTHORIZE THE ASSESSMENT AND COLLECTION OF
12 DEVELOPMENT IMPACT FEES BY MUNICIPALITIES AND
13 MUNICIPAL SERVICE AGENCIES; AND FOR OTHER
14 PURPOSES.
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Subtitle

18 TO AUTHORIZE THE ASSESSMENT AND
19 COLLECTION OF DEVELOPMENT IMPACT FEES BY
20 MUNICIPALITIES AND MUNICIPAL SERVICE
21 AGENCIES.
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25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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27 SECTION 1. Arkansas Code Title 14, *Chapter 56*, Subchapter 1 is amended
28 to add an additional section to read as follows:

29 14-56-102. Development impact fees.

30 (a) As used in this section:

31 (1) "Capital plan" means a description of new public facilities
32 or of new capital improvements to existing public facilities or of previous
33 capital improvements to public facilities that continue to provide capacity
34 available for new development that includes cost estimates, anticipated dates
35 of completed construction, and capacity available to serve new development;

36 (2) "Development" means any residential, multi-family,



1 commercial, or industrial improvement to lands within the municipality or
2 within the municipal service agency's area of service;

3 (3) "Development impact fee" means:

4 (A) A fee or charge imposed by the municipality or by a
5 municipal service agency upon or against a development in order to generate
6 revenue for funding or for recouping expenditures of the municipality or
7 municipal service agency that are necessitated by and attributable to the use
8 and occupancy of the development; and

9 (B) Shall not include any ad valorem real property taxes,
10 any special assessments for an improvement district, any utility hookup fees
11 or access fees, or any fees for filing development plats or plans, for
12 building permits or for construction permits assessed by a municipality or a
13 municipal service that are approximately equal to the cost of the plat, plan,
14 or permit review process to the municipality or the municipal service agency;

15 (4) "Municipality" means a city of the first class, city of the
16 second class, or an incorporated town;

17 (5) "Municipal service agency" means:

18 (A) Any department, commission, utility or agency of a
19 municipality, including any municipally-owned or controlled corporation;

20 (B) Any municipal improvement district, consolidated
21 public or municipal utility system improvement district, or municipally-owned
22 nonprofit corporation that owns or operates any utility service;

23 (C) Any municipal water department, waterworks or joint
24 waterworks, or a consolidated waterworks system operating under §§ 25-20-301
25 through 25-20-323;

26 (D) Any municipal wastewater utility or department;

27 (E) Any municipal public facilities board; or

28 (F) Any of these municipal entities operating with another
29 similar entity under a interlocal agreement in accordance with §§ 25-20-101
30 through 25-20-108 or §§ 25-20-201 through 25-20-207;

31 (6) "Ordinance" means an municipal impact fee ordinance of
32 municipality or an authorizing rate resolution by a board of commissioners of
33 a consolidated waterworks system authorized to set rates for its customers
34 under the Consolidated Waterworks Authorization Act;

35 (7) "Public facilities" means publicly-owned facilities that are
36 one (1) or more of the following systems, or a portion of those systems:

1 (A) Water supply, treatment, and distribution, for either
2 domestic water or for suppression of fires;

3 (B) Wastewater treatment and sanitary sewerage;

4 (C) Stormwater drainage;

5 (D) Roads, streets, sidewalks, highways and public
6 transportation;

7 (E) Library;

8 (F) Parks, open space, and recreation areas;

9 (G) Police or public safety;

10 (H) Fire protection; and

11 (I) Ambulance or emergency medical transportation and
12 response.

13 (b) A municipality or a municipal service agency may assess, by
14 ordinance, a development impact fee to offset costs to the municipality or to
15 a municipal service agency that are associated with providing necessary
16 public facilities to new development.

17 (c)(1) A municipality or municipal service agency may assess, collect,
18 and expend development impact fees only for the planning, design and
19 construction of new public facilities or of capital improvements to existing
20 public facilities that expand its capacity or for the recoupment of prior
21 capital improvements to public facilities that created capacity that is
22 available to serve new development.

23 (2) The development impact fee may be pledged to the payment of
24 bonds issued by the municipality or municipal service agency to finance
25 capital improvements or public facilities for which the development impact
26 fee may be imposed.

27 (3) No development impact fee shall be assessed for, or expended
28 upon, the operation or maintenance of any public facility, or for the
29 construction or improvement of public facilities, that does not create
30 additional capacity.

31 (d)(1) A municipality or a municipal service agency may assess and
32 collect impact fees only from new development and only against a particular
33 new development in reasonable proportion to the demand for additional
34 capacity in public facilities that are necessitated by and attributable to
35 the use and occupancy of that new development.

36 (2) The owner, resident, or tenant of a property that was

1 assessed an impact fee and paid it in full shall have the right to make
2 reasonable use of all public facilities that were financed by the impact fee.

3 (e)(1) A municipality or municipal service agency may assess, collect,
4 and expend impact fees only under a development impact fee ordinance adopted
5 and amended under this section.

6 (2) A development impact fee ordinance shall be adopted or
7 amended by the governing body of a municipality or municipal service agency
8 only after the municipality or a municipal service agency has adopted a
9 capital plan and level of service standards for all of the public facilities
10 that are to be so financed.

11 (3) The development impact fee ordinance shall contain:

12 (A) A statement of the new public facilities and capital
13 improvements to existing public facilities that are to be financed by impact
14 fees and the level of service standards included in the capital plan for the
15 public facilities that are to be financed with impact fees;

16 (B) The actual formula or formulas for assessing the
17 impact fee, which shall be consistent with the level of service standards;

18 (C) The procedure by which impact fees are to be assessed
19 and collected; and

20 (D) The procedure for refund of excess impact fees, in
21 accordance with subsection (h) of this section.

22 (f)(1) The municipality or municipal service agency shall collect the
23 development impact fee at the time and manner and from the party as
24 prescribed in the ordinance and shall collect the fee separate and apart from
25 any other charges to the development.

26 (2) A development impact fee shall be collected at either the
27 closing on the property by the owner or the issuance of a certificate of
28 occupancy by the municipality.

29 (3) At closing, the development impact fee shall be a separate
30 charge.

31 (4) The ordinance may include that the development impact fee
32 may be paid in installments at a reasonable interest rate for a fixed number
33 of years or that the municipality or municipal service agency may negotiate
34 agreements with the owner of the property as to the time and method of paying
35 the impact fee.

36 (g)(1) The funds collected under a development impact fee ordinance

1 shall be deposited into a special interest-bearing account.

2 (2) The interest earned on the moneys in the separate account
3 shall be credited to the special fund and the funds deposited into the
4 special account and the interest earned shall be expended only in accordance
5 with this section.

6 (3) No other revenues or funds shall be deposited into the
7 special account.

8 (h)(1) The municipality or municipal service agency shall refund the
9 portion of collected development impact fees, including the accrued interest,
10 that has not been expended on the new public facilities or capital
11 improvements to existing public facilities as specified in the ordinance
12 within the time or by the date specified for their completion.

13 (2)(A) The time or date for completion shall be the time or date
14 specified in the capital plan developed by the municipality or municipal
15 service agency as the anticipated date of completed construction and shall be
16 stated in the ordinance.

17 (B) If no completion time or date has been specified in
18 the capital plan, then the ordinance shall specify a reasonable time, ending
19 at a specific date for the completion of each new public facility and capital
20 improvement to existing public facilities.

21 (3)(A) A refund shall be paid to the present owner of the
22 property that was the subject of new development and against which the fee
23 was assessed and collected.

24 (B) Notice of the right to a refund, including the amount
25 of the refund and the procedure for applying for and receiving the refund,
26 shall be sent or served in writing to the present owners of the property not
27 later than thirty (30) days after the date which the refund becomes due.

28 (C) The sending by regular mail of the notices to all
29 present owners of record shall be sufficient to satisfy the requirement of
30 notice.

31 (4)(A) The refund shall be made on a pro rata basis, and shall
32 be paid in full not later than ninety (90) days after the date certain upon
33 which the refund becomes due.

34 (B) If the municipality or municipal service agency does
35 not pay a refund in full within the period set in this subsection to any
36 person entitled to a refund, that person shall have a cause of action against

1 the municipality for the refund or the unpaid portion in the circuit court
2 for the county in which the property is located.

3 (i)(1)(A) On and after the effective date of this section, a
4 municipality or municipal service agency shall levy and collect a development
5 impact fee only if levied and collected under ordinances enacted in
6 compliance with this section.

7 (B) Beginning January 1, 2004, a municipality or municipal
8 service agency shall collect development impact fees under ordinances enacted
9 before the effective date of this section or under ordinances amended after
10 the effective date of this section only if collected in compliance with
11 subsections (f), (g), and (h) of this section.

12 (2) However, except for the compliance with the collection
13 requirements under subsections (f), (g), and (h) of this section, this
14 section does not invalidate any development impact fee or a similar fee
15 adopted by a municipality or municipal service agency before the effective
16 date of this section, nor does this section apply to funds collected under
17 any development impact fee or similar fee adopted before the effective date
18 of this section.

19 (3) In addition, a municipality with a park land or green space
20 ordinance that has been in existence for ten (10) years on the effective date
21 of this section, and any amendments to the ordinance, which allows the option
22 to pay a fee or to dedicate green space or park land in lieu of a fee may
23 continue to be administered under the existing ordinance.

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25 /s/ Bisbee, et al
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