

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 H4/8/2003 H4/14/03*

# A Bill

Act 1719 of 2003  
SENATE BILL 620

5 By: Senators Bisbee, J. Jeffress  
6 By: Representatives Ledbetter, Jackson, Anderson  
7  
8

## 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.  
15  
16  
17

## Subtitle

18 TO AUTHORIZE THE ASSESSMENT AND  
19 COLLECTION OF DEVELOPMENT IMPACT FEES BY  
20 MUNICIPALITIES AND MUNICIPAL SERVICE  
21 AGENCIES.  
22  
23  
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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, and capacity  
35 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 reasonably attributable to the use and  
8 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 the  
25 Consolidated Waterworks Authorization Act;

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 reasonably attributable to providing  
16 necessary 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 reasonably attributable to the use and  
35 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) 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 (B) However, a municipal water or wastewater department,  
30 waterworks, or joint waterworks, or a consolidated waterworks system  
31 operating under the Consolidated Waterworks Authorization Act may collect a  
32 development impact fee in connection with and as a condition to the  
33 installation of the water meter serving the property.

34 (3) At closing, the development impact fee that has been paid or  
35 will be paid for the property shall be separately enumerated on the closing  
36 statement.

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

6           (g)(1) The funds collected under a development impact fee ordinance  
7 shall be deposited into a special interest-bearing account.

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

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

14           (h)(1) The municipality or municipal service agency shall refund the  
15 portion of collected development impact fees, including the accrued interest,  
16 that has not been expended seven (7) years from the date the fees were paid.

17           (2)(A) A refund shall be paid to the present owner of the of the  
18 property that was the subject of new development and against which the fee  
19 was assessed and collected.

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

24           (C) The sending by regular mail of the notices to all  
25 present owners of record shall be sufficient to satisfy the requirement of  
26 notice.

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

30           (B) If the municipality or municipal service agency does  
31 not pay a refund in full within the period set in this subsection to any  
32 person entitled to a refund, that person shall have a cause of action against  
33 the municipality for the refund or the unpaid portion in the circuit court  
34 for the county in which the property is located.

35           (i)(1)(A) On and after the effective date of this section, a  
36 municipality or municipal service agency shall levy and collect a development

1 impact fee only if levied and collected under ordinances enacted in  
2 compliance with this section.

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

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

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

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21 /s/ Bisbee, et al  
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24 APPROVED: 4/22/2003  
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