

By: Guice

To: Municipalities

HOUSE BILL NO. 179

1 AN ACT TO BE KNOWN AS THE "MISSISSIPPI DEVELOPMENT IMPACT FEE  
2 ACT"; TO ESTABLISH AN EQUITABLE PROGRAM FOR PLANNING AND FINANCING  
3 PUBLIC FACILITIES NEEDED TO SERVE NEW GROWTH AND DEVELOPMENT IN  
4 MUNICIPALITIES; TO DEFINE CERTAIN TERMS USED IN THE ACT; TO  
5 AUTHORIZE MUNICIPALITIES TO ADOPT ORDINANCES PROVIDING FOR THE  
6 IMPOSITION OF DEVELOPMENT IMPACT FEES; TO SPECIFY CERTAIN  
7 PROVISIONS THAT MUST BE INCLUDED IN MUNICIPAL DEVELOPMENT IMPACT  
8 FEE ORDINANCES; TO REQUIRE A LOCAL PLANNING COMMISSION TO REVIEW  
9 AND, IN ITS DISCRETION, HOLD PUBLIC HEARINGS BEFORE A MUNICIPALITY  
10 ADOPTS A DEVELOPMENT IMPACT FEE ORDINANCE; TO REQUIRE DEVELOPMENT  
11 IMPACT FEE FUNDS TO BE MAINTAINED IN SEPARATE ACCOUNTS AND TO  
12 LIMIT THE EXPENDITURE OF SUCH FUNDS TO THE PURPOSE FOR WHICH SUCH  
13 FEES WERE COLLECTED; TO ESTABLISH A PROCEDURE FOR REFUNDING  
14 CERTAIN DEVELOPMENT IMPACT FEES THAT HAVE BEEN COLLECTED; TO  
15 REQUIRE MUNICIPALITIES TO ESTABLISH AN APPEALS PROCESS RELATING TO  
16 THE DETERMINATION OF DEVELOPMENT IMPACT FEES FOR SPECIFIC  
17 PROJECTS; TO AUTHORIZE MUNICIPALITIES TO ENTER INTO INTERLOCAL  
18 AGREEMENTS CONCERNING THE IMPOSITION OF DEVELOPMENT IMPACT FEES;  
19 AND FOR RELATED PURPOSES.

20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

21 SECTION 1. (1) This act shall be known and may be cited as  
22 the "Mississippi Development Impact Fee Act."

23 (2) The Legislature finds that an equitable program for  
24 planning and financing public facilities needed to serve new  
25 growth and development is necessary in order to promote and  
26 accommodate orderly growth and development and to protect the  
27 public health, safety and general welfare of the citizens of the  
28 State of Mississippi. The following are the purposes of this act:

29 (a) To ensure that adequate public facilities are

30 available to serve new growth and development;

31 (b) To promote orderly growth and development by  
32 establishing uniform standards by which municipalities may require  
33 that new growth and development pay a proportionate share of the  
34 cost of new public facilities needed to serve new growth and  
35 development;

36 (c) To establish minimum standards for the adoption of  
37 development impact fee ordinances by municipalities; and

38 (d) To ensure that new growth and development is  
39 required to pay no more than its proportionate share of the cost  
40 of public facilities needed to serve new growth and development  
41 and to prevent duplicate and ad hoc development exactions.

42 SECTION 2. As use in this act, the following words and  
43 phrases shall have the meanings ascribed in this section unless  
44 the context clearly indicates otherwise:

45 (a) "Capital improvement" means an improvement with a  
46 useful life of five (5) years or longer, by new construction or  
47 other action, which increases the service capacity of a public  
48 facility.

49 (b) "Capital improvements element" means an optional  
50 component of a comprehensive plan, which may be adopted  
51 independently of the plan, which sets out projected needs for  
52 system improvements during a planning horizon established in the  
53 comprehensive plan, a schedule of capital improvements which will  
54 meet the anticipated need for system improvement and a description  
55 of anticipated funding sources for each required improvement.

56 (c) "Comprehensive plan" means any comprehensive plan  
57 adopted by a municipality under Chapter 1, Title 17, Mississippi  
58 Code of 1972.

59 (d) "Developer" means any person or legal entity  
60 undertaking development.

61           (e) "Development" means any construction or expansion  
62 of a building, structure or use, any change in use of a building  
63 or structure, or any change in the use of land, any of which  
64 creates additional demand and need for public facilities.

65           (f) "Development approval" means any written  
66 authorization from a municipality which authorizes the  
67 commencement of construction.

68           (g) "Development exaction" means a requirement attached  
69 to a development approval or other municipal action approving or  
70 authorizing a particular development project, including, but not  
71 limited to, a rezoning, which requirement compels the payment,  
72 dedication or contribution of goods, services, land or money as a  
73 condition of approval.

74           (h) "Development impact fee" means a payment of money  
75 imposed upon development as a condition of development approval to  
76 pay for a proportionate share of the cost of system improvements  
77 needed to serve new growth and development.

78           (i) "Encumber" means to legally obligate by contract or  
79 otherwise commit to use by appropriation or other official act of  
80 a municipality.

81           (j) "Fee payor" means that person who pays a development  
82 impact fee or his successor in interest where the right or  
83 entitlement to any refund of previously paid development impact  
84 fees required under this act has been transferred expressly or  
85 assigned to the successor in interest. In the absence of an  
86 express transfer or assignment of the right or entitlement to any  
87 refund of previously paid development impact fees, the right or  
88 entitlement shall be deemed "not to run with the land."

89           (k) "Level of service" means a measure of the  
90 relationship between service capacity and service demand for  
91 public facilities in terms of demand to capacity ratios or the  
92 comfort and convenience of use or service of public facilities, or  
93 both.

94           (l) "Present value" means the current value of past,  
95 present or future payments, contributions or dedications of goods,  
96 services, materials, construction or money.

97           (m) "Project" means a particular development on an  
98 identified parcel of land.

99           (n) "Project improvements" means site improvements and  
100 facilities that are planned and designed to provide service for a  
101 particular development project and which are necessary for the use  
102 and convenience of the occupants or users of the project and are  
103 not system improvements. The character of the improvement shall  
104 control a determination of whether an improvement is a project  
105 improvement or system improvement, and the physical location of  
106 the improvement on site or off site shall not be considered  
107 determinative of whether an improvement is a project improvement  
108 or system improvement. If an improvement or facility provides or  
109 will provide more than incidental service or facilities capacity  
110 to persons other than users or occupants of a particular project,  
111 the improvement or facility is a system improvement and shall not  
112 be considered a project improvement. No improvement or facility  
113 included in a plan for public facilities approved by the governing  
114 body of the municipality shall be considered a project  
115 improvement.

116           (o) "Proportionate share" means that portion of the

117 cost of system improvements which is reasonably related to the  
118 service demands and needs of the project.

119 (p) "Public facilities" means:

120 (i) Water supply production, treatment and  
121 distribution facilities;

122 (ii) Waste-water collection, treatment and  
123 disposal facilities;

124 (iii) Roads, street and bridges, including  
125 rights-of-way, traffic signals, landscaping and any municipal  
126 components of state or federal highways;

127 (iv) Storm-water collection, retention, detention,  
128 treatment and disposal facilities, flood control facilities and  
129 bank and shore protection and enhancement improvements;

130 (v) Parks, open space and recreation areas and  
131 related facilities;

132 (vi) Public safety facilities, including police,  
133 fire, emergency medical and rescue facilities;

134 (vii) Libraries and related facilities;

135 (viii) General governmental and municipal  
136 buildings and related facilities;

137 (ix) Public works facilities, storage yards and  
138 related facilities; and

139 (x) Solid waste facilities, landfills and related  
140 facilities.

141 (q) "Service area" means a geographic area defined by a  
142 municipality or interlocal agreement in which a defined set of  
143 public facilities provide service to development within the area.

144 Service areas shall be designated on the basis of sound planning

145 or engineering principles, or both.

146 (r) "System improvement costs" means costs incurred to  
147 provide additional public facilities capacity needed to serve new  
148 growth and development for planning, design and construction, land  
149 acquisition, land improvement, design and engineering related  
150 thereto, including the cost of constructing or reconstructing  
151 system improvements or facility expansions, including, but not  
152 limited to, the construction contract price, surveying and  
153 engineering fees, related land acquisition costs (including land  
154 purchases, court awards and costs, attorneys' fees and expert  
155 witness fees), and expenses incurred for qualified staff or any  
156 qualified engineer, planner, architect, landscape architect or  
157 financial consultant for preparing or updating the capital  
158 improvement element, and administrative costs not to exceed three  
159 percent (3%) of the total amount of the costs. Projected interest  
160 charges and other finance costs may be included if the impact fees  
161 are to be used for the payment of principal and interest on bonds,  
162 notes or other financial obligations issued by or on behalf of the  
163 municipality to finance the capital improvements element, but such  
164 costs do not include routine and periodic maintenance  
165 expenditures, personnel training and other operating costs.

166 (s) "System improvements" means capital improvements  
167 that are public facilities and are designed to provide service to  
168 the community at large, in contrast to "project improvements."

169 SECTION 3. (1) Municipalities that have adopted a  
170 comprehensive plan and a capital improvements element in  
171 conformity with the municipality's comprehensive plan may impose,  
172 by ordinance, development impact fees as a condition of

173 development approval on all development. After the transition  
174 period provided in this section, development exactions for other  
175 than project improvements may be imposed by municipalities only by  
176 way of development impact fees imposed pursuant to this act.

177 (2) Notwithstanding any other provision of this act, that  
178 portion of a project for which a valid building permit has been  
179 issued before the effective date of a municipal development impact  
180 fee ordinance may not be subject to development impact fees if the  
181 building permit remains valid and construction is commenced and is  
182 pursued according to the terms of the permit.

183 (3) Payment of a development impact fee shall be deemed to  
184 be in compliance with any municipal requirement for the provision  
185 of adequate public facilities or services in regard to the system  
186 improvements for which the development impact fee was paid.

187 SECTION 4. (1) A development impact fee may not exceed a  
188 proportionate share of the cost of system improvements, as defined  
189 in Section 2 of this act.

190 (2) Development impact fees must be calculated and imposed  
191 on the basis of service areas.

192 (3) Development impact fees must be calculated on the basis  
193 of levels of service for public facilities which are adopted by  
194 the governing authorities of a municipality and incorporated in  
195 the applicable development impact fee ordinance, and which are  
196 applicable to existing development as well as new growth and  
197 development.

198 (4) A municipal development impact fee ordinance must  
199 provide that development impact fees may be collected not earlier  
200 in the development process than the issuance of a building permit

201 authorizing construction of a building or structure; however,  
202 development impact fees for public facilities described in  
203 paragraph (p)(iv) of Section 2 of this act may be collected at the  
204 time of a development approval that authorizes site construction  
205 or improvement which requires public facilities described in that  
206 paragraph.

207 (5) A municipal development impact fee ordinance must  
208 include a schedule of impact fees specifying the development  
209 impact fee for various land uses per unit of development on a  
210 service area by service area basis. The ordinance must provide  
211 that a developer shall have the right to elect to pay a project's  
212 proportionate share of system improvement costs by payment of  
213 development impact fees according to the fee schedule as full and  
214 complete payment of the development project's proportionate share  
215 of system improvement costs.

216 (6) A municipal development impact fee ordinance must be  
217 adopted in accordance with Section 6 of this act.

218 (7) A municipal development impact fee ordinance must  
219 include a provision permitting individual assessments of  
220 development impact fees for public facilities described in  
221 paragraph (p)(iii) of Section 2 and, at the option of the  
222 municipality, for such other public facilities as may be deemed  
223 appropriate, giving applicants for development approval the  
224 opportunity to perform individual impact fee assessments pursuant  
225 to specific procedures, guidelines and standards established in  
226 the ordinance.

227 (8) A municipal development impact fee ordinance must  
228 provide for a process whereby a developer may receive a



229 certification of the development impact fee schedule or individual  
230 assessment for a particular project, which must establish the  
231 development impact fee for a period of ninety (90) days from the  
232 date of certification.

233 (9) A municipal development impact fee ordinance must  
234 include a provision for credits in accordance with Section 7 of  
235 this act.

236 (10) A municipal development impact fee ordinance must  
237 include a provision prohibiting the expenditure of development  
238 impact fees except in accordance with Section 8 of this act.

239 (11) A municipal development impact fee ordinance may  
240 provide for the imposition of a development impact fee for system  
241 improvement costs previously incurred by a municipality to the  
242 extent that new growth and development is served by the previously  
243 constructed system improvements.

244 (12) A municipal development impact fee ordinance may exempt  
245 all or part of particular development projects from development  
246 impact fees if:

247 (a) Such projects are determined to create  
248 extraordinary economic development and employment growth or  
249 affordable housing;

250 (b) The public policy that supports the exemption is  
251 contained in the municipality's comprehensive plan or in the  
252 applicable development impact fee ordinance, or both; and

253 (c) The exempt development's proportionate share of the  
254 system improvement is funded through a revenue source other than  
255 development impact fees.

256 (13) A municipal development impact fee ordinance must

257 provide that development impact fees may be spent only for the  
258 category of system improvements for which the fees were collected  
259 and in the service area in which the project for which the fees  
260 were paid is located.

261 (14) A municipal development impact fee ordinance must  
262 provide that, in the event a building permit is abandoned, credit  
263 must be given for the present value of the development impact fee  
264 against future development impact fees for the same parcel of  
265 land.

266 (15) A municipal development impact fee ordinance must  
267 provide for a refund of development impact fees in accordance with  
268 Section 9 of this act.

269 (16) A municipal development impact fee ordinance must  
270 provide for appeals from administrative determinations regarding  
271 development impact fees in accordance with Section 10 of this act.

272 (17) Development impact fees must be based on actual system  
273 improvement costs or reasonable estimates of such costs.

274 (18) Development impact fees must be calculated on a basis  
275 that is net of credits for the present value of revenues that new  
276 growth and development will generate, based on historical funding  
277 patterns, and which are anticipated to be available to pay for  
278 system improvements, including taxes, assessments, user fees and  
279 intergovernmental transfers.

280 SECTION 5. (1) Before the adoption of a development impact  
281 fee ordinance, a municipality adopting an impact fee program shall  
282 refer the development impact fee calculation methodology report,  
283 by public facility, including all necessary documentation and  
284 supporting information, as well as the proposed development impact

285 fee ordinance, to the local planning commission for review and  
286 recommendation within a specified time frame.

287 (2) The local planning commission may hold such meetings and  
288 public hearings as may be deemed necessary or appropriate and  
289 shall forward its recommendations to the governing authorities of  
290 the municipality in a timely fashion.

291 (3) The local planning commission shall serve in an advisory  
292 capacity to assist and advise the governing authorities of the  
293 municipality with regard to the adoption of a proposed development  
294 impact fee ordinance. In that the commission may serve in an  
295 advisory capacity only regarding the development impact fee  
296 ordinance, no action of the commission may be considered a  
297 necessary prerequisite to action by the governing authorities of  
298 the municipality with regard to adoption of the ordinance.

299 SECTION 6. Before the adoption of an ordinance imposing a  
300 development impact fee pursuant to this act, the governing  
301 authorities of a municipality shall conduct two (2) duly noticed  
302 public hearings to be held in regard to the proposed ordinance.  
303 The second hearing must be held at least two (2) weeks after the  
304 first hearing.

305 SECTION 7. (1) In the calculation of development impact  
306 fees for a particular project, credit must be given for the  
307 present value of any construction of improvements or contribution  
308 or dedication of land or money required or accepted by a  
309 municipality from a developer or his predecessor in title or  
310 interest for system improvements of the category for which the  
311 development impact fees is being collected. Credits may not be  
312 given for project improvements.

313           (2) If a developer enters into an agreement with a  
314 municipality to construct, fund or contribute system improvements  
315 so that the amount of the credit created by such construction,  
316 funding or contribution is in excess of the development impact  
317 fees that otherwise would have been paid for the development  
318 project, the developer must be reimbursed for the excess  
319 construction, funding or contribution from development impact fees  
320 paid by other development located in the service area that is  
321 benefited by the improvements.

322           SECTION 8. (1) An ordinance imposing development impact  
323 fees must provide that all development impact fee funds must be  
324 maintained in one or more interest-bearing accounts. Accounting  
325 records must be maintained for each category of system  
326 improvements and the service area in which the fees are collected.  
327 Interest earned on development impact fees must be considered  
328 funds of the account on which it is earned and may be subject to  
329 all restrictions placed on the use of development impact fees  
330 under this act.

331           (2) Expenditures of development impact fees shall be made  
332 only for the category of system improvements and in the service  
333 area of which the development impact fee was imposed as shown by  
334 the capital improvement element and as authorized by this act.  
335 Development impact fees may not be used to pay for any purpose  
336 that does not involve system improvements that create additional  
337 service available to serve new growth and development.

338           (3) As part of its annual audit process, a municipality  
339 shall prepare an annual report describing the amount of any  
340 development impact fees collected, encumbered and used during the

341 preceding year by category of public facility and service area.

342       SECTION 9. Any municipality that adopts a development impact  
343 fee ordinance shall provide for refunds in accordance with the  
344 following provisions:

345           (a) Upon the request of an owner of property on which a  
346 development impact fee has been paid, a municipality shall refund  
347 the development impact fee if capacity is available and service is  
348 denied or if the municipality, after collecting the fee when  
349 service is not available, fails to encumber the development impact  
350 fee or commence construction within six (6) years after the date  
351 that the fee was collected. In determining whether development  
352 impact fees have been encumbered, development impact fees must be  
353 considered encumbered on a first-in, first-out (FIFO) basis;

354           (b) When the right to a refund exists due to a failure  
355 to encumber development impact fees, the municipality shall  
356 provide written notice of entitlement to a refund to the feepayor  
357 who paid the development impact fee at the address shown on the  
358 application for development approval or to a successor in interest  
359 who has given notice to the municipality of a transfer or  
360 assignment of the right or entitlement to a refund and who has  
361 provided a mailing address. The notice also must be published  
362 within thirty (30) days after the expiration of the six-year  
363 period following the date that the development impact fees were  
364 collected and must contain the heading "Notice of Entitlement to  
365 Development Impact Fee Refund";

366           (c) An application for a refund must be made within one  
367 (1) year of the time the refund becomes payable under paragraph  
368 (a) or (b) of this section or within one (1) year of publication

369 of the notice of entitlement to a refund under this section,  
370 whichever is later;

371 (d) A refund must include a refund of a pro rata share  
372 of interest actually earned on the unused or excess development  
373 impact fee collected;

374 (e) All refunds must be made to the feepayor within  
375 sixty (60) days after a municipality determines that a sufficient  
376 proof of claim for a refund has been made; and

377 (f) The feepayor has standing to sue for a refund under  
378 this act if there has been a timely application for a refund and  
379 the refund is denied or not made within one (1) year of submission  
380 of the application for refund to the collecting municipality.

381 SECTION 10. (1) A municipality that adopts a development  
382 impact fee ordinance shall provide for administrative appeals to  
383 the governing authorities of the municipality or such other body  
384 as designated in the ordinance of a determination of the  
385 development impact fees for a particular project.

386 (2) A developer may pay a development impact fee under  
387 protest in order to obtain a development approval or building  
388 permit, as the case may be. A developer making such payment may  
389 not be estopped from exercising the right of appeal provided by  
390 this act, nor may the developer be estopped from receiving a  
391 refund of any amount deemed to have been collected illegally.

392 (3) A municipality development impact fee ordinance may  
393 provide for the resolution of disputes over the development impact  
394 fee by binding arbitration through the American Arbitration  
395 Association or otherwise.

396 SECTION 11. Municipalities that are jointly affected by

397 development may enter into an interlocal agreement with each other  
398 for the purpose of developing joint plans for capital improvements  
399 or for the purpose of agreeing to collect and expend development  
400 impact fees for system improvements, or both, if the agreement  
401 complies with Chapter 13, Title 17, Mississippi Code of 1972.

402       SECTION 12. This act does not repeal any existing laws  
403 authorizing a municipality to impose fees or require contributions  
404 or property dedications for capital improvements; however, all  
405 municipal ordinances imposing development exactions for system  
406 improvements on July 1, 2000, must be brought into conformance  
407 with this act no later than July 1, 2001.

408       SECTION 13. (1) Nothing in this act may be construed to  
409 prevent a municipality from requiring a developer to construct  
410 reasonable project improvements in conjunction with a development  
411 project.

412       (2) Nothing in this act may be construed to prevent or  
413 prohibit private agreements between property owners or developers  
414 and municipalities in regard to the construction or installation  
415 of system improvements and providing for credits or reimbursements  
416 for system improvement costs incurred by a developer, including  
417 interproject transfers of credits or providing for reimbursement  
418 for project improvement costs that are used or shared by more than  
419 one (1) development project.

420       (3) Nothing in this act may be construed to limit a  
421 municipality or other governmental entity that provides water or  
422 sewer service from collecting a proportionate share of the capital  
423 cost of water or sewer facilities by way of hook-up or connection  
424 fees as a condition of water or sewer service to new or existing

425 users if the development impact fee ordinance of the municipality  
426 includes a provision for credit for such hook-up or connection  
427 fees collected by the municipality to the extent that the hook-up  
428 or connection fee is collected to pay for system improvements.  
429 Imposition of hook-up or connection fees to pay for system  
430 improvements, either existing or new, must be consistent with the  
431 capital improvement element of the comprehensive plan.

432 SECTION 14. This act shall take effect and be in force from  
433 and after July 1, 2000.