MISSISSIPPI LEGISLATURE REGULAR SESSION 2001

By: Senator(s) King

To: Municipalities

SENATE BILL NO. 2802

AN ACT TO PROVIDE FOR THE IMPOSITION OF A DEVELOPMENT IMPACT FEE BY A MUNICIPALITY BY ORDINANCE; TO PROVIDE FOR THE ADOPTION OF A CAPITAL IMPROVEMENTS PLAN; TO PROVIDE FOR AN ADVISORY COMMITTEE FOR RECOMMENDING, AND PROCEDURES FOR ADOPTING, LAND USE ASSUMPTIONS, A CAPITAL IMPROVEMENTS PLAN, AND IMPACT FEE; TO PROVIDE FOR COMPUTATION OF THE PROPORTIONATE SHARE OF COSTS FOR NEW PUBLIC FACILITIES NEEDED TO SERVE NEW GROWTH AND DEVELOPMENT; AND TO LIMIT THE USES OF THE REVENUE COLLECTED FROM A DEVELOPMENT IMPACT FEE TO APPLICATION TOWARD THE INCREASED COSTS OF SERVING NEW GROWTH AND DEVELOPMENT; AND FOR RELATED PURPOSES.

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

SECTION 1. **Short title**. This chapter shall be known and may be cited as the "Mississippi Development Impact Fee Act."

SECTION 2. **Purpose**. The Legislature finds that an equitable program for planning and financing public facilities needed to serve new growth and development is necessary in order to promote and accommodate orderly growth and development and to protect the public health, safety and general welfare of the citizens of the State of Mississippi. It is the intent by enactment of this chapter to:

(a) Ensure that adequate public facilities are available to serve new growth and development;

(b) Promote orderly growth and development by establishing uniform standards by which local governments may require that those who benefit from new growth and development pay a proportionate share of the cost of new public facilities needed to serve new growth and development;

(c) Establish minimum standards for the adoption of development impact fee ordinances by governmental entities;

(d) Ensure that those who benefit from new growth and development are required to pay no more than their proportionate share of the cost of public facilities needed to serve new growth and development and to prevent duplicate and ad hoc development requirements; and

(e) Empower governmental entities which are authorized to adopt ordinances to impose development impact fees.

SECTION 3. **Definitions**. As used in this chapter:

(a) "Affordable housing" means housing affordable to families whose incomes do not exceed eighty percent (80%) of the median income for the service area or areas within the jurisdiction of the governmental entity.

(b) "Appropriate" means to legally obligate by contract or otherwise commit to use by appropriation or other official act of a governmental entity.

(c) "Capital improvements" means improvements with a useful life of ten (10) years or more, by new construction or other action, which increase the service capacity of a public facility.

(d) "Capital improvement element" means a component of a comprehensive plan adopted pursuant to Title 17, Chapter 1, Mississippi Code of 1972, which component meets the requirements of a capital improvements plan pursuant to this chapter.

(e) "Capital improvements plan" means a plan adopted pursuant to this chapter that identifies capital improvements for which development impact fees may be used as a funding source.

(f) "Developer" means any person or legal entity undertaking development.

(g) "Development" means any construction or installation of a building or structure, or any change in use of a building or structure, or any change in the use, character or appearance of land, which creates additional demand and need for public facilities.

(h) "Development approval" means any written authorization from a governmental entity which authorizes the commencement of a development.

(i) "Development impact fee" or "impact fee" means a charge or assessment, for the payment of money, imposed by a municipality or town, as a condition of development approval to fund or pay for the proportionate share of the costs of capital improvements for new or expanded public facilities necessitated by and attributable to the new development. This term does not include:

(i) A charge or fee to pay the administrative, plan review, or inspection costs associated with permits required for development;

(ii) Connection or hookup charges;

(iii) Availability charges for drainage, sewer, water, or transportation charges for services provided directly to the development; or

(iv) Amounts collected from a developer in a transaction in which the governmental entity has incurred expenses in constructing capital improvements for the development if the owner or developer has agreed to be financially responsible for the construction or installation of the capital improvements, unless a written agreement is made pursuant to Section 10 of this chapter, for credit or reimbursement.

(j) "Development requirement" means a requirement attached to a developmental approval or other governmental action approving or authorizing a particular development project including, but not limited to, a rezoning, which requirement compels the payment, dedication or contribution of goods, services, land, or money as a condition of approval.

(k) "Fee payer" means that individual or legal entity that pays or is required to pay a development impact fee.

(l) "Governmental entity" means a town or city of local government that is empowered in this enabling legislation to adopt a development impact fee ordinance.

(m) "Impact fee." See "development impact fee."

(n) "Land use assumptions" means a description of the service area and projections of land uses, densities, intensities, and population in the service area over at least a twenty-year period.

(o) "Level of service" means a measure of the relationship between service capacity and service demand for public facilities.

(p) "Manufactured home" means a structure, constructed according to HUD/FHA mobile home construction and safety standards, transportable in one or more sections, which, in the traveling mode, is eight (8) feet or more in width or is forty (40) body feet or more in length, or when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein, except that such term shall include any structure which meets all the requirements of this subsection except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary of housing and urban development and complies with the standards established under 42 USC 5401 et seq.

(q) "Modular building" means any building or building component, other than a manufactured home, which is constructed according to standards contained in the Southern Standard Building Code, as adopted or any amendments thereto, which is of closed construction and is either entirely or substantially prefabricated or assembled at a place other than the building site.

(r) "Present value" means the total current monetary value of past, present, or future payments, contributions or dedications of goods, services, materials, construction or money.

(s) "Project" means a particular development on an identified parcel of land.

(t) "Project improvements" means site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project.

(u) "Proportionate share" means that portion of the cost of system improvements determined pursuant to Section 8 of this chapter which are proportionate to the service demands and needs of the project.

(v) "Public facilities" means:

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

(ii) Wastewater collection, treatment and disposal facilities;

(iii) Roads, streets and bridges, including rights-of-way, and traffic signals; and

(iv) Storm water collection, retention, detention, treatment and disposal facilities.

(w) "Service area" means any defined geographic area identified by a governmental entity or by intergovernmental agreement in which specific public facilities provide service to development within the area defined, on the basis of sound planning or engineering principals, or both.

(x) "Service unit" means a standardized measure of consumption, use, generation or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards for a particular category of capital improvements. "Service unit" does not include alterations made to existing single family homes.

(y) "System improvements," in contrast to project improvements, means capital improvements to public facilities which are designed to provide service to a service area.

(z) "System improvement costs" means costs incurred for construction or reconstruction of system improvements, including design, acquisition, engineering and other costs directly attributable thereto. System improvement costs do not include:

(i) Construction, acquisition or expansion of public facilities other than capital improvements identified in the capital improvements plan;

(ii) Repair, operation or maintenance of existing or new capital improvements;

(iii) Upgrading, updating, expanding or replacing existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards;

(iv) Upgrading, updating, expanding or replacing existing capital improvements to provide better service to existing development;

(v) Administrative and operating costs of the governmental entity.

(vi) Principal payments and interest or other finance charges on bonds or other indebtedness except financial obligations issued by or on behalf of the governmental entity to finance capital improvements identified in the capital improvements plan.

SECTION 4. **Minimum standards and requirements for development impact fees ordinances**. Governmental entities which comply with the requirements of this chapter may impose, by ordinance, development impact fees specifically recognized in this chapter as a condition of development approval on all developments.

(a) A development impact fee shall not exceed a proportionate share of the cost of system improvements determined in accordance with Section 8 of this chapter. Development impact fees shall be based on actual system improvement costs or reasonable estimates of such costs supported by sound engineering studies.

(b) A development impact fee shall be calculated on the basis of levels of service for public facilities adopted in the development impact fee ordinance of the governmental entity that are applicable to existing development as well as new growth and development. The construction, improvement, expansion or enlargement of new or existing public facilities for which a development impact fee is imposed must be directly attributable to the capacity demands generated by the new development.

(c) A development impact fee ordinance shall specify the point in the development process at which the development impact fee shall be collected. The development impact fee may be collected no earlier than the final of a final plat, or the issuance of a building permit or a manufactured home installation permit, or as may be agreed by the developer and the governmental entity.

(d) A development impact fee ordinance shall be adopted in accordance with the procedural requirements of Section 7 of this chapter.

(e) A development impact fee ordinance shall include a provision permitting individual assessments of development impact fees under guidelines established in the ordinance.

(f) A development impact fee ordinance shall provide a process whereby a governmental entity shall provide a written certification of the amount of development impact fee(s) that are due for a particular project, which shall establish the development impact fee for a period of five (5) years from the date of the certification. The certification shall include an

explanation of the calculation of the impact fee including an explanation of factors considered under Section 8 of this chapter. The certification shall also specify the system improvement(s) for which the impact fee is intended to be used.

(g) A development impact fee ordinance shall include a provision for credits in accordance with the requirements of Section 10 of this chapter.

(h) A development impact fee ordinance shall include a provision prohibiting the expenditure of development impact fees except in accordance with the requirements of Section 11 of this chapter.

(i) A development impact fee ordinance may provide for the imposition of a development impact fee for system improvement costs incurred subsequent to adoption of the ordinance to the extent that new growth and development will be served by the system improvements.

(j) A development impact fee ordinance may exempt all or part of a particular development project from development impact fees provided that such project is determined to create affordable housing, provided that the public policy which supports the exemption is contained in the governmental entity's comprehensive plan and provided that the exempt development's proportionate share of system improvements is funded through a revenue source other than development impact fees.

(k) A development impact fee ordinance shall provide that development impact fees shall only be spent for the category of system improvements for which the fees were collected and within the service area in which the project is located.

(l) A development impact fee ordinance shall provide for a refund of development impact fees in accordance with the requirements of Section 12 of this chapter.

(m) A development impact fee ordinance shall establish a procedure for timely processing of applications for

determination by the governmental entity regarding development impact fees applicable to a project, individual assessment of development impact fees, and credits or reimbursements to be allowed or paid under Section 10 of this chapter.

(n) A development impact fee ordinance shall provide for appeals regarding development impact fees in accordance with the requirements of Section 13 of this chapter.

(o) A development impact fee ordinance must provide a detailed description of the methodology by which costs per service unit are determined. The methodology must include the following provisions:

The development impact fee per service unit may not exceed the amount determined by dividing the costs of the capital improvements described in Section 9 of this chapter, by the total number of projected service units described in Section 9 of this chapter. If the number of new service units projected over a reasonable period of time is less than the total number of new service units shown by the approved land use assumptions at full development of the service area, the maximum impact fee per service unit shall be calculated by dividing the costs of the part of the capital improvements necessitated by and attributable to the projected new service units described in Section 9 of this chapter, by the total projected new service units described in that section.

(p) A development impact fee shall include a description of acceptable levels of service for system improvements.

(q) A development impact fee ordinance shall include a schedule of development impact fees for various land uses per unit of development. The ordinance shall provide that a developer shall have the right to elect to pay a project's proportionate share of system improvement costs by payment of development impact fees according to the fee schedule as full and complete payment of

the development project's proportionate share of system improvement costs, except as provided in Section 15 of this chapter.

(r) After payment of the development impact fees or execution of an agreement for payment of development impact fees, additional development impact fees or increases in fees may not be assessed unless the number of service units increases or the scope or schedule of the development changes. In the event of an increase in the number of service units or schedule of the development changes, the additional development impact fees to be imposed are limited to the amount attributable to the additional service units or change in scope of the development.

(s) No system for the calculation of development impact fees shall be adopted which subjects any development to double payment of impact fees.

(t) A development impact fee ordinance shall exempt from development impact fees the following activities:

(i) Rebuilding the same amount of floor space of a structure which was destroyed by fire or other catastrophe, providing the structure is rebuilt and ready for occupancy within three (3) years of its destruction;

(ii) Remodeling or repairing a structure which does not increase the number of service units;

(iii) Replacing a residential unit, including a manufactured home, with another residential unit on the same lot, provided that the number of service units does not increase;

(iv) Placing a temporary construction trailer or office on a lot;

(v) Constructing an addition on a residential structure which does not increase the number of service units; and

(vi) Adding uses that are typically accessory to residential uses, such as tennis courts or clubhouse, unless it

can be clearly demonstrated that the use creates a significant impact on the capacity of system improvements.

(u) A development impact fee will be assessed for installation of a modular building or manufactured home unless the fee payer can demonstrate by documentation such as utility bills and tax records, either:

(i) That a modular building or manufactured home was legally in place on the lot or space prior to the effective date of the development impact fee ordinance; or

(ii) That a development impact fee has been paid previously for the installation of a modular building, manufactured home or recreational vehicle on that same lot or space.

(v) A development impact fee ordinance shall provide for the calculation of a development impact fee in accordance with generally accepted accounting principles. A development impact fee shall not be deemed invalid because payment of the fee may result in an incidental benefit to owners or developers within the service area other than the person paying the fee.

(w) A development impact fee ordinance shall include a description of acceptable levels of service for system improvements.

SECTION 5. **Intergovernmental agreements.** Governmental entities which are jointly affected by development are authorized to enter into intergovernmental agreements with each other for the purpose of developing joint plans for capital improvements or for the purpose of agreeing to collect and expend development impact fees for system improvements, or both, provided that such agreement complies with all applicable state laws. Governmental entities are also authorized to enter into agreements with the Mississippi Department of Transportation for the expenditure of development impact fees pursuant to a developer's agreement under Section 15 of this chapter.

SECTION 6. **Development impact fee advisory committee.** (1) A governmental entity that is considering or that has adopted a development impact fee ordinance shall establish a development impact fee advisory committee, composed of not fewer than five (5), but no more than seven (7), members appointed by the governing authority of the governmental entity. Members of the advisory committee may not include elected officials or employees of the governmental entity. At least forty percent (40%) of the members must be active in the business of development, building, or other real estate related professional work.

(2) An existing planning or planning and zoning commission may serve as the development impact fee advisory committee if the membership criteria in this subsection (1) are met.

(3) The development impact fee advisory committee shall serve in an advisory capacity and is established to:

(a) Assist the governmental entity in adopting land use assumptions;

(b) Review the capital improvements plan and proposed amendments, and file written comments;

(c) Monitor and evaluate implementation of the capital improvements plan;

(d) File periodic reports, at least annually, with respect to the capital improvements plan and report to the governmental entity any perceived inequities or improprieties in implementing the plan or imposing the development impact fees;

(e) Advise the governmental entity of the need to update or revise land use assumptions, capital improvements plan, and development impact fees; and

(f) Monitor and evaluate implementation of the development impact fee ordinance and expenditure of impact fees pursuant thereto.

(4) The governmental entity shall make available to the advisory committee, upon request, all financial and accounting

information, professional reports in relation to other development and implementation of land use assumptions, the capital improvements plan, and periodic updates of the capital improvements plan.

(5) The governmental entity shall provide administrative support to the advisory committee, to the extent necessary to allow the advisory committee to prudently and timely allow the committee to perform all of the functions described in this section.

SECTION 7. **Procedure for the imposition of development impact fees.** (1) A development impact fee shall be imposed by a governmental entity in compliance with the provisions set forth in this section.

(2) A capital improvements plan shall be developed in coordination with the development impact fee advisory committee utilizing the land use assumptions most recently adopted by the appropriate land use planning agency or agencies.

(3) At least one (1) public hearing shall be held to consider adoption, amendment, or repeal of a capital improvements plan. Two (2) notices, at least one (1) week apart, of the time, place and purpose of the hearing shall be published not less than fifteen (15) nor more than thirty (30) days before the scheduled date of the hearing, in a newspaper of general circulation within the jurisdiction of the governmental entity. A second notice of the hearing on adoption of the capital improvements plan, containing the same information, shall be published in the same manner at least seven (7) days before the scheduled date of the hearing. Such notices shall also include a statement that the governmental entity shall make available to the public, upon request, the following: proposed land use assumptions, a copy of the proposed capital improvements plan or amendments thereto, and a statement that any member of the public affected by the capital improvements plan or amendments shall have the right to appear at

the public hearing and present evidence regarding the proposed capital improvements plan or amendments. The governmental entity shall send notice of the intent to hold a public hearing by mail to any person who has requested in writing notification of the hearing date at least fifteen (15) days prior to the hearing date, provided that the governmental entity may require that any person making such request renew the request for notification, not more frequently than once each year, in accordance with a schedule determined by the governmental entity, in order to continue receiving such notices.

(4) If the governmental entity makes a material change in the capital improvements plan or amendment, further notice and hearing shall be provided before the governmental entity adopts the revision and notice of the proposed change given as set forth in subsection (3) of this section.

(5) Following adoption of the initial capital improvements plan, a governmental entity shall conduct a public hearing to consider adoption of an ordinance authorizing the imposition of development impact fees or any amendment thereof. Notice of the hearing shall be provided in the same manner as set forth in subsection (3) of this section for adoption of a capital improvements plan.

(6) Nothing contained in this section shall be construed to alter the procedures for adoption of an ordinance by the governmental entity. Provided, however, a development impact fee ordinance shall not be adopted as an emergency measure and shall not take effect earlier than thirty (30) days subsequent to adoption.

SECTION 8. **Proportionate share of determination.** (1) All development impact fees shall be based on a reasonable and equitable formula or method under which the development impact fee imposed does not exceed a proportionate share of the costs incurred or to be incurred by the governmental entity in providing

new or expanded public facilities to serve the new development. The proportionate share is the cost attributable to the new development after the governmental entity considers the following: (a) any appropriate credit, offset or contribution of money, dedication of land, or construction of system improvements; (b) payments reasonably anticipated to be made by or as a result of a new development in the form of user fees, debt service payments, or taxes of every type, which are dedicated for system improvements for which development impact fees would otherwise be imposed; and (c) all other available sources of funding such system improvements.

(2) In determining the proportionate share of the cost of system improvements to be paid by the developer, the following factors at a minimum shall be considered by the governmental entity imposing the development impact fee.

(a) The cost of existing system improvements within the service area or areas;

(b) The means by which existing system improvements have been financed;

(c) The extent to which the new development will contribute to the cost of system improvements through taxation, assessment, or developer or landowner contributions, or has previously contributed to the cost of system improvements through developer or landowner contribution.

(d) The extent to which the new development is required to contribute to the cost of existing system improvements in the future.

(e) The extent to which the new development should be credited for providing system improvements, without charge to other properties within the service area or areas;

(f) The time and price differential inherent in a fair comparison of fees paid at different times; and

(g) The availability of other sources of funding system improvements including, but not limited to, user charges, general tax levies, intergovernmental transfers, and special taxation. The governmental entity shall develop a plan for alternative sources of revenue.

(3) The governmental entity may not include in the development and assessment of a development impact fee the expenses associated with the development or amendment of a capital improvements plan or any other administrative expenses associated with the establishment and operation of a development impact fee program.

(4) A developer may not be required to pay more than his proportionate share of the costs of the project or to oversize his facilities for use of others outside of the project without fair and commensurate compensation, credit or reimbursement being made at the time payment of the impact fee is required of the developer.

SECTION 9. **Capital improvements plan.** (1) Each governmental entity intending to impose a development impact fee shall first prepare a capital improvements plan.

For governmental entities required to undertake comprehensive planning pursuant to Title 17, Chapter 1, Mississippi Code of 1972, such capital improvements plan shall be prepared and adopted according to the requirements contained in the local planning act, Title 17, Chapter 1, Mississippi Code of 1972, and shall be included as an element of the comprehensive plan. The capital improvements plan shall be prepared by qualified professionals in fields relating to finance, engineering, planning and transportation. The persons preparing the plan shall consult with the development impact fee advisory committee.

The capital improvements plan shall contain all of the following:

(a) A general description of all existing public facilities and their existing deficiencies within the service area or areas of the governmental entity and a reasonable estimate of all costs and a plan to develop the funding resources related to curing the existing deficiencies including, but not limited to, the upgrading, updating, improving, expanding or replacing of such facilities to meet existing needs and usage;

(b) A commitment by the governmental entity to use other available sources of revenue to cure existing system deficiencies where practical;

(c) An analysis of the total capacity, the level of current usage, and commitments for usage of capacity of existing capital improvements, which shall be prepared by a qualified professional planner or by a qualified engineer licensed to perform engineering services in this state;

(d) A description of the land use assumptions by the governmental entity;

(e) A definitive table establishing the specific level or quantity of use, consumption, generation or discharge of a service unit for each category of system improvements and an equivalency or conversion table establishing the ratio of a service unit to various types of land uses, including residential, commercial, agricultural and industrial;

(f) A description of all system improvements and their costs necessitated by and attributable to new development in each service area based on the approved land use assumptions, to provide a level of service not to exceed the level of service adopted in the development impact fee ordinance;

(g) The total number of service units necessitated by and attributable to new development within each service area based on the approved land use assumptions and calculated in accordance with generally accepted engineering or planning criteria;

(h) The projected demand for system improvements required by new service units projected over a reasonable period of time not to exceed twenty (20) years, but no less than ten (10) years.

(i) Identification of all sources and levels of funding available to the governmental entity for the financing of the system improvements;

(j) If the proposed system improvements include the improvement of public facilities under the jurisdiction of the State of Mississippi or another governmental entity, then an agreement between governmental entities shall specify the reasonable share of funding by each unit, provided the governmental entity authorized to impose development impact fees shall not assume more than its reasonable share of funding joint improvements, nor shall the agreement permit expenditure of development impact fees by a governmental entity which is not authorized to impose development impact fees unless such expenditure is pursuant to a developer agreement under Section 15 of this chapter; and

(k) A schedule setting forth dates for commencing and completing construction of all improvements identified in the capital improvements plan.

(2) The governmental entity imposing a development impact fee shall update the capital improvements plan at least once every five (5) years. The five-year period shall commence from the date of the original adoption of the capital improvements plan. The updating of the capital improvements plan shall be made in accordance with procedures set forth in this section.

(3) The governmental entity must annually adopt a capital improvements plan budget.

(4) A statement that development impact fees shall not be used to cure deficiencies in existing public facilities within the service area or areas of the governmental entity.

SECTION 10. **Credits**. (1) In the calculation of development impact fees for a particular project, credit or reimbursement shall be given for the present value of any construction of system improvements or contribution or dedication of land or money required by a governmental entity from a developer for system improvements of the category for which the development impact fee is being collected. Credit or reimbursement shall not be given for project improvements.

(2) If a developer is required to construct, fund or contribute system improvements in excess of the development project's proportionate share of system improvements costs, the developer shall receive a credit on future impact fees or be reimbursed at the developer's choice for such excess construction, funding or contribution from development impact fees paid by future development which impacts the system improvements constructed, funded or contributed by the developer or developers or fee payer.

(3) If credit or reimbursement is due to the developer pursuant to this section, the governmental entity shall enter into a written agreement with the fee payer, negotiated in good faith, prior to the construction, funding or contribution. The agreement shall provide for the amount of credit or the amount, time and form of reimbursement.

SECTION 11. **Earmarking and expenditure of collected development impact fees**. (1) An ordinance imposing development impact fees shall provide that all development impact fee funds shall be maintained in interest-bearing accounts, within the capital projects fund, for each category of system improvements. Accounting records shall be maintained for each category of system improvements and the service area in which the fees are collected. Interest earned on development impact fees shall be considered funds of the account on which it is earned, and shall be subject

to all restrictions placed on the use of development impact fees under the provisions of this chapter.

(2) Expenditures of development impact fees shall be made only for the category of system improvements and within or for the benefit of the service area for which the development impact fee was imposed as shown by the capital improvements plan and as authorized in this chapter. Development impact fees shall not be used for any purpose other than system improvement costs to create additional improvements to serve new growth.

(3) As part of its annual audit process, a governmental entity shall prepare an annual report describing the amount of all development impact fees collected, appropriated, and spent during the preceding year by category of public facility and service area.

(4) Collected development impact fees must be expended within five (5) years from the date they were collected, on a first-in, first-out (FIFO) basis. Any funds not expended within the prescribed time or times shall be refunded pursuant to Section 12 of this chapter.

SECTION 12. **Refunds**. (1) Any governmental entity which adopts a development impact fee ordinance shall provide for refunds upon the request of an owner of property on which a development impact fee has been paid if:

(a) Service is available but not provided in accordance with Section 11 of this chapter;

(b) A building permit or permit for installation of a manufactured home is denied or abandoned; or

(c) The governmental entity, after collecting the fee when service is not available, has failed to appropriate and expend the collected development impact fees pursuant to Section 11 of this chapter.

(2) When the right to a refund exists, the governmental entity shall send a refund to the fee payer within ninety (90)

days after it is determined by the governmental entity that a refund is due.

(3) A refund shall include a refund of interest at the rate of interest earned on the impact fees to be refunded.

(4) Any person entitled to a refund shall have standing to bring suit in Chancery Court for a refund under the provisions of this chapter if there has not been a timely payment of a refund pursuant to subsection (2) of this section, and if successful, shall be entitled to recover attorney fees and costs expended in bringing suit.

SECTION 13. **Appeals.** (1) A governmental entity which adopts a development impact fee ordinance shall provide for administrative appeals by the developer or fee payer from any discretionary action or inaction by or on behalf of the governmental entity.

(2) A fee payer may pay a development impact fee under protest in order to obtain a development approval or building permit. A fee payer making such payment shall not be estopped from exercising the right of appeal provided in this chapter, nor shall such fee payer be estopped from receiving a refund of any amount deemed to have been illegally collected.

(3) A governmental entity which adopts a development impact fee ordinance shall provide for mediation by a qualified independent party, upon voluntary agreement by the fee payer and the governmental entity, to address a disagreement related to the impact fee for proposed development. The ordinance shall provide the mediation may take place at any time during the appeals process and participation in mediation does not preclude the fee payer from pursuing other remedies provided for in this chapter or otherwise at law. The ordinance shall provide that mediation costs will be shared equally by the fee payer and the governmental entity.

(4) Any person or entity in or owning property within a service area, and any organization, association, corporation representing the interest of person(s) or entities owning property within a service area, may file a declaratory judgment action, in Chancery Court in the County in which the municipality is located, to challenge the validity of the impact fee, the amount or any aspect of the administration of an impact fee ordinance provided for in this chapter.

(5) A Chancery Judge may award reasonable attorney fees and costs to the prevailing party in any action brought under this section.

SECTION 14. **Collection.** A governmental entity may provide in a development impact fee ordinance the means for collection of development impact fees, including, but not limited to:

(a) Additions to the fee for reasonable interest for nonpayment or late payment;

(b) Withholding of the building permit or other governmental approval until the development impact fee is paid;

(c) Withholding of utility services until the development impact fee is paid; and

(d) Imposing liens on the real property affected for failure to timely pay a development impact fee.

SECTION 15. **Other powers and rights not affected**. (1) Nothing in this chapter shall prevent a town or city from requiring a developer to construct reasonable project improvements in conjunction with a development project, otherwise lawfully authorized by municipal ordinance and state law.

(2) Nothing in this chapter shall be construed to prevent or prohibit private agreements between property owners or developers, the Mississippi Department of Transportation or governmental entities in regard to the construction or installation of system improvements or providing for credits or reimbursements for system improvement costs incurred by a developer, including interproject

transfers of credits, or providing for reimbursement for project improvements which are used or shared by more than one (1) development project.

(3) If it can be shown that a proposed development will have a direct impact on a public facility under the jurisdiction of a public body or political subdivision of the State of Mississippi, then any such agreement as provided for in subsection (2) of this section shall include a provision for the allocation of impact fees collected from the developer for the improvement of the public facility by the political subdivision affected.

(4) Nothing in this chapter shall be construed to create any additional right to develop real property or diminish the power of towns or cities to regulate the orderly development of real property within their boundaries.

(5) Nothing in this chapter shall work to limit the use by governmental entities of the power of eminent domain or supersede or conflict with requirements or procedures authorized in the Mississippi Code for local improvement districts or general obligation bond issues.

SECTION 16. **Transition**. (1) The provisions of this chapter shall not be construed to repeal any existing laws authorizing a governmental entity to impose fees or require contributions or property dedications for capital improvements.

(2) All existing ordinances imposing development impact fees shall be brought into conformance with the provisions of this chapter within one (1) year after the effective date of this chapter. Impact fees collected and developer agreements entered into prior to the expiration of the one-year period shall not be invalid by reason of this chapter.

(3) After adoption of a development impact fee ordinance, in accordance with the provisions of this chapter, notwithstanding any other provision of law, development requirements for system improvements shall be imposed by governmental entities only by way

of development impact fees imposed pursuant to and in accordance with the provisions of this chapter.

(4) Notwithstanding any other provisions of this chapter, that portion of a project for which a valid building permit has been issued or construction has commenced, prior to the effective date of a development impact fee ordinance, shall not be subject to additional development impact fees so long as the building permit remains valid or construction is commenced and is pursued according to the terms of the permit or development approval.

SECTION 17. The provisions of this act shall be codified as a separate chapter of the Mississippi Code of 1972.

SECTION 18. This act shall take effect and be in force from and after July 1, 2001.