

By: Senator(s) Johnson (19th)

To: Finance

SENATE BILL NO. 3021

1 AN ACT TO PROVIDE FOR THE IMPOSITION OF A DEVELOPMENT IMPACT
2 FEE BY A MUNICIPALITY BY ORDINANCE; TO PROVIDE FOR COMPUTATION OF
3 THE PROPORTIONATE SHARE OF COSTS FOR NEW PUBLIC FACILITIES NEEDED
4 TO SERVE NEW GROWTH AND DEVELOPMENT; AND TO LIMIT THE USES OF THE
5 REVENUE COLLECTED FROM A DEVELOPMENT IMPACT FEE TO APPLICATION
6 TOWARD THE COSTS OF SERVING NEW GROWTH AND DEVELOPMENT; AND FOR
7 RELATED PURPOSES.

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

9 SECTION 1. **Short title.**

10 This act shall be known and may be cited as the "Mississippi
11 Development Impact Fee Act."

12 SECTION 2. **Purpose.**

13 The Legislature finds that an equitable program for planning
14 and financing public facilities needed to serve new growth and
15 development is necessary in order to promote and accommodate
16 orderly growth and development and to protect the public health,
17 safety and general welfare of the citizens of the State of
18 Mississippi. It is the intent by enactment of this act to:

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

21 (b) Promote orderly growth and development and require
22 that those who benefit from new growth and development pay a
23 proportionate share of the cost of Public facilities needed to
24 serve new growth and development;

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

27 SECTION 3. **Definitions.**

28 As used in this act:

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

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

36 (c) "Capital improvements" means improvements or
37 equipment with a useful life of three (3) years or more.

38 (d) "Capital improvements plan" means a plan adopted
39 pursuant to this act that identifies capital improvements for
40 which development impact fees may be used as a funding source.

41 (e) "Developer" means any person or legal entity
42 undertaking development.

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

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

51 (h) "Development impact fee" or "impact fee" means a
52 charge or assessment, for the payment of money, imposed by a
53 municipality or town, as a condition of development approval to
54 fund/pay for the proportionate share of the costs of public
55 infrastructure and equipment necessitated by and attributable to
56 the new development. This term does not include:

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

60 (ii) Connection or hookup charges;

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

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

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

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

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

82 (l) "Impact fee." See "development impact fee."

83 (m) "Land use assumptions" means relevant land use
84 projections of at least a five (5) years period and a description
85 of the service area.

86 (n) "Level of service" means a measure of the
87 relationship between service capacity and service demand for
88 public facilities.

89 (o) "Manufactured home" means a structure, constructed
90 according to HUD/FHA mobile home construction and safety
91 standards, transportable in one or more sections, which, in the
92 traveling mode, is eight (8) feet or more in width or is forty
93 (40) body feet or more in length, or when erected on site, is

94 three hundred twenty (320) or more square feet, and which is built
95 on a permanent chassis and designed to be used as a dwelling with
96 or without a permanent foundation when connected to the required
97 utilities, and includes the plumbing, heating, air conditioning,
98 and electrical systems contained therein, except that such term
99 shall include any structure which meets all the requirements of
100 this subsection except the size requirements and with respect to
101 which the manufacturer voluntarily files a certification required
102 by the secretary of housing and urban development and complies
103 with the standards established under 42 USC 5401 et. seq.

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

110 (q) "Present value" means the total current monetary
111 value of future payments.

112 (r) "Project" means a particular development on an
113 identified parcel of land.

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

118 (t) "Proportionate share" means that portion of the
119 cost of system improvements determined pursuant to Section 7 of
120 this act which are proportionate to the service demands and needs
121 of the project.

122 (u) "Public facilities" means all capital items
123 reflected in a capital improvements budget, except a landfill.

124 (v) "Service area" means any defined geographic area
125 identified by a governmental entity or by intergovernmental
126 agreement in which specific public facilities provide service to

127 development within the area defined, on the basis of sound public
128 policy, planning and/or engineering principals.

129 (w) "Service unit" means a standardized measure of
130 consumption, use, generation or discharge attributable to an
131 individual unit of development calculated in accordance with
132 generally accepted engineering and/or planning standards for a
133 particular category of capital improvements.

134 "Service unit" does not include alterations made to existing
135 single family homes.

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

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

143 (i) Repair, operation or maintenance of existing
144 or new capital improvements;

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

149 (iii) Upgrading, updating, expanding or replacing
150 existing capital improvements to provide better service to
151 existing development;

152 (iv) Administrative and operating costs of the
153 governmental entity;

154 (v) Principal payments and interest or other
155 finance charges on bonds or other indebtedness except financial
156 obligations issued by or on behalf of the governmental entity to
157 finance capital improvements included as part of the impact fee
158 calculations.

159 SECTION 4. **Minimum standards and requirements for**
160 **development impact fees ordinances.**

161 Governmental entities which comply with the requirements of
162 this act may impose, by ordinance, development impact fees
163 specifically recognized in this act as a condition of development
164 approval on all developments.

165 (a) A development impact fee shall not exceed a
166 proportionate share of the cost of system improvements determined
167 in accordance with Section 7 of this act.

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

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

184 (d) A development impact fee ordinance shall be adopted
185 in accordance with the procedural requirements of Section 6 of
186 this act.

187 (e) A development impact fee ordinance shall provide a
188 process whereby a governmental entity shall provide an impact fee
189 schedule. The technical impact fee report shall include an
190 explanation of the calculation of the impact fee including an
191 explanation of factors considered under Section 7 of this act.

192 (f) A development impact fee ordinance shall include a
193 provision for credits in accordance with the requirements of
194 Section 9 of this act.

195 (g) A development impact fee ordinance shall include a
196 provision prohibiting the expenditure of development impact fees
197 except in accordance with the requirements of Section 10 of this
198 act.

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

204 (i) A development impact fee ordinance may exempt all
205 or part of a particular development project from development
206 impact fees provided that such project is determined to create
207 affordable housing, provided that the public policy which supports
208 the exemption is contained in a governmental public policy and
209 provided that the exempt development's proportionate share of
210 system improvements is funded through a revenue source other than
211 development impact fees.

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

216 (k) A development impact fee ordinance shall provide
217 for a refund of development impact fees in accordance with the
218 requirements of Section 11 of this act.

219 (l) A development impact fee ordinance shall establish
220 a procedure for timely processing of applications regarding
221 development impact fees applicable to a project, and credits or
222 reimbursements to be allowed or paid under Section 9 of this act.

223 (m) A development impact fee ordinance shall provide
224 for appeals regarding development impact fees in accordance with
225 the requirements of Section 12 of this act.

226 (n) A development impact fee ordinance technical report
227 must provide a detailed description of the methodology by which
228 costs per service unit are determined.

229 (o) A development impact fee shall include a
230 description of acceptable levels of service for system
231 improvements.

232 (p) A development impact fee ordinance shall include a
233 schedule of development impact fees for various land uses per unit
234 of development.

235 (q) After payment of the development impact fees or
236 execution of an agreement for payment of development impact fees,
237 additional development impact fees or increases in fees may not be
238 assessed unless the number of service units increases or the scope
239 or schedule of the development changes. In the event of an
240 increase in the number of service units or schedule of the
241 development changes, the additional development impact fees to be
242 imposed are limited to the amount attributable to the additional
243 service units or change in scope of the development.

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

247 (s) A development impact fee ordinance shall exempt
248 from development impact fees the following activities:

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

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

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

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

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

262 (vi) Adding uses that are typically accessory to
263 residential uses, such as tennis courts or clubhouse, unless it
264 can be clearly demonstrated that the use creates a significant
265 impact on the capacity of system improvements.

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

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

273 (ii) That a development impact fee has been paid
274 previously for the installation of a modular building,
275 manufactured home or recreational vehicle on that same lot or
276 space and the number of service units does not increase.

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

283 **SECTION 5. Intergovernmental agreements.**

284 Governmental entities which are jointly affected by
285 development are authorized to enter into intergovernmental
286 agreements with each other for the purpose of developing joint
287 plans for capital improvements or for the purpose of agreeing to

288 collect and expend development impact fees for system
289 improvements, or both, provided that such agreement complies with
290 all applicable state laws. Governmental entities are also
291 authorized to enter into agreements with the Mississippi
292 Department of Transportation for the expenditure of development
293 impact fees pursuant to a developer's agreement under Section 14
294 of this act.

295 SECTION 6. **Procedure for the imposition of development**
296 **impact fees.**

297 (1) A development impact fee shall be imposed by a
298 governmental entity in compliance with the provisions set forth in
299 this section.

300 (2) At least one (1) public hearing shall be held to
301 consider adoption, amendment, or repeal of the impact fee
302 technical report and ordinance. Two (2) notices, at least one (1)
303 week apart, of the time, place and purpose of the hearing shall be
304 published not less than fifteen (15) nor more than thirty (30)
305 days before the scheduled date of the hearing, in a newspaper of
306 general circulation within the jurisdiction of the governmental
307 entity. A second notice of the hearing on adoption of the impact
308 fee technical report and ordinance, containing the same
309 information, shall be published in the same manner at least seven
310 (7) days before the scheduled date of the hearing. Such notices
311 shall also include a statement that the governmental entity shall
312 make available to the public, upon request, the impact fee
313 technical report, and a statement that any member of the public
314 affected by the impact fees shall have the right to appear at the
315 public hearing and present evidence regarding the proposed impact
316 fee ordinance. The governmental entity shall send notice of the
317 intent to hold a public hearing by mail to any person who has
318 requested in writing notification of the hearing date at least
319 fifteen (15) days prior to the hearing date, provided that the
320 governmental entity may require that any person making such

321 request renew the request for notification, not more frequently
322 than once each year, in accordance with a schedule determined by
323 the governmental entity, in order to continue receiving such
324 notices.

325 (3) If the governmental entity makes a material change in
326 the impact fee schedule, further notice and hearing shall be
327 provided before the governmental entity adopts the revision and
328 notice of the proposed change given as set forth in subsection (2)
329 of this section.

330 (4) Nothing contained in this section shall be construed to
331 alter the procedures for adoption of an ordinance by the
332 governmental entity. Provided, however, a development impact fee
333 ordinance shall not be adopted as an emergency measure.

334 **SECTION 7. Proportionate share of determination.**

335 All development impact fees shall be based on a reasonable
336 and equitable formula or method under which the development impact
337 fee imposed does not exceed a proportionate share of the costs
338 incurred or to be incurred by the governmental entity in providing
339 new or expanded public facilities to serve the new development.

340 **SECTION 8. Development impact fee technical report.**

341 (1) Each governmental entity intending to impose a
342 development impact fee shall prepare a capital improvements plan
343 as appropriate for the specific impact fee categories.

344 The development impact fee report shall contain all of the
345 following:

346 (a) As appropriate, an analysis of the total capacity,
347 the level of current usage, and commitments for usage of capacity
348 of existing capital improvements benefiting new growth, which
349 shall be prepared by a qualified professional planner or by a
350 qualified engineer licensed to perform engineering services in
351 this state;

352 (b) A description of relevant land use assumptions
353 affecting the governmental entity;

354 (c) A definitive table establishing the specific level
355 or quantity of use, consumption, generation or discharge of a
356 service unit for each category of system improvements and an
357 equivalency or conversion table establishing the ratio of a
358 service unit to various types of land uses, including residential,
359 commercial or industrial as appropriate;

360 (d) A description of all system improvements and their
361 costs necessitated by and attributable to new development in each
362 service to provide a level of service not to exceed the level of
363 service adopted in the development impact fee ordinance.

364 (e) The total number of service units necessitated by
365 and attributable to new development within each service area based
366 on projected growth and calculated in accordance with generally
367 accepted engineering or planning criteria;

368 (f) The projected demand for system improvements
369 required by new service units projected over a reasonable period
370 of time not to exceed twenty (20) years, but no less than five (5)
371 years; and

372 (g) If the proposed system improvements include the
373 improvement of public facilities under the jurisdiction of the
374 State of Mississippi or another governmental entity, then an
375 agreement between governmental entities shall specify the
376 reasonable share of funding by each unit, provided the
377 governmental entity authorized to impose development impact fees
378 shall not assume more than its reasonable share of funding joint
379 improvements, nor shall the agreement permit expenditure of
380 development impact fees by a governmental entity which is not
381 authorized to impose development impact fees unless such
382 expenditure is pursuant to a developer agreement under Section 15
383 of this act.

384 (2) The governmental entity imposing a development impact
385 fee shall update the development impact fee report at least once
386 every five (5) years. The five-year period shall commence from

387 the date of the original adoption of the capital improvements
388 plan. The updating of the capital improvements plan shall be made
389 in accordance with procedures set forth in this section.

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

392 **SECTION 9. Credits.**

393 (1) Credit or reimbursement shall be given for the present
394 value of any construction of system improvements or contribution
395 or dedication of land or money required by a governmental entity
396 from a developer for system improvements identified in the
397 development impact fee report. Credit or reimbursement shall not
398 be given for project improvements.

399 (2) If a developer is required to construct, or contribute
400 system improvements identified in the development impact fee
401 report, the developer shall receive a credit on the project's
402 impact fees. If additional credit is due, he will be reimbursed
403 by the jurisdiction or from development impact fees paid by future
404 development which impacts the system improvements constructed.

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

411 **SECTION 10. Earmarking and expenditure of collected**
412 **development impact fees.**

413 (1) An ordinance imposing development impact fees shall
414 provide that all development impact fee funds shall be maintained
415 in interest-bearing accounts, within the capital projects fund,
416 for each category of system improvements. Accounting records
417 shall be maintained for each category of system improvements and
418 the service area in which the fees are collected. Interest earned
419 on development impact fees shall be considered funds of the

420 account on which it is earned, and shall be subject to all
421 restrictions placed on the use of development impact fees under
422 the provisions of this act.

423 (2) Expenditures of development impact fees shall be made
424 only for the category of system improvements and within or for the
425 benefit of the service area for which the development impact fee
426 was imposed and as authorized in this act. Development impact
427 fees shall not be used for any purpose other than system
428 improvement costs to create improvements to serve new growth.

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

434 (4) Collected development impact fees must be expended
435 within six (6) years from the date they were collected, on a
436 first-in-first-out (FIFO) basis unless due to extenuating
437 circumstances which would be noted. Any funds not expended within
438 the prescribed time(s) shall be refunded pursuant to Section 11 of
439 this act.

440 SECTION 11. Refunds.

441 (1) Any governmental entity which adopts a development
442 impact fee ordinance shall provide for refunds upon the request of
443 an owner of property on which a development impact fee has been
444 paid as shown by transaction receipt if:

445 (a) Service is available but not provided;

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

448 (c) The governmental entity, after collecting the fee
449 when service is not available, has failed to appropriate and
450 expend the collected development impact fees pursuant to Section
451 10 of this act.

452 (2) When the right to a refund exists, the governmental
453 entity shall send a refund to the fee payer within ninety (90)
454 days after it is determined by the governmental entity that a
455 refund is due.

456 (3) Any person entitled to a refund shall have standing to
457 bring suit in chancery court for a refund under the provisions of
458 this act if there has not been a timely payment of a refund
459 pursuant to subsection (2) of this section, and if successful
460 shall be entitled to recover attorney fees and costs expended in
461 bringing suit.

462 **SECTION 12. Appeals.**

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

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

473 **SECTION 13. Collection.**

474 A governmental entity may provide in a development impact fee
475 ordinance the means for collection of development impact fees,
476 including, but not limited to:

477 (a) Additions to the fee for reasonable interest for
478 non-payment or late payment;

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

482 (c) Withholding of utility services until the
483 development impact fee is paid.

484 **SECTION 14. Other powers and rights not affected.**

485 (1) Nothing in this act shall prevent a town or city from
486 requiring a developer to construct reasonable project improvements
487 in conjunction with a development project, otherwise lawfully
488 authorized by municipal ordinance and state law.

489 (2) Nothing in this act shall be construed to prevent or
490 prohibit private agreements between property owners or developers,
491 the Mississippi Department of Transportation or governmental
492 entities in regard to the construction or installation of system
493 improvements included in the development impact fee technical
494 report or providing for credits or reimbursements for system
495 improvement costs incurred by a developer, including interproject
496 transfers of credits, or providing for reimbursement for project
497 improvements which are used or shared by more than one (1)
498 development project.

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

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

510 (5) Nothing in this act shall work to limit the use by
511 governmental entities of the power of eminent domain or supersede
512 or conflict with requirements or procedures as specified by law
513 for local improvement districts or general obligation bond issues.

514 **SECTION 15. Transition.**

515 (1) The provisions of this act shall not be construed to
516 repeal any existing laws authorizing a governmental entity to

517 impose fees or require contributions or property dedications for
518 capital improvements.

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

525 (3) After adoption of a development impact fee ordinance, in
526 accordance with the provisions of this act, notwithstanding any
527 other provision of law, development requirements for system
528 improvements shall be imposed by governmental entities only by way
529 of development impact fees imposed pursuant to and in accordance
530 with the provisions of this act.

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

538 SECTION 16. This act shall take effect and be in force from
539 and after July 1, 2001.