MISSISSIPPI LEGISLATURE

2000 Regular Session

To: Municipalities

By: Representative Guice

House Bill 179

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

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

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

(2) 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. The following are the purposes of this act:

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

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

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

(d) To ensure that new growth and development is required to pay no more than its proportionate share of the cost of public facilities needed to

serve new growth and development and to prevent duplicate and ad hoc development exactions.

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

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

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

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

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

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

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

(g) "Development exaction" means a requirement attached to a development approval or other municipal 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.

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

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

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

(k) "Level of service" means a measure of the relationship between service capacity and service demand for public facilities in terms of demand to

capacity ratios or the comfort and convenience of use or service of public facilities, or both.

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

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

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

(o) "Proportionate share" means that portion of the cost of system improvements which is reasonably related to the service demands and needs of the project.

(p) "Public facilities" means:

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

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

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

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

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

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

(vii) Libraries and related facilities;

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

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

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

(q) "Service area" means a geographic area defined by a municipality or interlocal agreement in which a defined set of public facilities provide service to development within the area. Service areas shall be designated on the basis of sound planning or engineering principles, or both.

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

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

SECTION 3. (1) Municipalities that have adopted a comprehensive plan and a capital improvements element in conformity with the municipality's comprehensive plan may impose, by ordinance, development impact fees as a condition of development approval on all development. After the transition period provided in this section, development exactions for other than project improvements may be imposed by municipalities only by way of development impact fees imposed pursuant to this act.

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

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

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

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

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

(4) A municipal development impact fee ordinance must provide that development impact fees may be collected not earlier in the development process than the issuance of a building permit authorizing construction of a building or structure; however, development impact fees for public facilities described in paragraph (p)(iv) of Section 2 of this act may be collected at the time of a development approval that authorizes site construction or improvement which requires public facilities described in that paragraph.

(5) A municipal development impact fee ordinance must include a schedule of impact fees specifying the development impact fee for various land uses per unit of development on a service area by service area basis. The ordinance must 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.

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

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

(8) A municipal development impact fee ordinance must provide for a process whereby a developer may receive a certification of the development impact fee schedule or individual assessment for a particular project, which must establish the development impact fee for a period of ninety (90) days from the date of certification.

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

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

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

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

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

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

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

(13) A municipal development impact fee ordinance must provide that development impact fees may be spent only for the category of system improvements for which the fees were collected and in the service area in which the project for which the fees were paid is located.

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

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

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

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

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

SECTION 5. (1) Before the adoption of a development impact fee ordinance, a municipality adopting an impact fee program shall refer the development impact fee calculation methodology report, by public facility, including all necessary documentation and supporting information, as well as the proposed development impact fee ordinance, to the local planning commission for review and recommendation within a specified time frame.

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

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

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

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

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

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

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

(3) As part of its annual audit process, a municipality shall prepare an annual report describing the amount of any development impact fees collected, encumbered and used during the preceding year by category of public facility and service area.

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

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

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

(c) An application for a refund must be made within one (1) year of the time the refund becomes payable under paragraph (a) or (b) of this section or within one (1) year of publication of the notice of entitlement to a refund under this section, whichever is later;

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

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

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

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

(2) A developer may pay a development impact fee under protest in order to obtain a development approval or building permit, as the case may be. A developer making such payment may not be estopped from exercising the right of appeal provided by this act, nor may the developer be estopped from receiving a refund of any amount deemed to have been collected illegally. (3) A municipality development impact fee ordinance may provide for the resolution of disputes over the development impact fee by binding arbitration through the American Arbitration Association or otherwise.

SECTION 11. Municipalities that are jointly affected by development may enter into an interlocal agreement 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, if the agreement complies with Chapter 13, Title 17, Mississippi Code of 1972. SECTION 12. This act does not repeal any existing laws authorizing a municipality to impose fees or require contributions or property dedications for capital improvements; however, all municipal ordinances imposing development exactions for system improvements on July 1, 2000, must be brought into conformance with this act no later than July 1, 2001.

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

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

(3) Nothing in this act may be construed to limit a municipality or other governmental entity that provides water or sewer service from collecting a proportionate share of the capital cost of water or sewer facilities by way of hook-up or connection fees as a condition of water or sewer service to new or existing users if the development impact fee ordinance of the municipality includes a provision for credit for such hook-up or connection fees collected by the municipality to the extent that the hook-up or connection fee is collected to pay for system improvements. Imposition of hook-up or connection fees to pay for system improvements, either existing or new, must be consistent with the capital improvement element of the comprehensive plan.

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