

COMMITTEE ON COMMERCE AND ECONOMIC DEVELOPMENT

SENATE AMENDMENTS TO S.B. 1406

(Reference to printed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 9-463.05, Arizona Revised Statutes, is amended to  
3 read:

4 9-463.05. Development fees; imposition by cities and towns;  
5 infrastructure improvements plan; annual report;  
6 limitation on actions; definitions

7 A. A municipality may assess development fees to offset costs to the  
8 municipality associated with providing necessary public services to a  
9 development, including the costs of infrastructure, improvements, real  
10 property, engineering and architectural services, financing, other capital  
11 costs and associated appurtenances, equipment, vehicles, furnishings and  
12 other personalty.

13 B. Development fees assessed by a municipality under this section are  
14 subject to the following requirements:

15 1. Development fees shall result in a beneficial use to the  
16 development.

17 2. Monies received from development fees assessed pursuant to this  
18 section shall be placed in a separate fund and accounted for separately and  
19 may only be used for the purposes authorized by this section. Monies  
20 received from a development fee identified in an infrastructure improvements  
21 plan adopted or amended pursuant to subsection D of this section shall be  
22 used to provide the same category of necessary public service for which the  
23 development fee was assessed **FOR THE BENEFIT OF THE SAME AREA, AS DEFINED IN**  
24 **THE INFRASTRUCTURE IMPROVEMENTS PLAN, WITHIN WHICH THE DEVELOPMENT FEE WAS**  
25 **ASSESSED**. Interest earned on monies in the separate fund shall be credited  
26 to the fund.

27 3. The schedule for payment of fees shall be provided by the  
28 municipality. **BASED ON THE COST IDENTIFIED IN THE INFRASTRUCTURE IMPROVEMENTS**  
29 **PLAN**, the municipality shall provide a credit toward the payment of a  
30 development fee for the required **OR AGREED TO** dedication of public sites,

1 improvements and other necessary public services included in the  
2 infrastructure improvements plan and for which a development fee is assessed,  
3 to the extent the public sites, improvements and necessary public services  
4 are provided by the developer. The developer of residential dwelling units  
5 shall be required to pay development fees when construction permits for the  
6 dwelling units are issued, or at a later time if specified in a development  
7 agreement pursuant to section 9-500.05. If a development agreement provides  
8 for fees to be paid at a time later than the issuance of construction  
9 permits, the deferred fees shall be paid no later than fifteen days after the  
10 issuance of a certificate of occupancy. The development agreement shall  
11 provide for the value of any deferred fees to be supported by appropriate  
12 security, including a surety bond, letter of credit or cash bond.

13 4. The amount of any development fees assessed pursuant to this  
14 section must bear a reasonable relationship to the burden imposed ~~upon~~ ON the  
15 municipality to provide additional necessary public services to the  
16 development. The municipality, ~~in determining the extent of the burden~~  
17 ~~imposed by the development,~~ shall ~~consider, among other things,~~ FORECAST the  
18 contribution ~~made or~~ to be made in the future in cash or by taxes, fees, ~~or~~  
19 assessments ~~by~~ OR OTHER SOURCES OF REVENUE DERIVED FROM the property owner  
20 towards the capital costs of the necessary public service covered by the  
21 development fee AND SHALL INCLUDE THESE CONTRIBUTIONS IN DETERMINING THE  
22 EXTENT OF THE BURDEN IMPOSED BY THE DEVELOPMENT.

23 5. If development fees are assessed by a municipality, such fees shall  
24 be assessed in a nondiscriminatory manner.

25 6. In determining and assessing a development fee applying to land in  
26 a community facilities district established under title 48, chapter 4,  
27 article 6, the municipality shall take into account all public infrastructure  
28 provided by the district and capital costs paid by the district for necessary  
29 public services and shall not assess a portion of the development fee based  
30 on the infrastructure or costs.

31 C. A municipality shall give at least sixty days' advance notice of  
32 intention to assess a new or modified development fee and shall release to  
33 the public a written report that identifies the methodology for calculating

1 the amount of the development fee, explains the relationship between the  
2 development fee and the infrastructure improvements plan, includes  
3 documentation that supports the assessment of a new or modified development  
4 fee and identifies any index or indices to be used for automatic adjustment  
5 of the development fee pursuant to subsection F of this section and the  
6 timing of those adjustments. The municipality shall conduct a public hearing  
7 on the proposed new or modified development fee at any time after the  
8 expiration of the sixty day notice of intention to assess a new or modified  
9 development fee and at least thirty days prior to the scheduled date of  
10 adoption of the new or modified fee by the governing body. A development fee  
11 assessed pursuant to this section shall not be effective until seventy-five  
12 days after its formal adoption by the governing body of the municipality.  
13 Nothing in this subsection shall affect any development fee adopted prior to  
14 July 24, 1982.

15 D. Before the assessment of a new or modified development fee, the  
16 governing body of the municipality shall adopt or amend an infrastructure  
17 improvements plan. The municipality shall conduct a public hearing on the  
18 infrastructure improvements plan at least thirty days before the adoption or  
19 amendment of the plan. The municipality shall release the plan to the  
20 public, make available to the public the documents used to prepare the plan  
21 and provide public notice at least sixty days before the public hearing,  
22 subject to the following:

23 1. An infrastructure improvements plan may be adopted concurrently  
24 with the report required by subsection C of this section, and the  
25 municipality may provide for and schedule the notices and hearings required  
26 by this subsection together with the notices and hearings required by  
27 subsection C of this section.

28 2. A municipality may amend an infrastructure improvements plan  
29 without a public hearing if the amendment addresses only elements of  
30 necessary public services that are included in the existing infrastructure  
31 improvements plan. The municipality shall provide public notice of those  
32 amendments at least fourteen days in advance of their effective date.

1           E. For each necessary public service that is the subject of a  
2 development fee, the infrastructure improvements plan shall:

3           1. Estimate future necessary public services that will be required as  
4 a result of new development **IN THE AREA, AS DEFINED IN THE INFRASTRUCTURE**  
5 **IMPROVEMENTS PLAN, WITHIN WHICH THE DEVELOPMENT FEE WILL BE ASSESSED** and the  
6 basis for the estimate, **INCLUDING A COMPARISON OF THE NECESSARY PUBLIC**  
7 **SERVICES PROVIDED TO EXISTING DEVELOPMENT AND THE NECESSARY PUBLIC SERVICES**  
8 **TO BE PROVIDED TO NEW DEVELOPMENT.**

9           2. Forecast the costs of infrastructure, improvements, real property,  
10 financing, other capital costs and associated appurtenances, equipment,  
11 vehicles, furnishings and other personalty that will be associated with  
12 meeting those future needs for necessary public services.

13           3. **FORECAST THE REVENUE SOURCES THAT WILL BE AVAILABLE TO FUND THE**  
14 **NECESSARY PUBLIC SERVICES** and estimate the time required to finance and  
15 provide the necessary public services.

16           F. **EXCEPT FOR ADJUSTMENTS PURSUANT TO SUBSECTION G OF THIS SECTION, A**  
17 **MUNICIPALITY'S DEVELOPMENT FEE ORDINANCE SHALL PROVIDE THAT A NEW DEVELOPMENT**  
18 **FEE OR AN INCREASED PORTION OF A MODIFIED DEVELOPMENT FEE SHALL NOT BE**  
19 **ASSESSED AGAINST A DEVELOPMENT FOR TWENTY-FOUR MONTHS AFTER THE DATE OF THE**  
20 **MUNICIPALITY'S FINAL APPROVAL OF THE DEVELOPMENT, PROVIDED THAT NO MATERIAL**  
21 **CHANGES ARE MADE TO THE SITE PLAN OR SUBDIVISION PLAT THAT WAS THE SUBJECT OF**  
22 **THE FINAL APPROVAL. THE TWENTY-FOUR MONTH PERIOD SHALL NOT BE EXTENDED BY A**  
23 **RENEWAL OR AMENDMENT OF THE SITE PLAN OR THE FINAL SUBDIVISION PLAT THAT WAS**  
24 **THE SUBJECT OF THE FINAL APPROVAL. THE MUNICIPALITY SHALL ISSUE, ON REQUEST,**  
25 **A WRITTEN STATEMENT OF THE DEVELOPMENT FEE SCHEDULE APPLICABLE TO THE**  
26 **DEVELOPMENT.**

27           ~~F.~~ G. A municipality may automatically adjust a development fee on an  
28 annual basis without a public hearing if the adjustment is based on a  
29 nationally recognized index applicable to the cost of the necessary public  
30 service that is the subject of the development fee and the adjustment  
31 mechanism is identified in the report required by subsection C of this  
32 section. The municipality shall provide public notice of those adjustments  
33 at least thirty days in advance of their effective date.

1           ~~G.~~ H. Each municipality that assesses development fees shall submit  
2 an annual report accounting for the collection and use of the fees. The  
3 annual report shall include the following:

4           1. The amount assessed by the municipality for each type of  
5 development fee.

6           2. The balance of each fund maintained for each type of development  
7 fee assessed as of the beginning and end of the fiscal year.

8           3. The amount of interest or other earnings on the monies in each fund  
9 as of the end of the fiscal year.

10          4. The amount of development fee monies used to repay:

11           (a) Bonds issued by the municipality to pay the cost of a capital  
12 improvement project that is the subject of a development fee assessment.

13           (b) Monies advanced by the municipality from funds other than the  
14 funds established for development fees in order to pay the cost of a capital  
15 improvement project that is the subject of a development fee assessment.

16          5. The amount of development fee monies spent on each capital  
17 improvement project that is the subject of a development fee assessment and  
18 the physical location of each capital improvement project.

19          6. The amount of development fee monies spent for each purpose other  
20 than a capital improvement project that is the subject of a development fee  
21 assessment.

22           ~~H.~~ I. Within ninety days following the end of each fiscal year, each  
23 municipality shall submit a copy of the annual report to the city  
24 clerk. Copies shall be made available to the public on request. The annual  
25 report may contain financial information that has not been audited.

26           ~~I.~~ J. A municipality that fails to file the report required by this  
27 section shall not collect development fees until the report is filed.

28           ~~J.~~ K. Any action to collect a development fee shall be commenced  
29 within two years after the obligation to pay the fee accrues.

30           ~~K.~~ L. For the purposes of this section, ~~—~~:

31           1. "FINAL APPROVAL" MEANS:

1 (a) FOR A NONRESIDENTIAL OR MULTIFAMILY DEVELOPMENT, THE APPROVAL OF A  
2 SITE PLAN OR, IF NO SITE PLAN IS SUBMITTED FOR THE DEVELOPMENT, THE APPROVAL  
3 OF A FINAL SUBDIVISION PLAT.

4 (b) FOR A SINGLE FAMILY RESIDENTIAL DEVELOPMENT, THE APPROVAL OF A  
5 FINAL SUBDIVISION PLAT.

6 2. "Infrastructure improvements plan" means one or more written plans  
7 that individually or collectively identify each public service that is  
8 proposed to be the subject of a development fee and otherwise complies with  
9 the requirements of this section, and may be the municipality's capital  
10 improvements plan.

11 Sec. 2. Applicability

12 Section 9-463.05, subsection F, Arizona Revised Statutes, as amended by  
13 this act, does not apply to any development that received its final approval  
14 before January 1, 2009.

15 Sec. 3. Effective date

16 Section 9-463.05, Arizona Revised Statutes, as amended by this act, is  
17 effective from and after December 31, 2008."

18 Amend title to conform

1406b1  
02/25/2008  
9:59 AM  
C: drt