

REFERENCE TITLE: municipal development fees; assessment

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
Second Regular Session  
2008

# HB 2452

Introduced by  
Representative Paton

AN ACT

AMENDING SECTION 9-463.05, ARIZONA REVISED STATUTES; RELATING TO MUNICIPAL DEVELOPMENT FEES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
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; definition  
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. Interest earned on monies in the separate fund  
24 shall be credited to the fund.  
25 3. The schedule for payment of fees shall be provided by the  
26 municipality. The municipality shall provide a credit toward the payment of  
27 a development fee for the required dedication of public sites, improvements  
28 and other necessary public services included in the infrastructure  
29 improvements plan and for which a development fee is assessed, to the extent  
30 the public sites, improvements and necessary public services are provided by  
31 the developer. The developer of residential dwelling units shall be required  
32 to pay development fees when construction permits for the dwelling units are  
33 issued, or at a later time if specified in a development agreement pursuant  
34 to section 9-500.05. If a development agreement provides for fees to be paid  
35 at a time later than the issuance of construction permits, the deferred fees  
36 shall be paid no later than fifteen days after the issuance of a certificate  
37 of occupancy. The development agreement shall provide for the value of any  
38 deferred fees to be supported by appropriate security, including a surety  
39 bond, letter of credit or cash bond.  
40 4. The amount of any development fees assessed pursuant to this  
41 section must bear a reasonable relationship to the burden imposed upon the  
42 municipality to provide additional necessary public services to the  
43 development. The municipality, in determining the extent of the burden  
44 imposed by the development, shall consider, among other things, the  
45 contribution made or to be made in the future in cash or by taxes, fees or

1 assessments by the property owner towards the capital costs of the necessary  
2 public service covered by the development fee.

3 5. **SUBJECT TO PARAGRAPH 7 OF THIS SUBSECTION**, if development fees are  
4 assessed by a municipality, such fees shall be assessed in a  
5 nondiscriminatory manner.

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

12 7. **A MUNICIPALITY SHALL NOT ASSESS ANY NEWLY ADOPTED DEVELOPMENT FEE**  
13 **AGAINST PROPERTY FOR A PERIOD OF EIGHTEEN MONTHS AFTER THE PROPERTY IS**  
14 **SUBDIVIDED ACCORDING TO A FINAL PLAT APPROVED BY THE MUNICIPALITY ASSESSING**  
15 **THE DEVELOPMENT FEE. FOR THE PURPOSES OF THIS PARAGRAPH, "NEWLY ADOPTED"**  
16 **MEANS A DEVELOPMENT FEE ADOPTED, AFTER THE FINAL PLAT APPROVAL, TO OFFSET THE**  
17 **COST OF A CATEGORY OF NECESSARY PUBLIC SERVICE FOR WHICH THE MUNICIPALITY HAS**  
18 **NOT ALREADY ASSESSED A DEVELOPMENT FEE. NEWLY ADOPTED DOES NOT INCLUDE THE**  
19 **MODIFICATION OF A DEVELOPMENT FEE PURSUANT TO SUBSECTION C OF THIS SECTION**  
20 **FOR ANY CATEGORY FOR WHICH A DEVELOPMENT FEE IS ALREADY IN EFFECT AT THE TIME**  
21 **OF THE FINAL PLAT APPROVAL.**

22 C. A municipality shall give at least sixty days' advance notice of  
23 intention to assess a new or modified development fee and shall release to  
24 the public a written report that identifies the methodology for calculating  
25 the amount of the development fee, explains the relationship between the  
26 development fee and the infrastructure improvements plan, includes  
27 documentation that supports the assessment of a new or modified development  
28 fee and identifies any index or indices to be used for automatic adjustment  
29 of the development fee pursuant to subsection F of this section and the  
30 timing of those adjustments. The municipality shall conduct a public hearing  
31 on the proposed new or modified development fee at any time after the  
32 expiration of the sixty day notice of intention to assess a new or modified  
33 development fee and at least thirty days prior to the scheduled date of  
34 adoption of the new or modified fee by the governing body. A development fee  
35 assessed pursuant to this section shall not be effective until seventy-five  
36 days after its formal adoption by the governing body of the municipality.  
37 Nothing in this subsection shall affect any development fee adopted prior to  
38 July 24, 1982.

39 D. Before the assessment of a new or modified development fee, the  
40 governing body of the municipality shall adopt or amend an infrastructure  
41 improvements plan. The municipality shall conduct a public hearing on the  
42 infrastructure improvements plan at least thirty days before the adoption or  
43 amendment of the plan. The municipality shall release the plan to the  
44 public, make available to the public the documents used to prepare the plan

1 and provide public notice at least sixty days before the public hearing,  
2 subject to the following:

3 1. An infrastructure improvements plan may be adopted concurrently  
4 with the report required by subsection C of this section, and the  
5 municipality may provide for and schedule the notices and hearings required  
6 by this subsection together with the notices and hearings required by  
7 subsection C of this section.

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

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

15 1. Estimate future necessary public services that will be required as  
16 a result of new development and the basis for the estimate.

17 2. Forecast the costs of infrastructure, improvements, real property,  
18 financing, other capital costs and associated appurtenances, equipment,  
19 vehicles, furnishings and other personalty that will be associated with  
20 meeting those future needs for necessary public services and estimate the  
21 time required to finance and provide the necessary public services.

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

29 G. Each municipality that assesses development fees shall submit an  
30 annual report accounting for the collection and use of the fees. The annual  
31 report shall include the following:

32 1. The amount assessed by the municipality for each type of  
33 development fee.

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

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

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

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

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

- 1           5. The amount of development fee monies spent on each capital  
2 improvement project that is the subject of a development fee assessment and  
3 the physical location of each capital improvement project.
- 4           6. The amount of development fee monies spent for each purpose other  
5 than a capital improvement project that is the subject of a development fee  
6 assessment.
- 7           H. Within ninety days following the end of each fiscal year, each  
8 municipality shall submit a copy of the annual report to the city  
9 clerk. Copies shall be made available to the public on request. The annual  
10 report may contain financial information that has not been audited.
- 11          I. A municipality that fails to file the report required by this  
12 section shall not collect development fees until the report is filed.
- 13          J. Any action to collect a development fee shall be commenced within  
14 two years after the obligation to pay the fee accrues.
- 15          K. For the purposes of this section, "infrastructure improvements  
16 plan" means one or more written plans that individually or collectively  
17 identify each public service that is proposed to be the subject of a  
18 development fee and otherwise complies with the requirements of this section,  
19 and may be the municipality's capital improvements plan.