

Brewer signs bill limiting development impact fees

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By Howard Fischer, Capitol Media Services |

Arizona cities are going to lose some of their powers to assess fees on new developments.

Legislation signed Tuesday by Gov. Jan Brewer will require cities to come up with very specific plans of improvements they say will be needed because of new subdivisions. More to the point, the law, which takes effect later this year, takes away what has been an almost unregulated discretion about what to charge and how much.

It does leave in place existing laws that say fees are appropriate for new fire and police stations and water and sewer system improvements. But it requires a "substantial nexus" between the project and the residential development.

And in the case of libraries and parks, cities would have to prove that the facilities actually will serve the residents of the new subdivision.

The new law also makes it off limits, for the first time ever, for cities to impose impact fees for cultural facilities and general governmental functions, like a new city hall.

That is more than academic: The Arizona Court of Appeals ruled last year that the city of Mesa was legally entitled to levy fees on new homes to fund cultural facilities as "necessary public services."

In that ruling, upheld without comment earlier this year by the Arizona Supreme Court, the judge said they have to give city council members broad latitude to decide what services are necessary. They did not accept arguments by the Home Builders Association of Central Arizona that this list must be pared only to what is absolutely required.

It was the homebuilders group that led the successful charge this year to rein in the fees.

Spencer Kamps, lobbyist for the organization, said his members do support impact fees. What they objected to -- and what this legislation forbids -- are fees not linked to the burden that new developments actually place on the community.

Key to that is the requirement that each city come up with plans based on "service areas."

"It's not viewed as fair or appropriate to charge a development at the north side of the community ... for a park in the south side of the community," Kamps said.

Beyond that, he said cities have operated under the philosophy that any new municipal project can be charged off to new development. He said cities must prove that residents of the new development actually will use those facilities.

"We will pay our proportional share of expansion," Kamps said.

He said that means if an entirely new library is needed solely because of the new subdivisions, then homebuilders will pay 100 percent of the cost. But Kamps said if the new residents will add only proportionately to the demand, then that should be the limit of what is charged.

Similarly, if a city is planning a new or expanded park, and figures that each acre will serve 1,000 residents, then the share of the cost of that expansion should be pro-rated based on the number of people in the new homes.

"All we want to do is pay our fair share, and no more," he said.

Ken Strobeck, executive director of the League of Arizona Cities and Towns, said his organization did not oppose the final version of the bill even though it curbs the power of communities.

He said one key incentive is that the Home Builders Association agreed not to try to push through any new restrictions on impact fees at least until 2015.

“We got that in writing,” Strobeck said. If nothing else, he said that means cities can implement the new regulations without fear they are going to be torn apart a year from now.

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