

AMENDED IN ASSEMBLY APRIL 19, 2021

AMENDED IN ASSEMBLY APRIL 6, 2021

AMENDED IN ASSEMBLY MARCH 18, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 602

Introduced by Assembly Member Grayson

February 11, 2021

An act to amend Sections 65940.1 and 66019 of, and to add Section 65940.2 to, the Government Code, and to add Section 50466.5 to the Health and Safety Code, relating to land use.

LEGISLATIVE COUNSEL’S DIGEST

AB 602, as amended, Grayson. Development fees: impact fee nexus study.

(1) Existing law, the Permit Streamlining Act, which is part of the Planning and Zoning Law, requires each public agency to provide a development project applicant with a list that specifies the information that will be required from any applicant for a development project. The Mitigation Fee Act requires a local agency that establishes, increases, or imposes a fee as a condition of approval of a development project to, among other things, determine a reasonable relationship between the fee’s use and the type of development project on which the fee is imposed. Existing law requires a city, county, or special district that has an internet website to make available on its internet website certain information, as applicable, including its current schedule of fees and exactions.

This bill, among other things, would require, on and after January 1, 2022, a city, county, or special district that conducts an impact fee nexus

study to follow specific standards and practices, including, but not limited to, (1) that prior to the adoption of an associated development fee or exaction, an impact fee nexus study be adopted, (2) that the study identify the existing level of service for each public facility, identify the proposed new level of service, and include an explanation of why the new level of service is necessary, and (3) if the study is adopted after July 1, 2022, either calculate a fee levied or imposed on a housing development project proportionately to the square footage of the proposed units, or make specified findings explaining why square footage is not an appropriate metric to calculate the fees. The bill would also require a city, county, or special district to post a written fee schedule or a link directly to the written fee schedule on its internet website. *The bill would require a city or county to request the total amount of fees and exactions associated with a project upon the issuance of a certificate of occupancy, and to post this information on its internet website, as specified.* By requiring a city or county to include certain information in, and follow certain standards with regard to, its impact fee nexus studies and to include certain information on its internet website, the bill would impose a state-mandated local program.

(2) Existing law requires the Department of Housing and Community Development to develop specifications for the structure, functions, and organization of a housing and community development information system for this state. Existing law requires the system to include statistical, demographic, and community development data that will be of assistance to local public entities in the planning and implementation of housing and community development programs.

This bill would require the department, on or before January 1, 2024, to create an impact fee nexus study template that may be used by local jurisdictions. The bill would require that the template include a method of calculating the feasibility of housing being built with a given fee level.

~~(3) Existing law requires a city, county, or special district that has an internet website to make specified information available on its internet website, including a current schedule of fees and exactions imposed by the city, county, or special district applicable to a proposed housing development project. Existing law defines “exaction” for these purposes to mean construction excise taxes, a requirement that the housing development project provide public art or an in-lieu payment, special taxes levied pursuant to the Mello-Roos Community Facilities Act, and dedications of parkland or in-lieu fees.~~

~~This bill would remove construction excise taxes and special taxes levied pursuant to the Mello-Roos Community Facilities Act from the above definition of “exaction.”~~

(4)

(3) The Mitigation Fee Act requires notice of the time and place of a meeting regarding any fee, that includes a general explanation of the matter to be considered, be mailed at least 14 days before the first meeting to an interested party who files a written request with the city or county for mailed notice of a meeting on a new or increased fee.

This bill would authorize any member of the public, including an applicant for a development project, to submit evidence that the city, county, or other local agency has failed to comply with the Mitigation Fee Act. The bill would require the legislative body of the city, county, or other local agency to consider any timely submitted evidence and authorize the legislative body to change or adjust the proposed fee or fee increase, as specified.

(5)

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 65940.1 of the Government Code is
2 amended to read:

3 65940.1. (a) (1) A city, county, or special district that has an
4 internet website shall make all of the following available on its
5 internet website, as applicable:

6 (A) (i) A current schedule of fees, exactions, and affordability
7 requirements imposed by that city, county, or special district,
8 including any dependent special districts, as defined in Section
9 56032.5, of the city or county applicable to a proposed housing
10 development project.

11 (ii) The city, county, or special district shall present the
12 information described in clause (i) in a manner that clearly
13 identifies the fees, exactions, and affordability requirements that

1 apply to each parcel and the fees that apply to each new water and
2 sewer utility connection.

3 (iii) The city, county, or special district shall post a written fee
4 schedule or a link directly to the written fee schedule on its internet
5 website.

6 (B) All zoning ordinances and development standards adopted
7 by the city or county presenting the information, which shall
8 specify the zoning, design, and development standards that apply
9 to each parcel.

10 (C) The list required to be compiled pursuant to Section 65940
11 by the city or county presenting the information.

12 (D) The current and five previous annual fee reports or the
13 current and five previous annual financial reports, that were
14 required pursuant to subdivision (b) of Section 66006 and
15 subdivision (d) of Section 66013.

16 (E) An archive of impact fee nexus studies, cost of service
17 studies, or equivalent, conducted by that city, county, or special
18 district on or after January 1, 2018. For purposes of this
19 subparagraph, “cost of service study” means the data provided to
20 the public pursuant to subdivision (a) of Section 66016.

21 (2) A city, county, or special district shall update the information
22 made available under this subdivision within 30 days of any
23 changes.

24 (3) ~~(A) A city, county, or special district~~ *city or county* shall
25 request from a development proponent, upon issuance of a
26 certificate of occupancy, the total amount of fees and exactions
27 associated with the project for which the certificate was issued.
28 ~~The city, county, or special district~~ *city or county* shall post this
29 information on its internet website, and update it at least twice per
30 year.

31 ~~(B) A city, county, or special district~~ *city or county* shall not be
32 responsible for the accuracy for the information received and posted
33 pursuant to subparagraph (A). ~~A city, county, or special district~~
34 *city or county* may include a disclaimer regarding the accuracy of
35 the information posted on its internet website under this paragraph.

36 (b) For purposes of this section:

37 (1) “Affordability requirement” means a requirement imposed
38 as a condition of a development of residential units, that the
39 development include a certain percentage of the units affordable
40 for rent or sale to households with incomes that do not exceed the

limits for moderate-income, lower income, very low income, or extremely low income households specified in Sections 50079.5, 50093, 50105, and 50106 of the Health and Safety Code, or an alternative means of compliance with that requirement including, but not limited to, in-lieu fees, land dedication, off-site construction, or acquisition and rehabilitation of existing units.

(2) (A) “Exaction” means ~~both~~ any of the following:

(i) A construction excise tax.

~~(i)~~

(ii) A requirement that the housing development project provide public art or an in-lieu payment.

~~(ii)~~

(iii) Dedications of parkland or in-lieu fees imposed pursuant to Section 66477.

(iv) A special tax levied on new housing units pursuant to the Mello Roos Community Facilities Act (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5).

(B) “Exaction” does not include fees or charges pursuant to Section 66013 that are not imposed (i) in connection with issuing or approving a permit for development or (ii) as a condition of approval of a proposed development, as held in *Capistrano Beach Water Dist. v. Taj Development Corp.* (1999) 72 Cal.App.4th 524.

(3) “Fee” means a fee or charge described in the Mitigation Fee Act (Chapter 5 (commencing with Section 66000), Chapter 6 (commencing with Section 66010), Chapter 7 (commencing with Section 66012), Chapter 8 (commencing with Section 66016), and Chapter 9 (commencing with Section 66020)).

(4) “Housing development project” means a use consisting of any of the following:

(A) Residential units only.

(B) Mixed-use developments consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use.

(C) Transitional housing or supportive housing.

(c) This section shall not be construed to alter the existing authority of a city, county, or special district to adopt or impose an exaction or fee.

SEC. 2. Section 65940.2 is added to the Government Code, to read:

65940.2. (a) On and after January 1, 2022, a city, county, or special district that conducts an impact fee nexus study shall follow all of the following standards and practices:

(1) Prior to the adoption of an associated development fee or exaction, fee, an impact fee nexus study shall be adopted.

(2) When applicable, the nexus study shall identify the existing level of service for each public facility, identify the proposed new level of service, and include an explanation of why the new level of service is appropriate.

(3) A nexus study shall include information that supports the local agency's actions, as required by subdivision (a) of Section 66001.

(4) If a nexus study supports the increase of an existing fee, the city, county, or special district shall review the assumptions of the nexus study supporting the original fee and evaluate the amount of fees collected under the original fee.

(5) (A) A nexus study adopted after July 1, 2022, shall comply with one of the following:

(i) ~~Calculate~~ calculate a fee imposed on a housing development project proportionately to the square footage of proposed units of the development. A fee imposed proportionately to the square footage of the proposed units of the development shall be deemed to bear a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.

(B) A nexus study is not required to comply with subparagraph (A) if the city, county, or special district makes a finding that includes all of the following:

(ii) ~~Include a finding that includes all of the following:~~

(i)

(i) An explanation as to why square footage is not appropriate metric to calculate fees imposed on housing development project.

(ii) ~~Demonstrate~~

(ii) An explanation that an alternative basis of calculating the fee bears a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed. ~~Any alternative basis for calculating fees shall be presumed to lack a reasonable relationship between the need for the public facility and the type of development project on which~~

1 the fee is imposed unless a finding is made pursuant to this
2 subclause.

3 ~~(III) Demonstrate that there are~~

4 ~~(iii) That other policies in the fee structure that support smaller~~
5 ~~developments, or otherwise ensure that smaller developments are~~
6 ~~not charged disproportionate fees.~~

7 (B) This paragraph does not prohibit an agency from establishing
8 different fees for different types of developments.

9 (6) A nexus study adopted after July 1, 2022, shall consider
10 targeting fees geographically. If the city, county, or special district
11 does not target the fees geographically, it shall adopt a finding
12 explaining why the adoption of geographically specific fees is not
13 appropriate.

14 ~~(7) A Large jurisdictions shall adopt a capital improvement~~
15 ~~plan shall be adopted as as a part of the study when infrastructure~~
16 ~~that is required to mitigate development impacts, or is required as~~
17 ~~a condition of development, exceeds a total cost of two million~~
18 ~~dollars (\$2,000,000). nexus study.~~

19 (8) All studies shall be adopted at a public hearing with at least
20 30 days' notice, and the local agency shall notify any member of
21 the public that requests notice of intent to begin an impact fee
22 nexus study of the date of the hearing.

23 (9) Studies shall be updated *at least* every eight years, from the
24 period beginning on January 1, 2022.

25 (10) The local agency may use the impact fee nexus study
26 template developed by the Department of Housing and Community
27 Development pursuant to Section 50466.5 of the Health and Safety
28 Code.

29 (b) This section does not require any study or analysis as a
30 prerequisite to impose any fee *or charges* pursuant to Section
31 66013.

32 (c) For purposes of this section:

33 ~~(1) "Exaction" and "fee" have the same meanings as in Section~~
34 ~~65940.1.~~

35 ~~(1) "Development fee" shall have the same meaning as~~
36 ~~subdivision (b) of Section 66000.~~

37 ~~(2) "Large jurisdiction" shall have the same meaning as~~
38 ~~subdivision (d) of Section 53559.1 of the Health and Safety Code.~~

39 ~~(2)~~

(3) “Public facility” has the same meaning as defined in subdivision (d) of Section 66000.

SEC. 3. Section 66019 of the Government Code is amended to read:

66019. (a) As used in this section:

(1) “Fee” means a fee as defined in Section 66000, but does not include any of the following:

(A) A fee authorized pursuant to Section 66013.

(B) A fee authorized pursuant to Section 17620 of the Education Code, or Sections 65995.5 and 65995.7.

(C) Rates or charges for water, sewer, or electrical services.

(D) Fees subject to Section 66016.

(2) “Party” means a person, entity, or organization representing a group of people or entities.

(3) “Public facility” means a public facility as defined in Section 66000.

(b) For any fee, notice of the time and place of the meeting, including a general explanation of the matter to be considered, and a statement that the data required by this subdivision is available shall be mailed at least 14 days prior to the first meeting to an interested party who files a written request with the city, county, or city and county for mailed notice of a meeting on a new or increased fee to be enacted by the city, county, or city and county. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body of the city, county, or city and county may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service. The legislative body may send the notice electronically. At least 10 days prior to the meeting, the city, county, or city and county shall make available to the public the data indicating the amount of cost, or the estimated cost, required to provide the public facilities and the revenue sources anticipated to fund those public facilities, including general fund revenues. The new or increased fee shall be effective no earlier than 60 days following the final action on the adoption or increase of the fee, unless the city, county, or city and county follows the procedures set forth in subdivision (b) of Section 66017.

1 (c) If a city, county, or city and county receives a request for
2 mailed notice pursuant to this section, or a local agency receives
3 a request for mailed notice pursuant to Section 66016, the city,
4 county, or city and county or other local agency may provide the
5 notice via electronic mail for those who specifically request
6 electronic mail notification. A city, county, city or county, or other
7 local agency that provides electronic mail notification pursuant to
8 this subdivision shall send the electronic mail notification to the
9 electronic mail address indicated in the request. The electronic
10 mail notification authorized by this subdivision shall operate as
11 an alternative to the mailed notice required by this section.

12 (d) (1) Any member of the public, including an applicant for a
13 development project, may submit evidence that the city, county,
14 or other local agency's determinations and findings required
15 pursuant to subdivision (a) of Section 66001 are insufficient or
16 that the local agency otherwise failed to comply with this chapter.
17 Evidence submitted pursuant to this subdivision may include, but
18 is not limited to, information regarding the proposed fee
19 calculation, assumptions, or methodology or the calculation,
20 assumptions, or methodology for an existing fee upon which the
21 proposed fee or fee increase is based.

22 (2) The legislative body of the city, county, or other local agency
23 shall consider any evidence submitted pursuant to paragraph (1)
24 that is timely submitted under this chapter. After consideration of
25 the evidence, the legislative body of the city, county, or other local
26 agency may change or adjust the proposed fee or fee increase if
27 deemed necessary by the legislative body.

28 SEC. 4. Section 50466.5 is added to the Health and Safety
29 Code, to read:

30 50466.5. (a) On or before January 1, 2024, the department
31 shall create an impact fee nexus study template that may be used
32 by local jurisdictions. The template shall include a method of
33 calculating the feasibility of housing being built with a given fee
34 level.

35 (b) The department may contract with nonprofit or academic
36 institutions to complete the template.

37 SEC. 5. No reimbursement is required by this act pursuant to
38 Section 6 of Article XIII B of the California Constitution because
39 a local agency or school district has the authority to levy service
40 charges, fees, or assessments sufficient to pay for the program or

- 1 level of service mandated by this act, within the meaning of Section
- 2 17556 of the Government Code.

O