

Date of Hearing: April 17, 2024

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Juan Carrillo, Chair

AB 3012 (Grayson) – As Amended March 11, 2024

SUBJECT: Development fees: fee schedule template: fee estimate tool.

SUMMARY: Requires cities and counties to make available on their internet websites a fee estimate tool that the public can use to calculate an estimate of fees and exactions for a proposed housing development, and requires the Department of Housing and Community Development (HCD) fee schedule template and a list of best practices, as specified. Specifically, **this bill:**

- 1) Defines the following terms:
 - a) “Affordability requirement” as a requirement imposed as a condition of a development of residential units, that the development include a certain percentage of the units affordable 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, as specified in existing law.
 - b) “Housing development project” as a use consisting of any of the following:
 - i) Residential units only.
 - ii) Mixed-use developments consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use.
 - iii) Transitional housing or supportive housing.
- 2) Requires a city or county that has an internet website to make a fee estimate tool that the public can use to calculate an estimate of fees and exactions for a proposed housing development project available on its internet website. A city or county may choose the format for the fee estimate tool.
- 3) Specifies that the fee estimate tool shall calculate an estimate of fees for a proposed housing development project include, but not be limited to, the following:
 - a) A fee or charge described in the Mitigation Fee Act, as specified.
 - b) In-lieu fees for affordability requirements.
 - c) A construction excise tax.
 - d) In-lieu fees for a requirement that the housing development project provide public art.
 - e) In-lieu fees for dedications of parkland pursuant to the Quimby Act.
 - f) A special tax levied on new housing units pursuant to the Mello-Roos Community Facilities Act of 1982.

- 4) Provides that a city or county shall not be responsible for the accuracy of the estimate provided by the fee estimate tool. A city or county may include a disclaimer regarding the accuracy of the estimate calculated on its website under this bill.
- 5) Specifies that a city or county with a population of greater than 500,000 shall meet the requirements of this bill on or before July 1, 2031, and a city or county with a population of 500,000 or less shall meet the requirements of this bill on or before July 1, 2032.
- 6) Requires on or before July 1, 2028, HCD to create a fee schedule template for proposed housing development projects that may be used by cities and counties.
- 7) Provides that the template in 6) above, shall, at a minimum, contain the following:
 - i) A list of the fees and exactions, as specified, with the approximate cost per unit or per square foot.
 - ii) The districts and neighborhoods where each fee applies.
 - iii) The uses that each fee applies to.
 - iv) Who should be contacted in order to calculate total fees.
- 8) Specifies that, to the extent practicable, the template in 6) above, shall include, but not be limited to, the following:
 - a) A fee or charge described in the Mitigation Fee Act, as specified.
 - b) In-lieu fees for affordability requirements.
 - c) A construction excise tax.
 - d) In-lieu fees for a requirement that the housing development project provide public art.
 - e) In-lieu fees for dedications of parkland pursuant to the Quimby Act.
 - f) A special tax levied on new housing units pursuant to the Mello-Roos Community Facilities Act of 1982.
- 9) Requires on or before July 1, 2028, HCD to create a list of best practices regarding presenting information for fees and exactions levied by local jurisdictions.
- 10) Authorizes HCD to create a fee estimate tool that may be used by cities and counties for the purpose of meeting the requirements of 2) through 5) above.
- 11) Allows HCD to contract with nonprofit or academic institutions to complete the fee schedule template, list of best practices, and fee estimate tool.
- 12) Finds and declares that provisions in this bill that apply to cities and counties address a matter of statewide concern rather than a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, these provisions apply to all cities, including charter cities.

- 13) Provides that no reimbursement is required by this bill because a local agency or school district has the authority to levy service charges, fees, or assessment sufficient to pay for the program or level of service mandated by this bill, as defined.

FISCAL EFFECT: This bill is keyed fiscal and contains a state mandated local program.

COMMENTS:

- 1) **Bill Summary.** This bill requires cities and counties to make available on their internet website a fee estimate tool that the public can use to calculate an estimate of fees and exactions for a proposed housing development. This bill requires the estimate tool to include certain fees, including impact fees, certain in-lieu fees, construction excise taxes, and Mello-Roos special taxes. This bill also requires the estimate tool to be available on a city's or county's website by 2031 or 2032 depending on the city's or county's population. Additionally, this bill requires HCD, by July 1, 2028, to create a fee schedule template with specified information and a list of best practices regarding presenting information for fees and exactions levied by local jurisdictions. This bill is sponsored by the author.
- 2) **Author's Statement** According to the author, "AB 1483 (Grayson, 2019) was a significant step forward in providing greater transparency on development impact fees, and it required jurisdictions to provide information on impact fee schedules, nexus fees studies, and other information that could help inform a developer of a jurisdiction's impact fees. Despite the progress made on providing greater transparency on development impact fees, recent reports by SPUR and the Turner Center found that there were significant shortcomings in compliance with the requirements of AB 1483 by many jurisdictions. While many jurisdictions have provided the information required by AB 1483, fee schedules often did not provide all applicable fees and calculating fees remained confusing.

"AB 3012 will help improve impact fee transparency and eliminate inconsistencies that may exist by requiring HCD to develop a fee schedule template and list of best practices that jurisdictions can utilize. This will harmonize State law with HCD's goals on data sharing, and make it easier for the public and for developers to understand the potential fees that may be encountered during the development process. Additionally, this bill would help advance transparency by requiring that jurisdictions provide a fee estimate calculator by 2032. This will help ensure that developers can arrive at a more accurate estimate for the fees that are required during the development process. This bill will further remove barriers to development by helping ensure that impact fee information is accurate and easy to understand."

- 3) **Mitigation Fee Act.** When approving development projects, counties and cities can require the applicants to mitigate the project's effects by paying fees—known as mitigation fees, impact fees, or developer fees. The California courts have upheld impact fees for sidewalks, parks, school construction, and many other public purposes.

When establishing, increasing, or imposing a fee as a condition of approving a development project, the Mitigation Fee Act requires local officials to:

- a) Identify the fee's purpose.

- b) Identify the fee's use, including the public facilities to be financed.
- c) Determine a reasonable relationship between the fee's use and the development.
- d) Determine a reasonable relationship between the public facility's need and the development.

When imposing a fee as a condition of approving a development project, the Mitigation Fee Act also requires local officials to determine a reasonable relationship between the fee's amount and the cost of the public facility. In its 1987 *Nollan* decision, the U.S. Supreme Court said there must be an "essential nexus" between a project's impacts and the conditions for approval. In the 1994 *Dolan* decision, the U.S. Supreme Court said that conditions on development must have a "rough proportionality" to a project's impacts.

In the 1996 *Ehrlich* decision, the California Supreme Court distinguished between "legislatively enacted" conditions that apply to all projects and "ad hoc" conditions imposed on a project-by-project basis. *Ehrlich* applied the "essential nexus" test from *Nollan* and the "rough proportionality" test from *Dolan* to "ad hoc" conditions. The Court did not apply the *Nollan* and *Dolan* tests to the conditions that were "legislatively enacted." In other words, local officials have generally faced greater scrutiny when they impose conditions on a project-by-project basis. As a result of these decisions and the Mitigation Fee Act, local agencies have conducted nexus studies to ensure any proposed impact fees meet these legal tests for most impact fees. Other requirements in the Mitigation Fee Act ensure that impact fees are appropriately levied and spent.

On April 12 of this year, the United States Supreme Court decided *Sheetz v. County of El Dorado, California*. The case involved the takings clause of the Fifth Amendment to the U.S. Constitution. An El Dorado County resident challenged the county's legislatively enacted traffic impact mitigation fee, arguing the county should only charge him based on the impact associated with his specific parcel. The main question was whether or not the same standards of "essential nexus" and "rough proportionality" apply to legislatively enacted fees as they do to ad-hoc fees.

In the *Sheetz* decision, the Court stated, "A legislative exception to the *Nollan/Dolan* test 'conflicts with the rest of our takings jurisprudence,' which does not otherwise distinguish between legislation and other official acts. *Knick v. Township of Scott*, 588 U. S. 180, 185 (2019)." The Court also proclaimed that, "...as we have explained, a legislative exception to the ordinary takings rules finds no support in constitutional text, history, or precedent. We do not address the parties' other disputes over the validity of the traffic impact fee, including whether a permit condition imposed on a class of properties must be tailored with the same degree of specificity as a permit condition that targets a particular development. The California Court of Appeal did not consider this point—or any of the parties' other nuanced arguments—because it proceeded from the erroneous premise that legislative permit conditions are categorically exempt from the requirements of *Nollan* and *Dolan*. Whether the parties' other arguments are preserved and how they bear on *Sheetz*'s legal challenge are for the state courts to consider in the first instance."

In addition, Justice Kavanaugh filed a concurring opinion, in which Justices Kagan and Jackson joined saying that, "I join the Court's opinion. I write separately to underscore that

the Court has not previously decided—and today explicitly declines to decide—whether ‘a permit condition imposed on a class of properties must be tailored with the same degree of specificity as a permit condition that targets a particular development.’ *Ante*, at 10–11. Importantly, therefore, today’s decision does not address or prohibit the common government practice of imposing permit conditions, such as impact fees, on new developments through reasonable formulas or schedules that assess the impact of classes of development rather than the impact of specific parcels of property. Moreover, as is apparent from the fact that today’s decision expressly leaves the question open, no prior decision of this Court has addressed or prohibited that longstanding government practice.”

- 4) **Connection and Capacity Charges.** Connection fees and capacity charges are one-time fees assessed on new customers that reflect the reasonable cost of providing service, typically for water or sewer systems. A local agency assesses a connection fee when it physically connects a structure to the water or sewer system, which pays for the physical facilities necessary to make a water connection or sewer connection, such as meters, meter boxes, pipelines, and the estimated reasonable cost of labor and materials for their installation of those facilities. A local agency assesses a capacity charge on the customer to cover the proportional cost of maintaining or constructing system wide infrastructure necessary to meet the additional water or sewer demand for new users of the system. The Mitigation Fee Act governs connection fees and capacity charges, but state law provides separate provisions related to their oversight and accounting.
- 5) **In-Lieu Fees.** Local governments also use in-lieu fees when requiring a developer to dedicate land is not optimal or feasible. For example, requiring each developer to dedicate land for school or recreation purposes might not achieve the goal of providing facilities for large, developing suburban areas if the sites are either inadequate in size or not in the best locations. Imposing an in-lieu fee instead substitutes a monetary payment for a dedication of land or property. Fees collected from multiple developers can then be used at a later date to purchase an appropriate site and construct the necessary public improvements.
- 6) **AB 1483 of 2019.** In response to a 2019 Turner Center for Housing Innovation report that studied fee transparency, among other issues, AB 1483 (Grayson), Chapter 662, Statutes of 2019, required cities, counties, and special districts to post specified housing related information on their websites. This information included the following:
 - a) A current schedule of fees, exactions, and affordability requirements imposed by the city, county, or special district, including any dependent special districts, of the city or county applicable to a proposed housing development project, which must be presented in a manner that clearly identifies the fees, exactions, and affordability requirements that apply to each parcel.
 - b) All zoning ordinances and development standards, which must specify the zoning, design, and development standards that apply to each parcel.
 - c) A list that cities and counties must develop under existing law of projects located within military use airspace or a low-level flight path.
 - d) Specified annual fee reports or specified annual financial reports.

- e) An archive of impact fee nexus studies, cost of service studies, or equivalent, conducted by the city, county, or special district on or after January 1, 2018.

Since the passage of AB 1483, the information required to be posted on a local agency's website has changed. AB 1473 (Senate Committee on Governance and Finance), Chapter 371, Statutes of 2020, required local agencies to separately post their connection fees and capacity charges, without being tied to specific parcels, and made technical fixes to ensure that special districts were properly accounted for by AB 1483. Additionally, AB 602 (Grayson), Chapter 347, Statutes of 2021, required local agencies, among other things, to do the following:

- a) Post a written fee schedule or a link directly to the written fee schedule on its internet website.
- b) Request from a development proponent, upon issuance of a certificate of occupancy or the final inspection, whichever occurs last, the total amount of fees and exactions associated with the project for which the certificate was issued. The city or county must post this information on its website, and update it at least twice per year. A city or county is not responsible for the accuracy of the information received by the development proponent.

7) **Policy Considerations.** The Committee may wish to consider the following:

- a) **Is Existing Law Insufficient?** Existing law already requires local agencies to post a written fee schedule on their websites. The author and supporters argue that, while progress with fee transparency has been made, inconsistencies in posting practices can make it difficult for developers to calculate fee costs. This bill requires HCD to create a fee schedule template. Would the creation of a template ameliorate the issues with inconsistent posting practice? The Committee may wish to consider if an additional fee calculation tool is needed or if the enhancement of existing requirements is more appropriate.
- b) **Connection Fees and Capacity Charges.** Connection fees and capacity charges are often collected differently than other impact fees. Most public agency water and sewer providers are separate from a city or a county, and water agencies do not have land use authority. The water agency often needs to know information such as the pipeline size, meter sizes, and whether or not additional infrastructure (i.e. a new water treatment facility) is necessary to serve a new development. Therefore, it could be difficult for a city or county to anticipate the costs associated with providing a new development with the water related services they need. The Committee may wish to consider if connection fees and capacity charges should be included in the requirements of this bill.
- c) **Recent Litigation.** The United States Supreme Court issued its decision in the *Sheetz* case on April 12 of this year. How the decision ultimately effects a local government's ability to impose fees is not entirely clear at the moment. The Committee may wish to consider if it is premature to consider impact fee legislation due to the recent decision in the *Sheetz* case and if more time is needed to determine the case's full impact.

- 8) **Committee Amendments.** In order to address policy consideration b) above, and to make a technical change, the Committee may wish to amend the bill as follows:

65940.2. (a) A city or county that has an internet website shall make a fee estimate tool that the public can use to calculate an estimate of fees and exactions for a proposed housing development project available on its internet website. A city or county may choose the format of the fee estimate tool.

(1) The fee estimate tool shall calculate an estimate of fees for a proposed housing development ~~project include, project, including,~~ but not be limited to, the following: (A) 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), except Section 66013, Chapter 8 (commencing with Section 66016), and Chapter 9 (commencing with Section 66020).

Due to timing constraints, these amendments should be adopted in the Housing and Community Development Committee.

- 9) **Arguments in Support.** According to a coalition of supporters, “Currently, cities impose development fees on developers to pay for services necessary to build new housing or to offset impacts of growth in a community. The fees can become a large portion of the cost to build new housing throughout the state. UC Berkeley’s Turner Center for Housing Innovation found in previous studies that development fees for multifamily housing in California can be as high as \$75,000 per unit. In some areas, fees for a single family home can total about \$157,000 per unit.

“To help tackle issues regarding impact fee transparency, AB 1483 was passed in 2019 to ensure that local jurisdictions make information revolving housing impact fees more accessible. The bill mandated that localities post impact fee schedules, impact fee nexus studies, and other information on their websites for developers to stay informed of that jurisdiction’s impact fees. Additionally, the Department of Housing and Community Development (‘HCD’) released the Statewide Housing Plan in 2022, which outlines the state’s strategy to address its housing crisis. Included in the plan was a 10-year Housing Data Strategy that looked to reduce barriers to building more housing.

“This bill aims to improve impact fee transparency and eliminate inconsistencies by ensuring HCD develops a fee schedule template and list of best practices that jurisdictions can use on their websites. Many jurisdictions currently post fee schedules but they do not cover all the applicable impact fees that are charged. Many jurisdictions also lack consistency about how they present the information, making it hard for a developer to calculate the amount of impact fees that could affect the project. This bill will enable state law and HCD’s goals to be better synthesized when it comes to data sharing. It will also allow for the public and developers to better understand fees they might face throughout the development process.”

- 10) **Arguments in Opposition.** None on file.

- 11) **Double-Referral.** This bill is double-referred to the Assembly Committee on Housing and Community Development.

REGISTERED SUPPORT / OPPOSITION:

Support

Abundant Housing LA
California YIMBY
Housing Action Coalition
Housing Trust Silicon Valley
Midpen Housing
SPUR
YIMBY Action

Opposition

None on file

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