Date of Hearing: April 17, 2024

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Juan Carrillo, Chair
AB 3276 (Ramos) – As Amended March 21, 2024

SUBJECT: Mitigation Fee Act: reports

SUMMARY: Requires local agencies to post on their internet websites specified information they must already provide to the public pursuant to the Mitigation Fee Act. **Specifically, this bill:**

1) Requires, for each separate account or fund that a local agency must establish if it requires the payment of development fees, as specified, the local agency to post on its internet website the information it must provide to the public pursuant to the Mitigation Fee Act. This information includes the following, for the preceding five years:

    a) A brief description of the type of fee in the account or fund.

    b) The amount of the fee.

    c) The beginning and ending balance of the account or fund.

    d) The amount of the fees collected and the interest earned.

    e) An identification of each public improvement on which fees were expended and the amount of the expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with fees.

    f) Specified information on incomplete public improvements, interfund transfers or loans, and specified refunds.

2) Requires the information that must be posted on a local agency's website pursuant to 1), above, to be posted on or before the last day of the 2029–30 fiscal year, and on or before the last day of each fifth fiscal year thereafter.

3) Provides that no reimbursement is required by this bill pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this bill, within the meaning of Section 17556 of the Government Code.

EXISTING LAW:

1) Establishes the Mitigation Fee Act, which governs fees local agencies may levy on development projects. [Government Code (GOV) § 66000-66025]

2) Requires local agencies to deposit fees they collect with the other fees for the improvement in a separate capital facilities account or fund in a manner to avoid any commingling of the fees with other revenues and funds of the local agency, except for temporary investments,

and expend those fees solely for the purpose for which the fee was collected. Any interest income earned by moneys in the capital facilities account or fund shall also be deposited in that account or fund and shall be expended only for the purpose for which the fee was originally collected. (GOV §6606)

3) Requires a local agency to make the following information publicly available within 180 days of the last day of each fiscal year, and on or before the last day of each fiscal year (GOV §6606):

   a) A brief description of the type of fee in the account or fund.

   b) The amount of the fee.

   c) The beginning and ending balance of the account or fund.

   d) The amount of the fees collected and the interest earned.

   e) An identification of each public improvement on which fees were expended and the amount of the expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with fees.

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

COMMENTS:

1) **Bill Summary and Author's Statement.** This bill requires local agencies to post on their internet websites specified information they must already provide to the public pursuant to the Mitigation Fee Act.

   According to the author, "AB 3276 will provide communities and business with greater sense of transparency into what their local governments are spending on using the money they collected from the collection of Mitigation Fees. This bill would ensure that the people have easy access to this information and that local agencies do their due diligence to maintain a level of transparency that is expected of them by the people of California."

2) **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."

3) **Fee Transparency.** In response to a 2019 Terner 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.

4) **Impact Fee Audit Requirements.** Any person may request an independent audit of how the impact fees have been collected and spent, including an assessment of whether the fees exceed the amount reasonably necessary to cover the costs of the stated projects or services. If a person makes that request, the local agency retains an independent auditor to conduct the audit, provided that an audit has not been performed for the same fee within the previous 12 months and the requestor deposits the estimated cost for the audit with the local agency. A local agency must adjust its fees if the audit finds that the fees are set too high.

   In response to reports of some local agencies not filing the annual impact fee reports in a timely fashion, the Legislature enacted SB 1202 (Stone) Chapter 357, Statutes of 2018, which required local agencies that do not complete their impact fee annual reports for three consecutive years to pay the costs of any requested audits.

5) **Previous Legislation.** SB 602 (Grayson), Chapter 347, Statutes of 2021, added new requirements to impact fee nexus studies, required local agencies to request certain information from development proponents and required the Department of Housing and Community Development to develop a nexus study template.

   SB 319 (Melendez), Chapter 385, Statutes of 2021, required that, when a local agency fails to comply with impact fee reporting requirements, as specified, a local agency must cover the cost of a requested audit that covers each year they failed to report.

   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.

   AB 1483 (Grayson), Chapter 662, Statues of 2019, required local jurisdiction to disseminate publicly information about its zoning ordinances, development standards, fees, exactions, and affordability requirements, and required the Department of Housing and Community Development to develop and update a 10-year housing data strategy.

   SB 1202 (Stone) Chapter 357, Statutes of 2018, required local agencies that do not complete their impact fee annual reports for three consecutive years to pay the costs of any requested audits.

6) **Arguments in Support.** None on file.

7) **Arguments in Opposition.** None on file.

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

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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