Date of Hearing: April 24, 2024

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Juan Carrillo, Chair
AB 1820 (Schiavo) – As Amended April 15, 2024

SUBJECT: Housing development projects: applications: fees and exactions

SUMMARY: Establishes a process through which development proponents can request preliminary project fee and exaction estimates when submitting a preliminary application, and receive a final list of all fees and exactions related to the project after final approval, within a specified timeframe. Specifically, **this bill**:

1) Requires a city or county to inform a development proponent that the proponent is under no obligation to respond to the city or county's request for the total amount of fees and exaction associated with a project upon issuing a certificate of occupancy.

2) Declares that the changes made in the bill are clarifying and does not constitute a change in law but is declaratory of existing law.

Preliminary estimate.

3) Allows a development proponent to submit a request for a preliminary fee and exaction estimate at the time of submitting a preliminary application for developments.

4) Requires the local agency to provide a preliminary fee and exaction estimate to the development proponent within 20 days of receiving if a request for a fee and exaction is included in a development proponent's preliminary application.

    a) Requires a development proponent to request a fee schedule directly from the agency that imposes a fee if that agency is not a city or a county.

Final Approval of a Housing Development

5) Requires a local agency to provide a complete itemized list and total sum amount of all fees and exactions that apply to the project within 20 business days of the final approval of a housing development.

    a) Requires the development proponent to request the final sum total amount of all fees and exactions imposed by the agency that apply to the project, and the agency shall provide the development proponent with this information within 20 business days, upon final approval of a housing development from the date of request.

6) Requires, for purposes of complying with 5) above, a public agency that calculates fees using a cost recovery method to cover administrative costs to provide fee estimates for those cost recovery fees based on the average amount of the fees imposed on similar projects.

7) Defines the following terms for purposes of the bill:

    a) "Exaction" means any of the following:

i) A construction excise tax.

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

iii) Dedications of parkland or in-lieu fees for parks.

iv) Mello-Roos taxes.

v) "Exaction" does not include fees or charges that are not imposed in connection with issuing or approving a permit for development or as a condition of approval of a proposed development, as specified.

b) "Fee" means a fee or charge described in the Mitigation Fee Act. "Fee" does not include the cost of providing electrical or gas service from a local publicly owned utility.

c) "Fee and exaction estimate" means a good faith estimate of the total amount of fees and exactions expected to be imposed in connection with the project.

d) "Final approval" means that the housing development project has received all necessary approvals to be eligible to apply for, and obtain, a building permit or permits.

e) "Housing development project" means 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 is designated for residential use.

iii) Transitional housing or supportive housing.

f) "Public agency" means a city, including a charter city, a county, including a charter county, or special district.

8) Makes findings and declarations on the effect impact fees have on median home prices in California and that access to affordable housing is a matter of statewide concern, therefore the bill applies to all cities, including charter cities.

9) Provides that no reimbursement is required 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 the bill.

EXISTING LAW:

1) Defines "housing development project" as 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; or

c) Transitional housing or supportive housing. (Government Code (GOV) 65940.1)

2) Establishes a process for a project applicant to file a preliminary application for a housing development project, and establishes that a housing development project that has submitted a preliminary application must be subject only to the ordinances, policies, and standards adopted and in effect when the preliminary application was deemed to be complete. (GOV 65941.1)

3) Establishes the Mitigation Fee Act (GOV 66000-66025) that requires a local agency to do all of the following when establishing, increasing, or imposing a fee on a development project:

   a) Identify the purpose of the fee;

   b) Identify the use to which the fee is to be put;

   c) Determine how there is a nexus between the fee's use and the type of development project on which the fee is imposed; and

   d) Determine how there is a nexus between the need for a public facility and the type of development project on which the fee is imposed.

4) Requires a city, county, or special district that has an internet website to make information available on its internet website, including the current schedule of fees, exactions, and affordability requirements imposed by that city, county, or special district, applicable to a proposed housing development project. (GOV 65940.1)

5) Requires a city or county to request from a development proponent, upon certificate of occupancy or final inspection, whichever occurs last, the total amount of fees and exactions associated with the project, and post that information on its internet website. (GOV 65940.1)

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

COMMENTS:

1) **Bill Summary**. AB 1820 requires local agencies to provide a preliminary fee estimate within 20 days from when an agency receives a preliminary application for development or when the local agency receives a request for a preliminary estimate. This bill also requires a public agency to provide a complete itemized list of fees and exactions within 20 days of the final approval of the project. For development fees imposed by an agency other than a city or county, including fees levied by a school district or a special district, the development proponent shall request the final sum of all fees and exactions imposed by the agency that will apply to the project and the agency shall provide the development proponent with this information within 20 business days

   The bill is sponsored by SPUR and the California Building Industry Association (CBIA).

2) **Author's Statement**. According to the author, "AB 1820 is a simple transparency measure that allows housing developers to have knowledge of development fees prior to committing shovels to the ground."

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) **AB 1483 of 2019.** 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.

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

a) **Tick-Tock.** AB 1820 requires that an estimate be returned within 20 business days of the submission of a preliminary application or upon request. Considering the broad range of sizes of jurisdictions, levels of staffing at planning departments and public agency offices, types of projects, and sizes of projects, 20 days may not be enough time for a public agency to respond to an estimate request. The Committee may wish to consider affording more time for a public agency to respond to an estimate request.

b) **Legal Liability.** When a public agency is required to post fee schedules, AB 602 (Grayson), Chapter 347, Statutes of 2021, protects local governments from being liable for inaccurate information posted on its online fee schedule. As there are many levels of local government and public agencies with jurisdictions that overlap, this provision ensures that a city or county is not on the hook if other public agencies change their fees without noticing the city or county. The Committee may wish to consider if the same provision should be included in this bill.

7) **Committee Amendments.** In order to address policy considerations above, and to make a technical change, the Committee may wish to amend the bill to do all of the following:

a) Extend the period of time a public agency has to provide an initial fee estimate from 20 business days to 30 business days.

b) Provide clarifying language that the preliminary fee estimate is just an estimate that would be used for informational purposes and shall not be legally binding or otherwise

affect the scope, amount, or time of payment of any fee or exaction which are determined by other provisions of law.

8) **Arguments in Support**. SPUR writes in support, "Affordable housing projects can be subject to exorbitant fees that raise the cost of the building, reducing the already narrow margins that affordable housing developers work with and the unpredictability of these fees can delay or derail projects altogether.

"By requiring local jurisdictions to timely provide an itemized list and estimated total sum amount of all fees and exactions that will apply to a residential development that has submitted a preliminary application, this measure will create certainty and predictability for proposed housing developments."

9) **Arguments in Opposition**. The California Special District Association writes in opposition, "AB 1820 would authorize a development proponent that submits a preliminary application for a housing development project to request a preliminary fee and exaction estimate and require a local agency to comply with the request within 20 business days. Additionally, after an application is approved, the bill would require the agency to provide the development proponent with an itemized list and total sum amount of all fees and exactions that will apply to the project within 20 days.

"We look forward to continuing to dialogue about outstanding issues such as clarification that the final summation is not necessarily binding depending on actual project changes, the number of days to respond after receiving a request, clarification on what types of developments the measure applies to, and the efficacy of including the parkland or fee-in-lieu known as the Quimby Act in the same calculations."

10) **Double-Referral**. This bill is double-referred to the Assembly Housing and Community Development Committee, where it passed on a 9-0 vote on April 10, 2024.

REGISTERED SUPPORT / OPPOSITION:

Support

San Francisco Bay Area Planning and Urban Research Association (SPUR) [Sponsor]
California Building Industry Association (CBIA) [Sponsor]
Abundant Housing LA
Bay Area Council
Buildcasa
California Apartment Association
California Chamber of Commerce
California Community Builders
California Hispanic Chambers of Commerce
California Yimby
Circulate San Diego
Civicwell
East Bay for Everyone
East Bay Yimby
Fieldstead and Company, INC.
Fremont for Everyone

Grow the Richmond
Habitat for Humanity California
Housing Action Coalition
Housing Action Coalition (UNREG)
Housing Leadership Council of San Mateo County
Housing Trust Silicon Valley
How to Adu
Leadingage California
Midpen Housing
Mountain View Yimby
Napa-Solano for Everyone
Northern Neighbors
Peninsula for Everyone
People for Housing - Orange County
Progress Noe Valley
Resources for Community Development
San Francisco Yimby
San Luis Obispo Yimby
Sand Hill Property Company
Santa Cruz Yimby
Santa Rosa Yimby
Silicon Valley Leadership Group
South Bay Yimby
Southside Forward
Streets for People
Urban Environmentalists
Ventura County Yimby
Yimby Action

Oppose

California Fire Chiefs Association
California State Association of Counties (CSAC) (Unless Amended)
California Association of Recreation & Park Districts (Unless Amended)
California Special Districts Association
City of La Verne
Fire Districts Association of California
League of California Cities (Unless Amended)
Rural County Representatives of California (RCRC) (Unless Amended)
Urban Counties of California (UCC) (Unless Amended)

Analysis Prepared by: Linda Rios / L. GOV. / (916) 319-3958