

Date of Hearing: July 2, 2025

**ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT**

Juan Carrillo, Chair

SB 358 (Becker) – As Amended May 27, 2025

**SENATE VOTE:** 27-11

**SUBJECT:** Mitigation Fee Act: mitigating vehicular traffic impacts

**SUMMARY:** Requires local agencies to reduce vehicle mitigation fees for housing developments near transit unless they make findings supported by substantial evidence in the record that projects are not expected to reduce automobile trips. Specifically, **this bill**:

- 1) Requires local agencies to reduce vehicle mitigation fees for housing developments within transit priority areas that meet specified characteristics to a rate that reflects a lower rate of automobile trip generation in comparison to those without these characteristics, unless the local agency makes findings supported by substantial evidence in the record that projects are not expected to reduce automobile trips.
- 2) Requires a housing development project to be near three or more of the following to qualify for lower fees as described above:
  - a) A restaurant.
  - b) A coffee shop.
  - c) A supermarket.
  - d) A grocery store.
  - e) A hardware store.
  - f) A park.
  - g) A pharmacy.
  - h) A drugstore.
  - i) A bar.
- 3) Provides that housing development projects with the minimum number of parking spaces required by local ordinance no longer qualify for this reduction.

**EXISTING LAW:**

- 1) Defines “transit priority area” means an area within one-half mile of a major transit stop that is existing or planned, if the planned stop is scheduled to be completed within the planning horizon included in a Transportation Improvement Program or applicable regional transportation plan. [Public Resources Code (PRC) § 21099]

- 2) Defines “major transit stop” to mean a site containing any of the following:
  - a) An existing rail or bus rapid transit station.
  - b) A ferry terminal served by either a bus or rail transit service.
  - c) The intersection of two or more major bus routes with a frequency of service interval of 20 minutes or less during the morning and afternoon peak commute periods. (PRC § 21064.3)
- 3) Establishes the Mitigation Fee Act which:
  - a) Requires a local agency to do all of the following when establishing, increasing, or imposing a fee on a development project:
    - i) Identify the purpose of the fee;
    - ii) Identify the use to which the fee is to be put;
    - iii) Determine how there is a nexus between the fee’s use and the type of development project on which the fee is imposed; and
    - iv) 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. (Government Code (GOV) § 66000-66025)
  - b) Provides that if a local agency imposes a fee on a housing development to mitigate traffic impacts, and the development is within half a mile barrier-free walk of a transit station, the fee should reflect a lower rate of automobile trips, unless proven at a public hearing that the housing development would not generate fewer automobile trips than a development further away from transit. (GOV § 66005.1)
- 4) Establishes the Housing Accountability Act (HAA), which, among other provisions, provides specified housing development projects with protections under the HAA if the project fails to make a determination that a project is exempt from the California Environmental Quality Act. This includes projects that are within one-half mile of a bus station or ferry terminal and within one to two miles from six or more of the following amenities:
  - a) A supermarket or grocery store.
  - b) A public park.
  - c) A community center.
  - d) A pharmacy or drugstore.
  - e) A medical clinic or hospital.
  - f) A public library.

- g) A school that maintains a kindergarten or any grades 1 to 12, inclusive. (GOV § 65589.5.1)
- 5) Defines “restaurant” to mean restaurants, itinerant restaurants, vehicles, vending machines, or institutions including hospitals, schools, asylums, eleemosynaries, and all other places where food is served to the public for consumption on the premises of sale that are not included within the definitions of the terms restaurants, itinerant restaurants, vehicles, and vending machines. [Health and Safety Code (HSC) §111200]
- 6) Defines “restaurant” to mean a retail food establishment that prepares, serves, and vends food directly to the consumer. (HSC § 114379.10)

**FISCAL EFFECT:** According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

**COMMENTS:**

- 1) **Bill Summary.** The bill requires local agencies to reduce vehicular traffic mitigation fees (traffic impact fees) to reflect a lower rate of automobile trip generation if a housing development project that is located in a transit priority area, also meets the following standards:
  - a) The housing development project is located within one-half mile of three more specified amenities. The list of amenities include retail uses, parks, and childcare facilities.
  - b) The housing development project provides no more than one onsite parking space for zero- to two-bedroom units, and two onsite parking spaces for three or more bedroom units.

Existing law authorizes a local agency to charge traffic impact fees that do not reflect lower rates of automobile generation if the local agency adopts findings after a public hearing establishing that the housing development does not generate fewer automobile trips. In contrast, this bill requires a local agency to make written findings that are supported by substantial evidence in the record before or as part of the housing development project approval process.

The bill is sponsored by SPUR and Streets for All.

- 2) **Author Statement.** According to the author, “With California’s housing supply still falling drastically short of demand, we need to remove unnecessary barriers that make development more expensive. Impact fees can add nearly 20% to the cost of construction, making new housing more expensive to build and to rent. SB 358 helps lower these costs and ensures that transit-friendly housing is more financially feasible.”
- 3) **Transit Oriented Development.** Research has shown that encouraging denser housing near transit serves not only as a means of increasing ridership of public transportation to reduce greenhouse gases (GHGs), but also as a solution to our state’s housing crisis. As part of California’s overall strategy to combat climate change, the Legislature began the process of encouraging more transit oriented development with the passage of SB 375 (Steinberg, Chapter 728, Statutes of 2008). SB 375 is aimed at reducing the amount that people drive and

associated GHGs by requiring the coordination of transportation, housing, and land use planning. The Affordable Housing and Sustainable Communities (AHSC), administered by the Strategic Growth Council, furthers the purposes of AB 32 (Chapter 488, Statutes 2006) and SB 375 (Chapter 728, Statutes, 2008) by investing in projects that reduce GHG emissions by supporting more compact, infill development patterns, encouraging active transportation and transit usage, and protecting agricultural land from sprawl development.

Funding for AHSC is provided from the Greenhouse Gas Reduction Fund (GGRF), an account established to receive Cap-and-Trade auction proceeds. The Legislature subsequently allocated 20% of the ongoing Cap and Trade Program funds to AHSC. AHSC provides grants and/or loans to projects that achieve GHG reductions and benefit disadvantaged communities, low-income communities, and low-income households through increasing accessibility of affordable housing connected to high quality transit. High quality transit includes bus rapid transit with a headway frequency of every 20 minutes or less and service seven days a week.

Additionally, the HCD the Transit Oriented Development (TOD) Program. Its primary objectives are to increase the overall supply of housing, increase the supply of affordable housing, increase public transit ridership, and minimize automobile trips. The program seeks to accomplish these objectives by providing financial assistance for the development of housing and related infrastructure near public transit stations, including bus rapid transit.

- 4) **Traffic Mitigation Impact Fees.** Under existing law, cities and counties must set lower traffic impact mitigation fees for specified transit-oriented housing developments unless the city or county makes a finding that the development will not generate fewer automobile trips than a non-transit oriented housing development. Specifically, this lower fee applies to housing developments that meet all of the following criteria:
- a) The development is located within a transit priority area and the major transit stop, if planned, is programmed to be completed before or within one year from the scheduled completion and occupancy of the housing development;
  - b) The development is located within one-half mile of convenience retail uses, including a store that sells food;
  - c) At least 50 percent of the floor space of the development is for residential use; and
  - d) The development provides either the minimum number of parking spaces required by the local ordinances, or no more than one onsite parking space for zero to two bedroom units, and two onsite parking spaces for three or more bedroom units, whichever is less.

The lower fee must reflect the lower rate of automobile trip generation associated with such housing developments in comparison with housing developments without these characteristics.

- 5) **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; and
- 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 face 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 must conduct a nexus study 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, including that a local agency must:

- a) Hold at least one open and public meeting prior to levying a new fee or increasing an existing one;
- b) If they decide to adopt capital improvement plans, indicate the approximate location, size, time of availability, and estimates of cost for all facilities or improvements to be financed with the fees;
- c) Deposit and spend the fees within five years of collecting them; and
- d) Refund fees or make specific findings on when and how the fees will be spent for construction, if the fees are not spent within five years of collection.

If a local agency levies an impact fee to fund a capital improvement associated with a development, it must deposit the fees with any other fees for that improvement in a separate account or fund.

Local officials must also produce an annual report within 180 days of the end of the fiscal year that includes information on the fee amounts, how they used the revenue, and any unspent funds.

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

- a) **Consistency Across Statute.** In order to be eligible for reduced traffic impact fees, a housing development project under this bill must be within a half mile of specified amenities, have limited on-site parking, and be within transit priority area. The list of specified amenities includes commercial uses such as hardware stores, coffee shops, restaurants, and bars.

Under existing law, the HAA provides certain protections to housing developments within specified distances from a list of amenities. The list in the HAA and the list in this bill both include categories of land uses that provide essential services, such as pharmacies, drugstores, supermarkets, grocery stores, and parks. In contrast, the list in the HAA identifies additional essential services such as medical clinics and hospitals and does not include retail uses that do not provide essential services. Since a local government will already be monitoring housing developments proximal to the amenities identified in the HAA, the Committee may wish to consider if it is prudent to align the list of amenities in this bill with the list of amenities in the HAA.

- b) **Definitions.** The proponents of this bill argue that the restaurants and establishments that serve food are important in designing walkable communities. Existing law includes two definitions of “restaurant”. While one definition identifies a “restaurant” as a retail food establishment that prepares, serves, and vends food directly to the consumer, the other definition in law identifies a wide range of establishments where food is available for public consumption including itinerant restaurants, vehicles, and vending machines. The Committee may wish to provide a definition of “restaurant” to clarify what kind of establishment will be identified as an amenity for the purposes of calculating reduced impact fees.

7) **Committee Amendments.** In response to the policy considerations above, the Committee may wish to amend the bill as follows:

- a) Strike subparagraphs (A) through (J) of paragraph (2) of subdivision (a) of Section 66005.1.

- b) Insert the following subparagraphs after paragraph (2):

(2) The housing development is located within one-half mile from three or more of the following:

(A) *A supermarket or grocery store.*

(B) *A public park.*

(C) *A community center.*

(D) *A pharmacy or drugstore.*

(E) *A medical clinic or hospital.*

(F) *A public library.*

(G) *A school that maintains a kindergarten or any of grades 1 to 12, inclusive.*

(H) *A licensed childcare facility.*

*(J) A restaurant. For the purposes of this paragraph, a “restaurant” means a retail food establishment that prepares, serves, and vends food directly to the consumer.*

- 8) **Related Legislation.** SB 79 (Wiener) authorizes a residential development within a  $\frac{1}{4}$  or  $\frac{1}{2}$  distance of transit stops in a residential, mixed-use, or commercial zone to be developed with maximum height, minimum density and residential floor area ratio (FAR), and additional development benefits, as specified. Allows a transit agency to adopt objective standards for both residential and commercial developments proposed to be constructed on land owned by the transit agency or on which the transit agency has a permanent easement, as specified, if the objective standards allow for the same or greater development intensity that is allowed by local standards or applicable state law. This bill is in the Assembly Housing and Community Development Committee.
- 9) **Previous Legislation.** AB 3177 (Wendy Carrillo), Chapter 436, Statutes of 2024, prevents local agencies from imposing land dedication requirements on new housing developments in transit priority areas to widen a roadway for vehicular traffic purposes, or for achieving a desired roadway width, with certain exemptions.

AB 2553 (Friedman), Chapter 275, Statutes of 2024, requires cities and counties to set lower traffic impact mitigation fees for transit-oriented housing developments near major transit stops, instead transit stations, and revises the definition of a major transit stop.

AB 2712 (Friedman), Chapter 415, Statutes of 2024, prohibits the City of Los Angeles from granting preferential parking permits to residents of new developments that are exempt from minimum parking requirements under existing law.

AB 894 (Friedman), Chapter 749, Statues of 2023, requires local agencies to allow developments to count underutilized and shared parking spaces toward a parking requirement imposed by the agency, under specified conditions.

AB 2097 (Friedman), Chapter 459, Statutes of 2022, prohibits public agencies from imposing minimum automobile parking requirements on specified residential, commercial and other developments located within one-half mile of public transit.

AB 1560 (Friedman), Chapter 631, Statues of 2019, defined “bus rapid transit” and restructured the definition of “major transit stop”.

AB 3005 (Jones), Chapter 692, Statutes of 2008, established that when a local agency imposes a fee on a housing development for the purpose of mitigating vehicular traffic impacts, the local agency shall set the fee at a lower rate for housing developments within one-half mile of a transit station, one-half mile of a convenience retail that sells food, and the housing development provides minimum number of parking spaces required by local ordinance.

SB 375 (Steinberg), Chapter 728, Statutes of 2008, requires metropolitan planning organizations to include sustainable community strategies, as defined, in their regional transportation plans for the purpose of reducing greenhouse gas emissions, aligns planning for transportation and housing, and creates specified incentives for the implementation of the strategies.

SB 1925 (Sher), Chapter 1039, Statutes of 2002, defines “major transit stop” means a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

- 10) **Arguments in Support.** Streets for All and SPUR, sponsors of the bill, write in support, “SB 358 will make it easier for housing developments near transit to receive reduced traffic mitigation fees to account for the fact that people who live near transit walk more often, take transit more often, and drive less.

“By reducing mitigation fees for developments that will actually generate fewer vehicle trips, SB 358 will reduce emissions and help to reverse housing sprawl. For most of the 21st century, the high cost of development in California’s urban areas has pushed most new housing to suburban and rural areas where development is cheaper, but where it is also impossible to get around without a personal vehicle. SB 358 will make it more affordable to build housing where residents don’t need a car for every trip, thereby reducing vehicle trips and emissions, and decreasing household transportation expenses.”

- 11) **Arguments in Opposition.** The City of Camarillo writes in opposition, “While we support the bill’s goal to lower emissions and increase housing, the mandatory 50 percent reduction in traffic impact fees is a one-size fits-all approach that fails to recognize the difference between communities across California. While the City of Camarillo’s transit stops qualify as “major transit stops” under the law, they don’t meaningfully reduce car dependency like transit in dense urban areas. This is the same case for other smaller communities. However, the bill would reduce the City’s ability to properly collect fees even though the reduction does not provide any increased benefits to car dependency.

“Additionally, the bill removes the City’s ability to hold public hearings to demonstrate when developments near transit wouldn’t actually generate fewer trips. This would create inaccuracies in the way fees are developed and the benefits to our communities. The financial impacts could be significant, reducing our ability to fund infrastructure while providing no alternate funding mechanisms. For these reasons, the City of Camarillo must regretfully oppose SB 358.”

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Abundant Housing LA  
Active San Gabriel Valley  
Bike East Bay  
Bike Long Beach  
California Yimby  
Car-lite Long Beach  
Circulate San Diego  
Costa Mesa Alliance for Better Streets  
East Bay for Everyone  
Everybody’s Long Beach



Families for Safe Streets San Diego  
Glendale Yimby  
Housing Action Coalition  
Los Angeles Walks  
Norwalk Unides  
People for Housing Orange County  
Remake Irvine Streets for Everyone (RISE)  
San Diego County Bicycle Coalition  
Spur  
Streets are for Everyone  
Streets for All  
Strong Towns Artesia  
Strong Towns Santa Barbara  
The Two Hundred

**Opposition**

City of Camarillo

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