Date of Hearing: May 13, 2015

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Brian Maienschein, Chair
AB 1191 (Nazarian) – As Introduced February 27, 2015

SUBJECT: Quimby Act: fees.

SUMMARY: Allows the interest income generated from a Quimby Act fee to be expended in the same manner as the Quimby Act fee, pursuant to the Quimby Act.

EXISTING LAW:

1) Establishes the Quimby Act as part of the Subdivision Map Act, and allows the legislative body of a city or county to, by ordinance, require the dedication of land or impose a requirement of the payment of fees in lieu thereof, or a combination of both, for park or recreational purposes as a condition to the approval of a tentative map or parcel map, if all of the following requirements are met:

    a) The ordinance has been in effect for a period of 30 days prior to the filing of the tentative map of the subdivision or parcel map;

    b) The ordinance includes definite standards for determining the proportion of a subdivision to be dedicated and the amount of any fee to be paid in lieu thereof, as specified. However, the dedication of land, or the payment of fees, or both, shall not exceed the proportionate amount necessary to provide three acres of park area per 1,000 persons residing within a subdivision subject to this section, unless the amount of existing neighborhood and community park area, as calculated pursuant to this subdivision, exceeds that limit, in which case the legislative body may adopt the calculated amount as a higher standard not to exceed five acres per 1,000 persons residing within a subdivision subject to this section;

        i) The park area per 1,000 members of the population of the city, county, or local public agency shall be derived from the ratio that the amount of neighborhood and community park acreage bears to the total population of the city, county, or local public agency as shown in the most recent available federal census. The amount of neighborhood and community park acreage shall be the actual acreage of existing neighborhood and community parks of the city, county, or local public agency as shown on its records, plans, recreational element, maps, or reports as of the date of the most recent available federal census.

        ii) For cities incorporated after the date of the most recent available federal census, the park area per 1,000 members of the population of the city shall be derived from the ratio that the amount of neighborhood and community park acreage shown on the maps, records, or reports of the county in which the newly incorporated city is located bears to the total population of the new city as determined. In making any subsequent calculations pursuant to this section, the county in which the newly incorporated city is located shall not include the figures pertaining to the new city which were

calculated pursuant to this paragraph. Fees shall be payable at the time of the recording of the final map or parcel map, or at a later time as may be prescribed by local ordinance.

c) The land, fees, or combination thereof are to be used only for the purpose of developing new or rehabilitating existing neighborhood or community park or recreational facilities to serve the subdivision, except as provided in i), below.

i) Notwithstanding c), above, fees may be used for the purpose of developing new or rehabilitating existing park or recreational facilities in a neighborhood other than the neighborhood in which the subdivision for which fees were paid as a condition to the approval of a tentative map or parcel map is located, if all of the following requirements are met:

(1) The neighborhood in which the fees are to be expended has fewer than three acres of park area per 1,000 members of the neighborhood population;

(2) The neighborhood in which the subdivision for which the fees were paid has a park area per 1,000 members of the neighborhood population ratio that meets or exceeds the ratio calculated as specified, but in no event is less than three acres per 1,000 persons;

(3) The legislative body holds a public hearing before using the fees pursuant to this subparagraph;

(4) The legislative body makes a finding supported by substantial evidence that it is reasonably foreseeable that future inhabitants of the subdivision for which the fee is imposed will use the proposed park and recreational facilities in the neighborhood where the fees are used;

(5) The fees are used within a specified radius that complies with the city's or county's ordinance adopted pursuant to subdivision (a), and are consistent with the adopted general plan or specific plan of the city or county. For purposes of this clause, "specified radius" includes a planning area, zone of influence, or other geographic region designated by the city or county, that otherwise meets the requirements of this section.

d) The legislative body has adopted a general plan or specific plan containing policies and standards for parks and recreational facilities, and the park and recreational facilities are in accordance with definite principles and standards.

e) The amount and location of land to be dedicated or the fees to be paid shall bear a reasonable relationship to the use of the park and recreational facilities by the future inhabitants of the subdivision.

f) The city, county, or other local public agency to which the land or fees are conveyed or paid shall develop a schedule specifying how, when, and where it will use the land or fees, or both, to develop park or recreational facilities to serve the residents of the

subdivision. Any fees collected under the ordinance shall be committed within five years after the payment of the fees or the issuance of building permits on one-half of the lots created by the subdivision, whichever occurs later. If the fees are not committed, they, without any deductions, shall be distributed and paid to the then record owners of the subdivision in the same proportion that the size of their lot bears to the total area of all lots within the subdivision.

i) The city, county, or other local agency to which the land or fees are conveyed or paid may enter into a joint or shared use agreement with one or more other public districts in the jurisdiction, including, but not limited to, a school district or community college district, in order to provide access to park or recreational facilities to residents of subdivisions with fewer than three acres of park area per 1,000 members of the population.

g) If the subdivider provides park and recreational improvements to the dedicated land, the value of the improvements together with any equipment located thereon shall be a credit against the payment of fees or dedication of land required by the ordinance.

2) Land or fees required shall be conveyed or paid directly to the local public agency which provides park and recreational services on a communitywide level and to the area within which the proposed development will be located, if that agency elects to accept the land or fee. The local agency accepting the land or funds shall develop the land or use the funds in the manner provided in this section.

3) If park and recreational services and facilities are provided by a public agency other than a city or county, the amount and location of land to be dedicated or fees to be paid shall, as specified, be jointly determined by the city or county having jurisdiction and that other public agency.

FISCAL EFFECT: None.

COMMENTS:

1) **Bill Summary.** This bill allows the interest income generated from a Quimby Act fee to be expended in the same manner as the fee itself, consistent with the provisions of the Quimby Act.

   This bill is sponsored by the City of Los Angeles.

2) **Author's Statement.** According to the author, "State law does not grant cities the statutory authority to use interest generated on Quimby fees for park development. Existing law ties the hands of local municipalities by making local Quimby resources inaccessible and used for their specified purpose. AB 1191 makes long overdue clarifying changes in the law to give cities authority to utilize dormant funds. Specifically, this bill will ensure Quimby interest fees are used to create much needed public outdoor space."

   According to the author, interest of Quimby fees has amounted to an estimated $15 - $20 million in untapped Quimby revenue for the City of Los Angeles.

3) **Quimby Act and Previous Legislation.** Cities and counties have been authorized since the passage of the 1975 Quimby Act to pass ordinances that require developers to set aside land, donate conservation easements, or pay fees for park improvements. The Quimby Act was substantially amended in 1982 to further define acceptable uses of or restrictions on Quimby funds, and provide acreage/population standards and formulas for determining the exaction. One other major change was to specify that the exactions must be closely tied to a project's impacts as identified through traffic studies required by the California Environmental Quality Act (CEQA), meaning that there has to be a "nexus."

   To impose Quimby Act fees, the city or county must have a general plan or specific plan that contains policies and standards for park facilities. Prior to 2014, fees were required to bear a reasonable relationship to the proposed subdivision. Those fees could only be used for developing new parks or rehabilitating parks that *serve* that subdivision. As well, the Quimby Act requires that the amount and location of land to be dedicated or the fees to be paid shall bear a "reasonable relationship to the use of the park and recreational facilities by the future inhabitants of the subdivision."

   However, AB 1359 (Hernández), Chapter 412, Statutes of 2013, made several changes to the Quimby Act. AB 1359 revised the requirements that needed to be met in order for Quimby Act fees to be used for the purpose of developing new or rehabilitating existing park or recreational facilities in a neighborhood other than the neighborhood in which the fees were paid, as follows:

   a) The neighborhood in which the fees are to be expended must have fewer than three acres of park area per 1,000 members of the neighborhood population;

   b) The neighborhood in which the subdivision for which the fees were paid cannot have less than three acres per 1,000 members;

   c) The legislative body must hold a public hearing before using the fees in this manner;

   d) The legislative body must make a finding supported by substantial evidence that it is reasonably foreseeable that future inhabitants of the subdivision for which the fee is imposed will use the proposed park and recreational facilities in the neighborhood where the fees are used; and,

   e) The fees must be used within a "specified radius" that complies with the city's or county's ordinance adopted pursuant to the Quimby Act, and must be consistent with the adopted general plan or specific plan of the city or county. "Specified radius" is defined to include a planning area, zone of influence, or other geographic region designated by the city or county, that otherwise meets the requirements of the bill.

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

   a) **Prospective Change?** The provisions of the bill are not retroactive. Therefore, the $15 - $20 million that is “untapped” Quimby revenue in the city of Los Angeles will not be able to be used because the bill is prospective, taking effect January 1, 2016. The Committee may wish to ask the author to clarify whether the intent is to apply the bill retroactively.

b) **Interest Follows the Fee.** The generally held principle on local finances is that the interest income follows the source, in this case the Quimby fee itself. The Committee may wish to ask the author and sponsor about the City of Los Angeles' legal interpretation that they could not expend the interest income in the same manner as the fee.

c) **Explicit Prohibition vs. Implicit Understanding.** The author and sponsor argue that the Quimby Act is silent on how interest income on Quimby fees can be used, and thereby prohibits the usage of interest income in the same manner as the fees themselves. However, there is no outright prohibition in the Quimby Act that prevents a local agency from doing this.

d) **Impact on Local Jurisdictions that are Already Using Interest Income in this Manner.** Several jurisdictions, including Cathedral City, Yuba County, have adopted Quimby Act ordinances at the local level that specify that interest income shall be counted as part of the Quimby fee, and used for the purposes specified for the fees in the Quimby Act. The Committee may wish to consider whether the addition of this language in AB 1191 might be harmful to those jurisdictions that have already been treating interest income as Quimby fees, and whether the bill may call into question their legality in order to do so.

e) **How Long?** The Committee may wish to ask the author and sponsor how long the $15 - $20 million has been sitting in accounts? The Quimby Act provides that any fees collected under the ordinance "shall be committed within five years after the payment of the fees or the issuance of the building permits on one-half of the lots created by the subdivision, whichever occurs later." The Quimby Act also provides that "if the fees are not committed, they, without any deductions, shall be distributed and paid the then record owners of the subdivision in the same proportion that the size of their lot bears to the total area of all lots within the subdivision."

   Because the bill seeks to treat interest income in the same manner as Quimby fees, then the Committee may wish to consider whether interest income sitting in an account for longer than five years would actually need to follow the above provisions and be returned.

5) **Arguments in Support.** The City of Los Angeles argues that state law currently leaves these funds in limbo and prevents cities from using these funds for any public benefit.

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

REGISTERED SUPPORT / OPPOSITION:

Support	**Opposition**
City of Los Angeles	None on file

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