

Date of Hearing: April 19, 2023

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
AB 516 (Ramos) – As Amended April 5, 2023

SUBJECT: Mitigation Fee Act: fees for improvements: expenditure reports and audits.

SUMMARY: Imposes additional reporting and disclosure requirements on local agencies relative to Mitigation Fee Act revenue. Specifically, **this bill:**

- 1) Requires local agencies to include additional information in reports they must file annually on Mitigation Fee Act revenue. Specifically, this bill requires local agencies to:
 - a) Note each public improvement identified in a previous report and whether construction began on the approximate date noted in the previous report.
 - b) For a project that was identified in a previous report for which construction did not commence by the approximate date provided in a previous report, the local agency shall explain the reason for the delay and provide a revised approximate date that construction will commence.
 - c) Identify the number of person or entities that receive refunds of Mitigation Fee Act fees (development fees), as specified.
- 2) Requires local agencies to inform a person paying development fees of the following:
 - a) The person's right to request an audit of development fee revenue pursuant to existing law.
 - b) The person's right to request a mailed notice of the local agency's meeting to review the annual reports on development fee revenue.
- 3) Requires local agencies to provide a person paying a development fee a link to the page on the local agency's internet website where the information from the annual report on development fee revenue is available for review.
- 4) Allows a person that requests an audit of development fee revenue to request that the audit determine whether the revenue generated will be expended in a reasonable amount of time.
- 5) 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.

EXISTING LAW: Establishes the Mitigation Fee Act, which governs fees local agencies may levy on development projects (Government Code § 66000-66025).

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

COMMENTS:

- 1) **The Mitigation Fee Act.** Local agencies approving development projects can require developers to mitigate a project's effects by paying impact fees. Impact fees stem from a straightforward principle: new developments should pay for the impacts that they have on the community and the burden they impose on public services. Prior to 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.

The Mitigation Fee Act also requires local officials that impose a fee as a condition of approving a development project to demonstrate a reasonable relationship between the amount of the fee and the cost of the public facilities supported by the fee.

- 2) **“Essential Nexus” and “Rough Proportionality.”** The U.S. Supreme Court and the California Supreme Court issued a series of decisions in the 1980s and 1990s that affected the scope and application of impact fees. In its 1987 *Nollan* decision, the U.S. Supreme Court decided that 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 opined that conditions placed 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 that any proposed impact fees meet these legal tests. 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) Deposit and spend the fees within five years of collecting them.
- c) 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.

- 3) **Impact Fee Reports.** 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:
- 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) An identification of an approximate date by which the construction of the public improvement will commence.
 - g) A description of each interfund transfer or loan made from the account or fund.
 - h) The amount of refunds of fees unspent after five years.
- 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) **Bill Summary and Author's Statement.** This bill requires local agencies to:
- a) Include additional information related to proposed projects in their annual reports on Mitigation Fee Act revenue.
 - b) Address the timeliness of expenditures in audits requested by development fee payers.
 - c) Inform fee payers where information on annual development fee reports is available and of their ability to request an audit of development fee revenue.

According to the author, "Small businesses are a pillar to the economy and often struggle the most due to unforeseen expenses. Often times, when small businesses pay a fee as required by the Mitigation Fee Act, they feel left in the dark and as if their money is idly sitting in accounts. The updates my bill aims to make include transparency in the annual reporting so

that small business owners are made aware of the reason for any delays and when construction is scheduled to be resumed among other things. It also requires that they are made aware of their right to request an audit. This is one step in providing clarity to the Mitigation Fee Act for small business owners across the state.”

This bill is sponsored by the High Desert Hispanic Chamber of Commerce.

- 6) **Previous Legislation.** 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.

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.

- 7) **Double-Referral.** This bill is double-referred to the Assembly Committee on Housing and Community Development.
- 8) **Arguments in Support.** The California Association of Realtors writes in support, “AB 516 seeks to make modest clarifications to existing law which allows for continued updates to the status of the projects based [on] the report provided in the previous year. Additionally, it requires any delays to the projects to be reported and the reason for the delay. Furthermore, AB 516 seeks to provide refunds to affected persons or entities if the local agency has collected sufficient funds to complete a project. Lastly, the bill allows for more accountability of funds by disclosing that a local agency must provide information to a person subject to paying a fee that they have the right to request an audit of the funds collected and how the fees are being used.”
- 9) **Arguments in Opposition.** None on file.

REGISTERED SUPPORT / OPPOSITION:

Support

The High Desert Hispanic Chamber of Commerce [SPONSOR]
 Hispanic Coalition of Small Businesses [SPONSOR]
 Latino Restaurant Association [SPONSOR]
 National Latina Business Women Association [SPONSOR]
 The California Association of Realtors
 Southern California Black Chamber of Commerce

Opposition

None on file

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