

Date of Hearing: June 19, 2019

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
SB 646 (Morrell) – As Amended May 7, 2019

SENATE VOTE: 37-0

SUBJECT: Local agency utility services: extension of utility services.

SUMMARY: Requires connection fees to bear a fair or reasonable relationship to the water or sewer connection that they fund.

EXISTING LAW:

- 1) Provides, under Article XIII C of the California Constitution, that:
 - a) All levies, charges, or exactions of any kind are taxes, except for the following:
 - i) A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege;
 - ii) A charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product;
 - iii) A charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof;
 - iv) A charge imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property;
 - v) A fine, penalty, or other monetary charge imposed by the judicial branch of government or a local government, as a result of a violation of law;
 - vi) A charge imposed as a condition of property development; and,
 - vii) Assessments and property-related fees imposed in accordance with the provisions of Article XIII D of the California Constitution.
 - b) The local government bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity.

- 2) Allows local governments to require applicants for development projects to pay fees to mitigate the project's effects, known as mitigation fees.
- 3) Requires local agencies to deposit mitigation fees to fund a capital improvement associated with a development in a separate account or fund.
- 4) Defines "fee" to mean a fee for the physical facilities necessary to make a water connection or sewer connection, including, but not limited to, meters, meter boxes, and pipelines from the structure or project to a water distribution line or sewer main, and that does not exceed the estimated reasonable cost of labor and materials for installation of those facilities.

FISCAL EFFECT: None

COMMENTS:

- 1) **Bill Summary and Author's Statement.** This bill requires the estimated reasonable cost of labor and materials for installation of facilities associated with a water or sewer connection to bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the water connection or sewer connection. This bill is sponsored by the author.

According to the author, "SB 646 will eliminate the confusion in the Mitigation Fee Act by enumerating the principle that was established in Propositions 218 and 26, that any utility connection fee charged to a property owner by a city must bear a fair or reasonable relationship to the payer's burdens on, or benefits received from, the utility connection."

- 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 mitigation 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 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 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 governments must conduct a nexus study to ensure that any proposed development fees meet these legal tests. Other requirements in the Mitigation Fee Act ensure that development 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) Adopt capital improvement plans;
- 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.

- 3) **Arguments in Support.** According to the Howard Jarvis Taxpayers Association, "SB 646 eliminates ambiguity in the Mitigation Fee Act of 1987 by codifying this statute to the constitutional provisions found in both Propositions 218 and 26. Despite recent rains, groundwater supplies remain limited forcing some homeowners to connect to municipal and wastewater systems. Under current law, municipalities are able to charge connection fees for such services that represent the "proportional benefit to the person or property being charged." SB 646 would alter this language to clarify that any utility connection fee must bear a fair or reasonable relationship to the payer's burdens on, or benefits received from, the utility connection.

"Beyond creating a fair straightforward standard for water and sewer connection pricing, SB 646 also brings the Mitigation Fee Act in line with the California Constitution and two voter approved ballot measures."

- 4) **Arguments in Opposition.** None on file.

REGISTERED SUPPORT / OPPOSITION:

Support

California Apartment Association
California Association of Realtors
Howard Jarvis Taxpayers Association

Opposition

None on file

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