

Assembly Bill No. 133

Passed the Assembly June 21, 2010

Chief Clerk of the Assembly

Passed the Senate June 17, 2010

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 66484 of the Government Code, relating to subdivisions.

LEGISLATIVE COUNSEL'S DIGEST

AB 133, Smyth. Subdivisions: major thoroughfares.

The Subdivision Map Act authorizes a local agency to require the payment of a fee as a condition of approval of a final map or as a condition of issuing a building permit for purposes of defraying the actual or estimated cost of constructing bridges or major thoroughfares if specified conditions are met. The fees collected are deposited in a planned bridge or major thoroughfare fund. If the benefit area of a bridge fund is one in which more than one bridge is required to be constructed, a fund may be established that covers all of the bridge projects in that benefit area. For the unincorporated area of San Diego County only, "construction" is defined to include design, acquisition of rights-of-way, actual construction, and reasonable administrative expenses, as specified.

This bill would authorize a local agency to establish a fund for a benefit area that covers all of the bridge and major thoroughfare projects in that benefit area when that benefit area is one in which more than one bridge or major thoroughfare is required to be constructed. The definition of "construction" for the unincorporated area of San Diego County would also be applied to the unincorporated area of, and, in specified circumstances, to other specified areas within, Los Angeles County.

The people of the State of California do enact as follows:

SECTION 1. Section 66484 of the Government Code is amended to read:

66484. (a) A local ordinance may require the payment of a fee as a condition of approval of a final map or as a condition of issuing a building permit for purposes of defraying the actual or estimated cost of constructing bridges over waterways, railways, freeways, and canyons, or constructing major thoroughfares. The

ordinance may require payment of fees pursuant to this section if all of the following requirements are satisfied:

(1) The ordinance refers to the circulation element of the general plan and, in the case of bridges, to the transportation or flood control provisions thereof that identify railways, freeways, streams, or canyons for which bridge crossings are required on the general plan or local roads and in the case of major thoroughfares, to the provisions of the circulation element that identify those major thoroughfares whose primary purpose is to carry through traffic and provide a network connecting to the state highway system, if the circulation element, transportation or flood control provisions have been adopted by the local agency 30 days prior to the filing of a map or application for a building permit.

(2) The ordinance provides that there will be a public hearing held by the governing body for each area benefited. Notice shall be given pursuant to Section 65091 and shall include preliminary information related to the boundaries of the area of benefit, estimated cost, and the method of fee apportionment. The area of benefit may include land or improvements in addition to the land or improvements that are the subject of any map or building permit application considered at the proceedings.

(3) The ordinance provides that at the public hearing the boundaries of the area of benefit, the costs, whether actual or estimated, and a fair method of allocation of costs to the area of benefit and fee apportionment are established. The method of fee apportionment, in the case of major thoroughfares, shall not provide for higher fees on land that abuts the proposed improvement except where the abutting property is provided direct usable access to the major thoroughfare. A description of the boundaries of the area of benefit, the costs, whether actual or estimated, and the method of fee apportionment established at the hearing shall be incorporated in a resolution of the governing body, a certified copy of which shall be recorded by the governing body conducting the hearing with the recorder of the county in which the area of benefit is located. The apportioned fees shall be applicable to all property within the area of benefit and shall be payable as a condition of approval of a final map or as a condition of issuing a building permit for the property or portions of the property. Where the area of benefit includes lands not subject to the payment of fees pursuant to this section, the governing agency shall make provision for

payment of the share of improvement costs apportioned to those lands from other sources.

(4) The ordinance provides that payment of fees shall not be required unless the major thoroughfares are in addition to, or a reconstruction of, any existing major thoroughfares serving the area at the time of the adoption of the boundaries of the area of benefit.

(5) The ordinance provides that payment of fees shall not be required unless the planned bridge facility is an original bridge serving the area or an addition to any existing bridge facility serving the area at the time of the adoption of the boundaries of the area of benefit. The fees shall not be expended to reimburse the cost of existing bridge facility construction.

(6) The ordinance provides that if, within the time when protests may be filed under the provisions of the ordinance, there is a written protest, filed with the clerk of the legislative body, by the owners of more than one-half of the area of the property to be benefited by the improvement, and sufficient protests are not withdrawn so as to reduce the area represented to less than one-half of that to be benefited, then the proposed proceedings shall be abandoned, and the legislative body shall not, for one year from the filing of that written protest, commence or carry on any proceedings for the same improvement or acquisition under the provisions of this section.

(b) Any protest may be withdrawn by the owner protesting, in writing, at any time prior to the conclusion of a public hearing held pursuant to the ordinance.

(c) If any majority protest is directed against only a portion of the improvement, then all further proceedings under the provisions of this section to construct that portion of the improvement so protested against shall be barred for a period of one year, but the legislative body may commence new proceedings not including any part of the improvement or acquisition so protested against. Nothing in this section prohibits a legislative body, within that one-year period, from commencing and carrying on new proceedings for the construction of a portion of the improvement so protested against if it finds, by the affirmative vote of four-fifths of its members, that the owners of more than one-half of the area of the property to be benefited are in favor of going forward with that portion of the improvement or acquisition.

(d) Nothing in this section precludes the processing and recordation of maps in accordance with other provisions of this division if the proceedings are abandoned.

(e) Fees paid pursuant to an ordinance adopted pursuant to this section shall be deposited in a planned bridge facility or major thoroughfare fund. A fund shall be established for each planned bridge facility project or each planned major thoroughfare project. If the benefit area is one in which more than one bridge or major thoroughfare is required to be constructed, a fund may be so established covering all of the bridge and major thoroughfare projects in the benefit area. Money in the fund shall be expended solely for the construction or reimbursement for construction of the improvement or improvements serving the area to be benefited and from which the fees comprising the fund were collected, or to reimburse the local agency for the cost of constructing the improvement or improvements.

(f) An ordinance adopted pursuant to this section may provide for the acceptance of considerations in lieu of the payment of fees.

(g) A local agency imposing fees pursuant to this section may advance money from its general fund or road fund to pay the cost of constructing the improvements and may reimburse the general fund or road fund for any advances from planned bridge facility or major thoroughfares funds established to finance the construction of those improvements.

(h) A local agency imposing fees pursuant to this section may incur an interest-bearing indebtedness for the construction of bridge facilities or major thoroughfares. However, the sole security for repayment of that indebtedness shall be moneys in planned bridge facility or major thoroughfares funds.

(i) (1) The term “construction,” as used in this section, includes design, acquisition of rights-of-way, administration of construction contracts, and actual construction.

(2) The term “construction,” as used in this section, with respect to the unincorporated areas of San Diego County and Los Angeles County only, includes design, acquisition of rights-of-way, and actual construction, including, but not limited to, all direct and indirect environmental, engineering, accounting, legal, administration of construction contracts, and other services necessary therefor. The term “construction,” with respect to the unincorporated areas of San Diego County and Los Angeles County

only, also includes reasonable administrative expenses, not exceeding three hundred thousand dollars (\$300,000) in any calendar year after January 1, 1986, as adjusted annually for any increase or decrease in the Consumer Price Index of the Bureau of Labor Statistics of the United States Department of Labor for all Urban Consumers, San Diego, California (1967 = 100), and Los Angeles-Long Beach-Anaheim, California (1967 = 100), respectively, as published by the United States Department of Commerce for the purpose of constructing bridges and major thoroughfares. “Administrative expenses” means those office, personnel, and other customary and normal expenses associated with the direct management and administration of the agency, but not including costs of construction.

(3) The term “construction,” as used in this section, with respect to Los Angeles County only, shall have the same meaning as in paragraph (2) in either of the following circumstances:

(A) The area of benefit includes, and all of the bridge and major thoroughfare project improvements lie within, both a city or a portion of a city and adjacent portions of unincorporated area.

(B) All of the area of benefit and all of the bridge and major thoroughfare project improvements lie completely within the boundaries of a city.

(j) Nothing in this section precludes a county or city from providing funds for the construction of bridge facilities or major thoroughfares to defray costs not allocated to the area of benefit.

Approved _____, 2010

Governor