

AMENDED IN SENATE JUNE 26, 2009

AMENDED IN SENATE JUNE 10, 2009

AMENDED IN ASSEMBLY APRIL 28, 2009

AMENDED IN ASSEMBLY APRIL 27, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1084

Introduced by Assembly Member Adams

February 27, 2009

An act to amend Section 66023 of, and to add Section 66019 to, the Government Code, relating to local planning.

LEGISLATIVE COUNSEL'S DIGEST

AB 1084, as amended, Adams. Local planning: development projects: fees.

(1) The Mitigation Fee Act requires a local agency to hold a public hearing, at which oral or written presentations can be made, as part of a regularly scheduled meeting prior to adopting an ordinance, resolution, or other legislative enactment adopting a specified type of new fee or approving an increase in a specified type of existing fee. The act also requires the local agency to publish, in accordance with a specified provision of law, notice of the time and place of the meeting, including a general explanation of the matter to be considered. The act provides that any cost incurred by a local agency in conducting the hearing may be recovered as part of the fees which were the subject of the hearing.

This bill would additionally require a city, county, or city and county to mail notice of the time and place of the meeting, including a general explanation of the matter to be considered and a statement that specified data is available, at least 14 days prior to the first meeting to any interested party who has filed a written request with the city, county, or city and county for mailed notice of a meeting on a new or increased fee to be enacted by the city, county, or city and county. The bill would authorize the legislative body of the city, county, or city and county to establish a reasonable annual charge for sending notices based on the estimated cost of providing the service. The bill would also authorize the legislative body to send the notices electronically. The bill would require a city, county, or city and county to make available to the public data indicating the amount of cost, or estimated cost, required to provide the public facilities and the revenue sources anticipated to fund those public facilities, including general fund revenues. The bill would also require any new or increased fee adopted by a city, county, or city and county to be effective no earlier than 60 days following the final action on the adoption or increase of the fee, unless the city, county, or city and county follows specified procedures. By adding to the duties of cities, counties, and cities and counties, this bill would impose a state-mandated local program.

(2) Existing law authorizes any person to request an audit to determine whether any fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of any product or service provided by the local agency. If a person makes that request, the legislative body of the local agency is authorized to retain an independent auditor to conduct an audit to determine whether the fee or charge is reasonable. The local agency is authorized to recover the cost of having the audit conducted by an independent auditor from the person who requests the audit, and the audit is required to conform to generally accepted auditing standards.

This bill would additionally authorize any person to request an audit to determine whether any fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of any public facility, as defined, provided by the local agency. *The bill would also require the local agency to retain an independent auditor only if the person requesting the audit deposits with the local agency the amount of the agency's reasonable estimation of the cost of the audit.* The bill would require the local agency to adjust the amount of any fee or charge to the extent it determines that the fee or charge does not meet specified

requirements. By adding to the duties of local agencies, this bill would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

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

1 SECTION 1. Section 66019 is added to the Government Code,
2 to read:

3 66019. (a) As used in this section:

4 (1) "Fee" means a fee as defined in Section 66000, but does not
5 include any of the following:

6 (A) A fee authorized pursuant to Section 66013.

7 (B) A fee authorized pursuant to Section 17620 of the Education
8 Code, Code, or Sections 65995.5 and 65995.7.

9 (C) Rates or charges for water, sewer, or electrical services.

10 (D) Fees subject to Section 66016.

11 (2) "Party" means a person, entity, or organization representing
12 a group of people or entities.

13 (3) "Public facility" means a public facility as defined in Section
14 66000.

15 (b) For any fee, notice of the time and place of the meeting,
16 including a general explanation of the matter to be considered, and
17 a statement that the data required by this subdivision is available
18 shall be mailed at least 14 days prior to the first meeting to an
19 interested party who files a written request with the city, county,
20 or city and county for mailed notice of a meeting on a new or
21 increased fee to be enacted by the city, county, or city and county.
22 Any written request for mailed notices shall be valid for one year
23 from the date on which it is filed unless a renewal request is filed.
24 Renewal requests for mailed notices shall be filed on or before
25 April 1 of each year. The legislative body of the city, county, or
26 city and county may establish a reasonable annual charge for
27 sending notices based on the estimated cost of providing the
28 service. The legislative body may send the notice electronically.

1 At least 10 days prior to the meeting, the city, county, or city and
2 county shall make available to the public the data indicating the
3 amount of cost, or *the* estimated cost, required to provide the public
4 facilities and *the* revenue sources anticipated to fund those public
5 facilities, including general fund revenues. The new or increased
6 fee shall be effective no earlier than 60 days following the final
7 action on the adoption or increase of the fee, unless the city, county,
8 or city and county follows the procedures set forth in subdivision
9 (b) of Section 66017.

10 SEC. 2. Section 66023 of the Government Code is amended
11 to read:

12 66023. (a) Any person may request an audit in order to
13 determine whether any fee or charge levied by a local agency
14 exceeds the amount reasonably necessary to cover the cost of any
15 product, public facility, as defined in Section 66000, or service
16 provided by the local agency. If a person makes that request, the
17 legislative body of the local agency may retain an independent
18 auditor to conduct an audit to determine whether the fee or charge
19 is reasonable, but is not required to conduct the audit if an audit
20 has been performed for the same fee within the previous 12 months.
21 ~~To the extent that the audit determines that the amount of any fee~~
22 ~~or charge does not meet the requirements of this section, the local~~
23 ~~agency shall adjust the fee accordingly.~~

24 ~~(b) Any costs incurred by a local agency in having an audit~~
25 ~~conducted by an independent auditor pursuant to subdivision (a)~~
26 ~~may be recovered from the person who requests the audit.~~

27 *(b) To the extent that the audit determines that the amount of*
28 *any fee or charge does not meet the requirements of this section,*
29 *the local agency shall adjust the fee accordingly. This subdivision*
30 *does not apply to a fee authorized pursuant to Section 17620 of*
31 *the Education Code, or Sections 65995.5 and 65995.7.*

32 *(c) The local agency shall retain an independent auditor to*
33 *conduct an audit only if the person who requests the audit deposits*
34 *with the local agency the amount of the local agency's reasonable*
35 *estimate of the cost of the independent audit. At the conclusion of*
36 *the audit, the local agency shall reimburse unused sums, if any,*
37 *or the requesting person shall pay the local agency the excess of*
38 *the actual cost of the audit over the sum which was deposited.*

39 (e)

1 (d) Any audit conducted by an independent auditor to determine
2 whether a fee or charge levied by a local agency exceeds the
3 amount reasonably necessary to cover the cost of providing the
4 product or service shall conform to generally accepted auditing
5 standards.

6 ~~(d)~~

7 (e) The procedures specified in this section shall be alternative
8 and in addition to those specified in Section 54985.

9 ~~(e)~~

10 (f) The Legislature finds and declares that oversight of local
11 agency fees is a matter of statewide interest and concern. It is,
12 therefore, the intent of the Legislature that this chapter shall
13 supersede all conflicting local laws and shall apply in charter cities.

14 ~~(f)~~

15 (g) This section shall not be construed as granting any additional
16 authority to any local agency to levy any fee or charge which is
17 not otherwise authorized by another provision of law, nor shall its
18 provisions be construed as granting authority to any local agency
19 to levy a new fee or charge when other provisions of law
20 specifically prohibit the levy of a fee or charge.

21 SEC. 3. No reimbursement is required by this act pursuant to
22 Section 6 of Article XIII B of the California Constitution because
23 a local agency or school district has the authority to levy service
24 charges, fees, or assessments sufficient to pay for the program or
25 level of service mandated by this act, within the meaning of Section
26 17556 of the Government Code.

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