

AMENDED IN ASSEMBLY APRIL 4, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 147

Introduced by Assembly Member Dickinson

January 14, 2011

An act to ~~amend Section 66484~~ of *add Section 66484.7* to the Government Code, relating to subdivisions.

LEGISLATIVE COUNSEL'S DIGEST

AB 147, as amended, Dickinson. Subdivisions.

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 Mitigation Fee Act authorizes a local agency to charge a variety of fees, dedications, reservations, or other exactions in connection with the approval of a development project, as defined.*

~~This bill would authorize the fee to additionally be used for defraying the actual or estimated cost of other transportation facilities, as described a local ordinance to require payment of a fee subject to the Mitigation Fee Act, 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 transportation facilities, as defined.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

1 *SECTION 1. Section 66484.7 is added to the Government Code,*
 2 *to read:*

3 *66484.7. (a) A local ordinance may require the payment of a*
 4 *fee, subject to the Mitigation Fee Act (Chapter 5 commencing with*
 5 *Section 66000), Chapter 6 (commencing with Section 66010),*
 6 *Chapter 7 (commencing with Section 66012), Chapter 8*
 7 *)commencing with Section 66016), and Chapter 9 (commencing*
 8 *with Section 66020) of Division 1), as a condition of approval of*
 9 *a final map or as a condition of issuing a building permit for*
 10 *purposes of defraying the actual or estimated cost of constructing*
 11 *transportation facilities. For purposes of this section,*
 12 *transportation facilities mean pedestrian, bicycle, transit, and*
 13 *traffic-calming facilities. The ordinance may require payment of*
 14 *fees pursuant to this section if all of the following requirements*
 15 *are satisfied:*

16 *(1) The ordinance refers to the circulation element of the general*
 17 *plan and to the provisions of the circulation element that identify*
 18 *those transportation facilities that are required to minimize the*
 19 *use of automobiles and minimize the traffic impacts of new*
 20 *development on existing roads, if the circulation element provisions*
 21 *have been adopted by the local agency 30 days prior to the filing*
 22 *of a map or application for a building permit.*

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

31 *(3) The ordinance provides that at the public hearing the*
 32 *boundaries of the area of benefit, the costs, whether actual or*
 33 *estimated, and a fair method of allocation of costs to the area of*
 34 *benefit and fee apportionment are established. A description of*
 35 *the boundaries of the area of benefit, the costs, whether actual or*
 36 *estimated, and the method of fee apportionment established at the*
 37 *hearing shall be incorporated in a resolution of the governing*
 38 *body, a certified copy of which shall be recorded by the governing*

1 *body conducting the hearing with the recorder of the county in*
2 *which the area of benefit is located. The apportioned fees shall be*
3 *applicable to all property within the area of benefit and shall be*
4 *payable as a condition of approval of a final map or as a condition*
5 *of issuing a building permit for the property or portions of the*
6 *property. Where the area of benefit includes lands not subject to*
7 *the payment of fees pursuant to this section, the governing agency*
8 *shall make provision for payment of the share of improvement*
9 *costs apportioned to those lands from other sources.*

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

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

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

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

1 (e) Fees paid pursuant to an ordinance adopted pursuant to
2 this section shall be deposited in a planned transportation facility
3 fund. A fund shall be established for each planned transportation
4 facility project. If the benefit area is one in which more than one
5 other transportation facility is required to be constructed, a fund
6 may be established covering all of the other transportation facility
7 projects in the benefit area. Money in the fund shall be expended
8 solely for the construction or reimbursement for construction of
9 the improvement or improvements serving the area to be benefited
10 and from which the fees comprising the fund were collected, or to
11 reimburse the local agency for the cost of constructing the
12 improvement or improvements.

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

15 (g) A local agency imposing fees pursuant to this section may
16 advance money from its general fund or road fund to pay the cost
17 of constructing the improvements and may reimburse the general
18 fund or road fund for any advances from other transportation
19 facility funds established to finance the construction of those
20 improvements.

21 (h) A local agency imposing fees pursuant to this section may
22 incur an interest-bearing indebtedness for the construction of other
23 transportation facilities. However, the sole security for repayment
24 of that indebtedness shall be moneys in planned transportation
25 facility funds.

26 (i) Nothing in this section precludes a county or city from
27 providing funds for the construction of other transportation
28 facilities to defray costs not allocated to the area of benefit.

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

31 ~~66484. (a) A local ordinance may require the payment of a~~
32 ~~fee as a condition of approval of a final map or as a condition of~~
33 ~~issuing a building permit for purposes of defraying the actual or~~
34 ~~estimated cost of constructing bridges over waterways, railways,~~
35 ~~freeways, and canyons, constructing major thoroughfares, or~~
36 ~~constructing other transportation facilities, including, but not~~
37 ~~limited to, pedestrian, bicycle, transit, and traffic-calming facilities.~~
38 ~~The ordinance may require payment of fees pursuant to this section~~
39 ~~if all of the following requirements are satisfied:~~

1 ~~(1) The ordinance refers to the circulation element of the general~~
2 ~~plan and, if the circulation element, transportation, or flood control~~
3 ~~provisions have been adopted by the local agency 30 days prior~~
4 ~~to the filing of a map or application for a building permit:~~

5 ~~(A) In the case of bridges, to the transportation or flood control~~
6 ~~provisions thereof that identify railroads, freeways, streams, or~~
7 ~~canyons for which bridge crossings are required on the general~~
8 ~~plan or local roads:~~

9 ~~(B) In the case of major thoroughfares, to the provisions of the~~
10 ~~circulation element that identify those major thoroughfares whose~~
11 ~~primary purpose is to carry through traffic and provide a network~~
12 ~~connecting to the state highway system.~~

13 ~~(C) In the case of other transportation facilities, to the provisions~~
14 ~~of the circulation element that identify those transportation facilities~~
15 ~~that are required to minimize the use of automobiles and minimize~~
16 ~~the traffic impacts of new development on existing roads:~~

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

25 ~~(3) The ordinance provides that at the public hearing the~~
26 ~~boundaries of the area of benefit, the costs, whether actual or~~
27 ~~estimated, and a fair method of allocation of costs to the area of~~
28 ~~benefit and fee apportionment are established. The method of fee~~
29 ~~apportionment, in the case of major thoroughfares, shall not provide~~
30 ~~for higher fees on land that abuts the proposed improvement except~~
31 ~~where the abutting property is provided direct usable access to the~~
32 ~~major thoroughfare. A description of the boundaries of the area of~~
33 ~~benefit, the costs, whether actual or estimated, and the method of~~
34 ~~fee apportionment established at the hearing shall be incorporated~~
35 ~~in a resolution of the governing body, a certified copy of which~~
36 ~~shall be recorded by the governing body conducting the hearing~~
37 ~~with the recorder of the county in which the area of benefit is~~
38 ~~located. The apportioned fees shall be applicable to all property~~
39 ~~within the area of benefit and shall be payable as a condition of~~
40 ~~approval of a final map or as a condition of issuing a building~~

1 permit for the property or portions of the property. Where the area
2 of benefit includes lands not subject to the payment of fees pursuant
3 to this section, the governing agency shall make provision for
4 payment of the share of improvement costs apportioned to those
5 lands from other sources.

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

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

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

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

31 ~~(c) If any majority protest is directed against only a portion of~~
32 ~~the improvement, then all further proceedings under the provisions~~
33 ~~of this section to construct that portion of the improvement so~~
34 ~~protested against shall be barred for a period of one year, but the~~
35 ~~legislative body may commence new proceedings not including~~
36 ~~any part of the improvement or acquisition so protested against.~~
37 ~~Nothing in this section prohibits a legislative body, within that~~
38 ~~one-year period, from commencing and carrying on new~~
39 ~~proceedings for the construction of a portion of the improvement~~
40 ~~so protested against if it finds, by the affirmative vote of four-fifths~~

1 of its members, that the owners of more than one-half of the area
2 of the property to be benefited are in favor of going forward with
3 that portion of the improvement or acquisition:

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

7 ~~(e) Fees paid pursuant to an ordinance adopted pursuant to this~~
8 ~~section shall be deposited in a planned bridge facility, major~~
9 ~~thoroughfare, or transportation facility fund. A fund shall be~~
10 ~~established for each planned bridge facility project, each planned~~
11 ~~major thoroughfare project, or each planned transportation facility~~
12 ~~project. If the benefit area is one in which more than one bridge,~~
13 ~~major thoroughfare, or other transportation facility is required to~~
14 ~~be constructed, a fund may be so established covering all of the~~
15 ~~bridge, major thoroughfare, and other transportation facility~~
16 ~~projects in the benefit area. Money in the fund shall be expended~~
17 ~~solely for the construction or reimbursement for construction of~~
18 ~~the improvement or improvements serving the area to be benefited~~
19 ~~and from which the fees comprising the fund were collected, or to~~
20 ~~reimburse the local agency for the cost of constructing the~~
21 ~~improvement or improvements.~~

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

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

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

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

39 ~~(2) The term “construction,” as used in this section, with respect~~
40 ~~to the unincorporated areas of San Diego County and Los Angeles~~

1 County only, includes design, acquisition of rights-of-way, and
 2 actual construction, including, but not limited to, all direct and
 3 indirect environmental, engineering, accounting, legal,
 4 administration of construction contracts, and other services
 5 necessary therefor. The term “construction,” with respect to the
 6 unincorporated areas of San Diego County and Los Angeles County
 7 only, also includes reasonable administrative expenses, not
 8 exceeding three hundred thousand dollars (\$300,000) in any
 9 calendar year after January 1, 1986, as adjusted annually for any
 10 increase or decrease in the Consumer Price Index of the Bureau
 11 of Labor Statistics of the United States Department of Labor for
 12 all Urban Consumers, San Diego, California (1967 = 100), and
 13 Los Angeles-Long Beach-Anaheim, California (1967 = 100),
 14 respectively, as published by the United States Department of
 15 Commerce for the purpose of constructing bridges, major
 16 thoroughfares, and other transportation facilities. “Administrative
 17 expenses” means those office, personnel, and other customary and
 18 normal expenses associated with the direct management and
 19 administration of the agency, but not including costs of
 20 construction.

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

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

28 (B) All of the area of benefit and all of the bridge, major
 29 thoroughfare, and other transportation facility project
 30 improvements lie completely within the boundaries of a city.

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