

Assembly Bill No. 147

CHAPTER 228

An act to add Sections 66484.7 and 66484.9 to the Government Code, relating to subdivisions.

[Approved by Governor September 6, 2011. Filed with
Secretary of State September 6, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

AB 147, Dickinson. Subdivisions.

The Subdivision Map Act authorizes a local agency to require the payment of fees, to be used for various purposes, as a condition of approval of a final map or as a condition of issuing a building permit, including, among others, 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 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.

This bill would specify that the authorizations to impose the fees, as specified, is in addition to other authority granted by law to local agencies relating to subdivisions, and is not to be construed as a limitation or diminution of that other authority.

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

SECTION 1. Section 66484.7 is added to the Government Code, to read:
66484.7. (a) A local ordinance may require the payment of a fee, subject to the Mitigation Fee Act (Chapter 5 (commencing with Section 66000), Chapter 6 (commencing with Section 66010), Chapter 7 (commencing with Section 66012), Chapter 8 (commencing with Section 66016), and Chapter 9 (commencing with Section 66020) of Division 1), 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. For purposes of this section, transportation facilities mean pedestrian, bicycle, transit, and traffic-calming facilities. 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 to the provisions of the circulation element that identify those transportation facilities that are required to minimize the use of automobiles and minimize the traffic impacts of new development on existing roads, if the circulation element 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. 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 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 transportation facility fund. A fund shall be established for each planned transportation facility project. If the benefit area is one in which more than one other transportation facility is required to be constructed, a fund may be established covering all of the other transportation facility 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 other transportation facility 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 other transportation facilities. However, the sole security for repayment of that indebtedness shall be moneys in planned transportation facility funds.

(i) As used in this section, "construction" includes design, acquisition of rights-of-way, administration of construction contracts, and actual construction.

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

SEC. 2. Section 66484.9 is added to the Government Code, to read:

66484.9. The authorizations granted by this article are additional to all other authority granted by law to local agencies relating to subdivisions and shall in no way be construed as a limitation on or diminution of that authority.