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AMENDED IN ASSEMBLY MAY 16, 1996  
AMENDED IN ASSEMBLY APRIL 18, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

**ASSEMBLY BILL**

**No. 3081**

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**Introduced by Assembly Member Olberg**

February 23, 1996

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An act to amend Sections 66000, 66001, and 66020 of the Government Code, relating to real property.

LEGISLATIVE COUNSEL'S DIGEST

AB 3081, as amended, Olberg. Real property: fees for development.

Existing law imposes various requirements with respect to fees exacted in connection with land development approvals by public agencies. Existing law defines the term "fee" as a monetary exaction, other than a tax or special assessment, which is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project.

This bill would revise that definition to state that a fee means a monetary exaction, other than a tax or special assessment, whether ~~imposed on~~ *established for* a broad class of projects by legislation of general applicability or *imposed* on a specific project ~~or individual~~ on an ad hoc basis, that is charged by a local agency to the applicant in connection with

approval of a development project for the purpose of defraying all or a portion of the cost of public facilities,~~the need for which is caused in some part by~~ *related to* the development project.

Under existing law, in any action imposing a fee as a condition of approval of a development project by a local agency, the local agency is required to determine how there is a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed.

~~This bill, instead, would require the local agency to determine that the fee is roughly proportional to the cost of the public facility. The bill also would add to these provisions that a discontinuance of a use of private property, or a change in its designation for zoning or planning purposes, does not deprive the public of a benefit, cause the need for public facilities, or otherwise justify the imposition of a fee. The bill would provide that this provision is not intended to prevent a local agency from charging a fee under specified provisions for the actual cost to administer the processing of an application, or imposing a fee consistent with the fee limitations based on the additional impact of a new development project proposed for property to be rezoned or following a discontinued use, or to offset the cost of providing replacement mitigation where the property being rezoned or the facility being closed was mitigation associated with a previous approval.~~

Existing law permits any party to protest the imposition of any fees, dedications, reservations, or other exactions imposed on a residential housing development by a local agency by (a) making payment in full or ensuring performance of the necessary conditions, and (b) serving a notice containing specified information, including a statement that the required payment is tendered under protest.

~~This bill, instead, would require the party protesting the imposition of an exaction to make payment in full *only when due and the required* or *provide satisfactory evidence of arrangements to pay the fee when due.* The bill would require the statement ~~would~~ to be revised to indicate that the required payment will be tendered under protest when due.~~



Under existing law, a protest filed against the imposition of any fees, dedications, reservations, or other exactions imposed on a residential housing development is required to be filed at the time of approval or conditional approval of the development or within 90 days after the date of the imposition thereof. Existing law also provides that any party who files a protest pursuant to these provisions may file an action to attack, review, set aside, void, or annul the imposition of the fees, dedications, reservations, or other exactions imposed on a residential housing development by a local agency within 180 days after the date of the imposition.

~~This bill, instead, would require a protest to be filed at or before payment of the fee or performance of the fee, dedication, reservation, or other exaction imposed on a residential housing development that is the subject of the protest. The bill also would require that an action to attack, review, set aside, void, or annul the imposition of the fees, dedications, reservations, or other exactions imposed on a residential housing development by a local agency be filed within 180 days after the date of payment of the fee or performance of the dedication, reservation, or other exaction.~~

~~Under existing law, approval or conditional approval of a development occurs, for the purposes of these protest requirements, when the tentative map, tentative parcel map, or parcel map is approved or conditionally approved or when the parcel map is recorded if a tentative map or tentative parcel map is not required. Additionally, under existing law, the imposition of fees, dedications, reservations, or other exactions occurs, for the purposes of these provisions, when they are imposed or levied on a specific development.~~

~~This bill would delete these provisions *each local agency to provide to the project applicant a notice in writing at the time of the approval of the project, or at the time of the imposition of the fees, dedications, reservations, or other exactions, a notification that the 90-day approval period in which the applicant may protest has begun. The bill also would provide that the 180-day period to file an action to attack, review, set aside, void, or annul fees, dedications, reservations, or other exactions imposed on a development by a local agency shall*~~



be filed within 180 days after the delivery of the notice required by these provisions.

This bill also would expand these protest provisions to apply not only to residential housing developments but to any project undertaken for the purpose of development, as defined under existing provisions of law.

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 66000 of the Government Code  
2 is amended to read:  
3 66000. As used in this chapter:  
4 (a) "Development project" means any project  
5 undertaken for the purpose of development.  
6 "Development project" includes a project involving the  
7 issuance of a permit for construction or reconstruction,  
8 but not a permit to operate.  
9 (b) "Fee" means a monetary exaction other than a tax  
10 or special assessment, whether ~~imposed on~~ *established for*  
11 a broad class of projects by legislation of general  
12 applicability or *imposed* on a specific project ~~or individual~~  
13 on an ad hoc basis, that is charged by a local agency to the  
14 applicant in connection with approval of a development  
15 project for the purpose of defraying all or a portion of the  
16 cost of public facilities ~~the need for which is caused in~~  
17 ~~some part by the~~ *related to the* development project, but  
18 does not include fees specified in Section 66477, fees for  
19 processing applications for governmental regulatory  
20 actions or approvals, fees collected under development  
21 agreements adopted pursuant to Article 2.5  
22 (commencing with Section 65864) of Chapter 4, or fees  
23 collected pursuant to agreements with redevelopment  
24 agencies which provide for the redevelopment of  
25 property in furtherance or for the benefit of a  
26 redevelopment project for which a redevelopment plan  
27 has been adopted pursuant to the Community  
28 Redevelopment Law (Part 1 (commencing with Section  
29 33000) of Division 24 of the Health and Safety Code.



1 (c) “Local agency” means a county, city, whether  
2 general law or chartered, city and county, school district,  
3 special district, authority, agency, any other municipal  
4 public corporation or district, or other political  
5 subdivision of the state.

6 (d) “Public facilities” includes public improvements,  
7 public services and community amenities.

8 SEC. 2. Section 66001 of the Government Code is  
9 amended to read:

10 66001. (a) In any action establishing, increasing, or  
11 imposing a fee as a condition of approval of a  
12 development project by a local agency on or after January  
13 1, 1989, the local agency shall do all of the following:

14 (1) Identify the purpose of the fee.

15 (2) Identify the use to which the fee is to be put. If the  
16 use is financing public facilities, the facilities shall be  
17 identified. That identification may, but need not, be  
18 made by reference to a capital improvement plan as  
19 specified in Section 65403 or 66002, may be made in  
20 applicable general or specific plan requirements, or may  
21 be made in other public documents that identify the  
22 public facilities for which the fee is charged.

23 (3) Determine how there is a reasonable relationship  
24 between the fee’s use and the type of development  
25 project on which the fee is imposed.

26 (4) Determine how there is a reasonable relationship  
27 between the need for the public facility and the type of  
28 development project on which the fee is imposed.

29 (b) In any action imposing a fee as a condition of  
30 approval of a development project by a local agency on  
31 or after January 1, 1989, the local agency shall determine  
32 ~~that the amount of the fee is roughly proportional to the~~  
33 *how there is a reasonable relationship between the*  
34 *amount of the fee and the cost of the public facility or*  
35 *portion of the public facility attributable to the*  
36 *development on which the fee is imposed.*

37 (c) A discontinuance of a use of private property, or a  
38 change in its designation for zoning or planning purposes,  
39 does not deprive the public of a benefit, cause the need  
40 for public facilities, or otherwise justify the imposition of



1 a fee. Nothing in this paragraph is intended to prevent a  
2 local agency from charging a fee under Section 65909.5 for  
3 the actual cost to administer the processing of an  
4 application, *or imposing a fee consistent with the fee*  
5 *limitations otherwise provided in this chapter based on*  
6 *the additional impact of a new development project*  
7 *proposed for property to be rezoned or following a*  
8 *discontinued use, or to offset the cost of providing*  
9 *replacement mitigation where the property being*  
10 *rezoned or the facility being closed was mitigation*  
11 *associated with a previous approval.*

12 (d) Upon receipt of a fee subject to this section, the  
13 local agency shall deposit, invest, account for, and expend  
14 the fees pursuant to Section 66006.

15 (e) The local agency shall make findings once each  
16 fiscal year with respect to any portion of the fee  
17 remaining unexpended or uncommitted in its account  
18 five or more years after deposit of the fee to identify the  
19 purpose to which the fee is to be put and to demonstrate  
20 a reasonable relationship between the fee and the  
21 purpose for which it was charged. The findings required  
22 by this subdivision need only be made for moneys in the  
23 possession of the local agency and need not be made with  
24 respect to letters of credit, bonds, or other instruments  
25 taken to secure payment of the fee at a future date.

26 (f) Except as provided in subdivision (f), the local  
27 agency shall refund to the then-current record owner or  
28 owners of lots or units of the development project or  
29 projects on a prorated basis the unexpended or  
30 uncommitted portion of the fee, and any interest accrued  
31 thereon, for which need cannot be demonstrated  
32 pursuant to subdivision (d). A local agency may refund  
33 the unexpended or uncommitted revenues by direct  
34 payment, by providing a temporary suspension of fees, or  
35 by any other means consistent with the intent of this  
36 section. The determination by the governing body of the  
37 local agency of the means by which those revenues are to  
38 be refunded is a legislative act.

39 (g) If the administrative costs of refunding  
40 unexpended or uncommitted revenues pursuant to



1 subdivision (e) exceed the amount to be refunded, the  
2 local agency, after a public hearing, notice of which has  
3 been published pursuant to Section 6061 and posted in  
4 three prominent places within the area of the  
5 development project, may determine that the revenues  
6 shall be allocated for some other purpose for which fees  
7 are collected subject to this chapter and which serves the  
8 project on which the fee was originally imposed.

9 SEC. 3. Section 66020 of the Government Code is  
10 amended to read:

11 66020. (a) Any party may protest the imposition of  
12 any fees, dedications, reservations, or other exactions  
13 imposed on a development project, as defined in Section  
14 66000, by a local agency by meeting both of the following  
15 requirements:

16 (1) Tendering any required payment in full ~~when due~~  
17 or providing satisfactory evidence of arrangements to *pay*  
18 *the fee when due* or ensure performance of the  
19 conditions necessary to meet the requirements of the  
20 imposition.

21 (2) Serving written notice on the governing body of  
22 the entity, which notice shall contain all of the following  
23 information:

24 (A) A statement that the required payment is  
25 tendered or will be tendered when due, or that any  
26 conditions which have been imposed are provided for or  
27 satisfied, under protest.

28 (B) A statement informing the governing body of the  
29 factual elements of the dispute and the legal theory  
30 forming the basis for the protest.

31 (b) Compliance by any party with subdivision (a) shall  
32 not be the basis for a local agency to withhold approval of  
33 any map, plan, permit, zone change, license, or other  
34 form of permission, or concurrence, whether  
35 discretionary, ministerial, or otherwise, incident to, or  
36 necessary for, the development project. This section does  
37 not limit the ability of a local agency to ensure compliance  
38 with all applicable provisions of law in determining  
39 whether or not to approve or disapprove a development  
40 project.



1 (c) Where a reviewing local agency makes proper and  
2 valid findings that the construction of certain public  
3 improvements or facilities, the need for which is directly  
4 attributable to the proposed development, is required for  
5 reasons related to the public health, safety, and welfare,  
6 and elects to impose a requirement for construction of  
7 those improvements or facilities as a condition of  
8 approval of the proposed development, then in the event  
9 a protest is lodged pursuant to this section, that approval  
10 shall be suspended pending withdrawal of the protest, the  
11 expiration of the limitation period of subdivision (d)  
12 without the filing of an action, or resolution of any action  
13 filed. This subdivision confers no new or independent  
14 authority for imposing fees, dedications, reservations, or  
15 other exactions not presently governed by other law.

16 (d) *(1) A protest filed pursuant to subdivision (a)*  
17 ~~shall be filed at or before payment of the fee or~~  
18 ~~performance of the dedication, reservation, or other~~  
19 ~~exaction that is the subject of the protest.~~ *filed at the time*  
20 *of approval or conditional approval of the development*  
21 *or within 90 days after the date of the imposition of the*  
22 *fees, dedications, reservations, or other exactions to be*  
23 *imposed on a development project. Each local agency*  
24 *shall provide to the project applicant a notice in writing*  
25 *at the time of the approval of the project or at the time*  
26 *of the imposition of the fees, dedications, reservations, or*  
27 *other exactions, and notification that the 90-day approval*  
28 *period in which the applicant may protest has begun.*

29 (2) Any party who files a protest pursuant to  
30 subdivision (a) may file an action to attack, review, set  
31 aside, void, or annul the imposition of the fees,  
32 dedications, reservations, or other exactions imposed on  
33 a development project by a local agency within 180 days  
34 ~~after the date of the payment of the fee or performance~~  
35 ~~of the dedication, reservation, or other exaction that is the~~  
36 ~~subject of the protest~~ *after the delivery of the notice.*  
37 Thereafter, notwithstanding any other law to the  
38 contrary, all persons are barred from any action or  
39 proceeding or any defense of invalidity or  
40 unreasonableness of the imposition. Any proceeding



1 brought pursuant to this subdivision shall take  
2 precedence over all matters of the calendar of the court  
3 except criminal, probate, eminent domain, forcible entry,  
4 and unlawful detainer proceedings.

5 (e) If the court finds in favor of the plaintiff in any  
6 action or proceeding brought pursuant to subdivision (d),  
7 the court shall direct the local agency to refund the  
8 unlawful portion of the payment, with interest at the rate  
9 of 8 percent per annum, or return the unlawful portion  
10 of the exaction imposed.

11 (f) (1) If the court grants a judgment to a plaintiff  
12 invalidating, as enacted, all or a portion of an ordinance  
13 or resolution enacting a fee, dedication, reservation, or  
14 other exaction, the court shall direct the local agency to  
15 refund the unlawful portion of the payment, plus interest  
16 at an annual rate equal to the average rate accrued by the  
17 Pooled Money Investment Account during the time  
18 elapsed since the payment occurred, or to return the  
19 unlawful portion of the exaction imposed.

20 (2) If an action is filed within 120 days of the date at  
21 which an ordinance or resolution to establish or modify a  
22 fee, dedication, reservation, or other exactions to be  
23 imposed on a development project takes effect, the  
24 portion of the payment or exaction invalidated shall also  
25 be returned to any other person who, under protest  
26 pursuant to this section and under that invalid portion of  
27 that same ordinance or resolution as enacted, tendered  
28 the payment or provided for or satisfied the exaction  
29 during the period from 90 days prior to the date of the  
30 filing of the action which invalidates the payment or  
31 exaction to the date of the entry of the judgment  
32 referenced in paragraph (1).

33 (g) *Approval or conditional approval of a*  
34 *development occurs, for the purposes of this section,*  
35 *when the tentative map, tentative parcel map, or parcel*  
36 *map is approved or conditionally approved or when the*  
37 *parcel map is recorded if a tentative map or tentative*  
38 *parcel map is not required.*

39 (h) *The imposition of fees, dedications, reservations,*  
40 *or other exactions occurs, for the purposes of this section,*



1 *when they are imposed or levied on a specific*  
2 *development.*

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