

AMENDED IN SENATE AUGUST 15, 1996  
AMENDED IN SENATE AUGUST 14, 1996  
AMENDED IN SENATE JULY 8, 1996  
AMENDED IN SENATE JUNE 12, 1996  
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 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 established for a broad class of projects by legislation of general applicability or imposed on a specific project 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 related to the development project.

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 or provide satisfactory evidence of arrangements to pay the fee when due. The bill would require the statement 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 each local agency, with respect to a project for which the agency has elected to impose a fee, dedication, reservation, or other exaction, 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 statement of the amount of the fees or a description of the dedications, reservations, or other exactions, and* 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 established for a broad  
11 class of projects by legislation of general applicability or  
12 imposed on a specific project on an ad hoc basis, that is  
13 charged by a local agency to the applicant in connection  
14 with approval of a development project for the purpose  
15 of defraying all or a portion of the cost of public facilities  
16 related to the development project, but does not include  
17 fees specified in Section 66477, fees for processing  
18 applications for governmental regulatory actions or  
19 approvals, fees collected under development agreements  
20 adopted pursuant to Article 2.5 (commencing with  
21 Section 65864) of Chapter 4, or fees collected pursuant to  
22 agreements with redevelopment agencies which provide  
23 for the redevelopment of property in furtherance or for  
24 the benefit of a redevelopment project for which a  
25 redevelopment plan has been adopted pursuant to the



1 Community Redevelopment Law (Part 1 (commencing  
2 with Section 33000) of Division 24 of the Health and  
3 Safety Code.

4 (c) "Local agency" means a county, city, whether  
5 general law or chartered, city and county, school district,  
6 special district, authority, agency, any other municipal  
7 public corporation or district, or other political  
8 subdivision of the state.

9 (d) "Public facilities" includes public improvements,  
10 public services and community amenities.

11 SEC. 2. Section 66020 of the Government Code is  
12 amended to read:

13 66020. (a) Any party may protest the imposition of  
14 any fees, dedications, reservations, or other exactions  
15 imposed on a development project, as defined in Section  
16 66000, by a local agency by meeting both of the following  
17 requirements:

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

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

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

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

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



1 whether or not to approve or disapprove a development  
2 project.

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

18 (d) (1) A protest filed pursuant to subdivision (a)  
19 shall be filed at the time of approval or conditional  
20 approval of the development or within 90 days after the  
21 date of the imposition of the fees, dedications,  
22 reservations, or other exactions to be imposed on a  
23 development project. Each local agency shall provide to  
24 the project applicant a notice in writing at the time of the  
25 approval of the project or at the time of the imposition of  
26 the fees, dedications, reservations, or other exactions, *a*  
27 *statement of the amount of the fees or a description of the*  
28 *dedications, reservations, or other exactions,* and  
29 notification that the 90-day approval period in which the  
30 applicant may protest has begun.

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



1 take precedence over all matters of the calendar of the  
2 court except criminal, probate, eminent domain, forcible  
3 entry, and unlawful detainer proceedings.

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

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

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

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

38 (h) The imposition of fees, dedications, reservations,  
39 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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