

ASSEMBLY BILL

No. 59

Introduced by Assembly Member Gabriel

December 7, 2020

An act to amend Sections 66013, 66014, 66016, 66019, and 66020 of, and to repeal Section 66022 of, the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 59, as introduced, Gabriel. Mitigation Fee Act: fees: notice and timelines.

The Mitigation Fee Act authorizes a local agency to establish, increase, or impose a variety of fees, dedications, reservations, or other exactions for services, and in connection with the approval of a development project, as defined. Existing law prohibits a local agency from imposing fees for specified purposes, including fees for water or sewer connections, capacity charges, zoning variances or changes, use permits, and building inspections or permits, among others, that exceed the estimated reasonable cost of providing the service for which the fee is charged, unless voter approval is obtained. Existing law requires fees or service charges that create revenues in excess of actual cost to be used to reduce the fee or service charge. Existing law requires a local agency, before levying or increasing a fee or service charge, to hold at least one open and public meeting and requires that notice of the time and place of the meeting be mailed at least 14 days prior to the meeting to any interested party who files a written request with the local agency for mailed notice of the meeting on new or increased fees or service charges. Existing law additionally requires the local agency to make available to the public, at least 10 days prior to the meeting, the data

indicating the amount of cost, or estimated cost, required to provide the service for which the fee or service charge is levied and the revenue sources anticipated to provide the service, as specified. Existing law also authorizes the local agency to provide notice via electronic notification to those who specifically request it, and authorizes the legislative body of a local agency to establish a reasonable annual charge for sending notices based on the estimated cost of providing the service.

Existing law authorizes any party to protest the imposition of a fee, dedication, reservation, or other exactions imposed on a development project within 90 or 120 days of the imposition of the fee, as applicable, and specifies procedures for those protests and actions. The act imposes the same requirements on a local agency for a new or increased fee for public facilities. Existing law, for specified fees, requires any judicial action or proceeding to attack, review, set aside, void, or annul an ordinance, resolution, or motion adopting a new fee or service charge or modifying an existing fee or service charge to be commenced within 120 days of the effective date of the ordinance, resolution, or motion. Existing law also provides that, if an ordinance, resolution, or motion provides for an automatic adjustment in a fee or service charge and the adjustment results in an increase in the fee or service charge, that any action to attack, review, set aside, void, or annul the increase to be commenced within 120 days of the increase.

This bill would increase, for fees and service charges and for fees for specified public facilities, the time for mailing the notice of the time and place of the meeting to at least 45 days before the meeting. The bill would require the local agency to make that information available to the public at least 30 days before the meeting. The bill would require a local agency to additionally make available to the public all of the data demonstrating the requisite relationship between the amount of a fee for public facilities and the need for the public facilities. The bill would require the data to also be made available to the public on the local agency's internet website. The bill would authorize interested parties to file an electronic request to receive the notice of the meeting time and place, and would require the local agency to mail or electronically send the notice as requested by the party. The bill would prohibit the legislative body of a local agency from establishing a reasonable annual charge for sending electronic notices. The bill would prohibit a local agency, when defending a protest or action filed for a fee or service charge, or for fees for specified public facilities, from using as evidence, or relying on in any way, data not made available to

the public pursuant to these provisions. The bill would require revenues in excess of actual cost to be used to reimburse the payor of the fee or service charge.

This bill would also delete the provisions requiring a judicial action or proceeding to attack, review, set aside, void, or annul an ordinance within 120 days of the effective date of the ordinance or increase, as applicable. The bill would instead require a judicial action or proceeding to be conducted in accordance with other procedures that, among other things, require a protest to be filed within 90 days after the imposition of the fees and an action to attack, review, set aside, void, or annul the imposition of the fees to be filed within 180 days after delivery of a specified notice by the local agency.

By imposing new duties on local agencies, the bill would impose a state-mandated local program.

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 66013 of the Government Code is
2 amended to read:

3 66013. (a) Notwithstanding any other provision of law, when
4 a local agency imposes fees for water connections or sewer
5 connections, or imposes capacity charges, those fees or charges
6 shall not exceed the estimated reasonable cost of providing the
7 service for which the fee or charge is imposed, unless a question
8 regarding the amount of the fee or charge imposed in excess of
9 the estimated reasonable cost of providing the services or materials
10 is submitted to, and approved by, a popular vote of two-thirds of
11 those electors voting on the issue.

12 (b) As used in this section:

13 (1) "Sewer connection" means the connection of a structure or
14 project to a public sewer system.

1 (2) “Water connection” means the connection of a structure or
2 project to a public water system, as defined in subdivision (h) of
3 Section 116275 of the Health and Safety Code.

4 (3) “Capacity charge” means a charge for public facilities in
5 existence at the time a charge is imposed or charges for new public
6 facilities to be acquired or constructed in the future that are of
7 proportional benefit to the person or property being charged,
8 including supply or capacity contracts for rights or entitlements,
9 real property interests, and entitlements and other rights of the
10 local agency involving capital expense relating to its use of existing
11 or new public facilities. A “capacity charge” does not include a
12 commodity charge.

13 (4) “Local agency” means a local agency as defined in Section
14 66000.

15 (5) “Fee” means a fee for the physical facilities necessary to
16 make a water connection or sewer connection, including, but not
17 limited to, meters, meter boxes, and pipelines from the structure
18 or project to a water distribution line or sewer main, and the
19 estimated reasonable cost of labor and materials for installation of
20 those facilities bears a fair or reasonable relationship to the payor’s
21 burdens on, or benefits received from, the water connection or
22 sewer connection.

23 (6) “Public facilities” means public facilities as defined in
24 Section 66000.

25 (c) A local agency receiving payment of a charge as specified
26 in paragraph (3) of subdivision (b) shall deposit it in a separate
27 capital facilities fund with other charges received, and account for
28 the charges in a manner to avoid any commingling with other
29 moneys of the local agency, except for investments, and shall
30 expend those charges solely for the purposes for which the charges
31 were collected. Any interest income earned from the investment
32 of moneys in the capital facilities fund shall be deposited in that
33 fund.

34 (d) For a fund established pursuant to subdivision (c), a local
35 agency shall make available to the public, within 180 days after
36 the last day of each fiscal year, the following information for that
37 fiscal year:

38 (1) A description of the charges deposited in the fund.

39 (2) The beginning and ending balance of the fund and the
40 interest earned from investment of moneys in the fund.

1 (3) The amount of charges collected in that fiscal year.

2 (4) An identification of all of the following:

3 (A) Each public improvement on which charges were expended
4 and the amount of the expenditure for each improvement, including
5 the percentage of the total cost of the public improvement that was
6 funded with those charges if more than one source of funding was
7 used.

8 (B) Each public improvement on which charges were expended
9 that was completed during that fiscal year.

10 (C) Each public improvement that is anticipated to be undertaken
11 in the following fiscal year.

12 (5) A description of each interfund transfer or loan made from
13 the capital facilities fund. The information provided, in the case
14 of an interfund transfer, shall identify the public improvements on
15 which the transferred moneys are, or will be, expended. The
16 information, in the case of an interfund loan, shall include the date
17 on which the loan will be repaid, and the rate of interest that the
18 fund will receive on the loan.

19 (e) The information required pursuant to subdivision (d) may
20 be included in the local agency's annual financial report.

21 (f) The provisions of subdivisions (c) and (d) shall not apply to
22 any of the following:

23 (1) Moneys received to construct public facilities pursuant to a
24 contract between a local agency and a person or entity, including,
25 but not limited to, a reimbursement agreement pursuant to Section
26 66003.

27 (2) Charges that are used to pay existing debt service or which
28 are subject to a contract with a trustee for bondholders that requires
29 a different accounting of the charges, or charges that are used to
30 reimburse the local agency or to reimburse a person or entity who
31 advanced funds under a reimbursement agreement or contract for
32 facilities in existence at the time the charges are collected.

33 (3) Charges collected on or before December 31, 1998.

34 (g) Any judicial action or proceeding to attack, review, set aside,
35 void, or annul the ordinance, resolution, or motion imposing a fee
36 or capacity charge subject to this section shall be brought pursuant
37 to Section ~~66022~~. 66020.

38 (h) Fees and charges subject to this section are not subject to
39 the provisions of Chapter 5 (commencing with Section 66000),

1 but are subject to the provisions of Sections 66016, ~~66022~~, 66020,
2 and 66023.

3 (i) Subdivisions (c) and (d) only apply to capacity charges levied
4 pursuant to this section.

5 SEC. 2. Section 66014 of the Government Code is amended
6 to read:

7 66014. (a) Notwithstanding any other provision of law, when
8 a local agency charges fees for zoning variances; zoning changes;
9 use permits; building inspections; building permits; filing and
10 processing applications and petitions filed with the local agency
11 formation commission or conducting preliminary proceedings or
12 proceedings under the Cortese-Knox-Hertzberg Local Government
13 Reorganization Act of 2000, Division 3 (commencing with Section
14 56000) of Title 5; the processing of maps under the provisions of
15 the Subdivision Map Act, Division 2 (commencing with Section
16 66410) of Title 7; or planning services under the authority of
17 Chapter 3 (commencing with Section 65100) of Division 1 of Title
18 7 or under any other authority; those fees may not exceed the
19 estimated reasonable cost of providing the service for which the
20 fee is charged, unless a question regarding the amount of the fee
21 charged in excess of the estimated reasonable cost of providing
22 the services or materials is submitted to, and approved by, a popular
23 vote of two-thirds of those electors voting on the issue.

24 (b) The fees charged pursuant to subdivision (a) may include
25 the costs reasonably necessary to prepare and revise the plans and
26 policies that a local agency is required to adopt before it can make
27 any necessary findings and determinations.

28 (c) Any judicial action or proceeding to attack, review, set
29 aside, void, or annul the ordinance, resolution, or motion
30 authorizing the charge of a fee subject to this section shall be
31 brought pursuant to Section ~~66022~~. 66020.

32 SEC. 3. Section 66016 of the Government Code is amended
33 to read:

34 66016. (a) Prior to levying a new fee or service charge, or
35 prior to approving an increase in an existing fee or service charge,
36 a local agency shall hold at least one open and public meeting, at
37 which oral or written presentations can be made, as part of a
38 regularly scheduled meeting. Notice of the time and place of the
39 meeting, including a general explanation of the matter to be
40 considered, and a statement that the data required by this section

1 is available, shall be mailed *or delivered electronically* at least ~~14~~
2 45 days prior to the meeting to any interested party who files a
3 ~~written~~ *written, including electronic*, request with the local agency
4 for mailed *or electronic* notice of the meeting on new or increased
5 fees or service charges. Any ~~written~~ *written, including electronic*,
6 request for mailed *or electronic* notices shall be valid for one year
7 from the date on which it is filed unless a renewal request is filed.
8 Renewal requests for mailed *or electronic* notices shall be filed
9 on or before April 1 of each year. The legislative body may
10 establish a reasonable annual charge for sending *mailed* notices
11 based on the estimated cost of providing the service. At least ~~10~~
12 30 days prior to the meeting, the local agency shall make available
13 to the ~~public~~ *public, including on its internet website, all of the*
14 data indicating the amount of cost, or estimated cost, required to
15 provide the service for which the fee or service charge is levied
16 and the revenue sources anticipated to provide the service,
17 including ~~General Fund~~ *general fund* revenues. Unless there has
18 been voter approval, as prescribed by Section 66013 or 66014, no
19 local agency shall levy a new fee or service charge or increase an
20 existing fee or service charge to an amount which exceeds the
21 estimated amount required to provide the service for which the fee
22 or service charge is levied. If, however, the fees or service charges
23 create revenues in excess of actual cost, those revenues shall be
24 used to ~~reduce~~ *reimburse the payor of* the fee or service charge
25 creating the excess.

26 (b) Any action by a local agency to levy a new fee or service
27 charge or to approve an increase in an existing fee or service charge
28 shall be taken only by ordinance or resolution. The legislative body
29 of a local agency shall not delegate the authority to adopt a new
30 fee or service charge, or to increase a fee or service charge.

31 (c) Any costs incurred by a local agency in conducting the
32 meeting or meetings required pursuant to subdivision (a) may be
33 recovered from fees charged for the services which were the subject
34 of the meeting.

35 (d) This section shall apply only to fees and charges as described
36 in Sections 51287, 56383, 65104, 65456, 65584.1, 65863.7,
37 65909.5, 66013, 66014, and 66451.2 of this code, Sections 17951,
38 19132.3, and 19852 of the Health and Safety Code, Section 41901
39 of the Public Resources Code, and Section 21671.5 of the Public
40 Utilities Code.

1 (e) Any judicial action or proceeding to attack, review, set aside,
2 void, or annul the ordinance, resolution, or motion levying a fee
3 or service charge subject to this section shall be brought pursuant
4 to Section ~~66022~~: 66020.

5 SEC. 4. Section 66019 of the Government Code is amended
6 to read:

7 66019. (a) As used in this section:

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

- 10 (A) A fee authorized pursuant to Section 66013.
- 11 (B) A fee authorized pursuant to Section 17620 of the Education
- 12 Code, or Sections 65995.5 and 65995.7.
- 13 (C) Rates or charges for water, sewer, or electrical services.
- 14 (D) Fees subject to Section 66016.

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

17 (3) "Public facility" means a public facility as defined in Section
18 66000.

19 (b) For any fee, notice of the time and place of the meeting,
20 including a general explanation of the matter to be considered, and
21 a statement that the data required by this subdivision is available
22 shall be mailed *or delivered electronically* at least ~~14~~ 45 days prior
23 to the first meeting to an interested party who files a ~~written~~
24 *written, including electronic*, request with the city, county, or city
25 and county for mailed *or electronic* notice of a meeting on a new
26 or increased fee to be enacted by the city, county, or city and
27 county. Any ~~written~~ *written, including electronic*, request for
28 mailed *or electronic* notices shall be valid for one year from the
29 date on which it is filed unless a renewal request is filed. Renewal
30 requests for mailed *or electronic* notices shall be filed on or before
31 April 1 of each year. The legislative body of the city, county, or
32 city and county may establish a reasonable annual charge for
33 sending *mailed* notices based on the estimated cost of providing
34 the service. The legislative body may send the notice electronically.
35 At least ~~10~~ 30 days prior to the meeting, the city, county, or city
36 and county shall make available to the ~~public~~ *public, including on*
37 *its internet website, all of* the data indicating the amount of cost,
38 or the estimated cost, required to provide the public facilities and
39 the revenue sources anticipated to fund those public facilities,
40 including general fund ~~revenues~~: *revenues, and demonstrating the*

1 *requisite relationship between the amount of the fee and the need*
2 *for the public facilities.* The new or increased fee shall be effective
3 no earlier than 60 days following the final action on the adoption
4 or increase of the fee, unless the city, county, or city and county
5 follows the procedures set forth in subdivision (b) of Section
6 66017.

7 (c) If a city, county, or city and county receives a request for
8 mailed notice pursuant to this section, or a local agency receives
9 a request for mailed notice pursuant to Section 66016, the city,
10 county, or city and county or other local agency may provide the
11 notice via electronic mail for those who specifically request
12 electronic mail notification. A city, county, city or county, or other
13 local agency that provides electronic mail notification pursuant to
14 this subdivision shall send the electronic mail notification to the
15 electronic mail address indicated in the request. The electronic
16 mail notification authorized by this subdivision shall operate as
17 an alternative to the mailed notice required by this section.

18 SEC. 5. Section 66020 of the Government Code is amended
19 to read:

20 66020. (a) Any party may protest the imposition of any fees,
21 dedications, reservations, or other exactions imposed on a
22 development project, as defined in Section 66000, by a local agency
23 by meeting both of the following requirements:

24 (1) Tendering any required payment in full or providing
25 satisfactory evidence of arrangements to pay the fee when due or
26 ensure performance of the conditions necessary to meet the
27 requirements of the imposition.

28 (2) Serving ~~written~~ *written, including electronic*, notice on the
29 governing body of the entity, which notice shall contain all of the
30 following information:

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

34 (B) A statement informing the governing body of the factual
35 elements of the dispute and the legal theory forming the basis for
36 the protest.

37 (b) Compliance by any party with subdivision (a) shall not be
38 the basis for a local agency to withhold approval of any map, plan,
39 permit, zone change, license, or other form of permission, or
40 concurrence, whether discretionary, ministerial, or otherwise,

1 incident to, or necessary for, the development project. This section
2 does not limit the ability of a local agency to ensure compliance
3 with all applicable provisions of law in determining whether or
4 not to approve or disapprove a development project.

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

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

29 (2) Any party who files a protest pursuant to subdivision (a)
30 may file an action to attack, review, set aside, void, or annul the
31 imposition of the fees, dedications, reservations, or other exactions
32 imposed on a development project by a local agency within 180
33 days after the delivery of the notice. Thereafter, notwithstanding
34 any other law to the contrary, all persons are barred from any action
35 or proceeding or any defense of invalidity or unreasonableness of
36 the imposition. Any proceeding brought pursuant to this
37 subdivision shall take precedence over all matters of the calendar
38 of the court except criminal, probate, eminent domain, forcible
39 entry, and unlawful detainer proceedings.

1 (e) A local agency, when defending a protest or action filed
2 under this section for a fee described under Section 66016 or
3 Section 66019, shall not use any evidence, or rely on in any way,
4 data not made available to the public, including data not posted
5 on the local agency's internet website, pursuant to Section 66016
6 or Section 66019.

7 ~~(e)~~

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

13 ~~(f)~~

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

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

33 ~~(g)~~

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

39 ~~(h)~~

1 (i) The imposition of fees, dedications, reservations, or other
2 exactions occurs, for the purposes of this section, when they are
3 imposed or levied on a specific development.

4 SEC. 6. Section 66022 of the Government Code is repealed.

5 ~~66022. (a) Any judicial action or proceeding to attack, review,
6 set aside, void, or annul an ordinance, resolution, or motion
7 adopting a new fee or service charge, or modifying or amending
8 an existing fee or service charge, adopted by a local agency, as
9 defined in Section 66000, shall be commenced within 120 days of
10 the effective date of the ordinance, resolution, or motion.~~

11 ~~If an ordinance, resolution, or motion provides for an automatic
12 adjustment in a fee or service charge, and the automatic adjustment
13 results in an increase in the amount of a fee or service charge, any
14 action or proceeding to attack, review, set aside, void, or annul the
15 increase shall be commenced within 120 days of the effective date
16 of the increase.~~

17 ~~(b) Any action by a local agency or interested person under
18 this section shall be brought pursuant to Chapter 9 (commencing
19 with Section 860) of Title 10 of Part 2 of the Code of Civil
20 Procedure.~~

21 ~~(c) This section shall apply only to fees, capacity charges, and
22 service charges described in and subject to Sections 66013, 66014,
23 and 66016.~~

24 SEC. 7. No reimbursement is required by this act pursuant to
25 Section 6 of Article XIII B of the California Constitution because
26 a local agency or school district has the authority to levy service
27 charges, fees, or assessments sufficient to pay for the program or
28 level of service mandated by this act, within the meaning of Section
29 17556 of the Government Code.