

useful to enforce existing housing laws and inform state housing policymaking, as specified. Requires HCD to establish a workgroup, as specified, in developing this strategy.

This bill as amended in the Senate Governance and Finance Committee:

- 1) Requires HCD, on or before January 1, 2024, to create an impact fee nexus study template that may be used by local jurisdictions. The template shall include a method of calculating the feasibility of housing being built with a given fee level. Authorizes HCD to contract with non-profit or academic institutions to complete the template.
- 2) Requires a city, county, or special district to post a written fee schedule, or a link directly to the written fee schedule, on its Web site.
- 3) Requires a city or county to request from a development proponent, upon issuance of a certificate of occupancy or the final inspection, whichever occurs last, the total amount of fees and exactions associated with the project. Requires the city or county to post this information on its website and update it at least twice per year. Allows a city or county to post a disclaimer regarding the accuracy of this information.
- 4) Requires a city, county, or special district that conducts an impact fee nexus study on or after January 1, 2022 to adopt the nexus fee study prior to adopting the associated development fee. Requires the nexus fee study to:
 - a) Include, as applicable, the existing level of service for each public facility, the proposed new level of service, and an explanation of why the new level of service is appropriate.
 - b) Include information supporting the local agency's actions, as specified.
 - c) Review the assumptions supporting the original fee and evaluate the amount collected under the original fee, if the study supports increasing an existing fee.
- 5) Requires a nexus fee study adopted after July 1, 2022, to calculate a fee imposed on a housing development project proportionately to the square footage of the proposed units in the development. This fee shall be deemed to bear a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.

- 6) Provides that an agency is not prohibited from establishing different fees for different types of developments. Exempts a nexus fee study from the requirement in (5) if the city, county, or special district makes a finding that includes:
 - a) An explanation of why square footage is not an appropriate metric to calculate fees imposed on the housing development project.
 - b) An explanation that an alternative basis of calculating the fee bears a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.
 - c) A finding that other polices in the fee structure support smaller developments, or otherwise ensure that smaller developments are not charged disproportionate fees.
- 7) Requires large jurisdictions to adopt a capital improvement plan as part of the nexus study.
- 8) Requires all nexus studies to be adopted at a public hearing with at least 30 days' notice. Requires the local agency to notify any member of the public that requests it, of the date of the hearing at which it will begin the study.
- 9) Requires all nexus studies to be updated at least every eight years, from the period beginning January 1, 2022.
- 10) Authorizes a local agency to use the impact fee nexus study template developed by HCD as required in (1).
- 11) Provides that this bill does not apply to water or sewer connection or capacity charges.
- 12) Authorizes any member of the public, including an applicant for a development project, to submit evidence, as specified, to the city, county, or other local agency that its findings are insufficient or that the local agency otherwise failed to comply with this bill. Requires the legislative body of a city, county, or other local agency to consider any such evidence and authorizes the legislative body to change or adjust the proposed fee or fee increase if it deems necessary.

COMMENTS:

- 1) *Author's statement.* “Local jurisdictions levy development fees to pay for the services needed to support new housing and to offset the impacts of growth in a community. These fees can make up a substantial portion of the cost to build new housing in California cities. In a March 2018 report, UC Berkeley’s Turner Center for Housing Innovation found that development fees can amount to anywhere from 6-18% of the median price of a home depending on the location. In order for impact fees to be legally valid, they must comply with the rules and regulations established by the Mitigation Fee Act and be justified through the use of a ‘nexus study’ which illustrates the relationship between new development and its incremental impacts on infrastructure. In November of 2020, the Turner Center released a report which stressed the need for additional guidance on how local jurisdictions conduct nexus studies, which are currently governed by an opaque and informal patchwork of guidelines and common practices. AB 602 establishes basic transparency and accountability standards for nexus studies, and tasks HCD with developing a template for nexus studies that local governments can use.”
- 2) *Impact fees.* Local governments can charge a variety of fees to a development. These fees, commonly known as impact fees or mitigation fees, go toward infrastructure development (such as adding lanes to roads or supporting additional traffic) or other public benefits (such as new parks, schools, or affordable housing). In the wake of the passage of Proposition 13 in 1978 and the resulting loss of significant property tax revenue, local governments have also turned to development fees as a means to generate revenue. Given that California cities have tightly restricted funding sources, fees are one of the few ways cities can pay for the indirect costs of growth. The Mitigation Fee Act requires local officials, when establishing, increasing, or imposing a fee as a condition of approving a development project, to identify the purpose of the fee; identify the use of the fee, including the public facilities that the fee will finance; determine a reasonable relationship between the use of the fee and the development; and determine a reasonable relationship between the public facility’s need and the development. Local agencies must also produce an annual report on developer and other fees.
- 3) *Do impact fees drive up housing construction costs?* Concerned that mitigation fees could be increasing the cost of housing, the Legislature passed AB 879 (Grayson, 2017), which required HCD to complete a study to evaluate the reasonableness of local fees charged to new developments. In August 2019, HCD released the study, performed by UC Berkeley’s Turner Center for

Housing Innovation (Turner Center).¹ Among other conclusions, the report argued that fees can be a barrier to development and can raise prices of both new and existing homes; however, it also noted that local governments face substantial fiscal constraints and thus have turned to fees as a source of revenue to fund public services for new developments. The report found that fee transparency could be substantially improved. According to the study, many jurisdictions do not post their fee schedules or their nexus studies online, making it difficult for developers to estimate project costs, while other jurisdictions have adopted best practices such as offering an estimate of the fees that a project would pay. The study recommended requiring local governments to post fees and nexus studies online, as well as annual reports on fee collections, and requiring jurisdictions to provide fee estimates. In response, the Legislature passed AB 1483 (Grayson, 2019), which required cities and counties to post specified housing-related information on their website and required HCD to establish a workgroup to develop a strategy for state housing data.

In February 2020, the Senate Housing Committee, Senate Governance & Finance Committee, Assembly Housing Committee, and Assembly Local Government Committee convened a joint hearing titled “The Price of Civilization: Benefits and Costs of Impact Fees on Housing in California.”² At this hearing, committee members heard from experts on the legal framework governing impact fees, learned about common uses of impact fees, reviewed how local governments use impact fees to achieve local policy goals, and heard from academic experts on recent research on the effects of impact fees on the building industry.

In November 2020, the Turner Center released a report focused on the preparation of nexus studies.³ The report found that in many cases, nexus studies do not clearly identify the current level of service and do not always use methodologies that tie fees closely to the direct impacts of the new development. Finally, the study noted that nexus studies in general, and the fee-setting process more broadly, do not require a review of whether the fee would have negative financial consequences for housing development. The

¹ Hayley Raetz, David Garcia, and Nathaniel Decker. *Residential Impact Fees in California* (Turner Center for Housing Innovation, UC Berkeley, August 2019). https://turnercenter.berkeley.edu/wp-content/uploads/pdfs/Residential_Impact_Fees_in_California_August_2019.pdf

² Senate Committees on Governance and Finance and Housing and Assembly Committees on Local Government and Housing. *Background Paper* (February 2020). <https://shou.senate.ca.gov/sites/shou.senate.ca.gov/files/Mitigation%20fee%20background%20paper%20final.pdf>

³ Turner Center for Housing Innovation, UC Berkeley. *Improving Impact Fees in California: Rethinking the Nexus Studies Requirement* (November 2020). https://turnercenter.berkeley.edu/wp-content/uploads/2020/12/Nexus_Studies_November_2020.pdf

report recommended that the state set standards for nexus studies; that local agencies use methodologies that more closely tie fees to direct impacts of new development; and that local agencies incorporate consideration of feasibility into mechanisms for triggering review.

- 4) *Increasing transparency of impact fees.* This bill aims to increase the transparency of impact fees. The California Homebuilding Alliance, a coalition of builders, realtors, developers, and others, writing in support of this bill, notes that “Nexus studies are currently governed by an opaque and informal patchwork of guidelines and common practices.” This bill requires HCD to establish template for nexus fee studies, establishes specific requirements to help standardize nexus fee adoption and nexus fee studies, requires regular updates of nexus fee studies, and requires nexus fee studies to be adopted at a public hearing. Although this bill does not require any reductions of impact fees, it aims to help developers cut costs in terms of project time by making it easier to navigate local impact fee information.
- 5) *Opposition concerns.* A coalition of local government organizations including planners, cities, and counties objects to this bill’s requirement for HCD to develop a nexus fee template. The coalition states that HCD does not have the needed expertise and that the bill does not require HCD to consult with stakeholders in developing the template. The coalition also opposes the requirement for capital improvement planning, which it states will create additional costs for local agencies that would most likely be passed on to development proponents in the form of higher fees.
- 6) *Double referral.* This bill passed out of the Governance & Finance Committee on an 5-0 vote on July 1st.

RELATED LEGISLATION:

AB 1483 (Grayson, Chapter 662, Statutes of 2019) — required cities and counties to post specified housing-related information on their websites and requires HCD to establish a workgroup to develop a strategy for state housing data, as specified.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

POSITIONS: (Communicated to the committee before noon on Thursday, July 1, 2021.)

SUPPORT:

California YIMBY (Co-Sponsor)
Habitat for Humanity California (Co-Sponsor)
Bay Area Council
California Association of Realtors
California Building Industry Association
Casita Coalition
Council of Infill Builders
Greenbelt Alliance
Hello Housing
Housing Action Coalition
LISC San Diego
San Francisco Bay Area Planning and Research Association (SPUR)
Silicon Valley @ Home
The Two Hundred
TMG Partners

OPPOSITION:

American Planning Association, California Chapter
California State Association of Counties
City of Fremont
League of California Cities
Rural County Representatives of California
Urban Counties of California

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