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AB-516 Mitigation Fee Act: fees for improvements: reports and audits. (2023-2024)

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Assembly Bill No. 516

CHAPTER 741

An act to amend Sections 66006, 66008, and 66023 of the Government Code, relating to development fees.

[Approved by Governor October 11, 2023. Filed with Secretary of State October 11, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 516, Ramos. Mitigation Fee Act: fees for improvements: reports and audits.

Existing law, the Mitigation Fee Act, imposes certain requirements on a local agency that imposes a fee as a condition of approval of a development project that is imposed to provide for an improvement to be constructed to serve the development project, or a fee for public improvements, as specified. In this regard, the Mitigation Fee Act requires the local agency to deposit the fee in a separate capital facilities account or fund, and to make certain information about the account or fund public annually, as specified. The Mitigation Fee Act requires that information to include an identification of an approximate date by which the construction of the public improvement will commence if the local agency determines that sufficient funds have been collected to complete financing on an incomplete public improvement, as specified. The Mitigation Fee Act also requires that information to include the amount of refunds made to the owners of the lots or units of the development project, as specified.

This bill would require the report to include an identification of each public improvement identified in a previous report, whether construction began on the approximate date noted in the previous report, the reason for the delay, if any, and a revised approximate date that the local agency will commence construction, if applicable. The bill would also require the report to include the number of persons or entities identified to receive refunds.

The Mitigation Fee Act authorizes a person to request an audit to determine whether a fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of a product, public facility, as defined, or service provided by the local agency. Existing law prohibits a local agency from imposing water or sewer connection fees or capacity charges that exceed the estimated reasonable cost of providing the service for which the fee or charge is imposed, unless voter approval is obtained, as specified.

This bill, except with respect to the above-described connection fees and capacity charges, would expand the purposes of the audit to include a determination of when the revenue generated by a fee or charge is scheduled to be expended and when the public improvement is scheduled to be completed.

The bill would require a local agency to inform a person paying a fee imposed as a condition of approval of a development project, as described above, of their right to request the audit described above and their right to

file a written request for mailed notice of the local agency's meeting to review the fee account or fund information made public, as described above. The bill would also require the local agency to provide the person with a link to the page on the local agency's website where the fee account or fund information made public, as described above, is available for review.

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 Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 66006 of the Government Code is amended to read:

66006. (a) If a local agency requires the payment of a fee specified in subdivision (c) in connection with the approval of a development project, the local agency receiving the fee shall deposit it with the other fees for the improvement in a separate capital facilities account or fund in a manner to avoid any commingling of the fees with other revenues and funds of the local agency, except for temporary investments, and expend those fees solely for the purpose for which the fee was collected. Any interest income earned by moneys in the capital facilities account or fund shall also be deposited in that account or fund and shall be expended only for the purpose for which the fee was originally collected.

(b) (1) For each separate account or fund established pursuant to subdivision (a), the local agency shall, within 180 days after the last day of each fiscal year, make available to the public the following information for the fiscal year:

(A) A brief description of the type of fee in the account or fund.

(B) The amount of the fee.

(C) The beginning and ending balance of the account or fund.

(D) The amount of the fees collected and the interest earned.

(E) An identification of each public improvement on which fees were expended and the amount of the expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with fees.

(F) (i) An identification of an approximate date by which the construction of the public improvement will commence if the local agency determines that sufficient funds have been collected to complete financing on an incomplete public improvement, as identified in paragraph (2) of subdivision (a) of Section 66001, and the public improvement remains incomplete.

(ii) An identification of each public improvement identified in a previous report pursuant to clause (i) and whether construction began on the approximate date noted in the previous report.

(iii) For a project identified pursuant to clause (ii) for which construction did not commence by the approximate date provided in the previous report, the reason for the delay and a revised approximate date that the local agency will commence construction.

(G) A description of each interfund transfer or loan made from the account or fund, including the public improvement on which the transferred or loaned fees will be expended, and, in the case of an interfund loan, the date on which the loan will be repaid, and the rate of interest that the account or fund will receive on the loan.

(H) The amount of refunds made pursuant to subdivision (e) of Section 66001, the number of persons or entities identified to receive those refunds, and any allocations pursuant to subdivision (f) of Section 66001.

(2) The local agency shall review the information made available to the public pursuant to paragraph (1) at the next regularly scheduled public meeting not less than 15 days after this information is made available to the public, as required by this subdivision. Notice of the time and place of the meeting, including the address

where this information may be reviewed, shall be mailed, at least 15 days prior to the meeting, to any interested party who files a written request with the local agency for mailed notice of the meeting. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service.

(c) For purposes of this section, "fee" means any fee imposed to provide for an improvement to be constructed to serve a development project, or which is a fee for public improvements within the meaning of subdivision (b) of Section 66000, and that is imposed by the local agency as a condition of approving the development project.

(d) Any person may request an audit of any local agency fee or charge that is subject to Section 66023, including fees or charges of school districts, in accordance with that section.

(e) (1) A local agency shall inform a person paying a fee subject to this section of both of the following:

(A) The person's right to request an audit pursuant to Section 66023.

(B) The person's right, pursuant to paragraph (1) of subdivision (b), to file a written request for mailed notice of the local agency's meeting to review the information made public pursuant to paragraph (1) of subdivision (b).

(2) A local agency shall provide a person paying a fee subject to this section a link to the page on the local agency's internet website where the information made public pursuant to paragraph (1) of subdivision (b) is available for review.

(f) The Legislature finds and declares that untimely or improper allocation of development fees hinders economic growth and is, therefore, a matter of statewide interest and concern. It is, therefore, the intent of the Legislature that this section shall supersede all conflicting local laws and shall apply in charter cities.

(g) At the time the local agency imposes a fee for public improvements on a specific development project, it shall identify the public improvement that the fee will be used to finance.

SEC. 2. Section 66008 of the Government Code is amended to read:

66008. A local agency shall expend a fee for public improvements, as accounted for pursuant to Section 66006, solely and exclusively for the purpose or purposes, as identified in subdivision (g) of Section 66006, for which the fee was collected. The fee shall not be levied, collected, or imposed for general revenue purposes.

SEC. 3. Section 66023 of the Government Code is amended to read:

66023. (a) (1) Except as otherwise provided in paragraph (3), a person may request an audit in order to determine all of the following:

(A) Whether any fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of any product, public facility, as defined in Section 66000, or service provided by the local agency.

(B) When the revenue generated by a fee or charge is scheduled to be expended.

(C) When the public improvement is scheduled to be completed.

(2) (A) Except as provided in subparagraph (B), if a person makes a request pursuant to paragraph (1), the legislative body of the local agency may retain an independent auditor to conduct an audit to determine whether the fee or charge is reasonable, when the revenue generated by a fee or charge is scheduled to be expended, and when the project is scheduled to be completed.

(B) The legislative body is not required to conduct the audit if an audit has been performed for the same fee within the previous 12 months.

(3) Subparagraphs (B) and (C) of paragraph (1) shall not apply to a fee subject to Section 66013.

(b) To the extent that the audit determines that the amount of any fee or charge does not meet the requirements of this section, the local agency shall adjust the fee accordingly. This subdivision does not apply to a fee authorized pursuant to Section 17620 of the Education Code, or Sections 65995.5 and 65995.7.

(c) Except as otherwise provided in subdivision (h), the local agency shall retain an independent auditor to conduct an audit only if the person who requests the audit deposits with the local agency the amount of the local agency's reasonable estimate of the cost of the independent audit. At the conclusion of the audit, the local agency shall reimburse unused sums, if any, or the requesting person shall pay the local agency the excess of the actual cost of the audit over the sum which was deposited.

(d) Any audit conducted by an independent auditor to determine whether a fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of providing the product or service shall conform to generally accepted auditing standards.

(e) The procedures specified in this section shall be alternative and in addition to those specified in Section 54985.

(f) The Legislature finds and declares that oversight of local agency fees is a matter of statewide interest and concern. It is, therefore, the intent of the Legislature that this chapter shall supersede all conflicting local laws and shall apply in charter cities.

(g) This section shall not be construed as granting any additional authority to any local agency to levy any fee or charge which is not otherwise authorized by another provision of law, nor shall its provisions be construed as granting authority to any local agency to levy a new fee or charge when other provisions of law specifically prohibit the levy of a fee or charge.

(h) Notwithstanding subdivision (c), if a local agency does not comply with subdivision (b) of Section 66006 for three consecutive years, both of the following shall apply:

(1) The local agency shall not require a deposit for an independent audit requested pursuant to this section and shall pay the cost of the audit.

(2) The independent audit conducted shall include each consecutive year the local agency did not comply with subdivision (b) of Section 66006.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.