

Date of Hearing: May 12, 2021

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

AB 602 (Grayson) – As Amended May 4, 2021

Policy Committee:	Local Government	Vote:	8 - 0
	Housing and Community Development		7 - 0

Urgency: No      State Mandated Local Program: Yes      Reimbursable: No

**SUMMARY:**

This bill adds new requirements to the preparation and adoption of impact fee nexus studies, and requires the Department of Housing and Community Development (HCD) to develop a nexus study template. Specifically, this bill:

- 1) Establishes new standards and practices for impact fee nexus studies conducted after January 1, 2022, and specifically requires cities, counties and special districts to, among other requirements:
  - a) Identify the existing level of service and the proposed new level of service, and explain why the new level of service is appropriate.
  - b) Include information in the nexus study that supports the local agency's actions establishing, increasing or imposing a fee.
  - c) Calculate fees imposed on a housing development project proportionately to the square footage of the units of the proposed development.
  - d) Consider targeting fees geographically within the jurisdiction.
- 2) Requires, after July 1, 2022, cities, counties and special districts adopting nexus studies to, among other requirements:
  - a) Adopt the study prior to the adoption of a development fee.
  - b) Calculate fees imposed on a housing development project proportionately to the square footage of the units of the proposed development, or make findings demonstrating that another metric is more appropriate.
  - c) Adopt the study at a public hearing with at least 30 days' notice, and provide specific notification to members of the public.
  - d) Update any nexus studies at least every eight years.
- 3) Requires cities and counties to request development proponents to provide the total amount of fees and exactions associated with a project. Requires the local government to post this information on its website and update it at least twice a year.

- 4) Requires HCD to create an impact fee nexus study template by January 1 2024, and authorizes local jurisdictions to use the template.

#### **FISCAL EFFECT:**

- 1) Estimated costs of \$358,000 (GF) in the first and second years, and \$178,000 (GF) ongoing to HCD for two staff positions to create an impact fee nexus study template by January 1, 2024, work with a contractor and provide technical assistance to local governments, among other tasks.
- 2) One-time costs of \$300,000 (GF) for contracting with a non-profit organization or academic institution to develop the nexus template.
- 3) State-mandated local costs are not reimbursable by the state because local agencies have authority to levy fees to cover their costs.

#### **COMMENTS:**

- 1) **Purpose.** This bill seeks to improve the process for preparing and adopting impact fee nexus studies. According to the author,

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. [This bill] establishes basic transparency and accountability standards for nexus studies, and tasks the HCD with developing a template for nexus studies that local governments can use.

- 2) **Background.** 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. 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.

The Mitigation Fee Act requires local officials to undertake certain steps whenever establishing, increasing or imposing a fee as a condition of approving a development project. In its 1987 *Nollan* decision, the U.S. Supreme Court said there must be an “essential nexus” between a project's impacts and the conditions for approval, which is similar to the “reasonable relationship” requirement under the Mitigation Fee Act. In the 1994 *Dolan* decision, the U.S. Supreme Court said conditions on development must have a “rough proportionality” to a project's impacts.

To ensure that proposed impact fees meet the legal requirements established by the *Nollan* and *Dolan* cases, local governments must conduct a nexus study prior to imposing a new impact fee or increasing a fee above the level of fees allowed by the previous nexus study. These nexus fee studies and the subsequently imposed impact fees vary widely in approach, quality and outcomes. In a March 2018 report, UC Berkeley’s Turner Center for Housing Innovation found that development fees can amount to anywhere from 6% to 18% of the

median price of a home, depending on location. Such variation can have substantial impacts on the viability of developments within and between jurisdictions.

- 3) **Related Legislation:** AB 678 (Grayson), of this legislative session, would cap the total amount of fees and exactions imposed by a city or county on a housing development. AB 678 is pending hearing in the Assembly Local Government Committee.
- 4) **Prior Legislation.** AB 3145 (Grayson), of the 2019-20 Legislative Session, would have capped the total amount of fees and exactions imposed by a city or county on a housing development. AB 3145 died in the Assembly Local Government Committee.

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