Bill No:	SB 1036	**Hearing Date:**	4/15/26
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Version:	4/8/26	**Consultant:**	Peterson

MITIGATION FEE ACT

Requires that, if a development demolishes or changes an existing use, the local agency has to offset the fee amount to account for the demolition or change so that the fee amount is attributable only to the development's incremental impact on public facilities or services.

Background

Local government finance after Proposition 13. A series of propositions have drastically cut into local revenue sources, requiring local governments to look elsewhere to fund services that the public demands. First, Proposition 13 (1978) capped property tax rates at 1% of assessed value (which only changes upon new construction or when ownership changes) and required 2/3 voter approval for special taxes; as a result local governments turned to general taxes to avoid the higher voter threshold. When Proposition 62 (1986) required majority voter approval of general taxes, local agencies imposed assessments that were more closely tied to the benefit that an individual property owner receives. Subsequently, Proposition 218 (1996) required voter approval of parcel taxes, assessments, and property-related fees.

Since they cannot impose broad-based taxes without great difficulty, cities and counties follow a simple principle: new developments should pay for the impacts they have on the community and the burden they impose on public services.

Mitigation Fee Act. When approving development projects, counties and cities can require the applicants to mitigate the project's effects by paying fees—known as mitigation fees, impact fees, or developer fees. The California courts have upheld impact fees for sidewalks, parks, school construction, and many other public purposes.

When establishing, increasing, or imposing a fee as a condition of approving a development project, the Mitigation Fee Act requires local officials to:

- Identify the fee's purpose;
- Identify the fee's use, including the public facilities to be financed;
- Determine a reasonable relationship between the fee's use and the development; and
- Determine a reasonable relationship between the public facility's need and the development.

When imposing a fee as a condition of approving a development project, the Mitigation Fee Act also requires local officials to determine a reasonable relationship between the fee's amount and the cost of the public facility. 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. In the

1994 *Dolan* decision, the U.S. Supreme Court said that conditions on development must have a "rough proportionality" to a project's impacts.

In the 1996 *Ehrlich* decision, the California Supreme Court distinguished between "legislatively enacted" conditions that apply to all projects and "ad hoc" conditions imposed on a project-by-project basis. *Ehrlich* applied the "essential nexus" test from *Nollan* and the "rough proportionality" test from *Dolan* to "ad hoc' conditions. The Court did not apply the *Nollan* and *Dolan* tests to the conditions that were "legislatively enacted." In other words, local officials face greater scrutiny when they impose conditions on a project-by-project basis. In the 2024 U.S. Supreme Court decision *Sheetz vs. County of El Dorado*, the Supreme Court opined that that the U.S. Constitution does not distinguish between legislatively enacted and ad-hoc conditions.

As a result of these decisions and the Mitigation Fee Act, local agencies must conduct a nexus study to ensure any proposed impact fees meet these legal tests for most impact fees. Other requirements in the Mitigation Fee Act ensure that impact fees are appropriately levied and spent, including that a local agency must:

- Hold at least one open and public meeting prior to levying a new fee or increasing an existing one;
- If it decides to adopt capital improvement plans, indicate the approximate location, size, time of availability, and estimates of cost for all facilities or improvements to be financed with the fees;
- Deposit and spend the fees within five years of collecting them; and
- Refund fees or make specific findings on when and how the fees will be spent for construction, if the fees are not spent within five years of collection.

If a local agency levies an impact fee to fund a capital improvement associated with a development, it must deposit the fees with any other fees for that improvement in a separate account or fund. Any person may request an independent audit of how the impact fees have been collected and spent, including an assessment of whether the fees exceed the amount reasonably necessary to cover the costs of the stated projects or services.

Connection and capacity charges. Connection fees and capacity charges are one-time fees assessed on new customers that reflect the reasonable cost of providing service, typically for water or sewer systems. A local agency assesses a connection fee when it physically connects a structure to the water or sewer system, which pays for or the physical facilities necessary to make a water connection or sewer connection, such as meters, meter boxes, pipelines, and the estimated reasonable cost of labor and materials for their installation of those facilities. A local agency assesses a capacity charge on the customer to cover the proportional cost of maintaining or constructing system wide infrastructure necessary to meet the additional water or sewer demand for new users of the system. The Mitigation Fee Act governs connection fees and capacity charges, but state law provides separate provisions related to their oversight and accounting.

When a local agency imposes water or sewer connection fees or capacity charges, the fees or charges cannot exceed the estimated reasonable cost of providing the service without a 2/3 vote. If the local agency imposes a capacity charge, it must deposit revenues in a separate capital facilities fund to avoid any commingling with other moneys of the local agency, except for investments, and must only spend those charges for the purposes for which the charges were collected. Any interest income earned from the investment of moneys in the capital facilities fund must be deposited in that fund.

Not all development projects are on empty parcels. In some cases, they replace one use for another, which may change the impact that development project has on local agencies. The underlying project may have paid impact fees for its use as an office, but that did not account for the additional public services necessary to support residential development, like increased utility usage, schools, and other public services. If the local agency applied the same fees on the development reusing the existing development as it did for an entirely new residential development, the fees would not account for the existing infrastructure serving the development.

To ensure that developers are not paying more in impact fees that it costs the local agency to increase public services for the replacement development, the author wants to require local agencies to base their fees on the net impact that development has on public services.

Proposed Law

Senate Bill 1036 requires that, if a development demolishes or changes an existing use, the local agency has to offset the fee amount to account for the demolition or change so that the fee amount is attributable only to the development's incremental impact on public facilities or services. The measure applies to mitigation fees as well as connection fees and capacity charges. If the offset amount exceeds the fee amount, the developer cannot use that remainder to refund or offset any other fees.

SB 1036 also defines its terms.

Comments

1. Purpose of the bill. According to the author, "The Mitigation Fee Act allows local jurisdictions to impose impact fees on specific developments to help "mitigate" the costs of new or additional facilities that are needed to serve those developments. In order to charge a fee, there must be a reasonable relationship between the fee's use and the project on which the fee is imposed. Many development projects involve the redevelopment of sites with existing uses that already contribute to the demand for services or facilities funded by a particular impact fee. In certain cases, during redevelopment projects, local agencies can provide a "credit" to help reduce fees to account for prior usage. When accounting for prior use, many local jurisdictions currently recognize credits for most impact fees, however, this is not always the case throughout the state. To help provide uniformity and clarity under the Mitigation Fee Act, SB 1036 would require that all jurisdictions provide "credit" for prior uses when a project is redeveloping a site with similar prior uses. This bill would help reduce the costs of duplicative impact fees, helping to lower overall development costs and unlock more housing across California."

2. What if? SB 1036 follows a relatively straightforward principle. A developer paid impact fees and charges for the initial use of a parcel, so when a new developer comes in and changes the use of the parcel, they should only pay impact fees on the new impact the new development causes. For example, a local agency might impose a transportation impact fee so that the local agency can finance road improvements needed to serve the development, which might include things like turn lanes. If the initial development is an office building, the local agency calculated the impact of the commercial development knowing that it would only be used during office hours, not 24 hours per day. When that office building gets redeveloped into a housing

development, it could have a greater impact since residents will be coming and going throughout the day. SB 1036 ensures that when local agencies calculate impact fees, they only charge for impacts associated with the new use, not the original use and the new use. While this may make sense in most cases, it may prove more difficult to separate out the net impact of a conversion of use for certain fees or charges. For example, local agencies collect connection fees to cover the cost of the physical infrastructure needed for a connection, and could include new meters and the labor needed for installment. There is not any sort of offset in this case. When local agencies collect capacity charges, on the other hand, the local agency calculates the charge based on the increased new capacity needed. To ensure that SB 1036 does not unintentionally prevent local agencies from financing the infrastructure they need to provide services to developments, the Committee may wish to consider amending the bill to apply only to capacity charges, not connection fees.

Support and Opposition (4/10/2026)

Support: AARP
Bay Area Council
Cal Chamber
California Building Industry Association
California Council for Affordable Housing
Cbia
Fieldstead and Company, INC.
Habitat for Humanity California
Spur
Zillow Group

Opposition: City of Pico Rivera

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