SENATE THIRD READING
SB 1036 (Grayson)
As Amended April 16, 2026
Majority vote

SUMMARY

Requires, if a development demolishes or changes an existing use, local agencies to offset the fee amount to account for the demolition or change so that the fee amount is attributable only to the development project's incremental impact on public facilities or services and imposes similar requirements on capacity charges.

Major Provisions

1) Requires, if a development project demolishes or changes an existing use, the amount of a fee imposed on the development project to be offset for the demolition or change so that the amount of the fee is attributable only to the development project's incremental impact on public facilities or services.

   a) Provides that an offset amount that exceeds the fee amount shall not be refundable or used to offset any other fee.

   b) Defines, for purposes of this bill, "changes an existing use" to mean that no demolition is proposed, but the use within an existing structure changes to a new use.

2) Requires, in calculating the estimated reasonable cost of a capacity charge when a change in the capacity of an existing water or sewer connection is proposed, a local agency to only calculate an amount attributable to the change in the capacity.

   a) Provides that if the existing capacity exceeds the proposed capacity, no amount shall be refunded, credited, transferred, assigned, or otherwise applied to offset any other charge or fee.

3) Makes a technical and conforming change.

COMMENTS

1) *The Mitigation Fee Act***.** When approving development projects, cities and counties can require the applicants to mitigate the project's effects by paying fees – known as impact fees, mitigation fees, or developer fees. Impact fees stem from a straightforward principle: new developments should pay for the impacts that they have on the community and the burden they impose on public services. Prior to establishing, increasing, or imposing a fee as a condition of approving a development project, the Mitigation Fee Act requires local officials to:

   a) Identify the fee's purpose.

   b) Identify the fee's use, including the public facilities to be financed.

   c) Determine a reasonable relationship between the fee's use and the development.

d) Determine a reasonable relationship between the public facility's need and the development.

e) Determine a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed.

The developer is typically required to pay multiple impact fees, each corresponding to different public services or infrastructure needs that the development will affect, such as roadways, schools, water and sewer infrastructure, public facilities, affordable housing, and parks.

2) *"Essential Nexus" and "Rough Proportionality."* The U.S. Supreme Court and the California Supreme Court issued a series of decisions in the 1980s and 1990s that affected the scope and application of impact fees. 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 opined that conditions placed 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 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 that any proposed impact fees meet these legal tests. Other requirements in the Mitigation Fee Act ensure that impact fees are appropriately levied and spent, including that a local agency must:

a) Hold at least one open and public meeting prior to levying a new fee or increasing an existing one.

b) Deposit and spend the fees within five years of collecting them.

c) 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.

3) *Connection Fees 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 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.

4) *AB 1483 of 2019.* In response to a 2019 Terner Center for Housing Innovation report that studied fee transparency, among other issues, AB 1483 (Grayson), Chapter 662, Statutes of 2019, required cities, counties, and special districts to post specified housing related information on their websites. This information included the following:

   a) A current schedule of fees, exactions, and affordability requirements imposed by the city, county, or special district, including any dependent special districts, of the city or county applicable to a proposed housing development project, which must be presented in a manner that clearly identifies the fees, exactions, and affordability requirements that apply to each parcel.

   b) All zoning ordinances and development standards, which must specify the zoning, design, and development standards that apply to each parcel.

   c) A list that cities and counties must develop under existing law of projects located within military use airspace or a low-level flight path.

   d) Specified annual fee reports or specified annual financial reports.

   e) An archive of impact fee nexus studies, cost of service studies, or equivalent, conducted by the city, county, or special district on or after January 1, 2018.

   Since the passage of AB 1483, the information required to be posted on a local agency's website has changed. AB 1473 (Senate Committee on Governance and Finance), Chapter 371, Statutes of 2020, required local agencies to separately post their connection fees and capacity charges, without being tied to specific parcels, and made technical fixes to ensure that special districts were properly accounted for by AB 1483. Additionally, AB 602 (Grayson), Chapter 347, Statutes of 2021, required local agencies, among other things, to do the following:

   a) Post a written fee schedule or a link directly to the written fee schedule on its internet website.

   b) 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 for which the certificate was issued. The city or county must post this information on its website and update it at least twice per year. A city or county is not responsible for the accuracy of the information received by the development proponent.

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."

Arguments in Support
SPUR, the sponsor of the bill, writes in support, "The Mitigation Fee Act allows local jurisdictions to impose impact fees on development projects to help offset the costs of new or expanded public facilities needed to serve those developments, provided there is a reasonable relationship between the fee and the project. Many redevelopment projects occur on sites with existing uses that already contribute to demand for services funded by these fees, and in some cases local agencies provide credits to account for prior use, a concept recognized by courts, including Warmington Old Town Associates v. Tustin Unified School District (2002). However, not all jurisdictions consistently apply these credits. Because development and impact fees can account for roughly 6% to 13% of total housing development costs, failing to account for prior use can result in excessive or duplicative fees that "over-mitigate" impacts, increasing costs and potentially making new housing development financially infeasible."

"SB 1036 would help provide uniformity and clarity under the Mitigation Fee Act, by requiring that all jurisdictions provide 'credit' for prior uses when a project is redeveloping a site with similar prior uses. Ultimately, this bill would help reduce the costs of duplicative impact fees, helping to lower overall development costs and unlock more housing across California."

Arguments in Opposition
The City of Pico Rivera writes in opposition to a previous version of the bill, "SB 1036 would impose new requirements that fees be based on the 'net impact on the need for public facilities,' and it would mandate fee credits or reductions in certain redevelopment scenarios. In practice, these provisions risk narrowing the methodologies that local agencies rely upon to accurately recover facility impacts across a wide range of capital needs, particularly in infill and corridor revitalization contexts where public improvements are often necessary to make development feasible and safe. Pico Rivera is actively pursuing long-term revitalization and infrastructure modernization efforts through coordinated strategies, which depend on predictable, locally calibrated financing tools to deliver complete, safe, and functional public environments alongside new development."

"The City is also concerned that SB 1036, by reshaping the legal and administrative standards for establishing or adjusting fees, will create additional procedural burdens and litigation exposure, diverting limited staff time and resources away from project delivery and public service. Pico Rivera has consistently opposed state actions that erode local control and impose costly, rigid,

one-size-fits-all requirements that do not reflect local conditions or fiscal realities. Our experience with state proposals that add complex compliance duties without providing a corresponding reimbursement mechanism underscores the practical risk: such measure make it harder, not easier, for cities to deliver the outcomes the Legislature seeks, including housing, mobility, and infrastructure improvements."

FISCAL COMMENTS

None.

VOTES

SENATE FLOOR: 37-0-3
YES: Allen, Alvarado-Gil, Archuleta, Arreguín, Ashby, Becker, Blakespear, Cabaldon, Cervantes, Choi, Cortese, Dahle, Durazo, Grayson, Grove, Hurtado, Jones, Laird, Limón, McGuire, McNerney, Menjivar, Niello, Ochoa Bogh, Padilla, Pérez, Reyes, Richardson, Seyarto, Smallwood-Cuevas, Stern, Strickland, Umberg, Valladares, Wahab, Weber Pierson, Wiener
ABS, ABST OR NV: Caballero, Gonzalez, Rubio

ASM LOCAL GOVERNMENT: 10-0-0
YES: Carrillo, Ta, Johnson, Pacheco, Caloza, Ransom, Blanca Rubio, Stefani, Ward, Wilson

UPDATED

VERSION: April 16, 2026

CONSULTANT: Linda Rios / L. GOV. / (916) 319-3958 FN: 0003145