



NEW LEGISLATION IMPACTING DEVELOPMENT IMPACT FEES

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By: [Dave Lanferman](#)

New **AB 602** (Grayson) was signed into law by Governor Newsom on September 29, 2021, after having been approved by large majorities in the Legislature. This legislation appears to reflect the State's increasing concerns about the impact of **local development impact fees** on the production and affordability of housing in California (e.g., AB 879 [2017]; AB 1483 [2019]). AB 602 makes significant procedural and substantive changes in the ways that local governments may calculate, establish, and publicly disclose their development impact fees and fee policies. Such fees vary widely from one jurisdiction to another, but frequently add tens of thousands of dollars to the cost of producing new housing. A 2018 study reported that fees often comprise between 6% and 18% of total construction costs, and may exceed \$130,000 per home. (See Turner Center for Housing Innovation, *'It All Adds Up; Housing Development Fees in Seven California Cities.*)

Nexus Studies: AB 602 creates a new emphasis on "nexus studies" to support and justify the calculation and imposition of development fees. A nexus study is intended to provide support for the establishment of fees that are reasonably related and proportional to impacts on public facilities caused by new development. Although many agencies already prepare such studies in connection with the establishment of their fees, AB 602 will now require that local agencies adopt an appropriate nexus study as a pre-condition to the adoption of new development fees.

AB 602 adds Government Code Section 66016.5 to the Mitigation Fee Act (Act), which includes a series of specific new requirements to be followed in the adoption of nexus studies for new fees, but excludes fees for water and sewer connections. The Act now explicitly provides – after January 1, 2022 – that "a local agency that conducts an impact fee nexus study shall follow all of the following" specified standards and practices, including a requirement that "an impact fee nexus study shall be adopted" before the adoption of an associated development fee." Although the Act had previously stated the types of findings required to establish or impose development fees, there had been no detailed statutory guidance (outside the context of the School Facilities Act) as to the appropriate content or necessary methodology for such nexus studies.

Other changes created by AB 602 include:

- Generally requires that nexus studies shall "identify the existing level of service for each public facility," and if it is claimed that the nexus study supports the increase of an existing fee, this bill requires the local agency to review the assumptions supporting the existing fee and the amount of fees collected under the existing fee schedule.

- Generally requires that a nexus study for a fee “imposed on a housing project adopted after July 1, 2022 shall calculate the fee proportionately to the square footage of proposed units” in the development project (subject to local exception).
- “Large jurisdictions” (as defined) are now required to adopt a capital improvement plan as part of the nexus study.
- Nexus studies must be updated at least every eight (8) years.
- The Department of Housing and Community Development is directed to develop an “impact fee nexus study template” by January 1, 2024, for future use by local jurisdictions. That template shall include “a method of calculating the feasibility of housing being built with a given fee level.”

Extended Public Notice Required: AB 602 requires local agencies to adopt nexus studies at a public hearing and to give at least 30 days’ notice prior to the adoption of any nexus study.

Increased Public Transparency: AB 602 also follows the effort begun in 2019 with AB 1483 to address what was viewed as the prevailing lack of transparency regarding the multitude of development fees and requirements imposed by local governments and special districts. A subsequent survey by SPUR found a “widespread lack of compliance” with those requirements, noting that fewer than half of the jurisdictions surveyed posted all of the required information regarding fees. Changes include:

- AB 602 amends Government Code section 65940.1 to require that local governments and special districts “post a written fee schedule or a link directly to the written fee schedule” on their websites.
- AB 602 adds a requirement that cities and counties request from developers of completed projects “the total amount of fees and exactions” associated with the project, and requires that such information be posted on their website and updated at least twice a year.

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