



**BOARD OF DIRECTORS
EAST BAY MUNICIPAL UTILITY DISTRICT**

375 - 11th Street, Oakland, CA 94607

Office of the Secretary: (510) 287-0440

Notice of Time Change

**LEGISLATIVE/HUMAN RESOURCES
COMMITTEE MEETING
Tuesday, March 12, 2024
10:30 a.m.
Boardroom
375 11th Street
Oakland, CA 94607**

Notice is hereby given that the Tuesday, March 12, 2024 Legislative/Human Resources Committee meeting of the Board of Directors has been rescheduled from 10:15 a.m. to 10:30 a.m. The meeting will be held in the Administration Building Boardroom at 375 11th Street, Oakland, California.

Dated: March 7, 2024

A handwritten signature in blue ink that reads 'Rischa S. Cole'.

Rischa S. Cole
Secretary of the District

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**BOARD OF DIRECTORS
EAST BAY MUNICIPAL UTILITY DISTRICT**

375 - 11th Street, Oakland, CA 94607

Office of the Secretary: (510) 287-0440

AGENDA

Legislative/Human Resources Committee

Tuesday, March 12, 2024

10:30 a.m.

Boardroom

375 11th Street

Oakland, CA 94607

***** Please see appendix for public participation instructions*****

Committee Members: Directors William B. Patterson {Chair}, Lesa R. McIntosh, and Marguerite Young

ROLL CALL:

PUBLIC COMMENT: The Board of Directors is limited by State law to providing a brief response, asking questions for clarification or referring a matter to staff when responding to items that are not listed on the agenda.

DETERMINATION AND DISCUSSION:

3. Legislative Update. (Viatella)
- Receive Legislative Report No. 02-24 and consider a position on the following bill: SB 903 (Skinner) Environmental health: product safety: perfluoroalkyl and polyfluoroalkyl substances; and receive information on connection fee and capacity charge legislation.

ADJOURNMENT:

Disability Notice

If you require a disability-related modification or accommodation to participate in an EBMUD public meeting please call the Office of the Secretary (510) 287-0404. We will make reasonable arrangements to ensure accessibility. Some special equipment arrangements may require 48 hours advance notice.

Document Availability

Materials related to an item on this agenda that have been submitted to the EBMUD Board of Directors within 72 hours prior to this meeting are available for public inspection in EBMUD's Office of the Secretary at 375 11th Street, Oakland, California, during normal business hours, and can be viewed on our website at www.ebmud.com.



APPENDIX

Legislative/Human Resource Committee Meeting

*EBMUD Board committee meetings will be conducted in person and via Zoom.
These meetings are recorded and live-streamed.*

Online* Online

<https://ebmud.zoom.us/j/98022213415?pwd=Q0JkaXptbSt3eW5XRElvRUNIZHRpUT09>

Webinar ID: 980 2221 3415

Passcode: 352334

By Phone

Telephone: 1 669 900 6833

Webinar ID: 980 2221 3415

Passcode: 352334

International numbers available: <https://ebmud.zoom.us/j/98022213415?pwd=Q0JkaXptbSt3eW5XRElvRUNIZHRpUT09>

*To familiarize yourself with Zoom, please visit <https://support.zoom.us/hc/en-us/articles/201362193-Joining-a-Meeting>

Providing public comment - *The EBMUD Board of Directors is limited by State law to providing a brief response, asking questions for clarification, or referring a matter to staff when responding to items that are not listed on the agenda.*

- Each speaker is allotted 3 minutes to speak; the Committee Chair has the discretion to amend this time based on the number of speakers
- The Secretary will track time and inform each speaker when the allotted time has concluded
- Comments on **non-agenda items** will be heard at the beginning of the meeting
- Comments on **agenda items** will be heard when the item is up for consideration
- The Secretary will call each speaker in the order received

In person

- Fill out and submit a blue speaker card which is available in the meeting room

Via Zoom

- Use the raise hand feature in Zoom to indicate you wish to make a public comment
<https://support.zoom.us/hc/en-us/articles/205566129-Raising-your-hand-in-a-webinar>
 - If you participate by phone, press *9 to raise your hand
- When prompted by the Secretary, please state your name, affiliation if applicable, and topic

Submitting written comments or materials

- Email written comments or other materials for the Board of Directors to SecOffice@ebmud.com
- Please indicate the meeting date and agenda item number or non-agenda item topic in the subject of the email. Contact information is optional.
- **Please email by 4 p.m. the day prior to the scheduled regular meeting;** written comments and other materials submitted to the Board of Directors will be filed in the record.

To observe the Legislative/Human Resources Committee Meeting,
please visit: <https://www.ebmud.com/about-us/board-directors/board-meetings/>

EAST BAY MUNICIPAL UTILITY DISTRICT

DATE: March 7, 2024

MEMO TO: Board of Directors

THROUGH: Clifford C. Chan, General Manager *CCC*

FROM: Kathy Viatella, Manager of Legislative Affairs *KV*

SUBJECT: Legislative Report No. 02-24

The following issues are being referred to the Legislative/Human Resources Committee for review and recommendation to the Board of Directors for action, as appropriate, on March 12, 2024.

RECOMMENDED ACTION

Approve a position on the following bill: Support SB 903 (Skinner) Environmental health: product safety: perfluoroalkyl and polyfluoroalkyl substances; and receive information on connection fee and capacity charge legislation.

STATE LEGISLATION

RECOMMENDED POSITION

SB 903 (Skinner)	ENVIRONMENTAL HEALTH: PRODUCT SAFETY: PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES	SUPPORT
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Existing law, beginning January 1, 2025, prohibits the manufacture, distribution, sale, or offer for sale in commerce of any new textile articles that contain regulated perfluoroalkyl and polyfluoroalkyl substances (PFAS) and any cosmetic product that contains intentionally added PFAS. Existing law also prohibits the distribution, sale, or offering for sale in the state any food packaging that contains regulated PFAS.

SB 903 (Skinner), as amended on February 21, 2024, is intended to provide a comprehensive pollution prevention approach for PFAS. The bill is a follow-up to last year's veto of several product specific PFAS ban bills and attempts to address the governor's direction in his veto messages that the Department of Toxic Substances Control (DTSC) should work with the legislature on alternative approaches as the product specific legislation was difficult to implement and enforce.

SB 903 would primarily do four things: 1) beginning January 1, 2030, prohibit the distribution, sale, or offer for sale in the state any product that contains intentionally added PFAS unless the DTSC has determined that the use of PFAS in a product is a currently unavoidable use; 2) allow DTSC to implement the PFAS ban earlier than 2030 if it is feasible to do so; 3) establish a process by which manufacturers can petition DTSC for a determination, and DTSC makes an evaluation and determination, as to whether the use of PFAS in a product category is a currently unavoidable use; and 4) require DTSC to adopt regulations on or before January 1, 2027, to implement the bill's provisions.

SB 903 also authorizes civil penalties not to exceed \$1,000 per day for a first violation of the PFAS prohibition and penalties of up to \$2,500 per day for a second violation. Penalties collected would be deposited into the PFAS Penalty Account and would be available, upon appropriation by the legislature, to be used for administration and enforcement of the bill's provisions.

According to the Senate Committee on Environmental Quality, PFAS are a large group of synthetic substances that have been widely used in industrial and consumer applications for their heat, water, and oil resistance properties since their invention in the 1930s. PFAS are used extensively in commercial applications and consumer products such as carpets, furniture fabrics, apparel, paper packaging for food, nonstick cookware, personal care products, and other products designed to be waterproof; grease, heat, water and stain resistant; or non-stick. PFAS can migrate into soil, water, and air during production, use, and disposal. Extensive research has shown that there are health risks associated with some PFAS.

The author's office notes that while California has led the nation in addressing PFAS, PFAS still remain in hundreds of products sold. "With SB 903, California will end the unnecessary use of forever chemicals and significantly reduce the harm PFAS poses to our environment and our health."

EBMUD has an extensive water quality program, which includes sampling, testing, and treatment, to ensure that customers receive high-quality drinking water that meets or exceeds all state and federal regulatory requirements. EBMUD voluntarily monitored its drinking water in 2020-2021 for several PFAS chemicals and did not detect significant concentrations of these substances. The State Water Resources Control Board's (SWRCB) Division of Drinking Water has initiated phased monitoring orders that prioritize monitoring based on the vulnerability of each water source to PFAS contamination and has established notification and response levels for four PFAS.

Under the state's phased PFAS monitoring requirement, EBMUD monitors the Freeport Regional Water Facility intake in coordination with Sacramento County Water Agency. EBMUD's local and upcountry watersheds are considered more protected against PFAS contamination and are not included in the state's monitoring orders. On the federal side, beginning in 2023 the United States Environmental Protection Agency (U.S. EPA), as part of the fifth Unregulated Contaminant Monitoring Rule, requires all water systems to monitor for 29

PFAS compounds between 2023 and 2025. Samples must be collected from each water treatment plant quarterly. All EBMUD samples collected under the U.S. EPA monitoring program have been below the minimum reporting levels.

With regard to wastewater, the SWRCB has issued an investigative order that requires publicly owned treatment works to monitor for a variety of PFAS compounds in influent, effluent, and biosolids. EBMUD's Main Wastewater Treatment Plant is part of a PFAS monitoring study in collaboration with the San Francisco Bay Regional Water Quality Control Board through the Regional Monitoring Program run by the San Francisco Estuary Institute.

The first phase of the study showed PFAS in the influent and effluent of all Bay Area municipal wastewater plants, including EBMUD's, but at levels comparable to, or much lower than, the level of PFAS found in household products. The second phase of the study initiated in 2022 looked at upstream sources to better understand how residential, commercial, and specific industrial sources contribute to PFAS found in wastewater. The second phase of the study showed that businesses such as industrial laundries and car washes contribute the highest concentrations, but private residences appear to be the most significant overall source of PFAS. EBMUD is continuing collaborations to better characterize the sources of PFAS in residential wastewater and implement source reduction methods.

As PFAS are ubiquitous in consumer and industrial products, and water and wastewater agencies have limited means to control the trace amounts of these chemicals that enter the environment from a variety of sources, a source control or pollution prevention approach may offer the best way to reduce PFAS in the environment and protect public health.

SB 903 takes a pollution prevention approach to address the proliferation of PFAS in the environment by eliminating their use in products sold and used in California unless the use of PFAS is necessary. The bill is consistent with EBMUD's 2024 state legislative initiative on water quality. The bill could result in increased costs to EBMUD if there is an increase in costs to purchase manufactured products without PFAS, but the long-term benefit of eliminating a source of PFAS in products could outweigh those costs.

EBMUD has supported prior legislation to address PFAS pollution at its source. In 2023, EBMUD supported AB 727 (Weber) that would have banned PFAS in cleaning products and AB 1423 (Schiavo) that would have prohibited the sale of artificial turf containing PFAS. Both AB 727 and AB 1423 were vetoed by Governor Newsom. In 2022, EBMUD supported AB 1817 (Ting) that banned PFAS in textile products. AB 1817 was signed into law (Chapter 762 of 2022). Also in 2022, EBMUD supported AB 2247 (Bloom) that would have required manufacturers of PFAS or products containing PFAS sold or distributed in California to report those PFAS or products containing PFAS on a publicly accessible database. AB 2247 was vetoed. In 2021, EBMUD supported AB 1200 (Ting) that banned food packaging containing PFAS beginning January 1, 2023 and requires chemical disclosures for cookware sold in California beginning January 1, 2024. AB 1200 was signed into law (Chapter 503 of 2021).

SB 903 is co-sponsored by the California Association of Sanitation Agencies, Breast Cancer Prevention Partners, Clean Water Action, Environmental Working Group, and the National Resources Defense Council. An official support/opposition list for SB 903 is not currently available.

INFORMATION ITEM

CONNECTION FEE AND CAPACITY CHARGE LEGISLATION

INFORMATION

Proposition 26, enacted in 2010, amended Article XIII C of the California Constitution to among other things, require that fees or charges imposed by local governments to be no more than necessary to cover the reasonable costs of the governmental activity, and that the allocation of those costs to a payor bear a fair or reasonable relationship to the payor's burden on, or benefit received from, the governmental activity.

Existing law establishes the Mitigation Fee Act (Act) which allows local agencies to impose fees on development projects, specifies the requirements that local agencies must meet to establish, impose or increase these fees, and dictates how funds can be spent. The Act also allows for the imposition of capacity charges and connection fees for water and wastewater service, although these particular fees are treated in a different manner than other general development fees in the Act. Under the Act, water and sewer connection fees and capacity charges may not exceed the estimated reasonable cost of providing the service for which the fee or charge is imposed.

As part of a broader interest in housing supply and affordability in the legislature, several development-related fee bills, including bills pertaining to water and sewer connection fees and capacity charges, have been introduced. Four measures of direct interest to EBMUD are as follows:

- AB 1820 (Schiavo): Housing development projects: applications: fees and exactions. This bill would:
 - Authorize a development proponent that submits a preliminary application to a city, county, or city and county to include in the preliminary application a request for a preliminary fee and exaction estimate.
 - Require a local agency, including a special district, to comply with the request for a preliminary fee and exaction estimate within 10 business days of the preliminary application's submittal to the city, county, or city and county, if the application is complete.
 - Require a city, county, city or county, or special district that determines an application for a housing development project is complete to provide an itemized list and total sum of all fees and exactions that will apply to the projects when transmitting a formal determination of completeness.
 - Include water and sewer connection fees and capacity charges in the "fees" for which preliminary estimates and total sums must be provided.

- AB 2729 (Joe Patterson): Residential fees and charges.

This bill would:

- Prohibit local governments from requiring the payment of mitigation or development fees, possibly including water and wastewater connection fees and capacity charges, on a residential development prior to when the first dwelling in a development receives its final inspection or certificate of occupancy, whichever occurs first.

- SB 937 (Wiener): Development projects: permits and other entitlements: fees and charges.

This bill would:

- Specifically include water districts and sanitation districts, as well as water and wastewater connection fees and capacity charges in the provisions of the bill.
- Prohibit local governments from requiring the payment of mitigation or development fees, including water and wastewater connection fees and capacity charges, on a residential development until the date the certificate of occupancy is issued, and would prohibit local governments from charging interest on any amount deferred. If the development contains more than one dwelling unit, fees shall be paid on a pro rata basis based on a percentage of dwellings that have received certificates of occupancy or when all dwellings have received certificates of occupancy.
- Require that for specified lower-income housing development the cost of mitigation or development fees and charges must be equal to the cost that would have been charged had the fees been paid at the time the building permit was issued.
- Allow a city or county to withhold certificate of occupancy for a development project until the fees imposed are fully paid.

- SB 1210 (Skinner): New housing construction: electrical, gas, sewer, and water service connections: charges.

This bill would:

- Cap connection fees and capacity charges for electrical, gas, sewer, and or water service imposed by public utilities (electrical, gas, sewer, and water corporations) and special districts at 1 percent of the reported building permit value of the housing unit.
- Require a public utility or special district to collect the connection fees and capacity charges over a period of at least 10 years beginning on the date when the housing unit is first occupied. If the housing unit is sold before that time is up, the subsequent owner shall continue paying the charge over the remainder of that period of time.
- Require a public utility to prioritize the processing, approval, scheduling, and completion of electrical, gas, sewer, and water service connections to new

housing construction over the processing, approval, scheduling, and completion of service connections to all other structures.

- Require a public utility to report each year on its website the amount of any connection fee and capacity charges issued by housing unit.

Staff is evaluating these measures and have identified initial areas of concern. In general, the bills fail to acknowledge or recognize that connection fees and capacity charges are fees for service and therefore different from other development and mitigation fees. Also, the bills assume that special districts provide permits for, or are included in the permitting of, developments.

AB 1820 would include special districts in code sections that place requirements on cities and counties that permit and approve housing developments and require information about development fees, including water and wastewater connection fees and capacity charges imposed by special districts, to be provided to development proponents based on the building permit application information, process, and timelines. This could require special districts, including EBMUD, to provide fee estimates without having been notified of a potential development or without having received the information needed to calculate connection fee and capacity charge estimates. Assessing connection fees and capacity charges requires information that is different from, and sometimes only known much later in the building process, than the information included in and known at the time permit applications are submitted to a city or county.

AB 2729 would prohibit local governments from requiring the payment of mitigation or development fees on residential development until the first dwelling unit receives its final building inspection or certificate of occupancy. AB 2729 would apply to special districts, and while the bill does not specifically reference water and wastewater connection fees and capacity charges at this time, the bill may be construed to include those fees in the requirement to defer the payment of fees until first occupancy.

SB 937 has provisions similar to AB 2729 regarding the delay of when local governments can collect mitigation or development fees, and expressly includes water and wastewater connection fees and capacity charges in the fees that cannot be collected until occupancy. This could require water and wastewater agencies to perform work without being paid in a timely manner and without a way to guarantee payment once a building is occupied, or if a project is delayed or never completed. SB 937 also places restrictions on fees that can be charged to specified lower-income residential development projects.

SB 1210 would cap connection fees and capacity charges imposed by public utilities (electrical, gas, sewer, or water corporations regulated by the California Public Utilities Commission) and special districts on new housing development at 1 percent of the reported building permit value of a housing unit. The bill would also require public utilities and special districts to allow the connection fees and capacity charges to be paid over at least 10 years beginning once the housing unit is first occupied. This would prohibit water and wastewater special districts, including EBMUD, from imposing connection fees and capacity charges on new housing development that

are proportional to the cost of service (if the fees and chargers are higher than 1 percent of a housing unit's building permit value) and may result in shifting costs for new housing development onto existing ratepayers. The bill would also require special districts to provide water and sewer connections and perform work before receiving payment and could mean that all multi-family units will need separate water meters in order to bill the individual housing units for service and recover the connection fees and capacity charges over the payback period. Some of the bill's requirements could conflict with state constitutional provisions regarding water and sewer fees and charges.

Additional legislation may be amended in the future to address connection fee and capacity charge that may be of interest to EBMUD. Staff will continue to monitor and evaluate connection fee and capacity charge legislation in the context of constitutional requirements and EBMUD's operations. Staff will bring relevant measures to the Board for consideration at future board meetings, as appropriate.

CCC:KCV/JW

Attachments

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Introduced by Senator Skinner

January 4, 2024

An act to add Chapter 18 (commencing with Section 109030) to Part 3 of Division 104 of the Health and Safety Code, relating to product safety.

LEGISLATIVE COUNSEL'S DIGEST

SB 903, as amended, Skinner. Environmental health: product safety: perfluoroalkyl and polyfluoroalkyl substances.

Existing law, commencing January 1, 2025, prohibits the manufacture, distribution, sale, or ~~offer offering~~ for sale in the state *of* any new, not previously used, textile articles that contain regulated perfluoroalkyl and polyfluoroalkyl ~~substances: substances~~ (PFAS). Existing law, commencing January 1, 2025, prohibits the manufacture, sale, delivery, holding, or ~~offer offering~~ for sale in commerce *of* any cosmetic product that contains intentionally added ~~perfluoroalkyl and polyfluoroalkyl substances: PFAS~~.

Existing law prohibits the distribution, sale, or ~~offer offering~~ for sale in the state ~~any of certain~~ food packaging that contains regulated ~~perfluoroalkyl and polyfluoroalkyl substances: PFAS~~. Existing law prohibits the sale or distribution in commerce in the state *of* any new, not previously owned, juvenile product, as defined, that contains regulated perfluoroalkyl and polyfluoroalkyl chemicals.

~~This bill would state the intent of the Legislature to enact subsequent legislation to phase out the sale of products with avoidable perfluoroalkyl and polyfluoroalkyl substances.~~

This bill would, beginning January 1, 2030, prohibit a person from distributing, selling, or offering for sale a product that contains intentionally added PFAS, as defined, unless the Department of Toxic Substances Control has made a determination that the use of PFAS in the product is a currently unavoidable use, the prohibition is preempted by federal law, or the product is used. The bill would specify the criteria and procedures for determining whether the use of PFAS in a product is a currently unavoidable use, for renewing that determination, and for revoking that determination. The bill would require the department to maintain on its internet website a list of each determination of currently unavoidable use, when each determination expires, and the products and uses that are exempt from the prohibition. The bill would impose a civil penalty for a violation of the prohibition, as specified. The bill would establish the PFAS Penalty Account and require all civil penalties received to be deposited into that account and, upon appropriation by the Legislature, to be used for the administration and enforcement of these provisions, as specified.

This bill would, by January 1, 2027, require the department to adopt regulations to carry out the provisions of this bill. The bill would require the regulations to establish and provide for the assessment of an application fee. The bill would create the PFAS Oversight Fund and require all application fees to be deposited into the fund. The bill would require moneys in the account, upon appropriation by the Legislature, to be used to cover the department's reasonable costs of administering this act.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Perfluoroalkyl and polyfluoroalkyl substances (PFAS) are
- 4 a class of persistent and highly toxic chemicals with widespread
- 5 contamination across the United States, including California. The
- 6 United States Geological Survey estimates that 45 percent of the
- 7 United States' tap water is contaminated with PFAS. It is also
- 8 estimated that 98 percent of people living in the United States have
- 9 PFAS in their blood.

(b) PFAS have been and continue to be used in a broad range of industrial processes and in manufacturing products because of their water and stain resistant, nonstick, surfactant, and other properties, including for making packaging, plastic food ware, cleaning products, ski waxes, menstrual products, metal products, propellants, coatings and paints, and much more, despite the growing body of evidence that these chemicals may leach into food, water supplies, and even the human body through exposures.

(c) Exposure to PFAS poses a significant threat to the environment and public health. Adverse health effects associated with PFAS include, but are not limited to, kidney and liver damage, decreased immune system function, including interference with vaccine response and increased risk of asthma, developmental and reproductive harm, increased cholesterol levels, increased thyroid disorders and other hormone disruption, and increased incidences of testicular and kidney cancer.

(d) PFAS in products is a major source of PFAS contamination and phasing out nonessential uses of PFAS must be an immediate legislative objective.

(e) The intent of this act is to phase out the sale of products with avoidable PFAS use to address the imminent threat of further contamination of the environment in the state.

SEC. 2. Chapter 18 (commencing with Section 109030) is added to Part 3 of Division 104 of the Health and Safety Code, to read:

CHAPTER 18. PERFLUOROALKYL AND POLYFLUOROALKYL
SUBSTANCES

109030. For purposes of this chapter, the following definitions apply unless the context otherwise indicates:

(a) "Component" means an identifiable ingredient, part, or piece of a product, regardless of whether the manufacturer of the product is the manufacturer of the component.

(b) "Currently unavoidable use" means a use of PFAS that the department has determined is permissible for a limited time pursuant to subdivision (a) of Section 109030.2.

(c) "Department" means the Department of Toxic Substances Control.

(d) "Intentionally added PFAS" means either of the following:

1 (1) PFAS added to a product that have a functional or technical
2 effect in the product, including the PFAS components of
3 intentionally added chemical mixtures and PFAS that are
4 intentional products of an added chemical or process.

5 (2) PFAS used or produced during a product's manufacture or
6 processing that is introduced into or onto the product, whether or
7 not it confers a functional or technical effect in the product. This
8 includes any source of PFAS that is reasonably known to be
9 present, including the use of processing agents, mold release
10 agents, or fluorination.

11 (e) (1) Subject to paragraphs (2) and (3), "manufacturer"
12 means either of the following:

13 (A) A person that manufactures the product and whose name
14 appears on the product label.

15 (B) A person for whom the product is manufactured or by whom
16 it is distributed, and who owns or is the licensee of the brand or
17 trademark under which the product is used in a commercial
18 enterprise, sold, offered for sale, or distributed in the state.

19 (2) In the case of a product imported into the United States,
20 "manufacturer" includes the importer or first domestic distributor
21 of the product if no person that meets the requirements of
22 subparagraph (A) or (B) of paragraph (1) has a presence in the
23 United States.

24 (3) "Manufacturer" does not include trade associations or
25 similar entities.

26 (4) For purposes of this chapter, a product may have more than
27 one manufacturer.

28 (f) "Necessary for the product to work" means required for the
29 product to perform its primary function, as determined by the
30 department.

31 (g) "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS"
32 means a class of fluorinated organic chemicals containing at least
33 one fully fluorinated carbon atom.

34 (h) "Person" means an individual, firm, corporation,
35 association, or other entity doing business in California.

36 (i) "Product" means an item manufactured, assembled,
37 packaged, or otherwise prepared for sale in California, including,
38 but not limited to, its components, sold or distributed for personal,
39 residential, commercial, or industrial use, including for use in
40 making other products.

(j) “Product category” means a group of similar products that are used for a similar purpose and that could functionally replace each other for that purpose, as determined by the department, and does not mean a specific variation within a product. For example, pants, insulation, and cookware are each a product category whereas stain resistant pants, spray insulation, and nonstick cookware are specific variations of products within those product categories.

(k) “Reliable information” means a study or evaluation that meets both the following:

(1) The study or evaluation design was appropriate to the hypothesis being tested, and sufficient to support the proposition for which the study or evaluation is presented to the department.

(2) The study or evaluation was published in one of the following:

(A) A scientifically peer-reviewed report or other literature.

(B) A report of the United States National Academies.

(C) A report by an international, federal, state, or local agency that implements laws governing chemicals.

(l) “Safer alternative” means an alternative that, in comparison with another product or product manufacturing process, has reduced potentially adverse impacts or potential exposures associated with PFAS. Alternatives include materials, processes, designs, products, or chemicals that achieve the desired result. For example, a safer alternative to stain resistant sprays for avoiding stains could be the use of detergents or the use of fibers that are inherently stain resistant.

109030.1. (a) (1) Except as provided in subdivision (b), beginning January 1, 2030, a person shall not distribute, sell, or offer for sale in this state a product that contains intentionally added PFAS.

(2) The department may establish by regulation an effective date for the prohibition of PFAS in a product or product category that is before January 1, 2030, if it is feasible to do so. The department shall consider public petitions that request an earlier effective date for a product category. Feasibility shall be deemed to exist if any of the following conditions are met:

(A) If a safer alternative to PFAS in the product or product category is reasonably available, as determined by the department.

1 (B) If the findings of all or part of an applicable publicly
2 available study or evaluation of alternatives shows the viability
3 of safer alternatives to PFAS in the product or product category.
4 The department shall only rely on a study or evaluation that is
5 reliable information.

6 (C) If the sale or use of PFAS in the product or product category
7 has already been banned in another state or states within the
8 United States or in other countries.

9 (b) A prohibition described in subdivision (a) shall not apply
10 to any of the following:

11 (1) A product or product category for which there is an
12 applicable determination of currently unavoidable use identified
13 on the department's internet website pursuant to subdivision (g)
14 of Section 109030.2.

15 (2) A product or product category for which federal law governs
16 the presence of PFAS in the product in a manner that preempts
17 state authority.

18 (3) A used product.

19 109030.2. (a) Upon a petition from the manufacturer of a
20 product, the department shall review and determine whether the
21 use of PFAS in the product category to which the product belongs
22 is a currently unavoidable use. The department shall use the
23 broadest reasonable product category in making its determination.
24 In making a determination, the department shall rely on analysis
25 and findings from a prior determination. The department may
26 identify exclusions from a product category. The department shall
27 find that the use of PFAS in the product category or for an
28 exclusion is a currently unavoidable use only if it finds all the
29 following:

30 (1) There are no safer alternatives to PFAS that are reasonably
31 available.

32 (2) The function provided by PFAS in the product is necessary
33 for the product to work.

34 (3) The use of PFAS in the product is critical for health, safety,
35 or the functioning of society.

36 (b) The manufacturer in its petition shall provide the following:

37 (1) Evidence that demonstrates the criteria in paragraphs (1)
38 to (3), inclusive, of subdivision (a) are met.

39 (2) Any additional information requested by the department to
40 assist in making the determination.

1 (3) Any other information that the manufacturer believes is
2 relevant, with an explanation of the relevance.

3 (4) The applicable application fee established pursuant to
4 Section 109030.4.

5 (c) When determining whether the use of PFAS in a product
6 category is a currently unavoidable use, the department shall do
7 all of the following:

8 (1) Consider the information provided pursuant to subdivision
9 (b), including relevance and significance for the product category.

10 (2) Consider available reliable information.

11 (3) Consider bans on the sale or use of PFAS in the product or
12 product category in another state, the United States, or other
13 countries. If the sale or use of PFAS in the product or product
14 category has already been banned in another state, the United
15 States, or other countries, and if the ban is in effect, then that
16 demonstrates that the use of PFAS is not a currently unavoidable
17 use.

18 (4) Provide an opportunity for public comment.

19 (d) When determining whether the use of PFAS in a product
20 category is a currently unavoidable use, the department shall make
21 a determination without evaluating all the criteria pursuant to
22 subdivision (b) if the determination can be made based on fewer
23 criteria.

24 (e) (1) Upon finding that the use of PFAS in a product category
25 is a currently unavoidably use, the department shall issue a
26 determination of currently unavoidable use.

27 (2) A determination of currently unavoidable use shall expire
28 five years after its issuance.

29 (3) The department may review a determination of currently
30 unavoidable use before its expiration and may revoke the
31 determination if there is a significant change in the information
32 supporting the determination.

33 (4) The department shall consider public petitions requesting
34 a review of a determination of currently unavoidable use based
35 on a significant change of information.

36 (f) A manufacturer may submit a petition to renew a
37 determination of currently unavoidable use no later than six months
38 before its expiration. The petition for renewal shall comply with
39 subdivision (b) and also provide evidence of significant efforts to
40 develop a safer alternative to the continued use of PFAS in the

1 *product or product category, including, but not limited to,*
2 *published peer-reviewed papers and funding of third-party*
3 *research with no financial conflict of interest. In reviewing a*
4 *petition to renew, the department shall comply with subdivisions*
5 *(a), (c), (d), and (g).*

6 *(g) The department shall maintain on its internet website a list*
7 *of each determination of currently unavoidable use, when each*
8 *determination expires, and the products and uses that are exempt*
9 *from the prohibition specified in subdivision (a) of Section*
10 *109030.1.*

11 *(h) A manufacturer subject to the prohibition in paragraph (1)*
12 *of subdivision (a) of Section 109030.1 shall not submit a petition*
13 *for unavoidable use determination before January 1, 2030, and*
14 *no later than January 1, 2032.*

15 *109030.3. (a) A person who violates Section 109030.1 or fails*
16 *to comply with the requirements of subdivision (b) shall be liable*
17 *for a civil penalty not to exceed one thousand dollars (\$1,000) for*
18 *each day during which the violation continues, and, in addition,*
19 *the person may be enjoined from continuing the violation. For a*
20 *second violation, the person shall be liable to the people of the*
21 *state for a civil penalty not to exceed two thousand five hundred*
22 *dollars (\$2,500) for each day during which the violation continues.*
23 *Any civil penalties received pursuant to this subdivision shall be*
24 *deposited into the PFAS Penalty Account, that is hereby created*
25 *in the PFAS Oversight Fund created pursuant to Section 109030.4.*
26 *Moneys in the fund shall, upon appropriation by the Legislature,*
27 *be used for the administration and enforcement of this chapter.*

28 *(b) If the department has reason to believe that a product*
29 *contains intentionally added PFAS and is being distributed, sold,*
30 *or offered for sale in violation of Section 109030.1, the department*
31 *shall direct the manufacturer of the product to, within 30 days, do*
32 *either of the following:*

33 *(1) Provide the department with independent, third-party*
34 *laboratory test results demonstrating that the product does not*
35 *contain the intentionally added PFAS.*

36 *(2) Notify persons who sell that product in the state that the*
37 *sale of that product is prohibited in this state and provide the*
38 *department with a list of the names and addresses of those notified.*

39 *109030.4. On or before January 1, 2027, the department shall*
40 *adopt regulations to administer this chapter. The regulations shall*

1 *establish and provide for the assessment of an application fee.*
2 *Moneys received from the application fee shall be deposited into*
3 *the PFAS Oversight Fund, that is hereby created in the State*
4 *Treasury. Moneys in the account shall, upon appropriation by the*
5 *Legislature, be used to cover the department's reasonable costs*
6 *of administering this chapter.*

7 ~~SECTION 1. (a) The Legislature finds and declares that~~
8 ~~perfluoroalkyl and polyfluoroalkyl substances (PFAS) are a class~~
9 ~~of persistent and highly toxic chemicals responsible for widespread~~
10 ~~contamination across California and the United States.~~

11 ~~(b) It is the intent of the Legislature to enact subsequent~~
12 ~~legislation to phase out the sale of products with avoidable PFAS~~
13 ~~use to address the imminent threat of further contamination of the~~
14 ~~environment in the state.~~

AMENDED IN ASSEMBLY FEBRUARY 20, 2024

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

ASSEMBLY BILL

No. 1820

**Introduced by Assembly Member Schiavo
(Coauthor: Assembly Member Grayson)**

January 11, 2024

An act to amend ~~Section~~ *Sections 65940.1 and 65941.1* of, and to add Section 65943.1 to, the Government Code, relating to housing.

LEGISLATIVE COUNSEL’S DIGEST

AB 1820, as amended, Schiavo. Housing development projects: applications: fees and exactions.

(1) Existing law requires a city or county to deem an applicant for a housing development project to have submitted a preliminary application upon providing specified information about the proposed project to the city or county from which approval for the project is being sought. Existing law requires a housing development project be subject only to the ordinances, policies, and standards adopted and in effect when the preliminary application was submitted.

This bill would authorize a development proponent that submits a preliminary application for a housing development project to request a preliminary fee and exaction estimate, as ~~defined. The bill defined, and~~ would require ~~a the~~ local agency to ~~comply with the request provide the estimate~~ within 10 business days of the submission of the preliminary application, ~~except as specified.~~ *application.*

(2) Existing law requires a public agency that receives an application for a development project to, within 30 calendar days, determine in writing whether the application is complete and immediately transmit

its determination to the applicant for the development project, as specified.

This bill would require a public agency that determines an application for a housing development project is complete to provide the development proponent with an itemized list and total sum amount of all fees and exactions that will apply to the project ~~with~~ *within 10 days* of the above-described determination of completeness transmitted to the applicant.

(3) Existing law requires a city, county, or special district that has an internet website to make specified information available on its internet website, as applicable, including a current schedule of fees, exactions, affordability requirements it has imposed that are applicable to a proposed housing development project, and an archive of impact fee nexus studies, cost of service studies, or equivalent, conducted by that city, county, or special district on or after January 1, 2018. Existing law requires a city or county to 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.

This bill would clarify that these provisions may not be construed to impose any obligation on any entity, including a development proponent, other than a city, county, or special district, as specified. The bill would also require the request from the city or county for the total amount of fees and exactions associated with the project to clearly state that the request does not create any obligation to respond and that the development proponent will not be subjected to any consequences for not responding or for the content of a response.

~~(3)~~

(4) The bill would include findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

~~(4)~~

(5) By imposing new duties on local governments when receiving and reviewing certain development project applications, 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.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 65940.1 of the Government Code is*
2 *amended to read:*

3 65940.1. (a) (1) A city, county, or special district that has an
4 internet website shall make all of the following available on its
5 internet website, as applicable:

6 (A) (i) A current schedule of fees, exactions, and affordability
7 requirements imposed by that city, county, or special district,
8 including any dependent special districts, as defined in Section
9 56032.5, of the city or county applicable to a proposed housing
10 development project.

11 (ii) The city, county, or special district shall present the
12 information described in clause (i) in a manner that clearly
13 identifies the fees, exactions, and affordability requirements that
14 apply to each parcel and the fees that apply to each new water and
15 sewer utility connection.

16 (iii) The city, county, or special district shall post a written fee
17 schedule or a link directly to the written fee schedule on its internet
18 website.

19 (B) All zoning ordinances and development standards adopted
20 by the city or county presenting the information, which shall
21 specify the zoning, design, and development standards that apply
22 to each parcel.

23 (C) The list required to be compiled pursuant to Section 65940
24 by the city or county presenting the information.

25 (D) The current and five previous annual fee reports or the
26 current and five previous annual financial reports, that were
27 required pursuant to subdivision (b) of Section 66006 and
28 subdivision (d) of Section 66013.

29 (E) An archive of impact fee nexus studies, cost of service
30 studies, or equivalent, conducted by that city, county, or special
31 district on or after January 1, 2018. For purposes of this
32 subparagraph, “cost of service study” means the data provided to
33 the public pursuant to subdivision (a) of Section 66016.

(2) A city, county, or special district shall update the information made available under this subdivision within 30 days of any changes.

(3) (A) A city or county shall 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 request shall clearly state that the development proponent is under no obligation to respond to the request for information and that the development proponent will not be subjected to any consequences for not responding or for the content of a response.* The city or county shall post this information on its internet website, and update it at least twice per year.

(B) A city or county shall not be responsible for the accuracy for the information received and posted pursuant to subparagraph (A). A city or county may include a disclaimer regarding the accuracy of the information posted on its internet website under this paragraph.

(b) For purposes of this section:

(1) “Affordability requirement” means a requirement imposed as a condition of a development of residential units, that the development include a certain percentage of the units affordable for rent or sale to households with incomes that do not exceed the limits for moderate-income, lower income, very low income, or extremely low income households specified in Sections 50079.5, 50093, 50105, and 50106 of the Health and Safety Code, or an alternative means of compliance with that requirement including, but not limited to, in-lieu fees, land dedication, off-site construction, or acquisition and rehabilitation of existing units.

(2) (A) “Exaction” means any of the following:

(i) A construction excise tax.

(ii) A requirement that the housing development project provide public art or an in-lieu payment.

(iii) Dedications of parkland or in-lieu fees imposed pursuant to Section 66477.

(iv) A special tax levied on new housing units pursuant to the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5).

(B) “Exaction” does not include fees or charges pursuant to Section 66013 that are not imposed (i) in connection with issuing or approving a permit for development or (ii) as a condition of approval of a proposed development, as held in *Capistrano Beach Water Dist. v. Taj Development Corp.* (1999) 72 Cal.App.4th 524.

(3) “Fee” means a fee or charge described in the Mitigation Fee Act (Chapter 5 (commencing with Section 66000), Chapter 6 (commencing with Section 66010), Chapter 7 (commencing with Section 66012), Chapter 8 (commencing with Section 66016), and Chapter 9 (commencing with Section 66020)).

(4) “Housing development project” means a use consisting of any of the following:

(A) Residential units only.

(B) Mixed-use developments consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use.

(C) Transitional housing or supportive housing.

(c) This section shall not be construed to alter the existing authority of a city, county, or special district to adopt or impose an exaction or fee.

(d) This section shall not be construed to impose any obligation on any entity, including a development proponent, other than a city, county, or special district. This subdivision does not constitute a change in, but is declaratory of, existing law.

~~SECTION 1.~~

~~SEC. 2.~~ Section 65941.1 of the Government Code, as amended by Section 27 of Chapter 258 of the Statutes of 2022, is amended to read:

65941.1. (a) An applicant for a housing development project, as defined in paragraph (3) of subdivision (b) of Section 65905.5, shall be deemed to have submitted a preliminary application upon providing all of the following information about the proposed project to the city, county, or city and county from which approval for the project is being sought and upon payment of the permit processing fee:

(1) The specific location, including parcel numbers, a legal description, and site address, if applicable.

(2) The existing uses on the project site and identification of major physical alterations to the property on which the project is to be located.

1 (3) A site plan showing the location on the property, elevations
2 showing design, color, and material, and the massing, height, and
3 approximate square footage, of each building that is to be occupied.

4 (4) The proposed land uses by number of units and square feet
5 of residential and nonresidential development using the categories
6 in the applicable zoning ordinance.

7 (5) The proposed number of parking spaces.

8 (6) Any proposed point sources of air or water pollutants.

9 (7) Any species of special concern known to occur on the
10 property.

11 (8) Whether a portion of the property is located within any of
12 the following:

13 (A) A very high fire hazard severity zone, as determined by the
14 Department of Forestry and Fire Protection pursuant to Section
15 51178.

16 (B) Wetlands, as defined in the United States Fish and Wildlife
17 Service Manual, Part 660 FW 2 (June 21, 1993).

18 (C) A hazardous waste site that is listed pursuant to Section
19 65962.5 or a hazardous waste site designated by the Department
20 of Toxic Substances Control pursuant to Article 5 (commencing
21 with Section 78760) of Chapter 4 of Part 2 of Division 45 of the
22 Health and Safety Code.

23 (D) A special flood hazard area subject to inundation by the 1
24 percent annual chance flood (100-year flood) as determined by
25 the Federal Emergency Management Agency in any official maps
26 published by the Federal Emergency Management Agency.

27 (E) A delineated earthquake fault zone as determined by the
28 State Geologist in any official maps published by the State
29 Geologist, unless the development complies with applicable seismic
30 protection building code standards adopted by the California
31 Building Standards Commission under the California Building
32 Standards Law (Part 2.5 (commencing with Section 18901) of
33 Division 13 of the Health and Safety Code), and by any local
34 building department under Chapter 12.2 (commencing with Section
35 8875) of Division 1 of Title 2.

36 (F) A stream or other resource that may be subject to a
37 streambed alteration agreement pursuant to Chapter 6 (commencing
38 with Section 1600) of Division 2 of the Fish and Game Code.

39 (9) Any historic or cultural resources known to exist on the
40 property.

1 (10) The number of proposed below market rate units and their
2 affordability levels.

3 (11) The number of bonus units and any incentives, concessions,
4 waivers, or parking reductions requested pursuant to Section 65915.

5 (12) Whether any approvals under the Subdivision Map Act,
6 including, but not limited to, a parcel map, a tentative map, or a
7 condominium map, are being requested.

8 (13) The applicant's contact information and, if the applicant
9 does not own the property, consent from the property owner to
10 submit the application.

11 (14) For a housing development project proposed to be located
12 within the coastal zone, whether any portion of the property
13 contains any of the following:

14 (A) Wetlands, as defined in subdivision (b) of Section 13577
15 of Title 14 of the California Code of Regulations.

16 (B) Environmentally sensitive habitat areas, as defined in
17 Section 30240 of the Public Resources Code.

18 (C) A tsunami run-up zone.

19 (D) Use of the site for public access to or along the coast.

20 (15) The number of existing residential units on the project site
21 that will be demolished and whether each existing unit is occupied
22 or unoccupied.

23 (16) A site map showing a stream or other resource that may
24 be subject to a streambed alteration agreement pursuant to Chapter
25 6 (commencing with Section 1600) of Division 2 of the Fish and
26 Game Code and an aerial site photograph showing existing site
27 conditions of environmental site features that would be subject to
28 regulations by a public agency, including creeks and wetlands.

29 (17) The location of any recorded public easement, such as
30 easements for storm drains, water lines, and other public rights of
31 way.

32 (b) (1) A development proponent that submits a preliminary
33 application ~~pursuant to this section providing the information~~
34 ~~required by subdivision (a)~~ may include in its preliminary
35 application a request for a preliminary fee and exaction estimate.
36 ~~A estimate, which the local agency shall comply with the request~~
37 ~~of the development proponent provide within 10 business days of~~
38 ~~the submission of the preliminary application unless the local~~
39 ~~government otherwise determines that the preliminary application~~

1 ~~does not include all of the information required by subdivision (a).~~
2 ~~application.~~

3 (2) For purposes of this subdivision:

4 (A) “Fee” and “exaction” mean the same as those terms are
5 defined in Section 65940.1.

6 (B) “Fee and exaction estimate” means a good faith estimate of
7 the total amount of fees and exactions expected to be imposed in
8 connection with the project.

9 (3) Except for the provision of the fee and exaction estimate by
10 the local agency, nothing in this subdivision shall create or affect
11 any rights or obligations with respect to fees or exactions.

12 (c) (1) Each local agency shall compile a checklist and
13 application form that applicants for housing development projects
14 may use for the purpose of satisfying the requirements for submittal
15 of a preliminary application.

16 (2) The Department of Housing and Community Development
17 shall adopt a standardized form that applicants for housing
18 development projects may use for the purpose of satisfying the
19 requirements for submittal of a preliminary application if a local
20 agency has not developed its own application form pursuant to
21 paragraph (1). Adoption of the standardized form shall not be
22 subject to Chapter 3.5 (commencing with Section 11340) of Part
23 1 of Division 3 of Title 2 of the Government Code.

24 (3) A checklist or form shall not require or request any
25 information beyond that expressly identified in subdivision (a).

26 (d) After submittal of all of the information required by
27 subdivision (a), if the development proponent revises the project
28 such that the number of residential units or square footage of
29 construction changes by 20 percent or more, exclusive of any
30 increase resulting from the receipt of a density bonus, incentive,
31 concession, waiver, or similar provision, the housing development
32 project shall not be deemed to have submitted a preliminary
33 application that satisfies this section until the development
34 proponent resubmits the information required by subdivision (a)
35 so that it reflects the revisions. For purposes of this subdivision,
36 “square footage of construction” means the building area, as
37 defined by the California Building Standards Code (Title 24 of the
38 California Code of Regulations).

39 (e) (1) Within 180 calendar days after submitting a preliminary
40 application with all of the information required by subdivision (a)

1 to a city, county, or city and county, the development proponent
2 shall submit an application for a development project that includes
3 all of the information required to process the development
4 application consistent with Sections 65940, 65941, and 65941.5.

5 (2) If the public agency determines that the application for the
6 development project is not complete pursuant to Section 65943,
7 the development proponent shall submit the specific information
8 needed to complete the application within 90 days of receiving the
9 agency's written identification of the necessary information. If the
10 development proponent does not submit this information within
11 the 90-day period, then the preliminary application shall expire
12 and have no further force or effect.

13 (3) This section shall not require an affirmative determination
14 by a city, county, or city and county regarding the completeness
15 of a preliminary application or a development application for
16 purposes of compliance with this section.

17 (f) Notwithstanding any other law, submission of a preliminary
18 application in accordance with this section shall not preclude the
19 listing of a tribal cultural resource on a national, state, tribal, or
20 local historic register list on or after the date that the preliminary
21 application is submitted. For purposes of Section 65589.5 or any
22 other law, the listing of a tribal cultural site on a national, state,
23 tribal, or local historic register on or after the date the preliminary
24 application was submitted shall not be deemed to be a change to
25 the ordinances, policies, and standards adopted and in effect at the
26 time that the preliminary application was submitted.

27 (g) This section shall remain in effect only until January 1, 2030,
28 and as of that date is repealed.

29 ~~SEC. 2.~~

30 *SEC. 3.* Section 65943.1 is added to the Government Code, to
31 read:

32 65943.1. (a) A public agency that determines an application
33 for a housing development project is complete pursuant to Section
34 65943 shall provide the development proponent with an itemized
35 list and total sum amount of all fees and exactions that will apply
36 to the project ~~with~~ *within 10 days of* its formal determination of
37 completeness transmitted to the applicant.

38 (b) For purposes of complying with subdivision (a), a public
39 agency that calculates fees using a cost recovery method to cover
40 administrative cost shall provide fee estimates for those cost

1 recovery fees based on the average amount of the fees imposed
2 on similar projects.

3 (c) For purposes of this section:

4 (1) (A) “Exaction” means any of the following:

5 (i) A construction excise tax.

6 (ii) A requirement that the housing development project provide
7 public art or an in-lieu payment.

8 (iii) Dedications of parkland or in-lieu fees imposed pursuant
9 to Section 66477.

10 (iv) A special tax levied on new housing units pursuant to the
11 Mello-Roos Community Facilities Act of 1982 (Chapter 2.5
12 (commencing with Section 53311) of Part 1 of Division 2 of Title
13 5).

14 (B) “Exaction” does not include fees or charges pursuant to
15 Section 66013 that are not imposed (i) in connection with issuing
16 or approving a permit for development or (ii) as a condition of
17 approval of a proposed development, as held in *Capistrano Beach*
18 *Water Dist. v. Taj Development Corp.* (1999) 72 Cal.App.4th 524.

19 (2) “Fee” means a fee or charge described in the Mitigation Fee
20 Act (Chapter 5 (commencing with Section 66000), Chapter 6
21 (commencing with Section 66010), Chapter 7 (commencing with
22 Section 66012), Chapter 8 (commencing with Section 66016), and
23 Chapter 9 (commencing with Section 66020)).

24 (3) “Housing development project” means a use consisting of
25 any of the following:

26 (A) Residential units only.

27 (B) Mixed-use developments consisting of residential and
28 nonresidential uses with at least two-thirds of the square footage
29 designated for residential use.

30 (C) Transitional housing or supportive housing.

31 (4) “Public agency” means a city, including a charter city, a
32 county, including a charter county, or special district.

33 ~~SEC. 3.~~

34 *SEC. 4.* The Legislature finds and declares all of the following:

35 (a) A recent study conducted by the Turner Center for Housing
36 Innovation at the University of California, Berkeley, found that
37 fees and exactions can amount to up to 18 percent of the median
38 home price, that these fees and exactions are extremely difficult
39 to estimate, and that fees and exactions continue to rise in
40 California while decreasing nationally. Further, escalating fee and

1 exaction costs make it more difficult for builders to deliver new
2 housing for sale or rent at affordable prices.

3 (b) Ensuring access to affordable housing is a matter of statewide
4 concern rather than a municipal affair as that term is used in Section
5 5 of Article XI of the California Constitution. Therefore, Section
6 4 2 of this act amending Section 65941.1 of the Government Code,
7 and Section—2 3 of this act adding Section 65943.1 to the
8 Government Code apply to all cities, including charter cities.

9 ~~SEC. 4.~~

10 *SEC. 5.* No reimbursement is required by this act pursuant to
11 Section 6 of Article XIII B of the California Constitution because
12 a local agency or school district has the authority to levy service
13 charges, fees, or assessments sufficient to pay for the program or
14 level of service mandated by this act, within the meaning of Section
15 17556 of the Government Code.

ASSEMBLY BILL

No. 2729

Introduced by Assembly Member Joe Patterson

February 15, 2024

An act to amend Section 66007 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 2729, as introduced, Joe Patterson. Residential fees and charges.

Existing law prohibits a local agency that imposes fees or charges on a residential development for the construction of public improvements or facilities from requiring the payment of those fees or charges until the date of the final inspection or the date the certificate of occupancy is issued, whichever occurs first, except that the payment may be required sooner if the local agency determines that the fees or charges will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency has adopted a proposed construction schedule or plan prior to final inspection or issuance of the certificate of occupancy, or if the fees or charges are to reimburse the local agency for expenditures previously made.

This bill would delete the above-described authorization for a local agency to require payment of fees or charges prior to the date of final inspection or issuance of the certificate of occupancy, whichever occurs first.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 66007 of the Government Code is amended to read:

66007. (a) Except as otherwise provided in ~~subdivisions (b) and (g); subdivision (e)~~, any local agency that imposes any fees or charges on a residential development for the construction of public improvements or facilities shall not require the payment of those fees or charges, notwithstanding any other provision of law, until the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs first. However, utility service fees may be collected at the time an application for utility service is received. If the residential development contains more than one dwelling, the local agency may determine whether the fees or charges shall be paid on a pro rata basis for each dwelling when it receives its final inspection or certificate of occupancy, whichever occurs first; on a pro rata basis when a certain percentage of the dwellings have received their final inspection or certificate of occupancy, whichever occurs first; or on a lump-sum basis when the first dwelling in the development receives its final inspection or certificate of occupancy, whichever occurs first.

~~(b) (1) Notwithstanding subdivision (a), the local agency may require the payment of those fees or charges at an earlier time if (A) the local agency determines that the fees or charges will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency has adopted a proposed construction schedule or plan prior to final inspection or issuance of the certificate of occupancy or (B) the fees or charges are to reimburse the local agency for expenditures previously made. "Appropriated," as used in this subdivision, means authorization by the governing body of the local agency for which the fee is collected to make expenditures and incur obligations for specific purposes.~~

~~(2) (A) Paragraph (1) does not apply to units reserved for occupancy by lower income households included in a residential development proposed by a nonprofit housing developer in which at least 49 percent of the total units are reserved for occupancy by lower income households, as defined in Section 50079.5 of the Health and Safety Code, at an affordable rent, as defined in Section 50053 of the Health and Safety Code. In addition to the contract~~

1 that may be required under subdivision (c), a city, county, or city
2 and county may require the posting of a performance bond or a
3 letter of credit from a federally insured, recognized depository
4 institution to guarantee payment of any fees or charges that are
5 subject to this paragraph. Fees and charges exempted from
6 paragraph (1) under this paragraph shall become immediately due
7 and payable when the residential development no longer meets
8 the requirements of this paragraph.

9 (B) The exception provided in subparagraph (A) does not apply
10 to fees and charges levied pursuant to Chapter 6 (commencing
11 with Section 17620) of Part 10.5 of Division 1 of Title 1 of the
12 Education Code.

13 (e)

14 (b) (1) If any fee or charge specified in subdivision (a) is not
15 fully paid prior to issuance of a building permit for construction
16 of any portion of the residential development encumbered thereby,
17 the local agency issuing the building permit may require the
18 property owner, or lessee if the lessee's interest appears of record,
19 as a condition of issuance of the building permit, to execute a
20 contract to pay the fee or charge, or applicable portion thereof,
21 within the time specified in subdivision (a). If the fee or charge is
22 prorated pursuant to subdivision (a), the obligation under the
23 contract shall be similarly prorated.

24 (2) The obligation to pay the fee or charge shall inure to the
25 benefit of, and be enforceable by, the local agency that imposed
26 the fee or charge, regardless of whether it is a party to the contract.
27 The contract shall contain a legal description of the property
28 affected, shall be recorded in the office of the county recorder of
29 the county and, from the date of recordation, shall constitute a lien
30 for the payment of the fee or charge, which shall be enforceable
31 against successors in interest to the property owner or lessee at the
32 time of issuance of the building permit. The contract shall be
33 recorded in the grantor-grantee index in the name of the public
34 agency issuing the building permit as grantee and in the name of
35 the property owner or lessee as grantor. The local agency shall
36 record a release of the obligation, containing a legal description
37 of the property, in the event the obligation is paid in full, or a partial
38 release in the event the fee or charge is prorated pursuant to
39 subdivision (a).

(3) The contract may require the property owner or lessee to provide appropriate notification of the opening of any escrow for the sale of the property for which the building permit was issued and to provide in the escrow instructions that the fee or charge be paid to the local agency imposing the same from the sale proceeds in escrow prior to disbursing proceeds to the seller.

~~(d)~~

(c) This section applies only to fees collected by a local agency to fund the construction of public improvements or facilities. It does not apply to fees collected to cover the cost of code enforcement or inspection services, or to other fees collected to pay for the cost of enforcement of local ordinances or state law.

~~(e)~~

(d) “Final inspection” or “certificate of occupancy,” as used in this section, have the same meaning as described in Sections 305 and 307 of the Uniform Building Code, International Conference of Building Officials, 1985 edition.

~~(f) Methods of complying with the requirement in subdivision (b) that a proposed construction schedule or plan be adopted, include, but are not limited to, (1) the adoption of the capital improvement plan described in Section 66002, or (2) the submittal of a five-year plan for construction and rehabilitation of school facilities pursuant to subdivision (c) of Section 17017.5 of the Education Code.~~

~~(g)~~

(e) A local agency may defer the collection of one or more fees up to the close of escrow. This subdivision shall not apply to fees and charges levied pursuant to Chapter 6 (commencing with Section 17620) of Part 10.5 of Division 1 of Title 1 of the Education Code.

Introduced by Senator Wiener
(Coauthor: Assembly Member Grayson)

January 17, 2024

An act to amend Sections 66000, 66007, and 66013 of, and to add Section 65914.6 to, the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

SB 937, as introduced, Wiener. Development projects: permits and other entitlements: fees and charges.

The Planning and Zoning Law requires each county and each city to adopt a comprehensive, long-term general plan for its physical development, and the development of specified land outside its boundaries, that includes, among other mandatory elements, a housing element. Existing law, the Permit Streamlining Act, among other things, requires a public agency that is the lead agency for a development project to approve or disapprove that project within specified time periods. Existing law extended by 18 months the period for the expiration, effectuation, or utilization of a housing entitlement, as defined, that was issued before, and was in effect on, March 4, 2020, and that would expire before December 31, 2021, except as specified. Existing law provides that if the state or a local agency extended the otherwise applicable time for the expiration, effectuation, or utilization of a housing entitlement for not less than 18 months, as specified, that housing entitlement would not be extended an additional 18 months pursuant to these provisions.

This bill would extend by 18 months the period for the expiration, effectuation, or utilization of a housing entitlement, as defined, that was issued before January 1, 2024, and that will expire before December 31, 2025, except as specified. The bill would toll this 18-month

extension during any time that the housing entitlement is the subject of a legal challenge. By adding to the duties of local officials with respect to housing entitlements, this bill would impose a state-mandated local program. The bill would include findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

The Mitigation Fee Act regulates fees for development projects, fees for specific purposes, including water and sewer connection fees, and fees for solar energy systems, among others. The act, among other things, requires local agencies, as defined, to comply with various conditions when imposing fees, extractions, or charges as a condition of approval of a proposed development or development project. The act defines fee to mean a monetary exaction other than a tax or special assessment that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project. The act exempts certain fees from this definition, including a fee paid or land dedicated for park or recreational purposes as a condition to the approval of a tentative map or parcel map, as specified.

This bill would remove that exception. The bill would specify that water districts and sanitation districts are included in the definition of a local agency for purposes of the act.

The act prohibits a local agency that imposes fees or charges on a residential development for the construction of public improvements or facilities from requiring the payment of those fees or charges until the date of the final inspection or the date the certificate of occupancy is issued, whichever occurs first. The act authorizes a local agency to require the payment sooner if specified conditions are met, including if the fees or charges are to reimburse the local agency for expenditures previously made. The act exempts units reserved for occupancy by lower income households included in a residential development proposed by a nonprofit housing developer, as specified, from the authorization to require an earlier payment, but authorizes a city or county to require for those exempt units the posting of a performance bond or a letter of credit from a federally insured, recognized depository institution to guarantee payment of any fees or charges. The act, if a fee or charge is not fully paid prior to issuance of a building permit for construction, authorizes the local agency to require the property owner to execute a contract to pay the fee or charge, as specified.

This bill would instead prohibit a local agency from requiring the payment of those fees or charges until the date the certificate of occupancy is issued, and would prohibit the local agency from charging interest or other fees on any amount deferred. The bill would remove the authorization for a local agency to require the payment sooner if the fees or charges are to reimburse the local agency for expenditures previously made. The bill would revise the exemption from earlier payment for units reserved for occupancy by lower income households by a nonprofit housing developer to be those by an affordable housing developer, as specified, and would repeal the authorization for a city or county to require the posting of a performance bond or a letter of credit for those exempt units. The bill would repeal the authorization of the local agency to require the property owner to execute a contract to pay the fee or charge, and would instead authorize the local agency to withhold the certificate of occupancy until the fees and charges are paid.

Existing law prohibits a local agency from imposing fees for water connections or sewer connections, or capacity charges, that exceed the estimated reasonable cost of providing the service, and specifies that those fees or charges are not subject to the specified provisions of the act applicable to development projects, including requiring local agencies to comply with certain requirements when imposing fees, extractions, or charges as a condition of approval of a proposed development or development project.

This bill would provide that those fees or charges are subject to specified provisions of the act. By requiring local agencies to comply with specified requirements when imposing fees, extractions, or charges as a condition of approval of a proposed development or development project, 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.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 65914.6 is added to the Government Code, to read:

65914.6. (a) Except as provided in subdivision (b), notwithstanding any law, including any inconsistent provision of a local agency's general plan, ordinances, or regulations, the otherwise applicable time for the expiration, effectuation, or utilization of a housing entitlement that is within the scope of the timeframes specified in paragraphs (1) and (2) is extended by 18 months. For the purposes of this section, housing entitlements that are extended are entitlements where both of the following apply:

(1) It was issued prior to and was in effect on January 1, 2024.

(2) It will expire prior to December 31, 2025.

The otherwise applicable time for the utilization of a housing entitlement provided by this section includes any requirement to request the issuance of a building permit within a specified period of time.

(b) If the state or a local agency extends, on or after January 1, 2024, but before the effective date of the act adding this section, the otherwise applicable time for the expiration, effectuation, or utilization of a housing entitlement for not less than 18 months and pursuant to the same conditions provided in subdivision (a), that housing entitlement shall not be extended for an additional 18 months by operation of subdivision (a).

(c) For purposes of this section, the following definitions apply:

(1) "Housing entitlement" means any of the following:

(A) A legislative, adjudicative, administrative, or any other kind of approval, permit, or other entitlement necessary for, or pertaining to, a housing development project issued by a state agency.

(B) An approval, permit, or other entitlement issued by a local agency for a housing development project that is subject to Chapter 4.5 (commencing with Section 65920).

(C) A ministerial approval, permit, or entitlement by a local agency required as a prerequisite to issuance of a building permit for a housing development project.

(D) A requirement to submit an application for a building permit within a specified period of time after the effective date of a housing entitlement described in subparagraph (B) or (C).

1 (E) A vested right associated with an approval, permit, or other
2 entitlement described in subparagraphs (A) to (D), inclusive.

3 (2) For the purposes of this section, a housing entitlement does
4 not include any of the following:

5 (A) A development agreement issued pursuant to Article 2.5
6 (commencing with Section 65864).

7 (B) An approved or conditionally approved tentative map that
8 is extended for a minimum of 18 months pursuant to Section
9 66452.6 on or after January 1, 2024.

10 (C) A preliminary application as defined in Section 65941.1.

11 (3) “Housing development project” means a residential
12 development or mixed-use development in which at least two-thirds
13 of the square footage of the development is designated for
14 residential use. Both of the following apply for the purposes of
15 calculating the square footage usage of a development for purposes
16 of this section:

17 (A) The square footage of a development shall include any
18 additional density, floor area, and units, and any other concession,
19 incentive, or waiver of development standards pursuant to Section
20 65915.

21 (B) The square footage of a development shall not include any
22 underground space, including, but not limited to, a basement or
23 underground parking garage.

24 (4) “Local agency” means a county, city, whether general law
25 or chartered, city and county, school district, special district,
26 authority, agency, any other municipal public corporation or
27 district, or other political subdivision of the state.

28 (d) The extension granted pursuant to subdivision (a) shall be
29 tolled during any time that the housing entitlement is the subject
30 of a legal challenge.

31 (e) Nothing in this section is intended to preclude a local
32 government from exercising its existing authority to provide an
33 extension to an entitlement identified in this section.

34 (f) The Legislature finds and declares that this section addresses
35 a matter of statewide concern rather than a municipal affair as that
36 term is used in Section 5 of Article XI of the California
37 Constitution. Therefore, this section applies to all cities, including
38 charter cities.

39 SEC. 2. Section 66000 of the Government Code is amended
40 to read:

66000. As used in this chapter, the following terms have the following meanings:

(a) “Development project” means any project undertaken for the purpose of development. “Development project” includes a project involving the issuance of a permit for construction or reconstruction, but not a permit to operate.

(b) “Fee” means a monetary exaction other than a tax or special assessment, whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, but does not include ~~fees specified in Section 66477~~, fees for processing applications for governmental regulatory actions or approvals, fees collected under development agreements adopted pursuant to Article 2.5 (commencing with Section 65864) of Chapter 4, or fees collected pursuant to agreements with redevelopment agencies that provide for the redevelopment of property in furtherance or for the benefit of a redevelopment project for which a redevelopment plan has been adopted pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code).

(c) “Local agency” means a county, city, whether general law or chartered, city and county, school district, special district, authority, agency, any other municipal public corporation or district, *including, but not limited to, water districts and sanitation districts*, or other political subdivision of the state.

(d) “Public facilities” includes public improvements, public services, and community amenities.

SEC. 3. Section 66007 of the Government Code is amended to read:

66007. (a) Except as otherwise provided in subdivisions (b) and (g), any local agency that imposes any fees or charges on a residential development for the construction of public improvements or facilities shall not require the payment of those fees or charges, notwithstanding any other provision of law, until the date of the final inspection, or the date the certificate of occupancy is issued, ~~whichever occurs first. However, utility service fees may be collected at the time an application for utility~~

~~service is received. issued.~~ If the residential development contains more than one dwelling, the local agency may determine whether the fees or charges shall be paid on a pro rata basis for each dwelling when it receives its ~~final inspection or~~ certificate of occupancy, ~~whichever occurs first;~~ *occupancy*, on a pro rata basis when a certain percentage of the dwellings have received their ~~final inspection or~~ certificate of occupancy, ~~whichever occurs first;~~ *occupancy*, or on a lump-sum basis when ~~all the first dwelling dwellings~~ in the development ~~receives its final inspection or~~ *receive their* certificate of occupancy, ~~whichever occurs first.~~ *occupancy.* For development projects that meet the conditions in subparagraph (A) of paragraph (2) of subdivision (b), the amount due and payable for the fees and charges when the development receives its certificate of occupancy shall be the same amount as would have been paid had the fees and charges been paid prior to the issuance of building permits. The local agency shall not charge interest or other fees on any amount deferred.

(b) (1) Notwithstanding subdivision (a), the local agency may require the payment of those fees or charges at an earlier time if ~~(A)~~ the local agency determines that the fees or charges will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency has adopted a proposed construction schedule ~~or plan~~ and commenced or will commence construction prior to final inspection or issuance of the certificate of occupancy ~~or (B) the fees or charges are to reimburse the local agency for expenditures previously made.~~ of the development project. “Appropriated,” as used in this subdivision, means authorization by the governing body of the local agency for which the fee is collected to make expenditures and incur obligations for specific purposes.

(2) (A) Paragraph (1) does not apply to units reserved for occupancy by lower income households included in a residential development proposed by ~~a nonprofit~~ *an affordable* housing developer in which at least 49 percent of the total units are reserved for occupancy by lower income households, as defined in Section 50079.5 of the Health and Safety Code, at an affordable rent, as defined in Section 50053 of the Health and Safety Code. ~~In addition to the contract that may be required under subdivision (c), a city, county, or city and county may require the posting of a performance bond or a letter of credit from a federally insured, recognized~~

1 depository institution to guarantee payment of any fees or charges
2 that are subject to this paragraph. Fees and charges exempted from
3 paragraph (1) under this paragraph shall become immediately due
4 and payable when the residential development no longer meets
5 the requirements of this paragraph.

6 (B) The exception provided in subparagraph (A) does not apply
7 to fees and charges levied pursuant to Chapter 6 (commencing
8 with Section 17620) of Part 10.5 of Division 1 of Title 1 of the
9 Education Code.

10 (c) ~~(1) If any fee or charge specified in subdivision (a) is not~~
11 ~~fully paid prior to issuance of a building permit for construction~~
12 ~~of any portion of the residential development encumbered thereby,~~
13 ~~the local agency issuing the building permit may require the~~
14 ~~property owner, or lessee if the lessee's interest appears of record,~~
15 ~~as a condition of issuance of the building permit, to execute a~~
16 ~~contract to pay the fee or charge, or applicable portion thereof,~~
17 ~~within the time specified in subdivision (a). If the fee or charge is~~
18 ~~prorated pursuant to subdivision (a), the obligation under the~~
19 ~~contract shall be similarly prorated.~~ *withhold certificate of*
20 *occupancy for the development project until such fees and charges*
21 *specified in subdivision (a) are fully paid.*

22 ~~(2) The obligation to pay the fee or charge shall inure to the~~
23 ~~benefit of, and be enforceable by, the local agency that imposed~~
24 ~~the fee or charge, regardless of whether it is a party to the contract.~~
25 ~~The contract shall contain a legal description of the property~~
26 ~~affected, shall be recorded in the office of the county recorder of~~
27 ~~the county and, from the date of recordation, shall constitute a lien~~
28 ~~for the payment of the fee or charge, which shall be enforceable~~
29 ~~against successors in interest to the property owner or lessee at the~~
30 ~~time of issuance of the building permit. The contract shall be~~
31 ~~recorded in the grantor-grantee index in the name of the public~~
32 ~~agency issuing the building permit as grantee and in the name of~~
33 ~~the property owner or lessee as grantor. The local agency shall~~
34 ~~record a release of the obligation, containing a legal description~~
35 ~~of the property, in the event the obligation is paid in full, or a partial~~
36 ~~release in the event the fee or charge is prorated pursuant to~~
37 ~~subdivision (a).~~

38 ~~(3) The contract may require the property owner or lessee to~~
39 ~~provide appropriate notification of the opening of any escrow for~~
40 ~~the sale of the property for which the building permit was issued~~

1 ~~and to provide in the escrow instructions that the fee or charge be~~
2 ~~paid to the local agency imposing the same from the sale proceeds~~
3 ~~in escrow prior to disbursing proceeds to the seller.~~

4 (d) This section applies only to fees collected by a local agency
5 to fund the construction of public improvements or facilities. It
6 does not apply to fees collected to cover the cost of code
7 enforcement or inspection services, or to other fees collected to
8 pay for the cost of enforcement of local ordinances or state law.

9 (e) “Final inspection” or “certificate of occupancy,” as used in
10 this section, have the same meaning as described in Sections 305
11 and 307 of the Uniform Building Code, International Conference
12 of Building Officials, 1985 edition.

13 (f) Methods of complying with the requirement in subdivision
14 (b) that a proposed construction schedule or plan be adopted,
15 include, but are not limited to, (1) the adoption of the capital
16 improvement plan described in Section 66002, or (2) the submittal
17 of a five-year plan for construction and rehabilitation of school
18 facilities pursuant to subdivision (c) of Section 17017.5 of the
19 Education Code.

20 (g) A local agency may defer the collection of one or more fees
21 up to the close of escrow. This subdivision shall not apply to fees
22 and charges levied pursuant to Chapter 6 (commencing with
23 Section 17620) of Part 10.5 of Division 1 of Title 1 of the
24 Education Code.

25 SEC. 4. Section 66013 of the Government Code is amended
26 to read:

27 66013. (a) Notwithstanding any other provision of law, when
28 a local agency imposes fees for water connections or sewer
29 connections, or imposes capacity charges, those fees or charges
30 shall not exceed the estimated reasonable cost of providing the
31 service for which the fee or charge is imposed, unless a question
32 regarding the amount of the fee or charge imposed in excess of
33 the estimated reasonable cost of providing the services or materials
34 is submitted to, and approved by, a popular vote of two-thirds of
35 those electors voting on the issue.

36 (b) As used in this section:

37 (1) “Sewer connection” means the connection of a structure or
38 project to a public sewer system.

1 (2) “Water connection” means the connection of a structure or
2 project to a public water system, as defined in subdivision (h) of
3 Section 116275 of the Health and Safety Code.

4 (3) “Capacity charge” means a charge for public facilities in
5 existence at the time a charge is imposed or charges for new public
6 facilities to be acquired or constructed in the future that are of
7 proportional benefit to the person or property being charged,
8 including supply or capacity contracts for rights or entitlements,
9 real property interests, and entitlements and other rights of the
10 local agency involving capital expense relating to its use of existing
11 or new public facilities. A “capacity charge” does not include a
12 commodity charge.

13 (4) “Local agency” means a local agency as defined in Section
14 66000.

15 (5) “Fee” means a fee for the physical facilities necessary to
16 make a water connection or sewer connection, including, but not
17 limited to, meters, meter boxes, and pipelines from the structure
18 or project to a water distribution line or sewer main, and the
19 estimated reasonable cost of labor and materials for installation of
20 those facilities bears a fair or reasonable relationship to the payor’s
21 burdens on, or benefits received from, the water connection or
22 sewer connection.

23 (6) “Public facilities” means public facilities as defined in
24 Section 66000.

25 (c) A local agency receiving payment of a charge as specified
26 in paragraph (3) of subdivision (b) shall deposit it in a separate
27 capital facilities fund with other charges received, and account for
28 the charges in a manner to avoid any commingling with other
29 moneys of the local agency, except for investments, and shall
30 expend those charges solely for the purposes for which the charges
31 were collected. Any interest income earned from the investment
32 of moneys in the capital facilities fund shall be deposited in that
33 fund.

34 (d) For a fund established pursuant to subdivision (c), a local
35 agency shall make available to the public, within 180 days after
36 the last day of each fiscal year, the following information for that
37 fiscal year:

38 (1) A description of the charges deposited in the fund.

39 (2) The beginning and ending balance of the fund and the
40 interest earned from investment of moneys in the fund.

1 (3) The amount of charges collected in that fiscal year.

2 (4) An identification of all of the following:

3 (A) Each public improvement on which charges were expended
4 and the amount of the expenditure for each improvement, including
5 the percentage of the total cost of the public improvement that was
6 funded with those charges if more than one source of funding was
7 used.

8 (B) Each public improvement on which charges were expended
9 that was completed during that fiscal year.

10 (C) Each public improvement that is anticipated to be undertaken
11 in the following fiscal year.

12 (5) A description of each interfund transfer or loan made from
13 the capital facilities fund. The information provided, in the case
14 of an interfund transfer, shall identify the public improvements on
15 which the transferred moneys are, or will be, expended. The
16 information, in the case of an interfund loan, shall include the date
17 on which the loan will be repaid, and the rate of interest that the
18 fund will receive on the loan.

19 (e) The information required pursuant to subdivision (d) may
20 be included in the local agency's annual financial report.

21 (f) The provisions of subdivisions (c) and (d) shall not apply to
22 any of the following:

23 (1) Moneys received to construct public facilities pursuant to a
24 contract between a local agency and a person or entity, including,
25 but not limited to, a reimbursement agreement pursuant to Section
26 66003.

27 (2) Charges that are used to pay existing debt service or which
28 are subject to a contract with a trustee for bondholders that requires
29 a different accounting of the charges, or charges that are used to
30 reimburse the local agency or to reimburse a person or entity who
31 advanced funds under a reimbursement agreement or contract for
32 facilities in existence at the time the charges are collected.

33 (3) Charges collected on or before December 31, 1998.

34 (g) Any judicial action or proceeding to attack, review, set aside,
35 void, or annul the ordinance, resolution, or motion imposing a fee
36 or capacity charge subject to this section shall be brought pursuant
37 to Section 66022.

38 (h) Fees and charges subject to this section are not subject to
39 the provisions of Chapter 5 (commencing with Section 66000),

1 ~~but~~ *except for Section 66007, and* are subject to the provisions of
2 Sections 66016, 66022, and 66023.

3 (i) Subdivisions (c) and (d) only apply to capacity charges levied
4 pursuant to this section.

5 SEC. 5. No reimbursement is required by this act pursuant to
6 Section 6 of Article XIII B of the California Constitution because
7 a local agency or school district has the authority to levy service
8 charges, fees, or assessments sufficient to pay for the program or
9 level of service mandated by this act, within the meaning of Section
10 17556 of the Government Code.

Introduced by Senator Skinner

February 15, 2024

An act to add Chapter 8 (commencing with Section 8395) to Division 4.1 of the Public Utilities Code, relating to utility service.

LEGISLATIVE COUNSEL'S DIGEST

SB 1210, as introduced, Skinner. New housing construction: electrical, gas, sewer, and water service connections: charges.

The California Constitution establishes the Public Utilities Commission, with jurisdiction over all public utilities. Existing law defines the term “public utility” for certain purposes to include, among other corporations, every gas corporation, electrical corporation, water corporation, and sewer system corporation, where the service is performed for, or the commodity is delivered to, the public or any portion thereof.

This bill would, for new housing construction, prohibit a connection, capacity, or other point of connection charge from a public utility, as defined, or a special district, as defined, for electrical, gas, sewer, or water service from exceeding 1% of the reported building permit value of that housing unit. The bill would require a public utility or special district to issue an above-described charge over a period of at least 10 years commencing on the date when the housing unit is first occupied, as specified. The bill would require a public utility to publicly report on its internet website the amount of any charge issued each year pursuant the above-described provision by the housing unit’s address. The bill would also require a public utility to prioritize the processing, approval, scheduling, and completion of electrical, gas, sewer, and water service connections to new housing construction over the processing, approval, scheduling, and completion of service connections to all other

structures. To the extent that this bill imposes new requirements on certain special districts, 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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 8 (commencing with Section 8395) is
2 added to Division 4.1 of the Public Utilities Code, to read:

3
4 CHAPTER 8. ELECTRICAL, GAS, SEWER, AND WATER CHARGES
5 FOR NEW HOUSING CONSTRUCTION
6

7 8395. As used in this chapter, the following definitions apply:
8 (a) "Public utility" means any of the following where the service
9 is performed for, or the commodity is delivered to, the public or
10 any portion thereof:

- 11 (1) An electrical corporation, as defined in Section 218.
12 (2) A gas corporation, as defined in Section 222.
13 (3) A sewer system corporation, as defined in Section 230.6.
14 (4) A water corporation, as defined in Section 241.

15 (b) "Special district" means an agency of the state formed for
16 the performance of governmental or proprietary functions within
17 limited geographic boundaries.

18 8396. (a) For new housing construction, a connection, capacity,
19 or other point of connection charge from a public utility or special
20 district for electrical, gas, sewer, or water service shall not exceed
21 1 percent of the reported building permit value of that housing
22 unit.

23 (b) A public utility or special district shall issue any charge
24 described in subdivision (a) over a period of at least 10 years
25 commencing on the date when the housing unit is first occupied.

1 If the housing unit is sold before the expiration of that period, the
2 subsequent owners of the housing unit shall continue paying the
3 charge over the remainder of that period.

4 8397. A public utility shall prioritize the processing, approval,
5 scheduling, and completion of electrical, gas, sewer, and water
6 service connections to new housing construction over the
7 processing, approval, scheduling, and completion of service
8 connections to all other structures.

9 8398. For new housing construction, a public utility shall
10 publicly report on its internet website the amount of any charge
11 issued each year pursuant to Section 8396 by the housing unit's
12 address.

13 SEC. 2. If the Commission on State Mandates determines that
14 this act contains costs mandated by the state, reimbursement to
15 local agencies and school districts for those costs shall be made
16 pursuant to Part 7 (commencing with Section 17500) of Division
17 4 of Title 2 of the Government Code.

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