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**SB-1202 Land use: development fees.** (2017-2018)

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**Senate Bill No. 1202**

**CHAPTER 357**

An act to amend Section 66023 of the Government Code, relating to land use.

[ Approved by Governor September 11, 2018. Filed with Secretary of State September 11, 2018. ]

**LEGISLATIVE COUNSEL'S DIGEST**

SB 1202, Stone. Land use: development fees.

The Mitigation Fee Act, if a local agency requires the payment of certain fees to provide for an improvement to serve a development project in connection with the approval of that development project, requires the local agency receiving the fee to deposit the fee with the other fees imposed for the improvement in a separate capital facilities account or fund and to expend those fees solely for the purpose for which the fees were collected. The act requires the local agency, within 180 days after the last day of each fiscal year, to make public specified information for the fiscal year about each separate account or fund established, including the amount of fees collected and an identification of each public improvement on which fees were expended.

The act authorizes a local agency to retain an independent auditor if requested to conduct an audit to determine whether a fee or charge is reasonable, provided that the person who requests the audit deposits with the local agency the amount of the local agency's reasonable estimate of the cost of that audit. At the conclusion of the audit, the act requires the local agency to reimburse unused sums, if any, but requires the person to pay the local agency the excess of the actual cost of the audit over the sum which was deposited.

This bill would prohibit a local agency that does not comply with the requirement to disclose information regarding separate capital facilities funds or accounts following the establishment, increase, or imposition of a certain fee but requires the payment of that fee in connection with a development project for 3 consecutive years, from requiring a deposit for an independent audit, as described above, and instead require the local agency to pay the cost of the audit.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

**SECTION 1.** Section 66023 of the Government Code is amended to read:

**66023.** (a) Any person may request an audit in order to determine whether any fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of any product, public facility, as defined in Section 66000, or service provided by the local agency. If a person makes that request, the legislative body of the local agency may retain an independent auditor to conduct an audit to determine whether the fee or charge is reasonable, but is not required to conduct the audit if an audit has been performed for the same fee within the previous 12 months.

(b) To the extent that the audit determines that the amount of any fee or charge does not meet the requirements of this section, the local agency shall adjust the fee accordingly. This subdivision does not apply to a fee authorized pursuant to Section 17620 of the Education Code, or Sections 65995.5 and 65995.7.

(c) Except as otherwise provided in subdivision (h), the local agency shall retain an independent auditor to conduct an audit only if the person who requests the audit deposits with the local agency the amount of the local agency's reasonable estimate of the cost of the independent audit. At the conclusion of the audit, the local agency shall reimburse unused sums, if any, or the requesting person shall pay the local agency the excess of the actual cost of the audit over the sum which was deposited.

(d) Any audit conducted by an independent auditor to determine whether a fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of providing the product or service shall conform to generally accepted auditing standards.

(e) The procedures specified in this section shall be alternative and in addition to those specified in Section 54985.

(f) The Legislature finds and declares that oversight of local agency fees is a matter of statewide interest and concern. It is, therefore, the intent of the Legislature that this chapter shall supersede all conflicting local laws and shall apply in charter cities.

(g) This section shall not be construed as granting any additional authority to any local agency to levy any fee or charge which is not otherwise authorized by another provision of law, nor shall its provisions be construed as granting authority to any local agency to levy a new fee or charge when other provisions of law specifically prohibit the levy of a fee or charge.

(h) Notwithstanding subdivision (c), if a local agency does not comply with subdivision (b) of Section 66006 following the establishment, increase, or imposition of a fee, but requires payment of that fee in connection with the approval of a development project for three consecutive years, the local agency shall not require a deposit for an independent audit requested pursuant to this section and shall pay the cost of the audit.