DEPARTMENT: Board of Supervisors  BY: Garry R. Parker  PHONE: 966-3222

RECOMMENDED ACTION AND JUSTIFICATION: (Policy Item: Yes ___ No x )
Resolution Opposing SB 1066 (Campbell) and Authorizing Chairman to Request Opposition from State Legislators. The bill would prohibit local agencies from levying, collecting or imposing any monetary charge or exaction, including excise taxes, for general revenue purposes on development projects.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
CSAC opposes the bill and opines that the bill places severe new restrictions on the ability of local agencies to charge certain fees and taxes upon property which is part of a development project or construction activity. Public Works Director, Mike Edwards, requests that the board consider opposing the bill since it could affect the County's ability to impose traffic impact fees for road funding offsets.

New development could be severely restricted by this bill since Boards of Supervisors will be reluctant to approve developments that cannot be levied for costs imposed on County services.

Attached is a memorandum from Mike Edwards, Public Works Director, and the CSAC article taken from the Legislative Bulletin.

LIST ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
If the Board does not oppose the bill, the County could be negatively affected by its passage.

SPECIAL INSTRUCTIONS:
List the attachments and number the pages consecutively:
Memo dated 9/19/95 with CSAC referenced article.
Copy of SB 1066

ADMINISTRATIVE OFFICER'S RECOMMENDATION:
This item on agenda as:
- Recommended
- Not Recommended
- For Policy Determination
- Submitted with Comment
- Returned for Further Action
Comment: 
A.O. Initials: 

10-17SB  Action Form Revised 5/92
October 25, 1995

The Honorable Dick Monteith
California State Senate
State Capitol, Room #2048
Sacramento, California  94248-0001

The Honorable George House
California State Assembly Member
State Capitol, Room #4017
Sacramento, California  94248-0001

Re: Mariposa County Resolution Number 95-450 in Support of SB 1066 (Campbell)

Dear Colleagues:

Please be advised that on October 17, 1995, the Mariposa County Board of Supervisors took action opposing Senate Bill Number 1066 (Campbell), an act amending sections 66000, 66001, and 66006, and adding sections 65995.3, 66008, and 66009 to the California Government Code (development fees, school facilities). A copy of Resolution Number 95-450 is enclosed for your review and consideration.

We respectfully urge your assistance in opposing SB 1066, as it infringes on the authority of counties to apply fees and/or taxes on development and construction activities, which will have a devastating effect on new development since all the costs of any new development will have to be absorbed within the County's existing revenues.

If you would like to discuss this matter further or need additional information, please feel free to contact our office at (209) 966-3222. Your sincere consideration and assistance in opposing this proposed legislation is greatly appreciated.

Respectfully submitted,

GARRY R. PARKER
Chairman of the Board of Supervisors

GRP/jb

Enclosure

cc: California State Association of Counties
Regional Council of Rural Counties
Senator T. Campbell, California State Senate
Dan Wall, Legislative Representative (CSAC)
Dave Oppenheim, Legislative Analyst (CSAC)
Mike Edwards, Public Works Director (Mariposa County)
6. Developer Fees/Taxes
(SB 1066 -- Oppose)

CSAC is strongly opposed to SB 1066, by Senator Tom Campbell, which would place severe new restrictions on the ability of local agencies to charge certain fees and taxes upon property which is part of a development project or construction activity.

SB 1066 would specifically prohibit a local agency from levying, collecting or imposing any monetary charge or exaction, including excise taxes, for general revenue purposes on development projects. In addition, SB 1066 would appear to require that any tax which is to be imposed on a development project would have to meet the same findings - i.e. establish a nexus between the tax and the construction activity -- as is currently required for the imposition of a fee. This represents an unacceptable obstacle to counties' current authority to levy taxes.

CSAC is concerned that SB 1066 unfairly infringes on the authority of counties to impose certain taxes and fees on development and construction activities. In addition, placing additional restrictions on the ability of counties to charge reasonable fees for development activities will only serve to slow the rate at which new development projects are approved by county boards of supervisors. If revenues generated from a proposed new development project do not fully cover the cost of additional countywide services, boards of supervisors will be reluctant to approve any new development.

SB 1066 was approved by the Assembly Appropriations Committee last week and has been sent to the Assembly Floor. CSAC strongly encourages all counties to contact members of their Assembly delegation and request that they vote "NO" on this extremely intrusive legislation. (CSAC Staff: Dan Wall and David Oppenheim)
AMENDED IN ASSEMBLY SEPTEMBER 7, 1995
AMENDED IN ASSEMBLY SEPTEMBER 1, 1995
AMENDED IN ASSEMBLY AUGUST 29, 1995
AMENDED IN ASSEMBLY AUGUST 21, 1995
AMENDED IN ASSEMBLY JULY 19, 1995
AMENDED IN SENATE JUNE 19, 1995
AMENDED IN SENATE MAY 30, 1995
AMENDED IN SENATE MAY 23, 1995
AMENDED IN SENATE MAY 16, 1995
AMENDED IN SENATE APRIL 27, 1995
AMENDED IN SENATE APRIL 6, 1995

SENATE BILL

No. 1066

Introduced by Senator Campbell

February 24, 1995

An act to amend Sections 66000, 66001, and 66006 of, and to add Sections 65995.3, 66008, and 66009 to, the Government Code, relating to development.

LEGISLATIVE COUNSEL'S DIGEST
(1) Existing law authorizes the legislative body of certain local agencies to impose limited fees or other charges against
land use legislation, from denying approval of a project on the basis of the adequacy of school facilities.

This bill would instead prohibit a fee, charge, dedication, monetary payment, or other obligation from being imposed by any state or local agency to mitigate the impact of school facility needs relating to certain legislative or administrative acts.

(3) Existing law authorizes a local agency to charge a variety of fees in connection with the approval of a development project, as defined. Under existing law, a fee does not include a tax or special assessment for these purposes. Existing law prescribes the responsibilities of the local agency with respect to the fees collected, including requiring the local agency to make certain findings with respect to any portion of a fee that remains unexpended or uncommitted for 5 or more years after the deposit of the fee, and to refund unexpended or uncommitted fees under certain circumstances. Existing law also provides that if a local agency requires the payment of a fee imposed to provide for an improvement to be constructed to serve a development project, as specified, the local agency shall deposit the fee in a separate capital facilities account, and shall provide to the public specified balance and expenditure information.

This bill would create a state-mandated local program by revising the responsibilities of the local agency with respect to the collection of fees for development projects. The bill would restrict application of the above provision to unexpended funds, and would expand the definition of “fee” to include specified taxes.

The bill would require the local agency, at the time it imposes a fee, to identify the public facility or facilities that the fee will be used to finance. The bill would require a local agency to prepare a report relative to each capital improvement account or fund, and would specify the contents of the report. The bill would prohibit a local agency from levying or imposing a fee, as defined, for general revenue purposes.

(4) 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

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 these statutory provisions.


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

SECTION 1. Section 65995.3 is added to the Government Code, to read:

65995.3. (a) (1) It is the intent of the Legislature in enacting this act to promote growth of low-income residential development, as defined in subdivision (d).

(2) It is the intent of the Legislature in enacting this act to statutorily reverse the decisions reached by the California Courts of Appeal in Mira Development Corp. v. City of San Diego, 205 Cal. App. 3d 1201 (1988), William S. Hart Union High School District v. Regional Planning Commission of the County of Los Angeles, 226 Cal. App. 3d 1612 (1991), and Murrieta Valley Unified School District v. County of Riverside, 226 Cal. App. 3d 1212 (1991), only with respect to low-income residential development, as defined in subdivision (d). It is not the intent of the Legislature in enacting this act to affect these decisions in any other manner.

(3) It is the intent of the Legislature in enacting this act to limit, for the purpose of funding the construction or reconstruction of school facilities, the amount of fees, charges, dedications, and other requirements, to the amount authorized by this section to be imposed, directly or indirectly, on the development or construction of real property for low-income residential development, as defined in subdivision (d).

(b) Except for a fee, charge, dedication, or other requirement authorized by Section 53080, or Chapter 4.7 (commencing with Section 65970), no fee, charge, dedication, or other requirement, with the exception of physical requirements, including rules on density, phasing, and easements, that is reasonably necessary to the physical location or effective operation of the school, shall be levied or imposed by any state or local agency, or made a condition of any legislative or administrative act of any state or local agency, involving the planning, use, or development of real property for low-income residential development, or any change in governmental organization or reorganization, as defined in Section 56021 or 56073, for low-income residential development, as defined in subdivision (d), in order to mitigate the impact of school facility needs.

(c) In no event shall the amount of any fees, charges, dedications, or other requirements authorized by Section 53080, or Chapter 4.7 (commencing with Section 65970), or both, for low-income residential development, as defined in subdivision (d), exceed the following:

(1) (A) For construction permits obtained not later than three years after the effective date of Senate Bill 1066 of the 1995–96 Regular Session, within tentative maps or parcel maps approved prior to that date, one dollar and seventy-two cents ($1.72) per square foot assessable space. Thereafter, the amount of any fee, charges, dedications, or other requirements shall not exceed the amount specified in paragraph (2).

(B) For purposes of this section, “assessable space” shall mean all of the square footage within the perimeter of a residential structure, not including any carport, walkway, garage, overhang, patio, enclosed patio, detached accessory structure, or similar area. The amount of the square footage within the perimeter of a residential structure shall be calculated by the building department of the city or county issuing the building permit, in accordance with the standard practice of that city or county in calculating structural perimeters.
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39 law or chapter.
38 Law or chapter.
37 Senate Bill No. 1066 of the 1995-96 Regular Session, this
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The acquisition, rehabilitation, development, or any combination of these actions is
promulgated by section 43 of the Internal Revenue Code as determined by section 43 of
the Internal Revenue Code. This section shall not affect any combination disposed
of under section 43 of the Internal Revenue Code as determined by section 43 of
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section shall not affect any existing school facilities
mitigation ordinances or resolutions.
SEC. 2. Section 66000 of the Government Code is
amended to read:
66000. As used in this chapter:
(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
special assessment or tax, unless the tax is a monetary
charge or exaction on development or construction
activity as defined in subdivision (b) of Section 66009,
which 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.
"Fee" 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 which provide for the redevelopment of
property in furtherance of, or for the benefit of, a
development project for which a redevelopment plan has
been adopted pursuant to the Community
Redevelopment Law (Part 1 (commencing with Section
(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, or other political
subdivision of the state.
(d) "Public facilities" includes public improvements,
public services, and community amenities.
SEC. 3. Section 66001 of the Government Code is
amended to read:
66001. (a) In any action establishing, increasing, or
adopting a fee as a condition of approval of a
development project by a local agency on or after January
1, 1989, the local agency shall do all of the following:
(1) Identify the purpose of the fee.
(2) Identify the use to which the fee is to be put. If the
use is financing public facilities, the facilities shall be
identified. That identification may, but need not, be
made by reference to a capital improvement plan as
specified in Section 65403 or 66002, may be made in
applicable general or specific plan requirements, or may
be made in other public documents that identify the
public facilities for which the fee is charged.
(3) Determine how there is a reasonable relationship
between the fee's use and the type of development
project on which the fee is imposed.
(4) Determine how there is a reasonable relationship
between the need for the public facility and the type of
development project on which the fee is imposed.
(b) In any action imposing a fee as a condition of
approval of a development project by a local agency on
or after January 1, 1989, the local agency shall determine
how there is a reasonable relationship between the
amount of the fee and the cost of the public facility or
portion of the public facility attributable to the
development on which the fee is imposed.
(c) Upon receipt of a fee subject to this section,
the local agency shall deposit, invest, account for, and expend
the fees pursuant to Section 66006.
(d) The local agency shall make findings once each
fiscal year with respect to any portion of the fee
remaining unexpended in its account five or more years
after deposit of the fee to identify the purpose to which
the fee is to be put and to demonstrate a reasonable
relationship between the fee and the purpose for which
it was charged. The findings required by this subdivision
need only be made for moneys in the possession of the
local agency and need not be made with respect to letters
of credit, bonds, or other instruments taken to secure
payment of the fee at a future date.


facilities that the fee will be used to finance.

development projects, it shall dedicate the public facility or a
chapter and which serves the project on which the fee

34 other purposes for which fees are collected subject to the
33 determine that the fees collected shall be allocated for some
32 fees within the area of the development project may
31 pursuant to section 6006 and posted in the promulgation
30 public hearing. Notice of which has been published,
29 injunctions resulting from subdivision (e) exceeded
28 (f) If the administrative costs of promulgating
27 the
26 of the fees by which these revenues are to be
25 determination by the governing body of the local agency.
24 consistent with the intent of this section. The
23 importance situation of fees, or by any other means
22 unincorporated revenue by direct payment, by providing a
21 subdivision (c) a local agency may refund the
20 which need cannot be demonstrated pursuant to
19 portion of the fee, and any interest earned thereon, for
18 project or projects on a prorated basis the unincorporated
17 which over a period of time the development
16 considered, or small refund to the then current recipient, the
15 with which the consultation of the public facilities would be
14 local agency shall have authority to implement the
13 to public facilities or public facilities remain unincorporated, the
12 all public facilities are subject to Paragraph (g) of
11 of the Government Code is
10 SB 1066
9 SB 1066
8 SB 1066
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66008. A local agency shall not levy, collect, or impose a fee, as defined in Section 66000 for general revenue purposes.

SEC. 6. Section 66009 is added to the Government Code, to read:

66009. (a) Any monetary charge or monetary exaction on development or construction activity levied or imposed by a local agency, including any denominated as a tax, privilege, excise, license, condition, transaction, approval, or occupancy, shall not exceed the amount that may be collected pursuant to subdivision (b) of Section 66001. This limit shall apply whether or not the charge or exaction is levied or imposed in connection with approval of a development project for the purpose of defraying all or a portion of the costs of public facilities related to the development project.

(b) “Development or construction activity” is any action by which a person or local agency advances a development project to conclusion. Development or construction activity includes the following:

(1) The approval of a development project.

(2) Any action relating to the adoption or amendment of a general or specific plan.

(3) The adoption or amendment of a zoning code or map.

(4) The processing or approval of a conditional use permit, use permit, or variance.

(5) The processing or approval of the application for a development agreement, but not the collection of fees that are the subject of a development agreement.

(6) The processing, approval, or certification of any environmental document.

(7) The processing or approval of a parcel, tentative, vesting tentative, or final subdivision map, including any agreement, improvement plan, or other document required by local subdivision ordinances.

(8) The processing, approval, or inspection, relative to foundation, grading, or building permits and certificates of occupancy.

(c) This section shall not apply to any of the following:

(1) A fee subject to Sections 66000 to 66008, inclusive, that is not a monetary charge or exaction on construction or development activity, or to Chapter 6 (commencing with Section 66010), Chapter 8 (commencing with
takes effect pursuant to the California Constitution.

shall become operative on the same date that the act
Code, unless otherwise specified, the provisions of this act
Section 1780 of the Government
the State Mandates Claims Fund.

sections (§1,000,000) reimbursement shall be made from
one million
the statewide cost of the Government Code. If the
Section 17500 of the Code, or Division 4 of the
Government Code, if the reimbursement to local agencies and school
determined that the act contains costs mandated by the
Government Code, if the reimbursement on State Mandates

Section 2

division for the purpose of funding the
Division

Section 2

reimbursement Act of 1992, Chapter 27

Community Facilities Act of 1992, Chapter 25

Revenue and Taxation Code.

Section 2

B, Part 10 (Chapter 69)

Communication with Section 36000, of Division 2 of the
Communication with Section 36050, of Division 16, Part 67
Communication with Section 36010, of Part 55
Communication with Section 36010 (Part 4, Chapter 69), Part 55
Communication with Section 36010, of Part 67 (Chapter 69), Part 55
Communication with Section 36020 (Part 4, Chapter 69), Part 55
Communication with Section 36030 (Part 4, Chapter 69), Part 55
Communication with Section 36040, of Chapter 9 (Chapter 69), Part 55

A tax or fee imposed by a local agency pursuant to
applied to another business classification.

and that is no greater than the highest measure of tax
that is actually applied to and paid by another business,
measure included in the business license tax ordinance
the tax is gross receipts, payroll, or another unit of
property development or construction, the measure of
(2) A business license tax on a business engaged in
Section 66060 (Part 4, Chapter 69), Part 55

SB 1066