March 26, 2018

The Honorable Mike McGuire, Chair
Senate Governance and Finance Committee
State Capitol, Room 408
Sacramento, CA 95821

RE: SB 831 (Wieckowski): Accessory dwelling units – OPPOSE

Dear Senator McGuire:

The undersigned public agency organizations (coalition) have taken an “oppose” position on SB 831, which prohibits local governments from assessing fees for the construction of accessory dwelling units (ADUs).

The coalition in opposition to SB 831 represents hundreds of public agencies providing vital public services to millions of Californians. These services are funded in part by fees associated with residential construction. Public agencies are constitutionally obligated to assess these fees in a proportional manner consistent with Proposition 218 and Proposition 26. Eliminating the existing fee authority for one specific type of residential construction, as proposed in SB 831, would negatively impact our agencies’ ability to provide important public services and will expose public agencies to significant legal liability.

SB 831, as introduced, would eliminate the ability for public agencies to charge impact fees, connection fees, capacity charges, or any other fees for the new construction of an accessory dwelling unit. This proposal would require a public water or wastewater agency to provide service to a new residential unit, but preclude the agency from assessing connection or capacity charges that account for the proportional burden the new unit imposes on the public infrastructure. Public agency budgets are a zero-sum game: subsidizing the fees that would otherwise be required of an ADU necessarily means that the burden to pay those costs falls on other ratepayers. This type of subsidization, where an ADU does not pay for its proportionate burden on the system, and that burden is shouldered by other users in the system, is prohibited by the California Constitution.

Additionally, the bill exempts ADUs from all manner of impact and mitigation fees, regardless of the assessment of the actual impacts that additional residential space will have on the community, and the actual services associated with the property. The increase in residential space created by ADUs will place additional burdens on public agency systems, services, and facilities, including but not limited to parks, schools, transportation, water, and wastewater systems. Eliminating local agencies’ ability to charge appropriate and necessary fees to operate and maintain these impacted facilities and services is unfair and fiscally imprudent, and in some cases could put local agencies in legal jeopardy due to their obligation to comply with Propositions 218 and 26.
Public agencies have been actively revising their local ordinances for the past two years to come into compliance with the new statutes adopted under SB 1069 in 2016, and under SB 229 in 2017. Many of the members of this coalition worked with your office on those bills to develop a reasonable approach to encouraging new ADU development. The new laws restructuring and restricting fees for accessory dwelling units established under these bills have been in effect for less than three months. Accordingly, there has not been sufficient time to evaluate the implications of the new fee restrictions for ADU construction in this short time span. For this reason, the coalition believes this legislation is premature and will create significant uncertainty for both public agencies and residents. Additionally, AB 879 (Frazier), enacted in 2017, requires the Department of Housing and Community Development (HCD) to complete a study to evaluate fees imposed on new developments by June 30, 2019. If enacted, SB 831 would preclude the completion of the study. We feel that it would be a more prudent approach to allow the structure set forth in SB 1069 and SB 229 to be enacted and the impacts evaluated, and to review the results of the AB 879 HCD study, prior to making further changes to fee authority under this section.

For these reasons, our coalition must respectfully oppose SB 831. Thank you for your consideration of our comments.

Sincerely,

Jessica Gauger
California Association of Sanitation Agencies

Adam Quinonez
Association of California Water Agencies

Rylan Gervase
California Special Districts Association

CC: Senate Transportation and Housing Committee
    Senate Governance and Finance Committee