

**ASSEMBLY BILL**

**No. 2048**

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**Introduced by Assembly Member Torlakson**

February 17, 2010

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An act to amend Sections 17620 and 17621 of the Education Code, relating to school facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 2048, as introduced, Torlakson. School facilities.

(1) Existing law authorizes the governing board of any school district to levy a fee, charge, dedication, or other requirement against any construction within the boundaries of the district, for the purpose of funding the construction or reconstruction of school facilities, as specified. Existing law authorizes the appropriate city or county, pursuant to a contractual agreement with the governing board, to administer these provisions, as specified, on behalf of the school district.

This bill would additionally authorize agencies to administer these provisions on behalf of a school district.

(2) Existing law requires any resolution adopting or increasing a fee, charge, dedication, or other requirement, for application to residential, commercial, or industrial development, to be enacted in accordance with specified provisions of law. Existing law requires a school district, upon adopting or increasing a fee, charge, dedication, or other requirement pursuant to these provisions, to transmit a copy of the resolution to each city and each county in which the district is situated, accompanied by relevant supporting documentation.

This bill would require a school district to transmit these documents to a city, county, or agency that the school district has authorized to

collect a fee on its behalf, thereby imposing a state-mandated local program.

(3) 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 these statutory provisions.

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 17620 of the Education Code is amended  
2 to read:

3 17620. (a) (1) The governing board of any school district is  
4 authorized to levy a fee, charge, dedication, or other requirement  
5 against any construction within the boundaries of the district, for  
6 the purpose of funding the construction or reconstruction of school  
7 facilities, subject to any limitations set forth in Chapter 4.9  
8 (commencing with Section 65995) of Division 1 of Title 7 of the  
9 Government Code. This fee, charge, dedication, or other  
10 requirement may be applied to construction only as follows:

11 (A) To new commercial and industrial construction. The  
12 chargeable covered and enclosed space of commercial or industrial  
13 construction shall not be deemed to include the square footage of  
14 any structure existing on the site of that construction as of the date  
15 the first building permit is issued for any portion of that  
16 construction.

17 (B) To new residential construction.

18 (C) (i) Except as otherwise provided in clause (ii), to other  
19 residential construction, only if the resulting increase in assessable  
20 space exceeds 500 square feet. The calculation of the “resulting  
21 increase in assessable space” for this purpose shall reflect any  
22 decrease in assessable space in the same residential structure that  
23 also results from that construction. Where authorized under this  
24 paragraph, the fee, charge, dedication, or other requirement is  
25 applicable to the total resulting increase in assessable space.

1 (ii) This subparagraph does not authorize the imposition of a  
2 levy, charge, dedication, or other requirement against residential  
3 construction, regardless of the resulting increase in assessable  
4 space, if that construction qualifies for the exclusion set forth in  
5 subdivision (a) of Section 74.3 of the Revenue and Taxation Code.

6 (D) To location, installation, or occupancy of manufactured  
7 homes and mobilehomes, as defined in Section 17625.

8 (2) For purposes of this section, “construction” and “assessable  
9 space” have the same meaning as defined in Section 65995 of the  
10 Government Code.

11 (3) For purposes of this section and Section 65995 *of the*  
12 *Government Code*, “construction or reconstruction of school  
13 facilities” does not include any item of expenditure for any of the  
14 following:

15 (A) The regular maintenance or routine repair of school  
16 buildings and facilities.

17 (B) The inspection, sampling, analysis, encapsulation, or  
18 removal of asbestos-containing materials, except where incidental  
19 to school facilities construction or reconstruction for which the  
20 expenditure of fees or other consideration collected pursuant to  
21 this section is not prohibited.

22 (C) The purposes of deferred maintenance described in Section  
23 17582.

24 (4) The appropriate city~~—or~~, county, *or agency* may be  
25 authorized, pursuant to contractual agreement with the governing  
26 board, to collect and otherwise administer, on behalf of the school  
27 district, any fee, charge, dedication, or other requirement levied  
28 under this subdivision. In the event of any agreement authorizing  
29 a city~~—or~~, county, *or agency* to collect that fee, charge, dedication,  
30 or other requirement in any area within the school district, the  
31 certification requirement set forth in subdivision (b) or (c), as  
32 appropriate, is deemed to be complied with as to any residential  
33 construction within that area upon receipt by that city~~—or~~, county,  
34 *or agency* of payment of the fee, charge, dedication, or other  
35 requirement imposed on that residential construction.

36 (5) Fees or other consideration collected pursuant to this section  
37 may be expended by a school district for the costs of performing  
38 any study or otherwise making the findings and determinations  
39 required under subdivisions (a), (b), and (d) of Section 66001 of  
40 the Government Code, or in preparing the school facilities needs

1 analysis described in Section 65995.6 of the Government Code.  
2 In addition, an amount not to exceed, in any fiscal year, 3 percent  
3 of the fees collected in that fiscal year pursuant to this section may  
4 be retained by the school district, city, ~~or~~ county, *or agency* as  
5 appropriate, for reimbursement of the administrative costs incurred  
6 by that entity in collecting the fees. When any city ~~or~~, county, *or*  
7 *agency* is entitled, under an agreement as described in paragraph  
8 (4), to compensation in excess of that amount, the payment of that  
9 excess compensation shall be made from other revenue sources  
10 available to the school district. For purposes of this paragraph,  
11 “fees collected in that fiscal year pursuant to this section” does not  
12 include any amount in addition to the amounts specified in  
13 paragraphs (1) and (2) of subdivision (b) of Section 65995 of the  
14 Government Code.

15 (b) A city or county, whether general law or chartered, ~~may~~ *or*  
16 *agency shall* not issue a building permit for any construction absent  
17 certification by the appropriate school district that any fee, charge,  
18 dedication, or other requirement levied by the governing board of  
19 that school district has been complied with, or of the district’s  
20 determination that the fee, charge, dedication, or other requirement  
21 does not apply to the construction. The school district shall issue  
22 the certification immediately upon compliance with the fee, charge,  
23 dedication, or other requirement.

24 (c) If, pursuant to subdivision (c) of Section 17621, the  
25 governing board specifies that the fee, charge, dedication, or other  
26 requirement levied under subdivision (a) is subject to the restriction  
27 set forth in subdivision (a) of Section 66007 of the Government  
28 Code, the restriction set forth in subdivision (b) of this section  
29 does not apply. In that event, however, a city or county, whether  
30 general law or chartered, ~~may~~ *or agency shall* not conduct a final  
31 inspection or issue a certificate of occupancy, whichever is later,  
32 for any residential construction absent certification by the  
33 appropriate school district of compliance by that residential  
34 construction with any fee, charge, dedication, or other requirement  
35 levied by the governing board of that school district pursuant to  
36 subdivision (a).

37 (d) Neither subdivision (b) nor (c) shall apply to a city ~~or~~,  
38 county, *or agency* as to any fee, charge, dedication, or other  
39 requirement as described in subdivision (a), or as to any increase  
40 in that fee, charge, dedication, or other requirement, except upon

1 the receipt by that city ~~or~~, county, *or agency* of notification of the  
2 adoption of, or increase in, the fee or other requirement in  
3 accordance with subdivision (c) of Section 17621.

4 SEC. 2. Section 17621 of the Education Code is amended to  
5 read:

6 17621. (a) Any resolution adopting or increasing a fee, charge,  
7 dedication, or other requirement pursuant to Section 17620, for  
8 application to residential, commercial, or industrial development,  
9 shall be enacted in accordance with Chapter 5 (commencing with  
10 Section 66000) of Division 1 of Title 7 of the Government Code.  
11 The adoption, increase, or imposition of any fee, charge, dedication,  
12 or other requirement pursuant to Section 17620 shall not be subject  
13 to the California Environmental Quality Act, Division 13  
14 (commencing with Section 21000) of the Public Resources Code.  
15 The adoption of, or increase in, the fee, charge, dedication, or other  
16 requirement shall be effective no sooner than 60 days following  
17 the final action on that adoption or increase, except as specified  
18 in subdivision (b).

19 (b) Without following the procedure otherwise required for  
20 adopting or increasing a fee, charge, dedication, or other  
21 requirement, the governing board of a school district may adopt  
22 an urgency measure as an interim authorization for a fee, charge,  
23 dedication, or other requirement, or increase in a fee, charge,  
24 dedication, or other requirement, where necessary to respond to a  
25 current and immediate threat to the public health, welfare, or safety.  
26 The interim authorization shall require a four-fifths vote of the  
27 governing board for adoption, and shall contain findings describing  
28 the current and immediate threat to the public health, welfare, or  
29 safety. The interim authorization shall have no force or effect on  
30 and after a date 30 days after its adoption. After notice and hearing  
31 in accordance with subdivision (a), the governing board, upon a  
32 four-fifths vote of the board, may extend the interim authority for  
33 an additional 30 days. Not more than two extensions may be  
34 granted.

35 (c) Upon adopting or increasing a fee, charge, dedication, or  
36 other requirement pursuant to subdivision (a) or (b), the school  
37 district shall transmit a copy of the resolution to each city and each  
38 county in which the district is situated, accompanied by all relevant  
39 supporting documentation and a map clearly indicating the  
40 boundaries of the area subject to the fee, charge, dedication, or

1 other requirement. *The school district also shall transmit the*  
2 *documents required by this subdivision to a city, county, or agency*  
3 *that the school district has authorized to collect a fee pursuant to*  
4 *paragraph (4) of subdivision (a) of Section 17620.* The school  
5 district governing board shall specify, pursuant to that notification,  
6 whether or not the collection of the fee or other charge is subject  
7 to the restriction set forth in subdivision (a) of Section 66007 of  
8 the Government Code.

9 (d) Any party on whom a fee, charge, dedication, or other  
10 requirement has been directly imposed pursuant to Section 17620  
11 may protest the establishment or imposition of that fee, charge,  
12 dedication, or other requirement in accordance with Section 66020  
13 of the Government Code, except that the procedures set forth in  
14 Section 66021 of the Government Code are deemed to apply, for  
15 this purpose, to commercial and industrial development, as well  
16 as to residential development.

17 (e) In the case of any commercial or industrial development,  
18 the following procedures shall also apply:

19 (1) The school district governing board shall, in the course of  
20 making the findings required under subdivisions (a) and (b) of  
21 Section 66001 of the Government Code, do all of the following:

22 (A) Make the findings on either an individual project basis or  
23 on the basis of categories of commercial or industrial development.  
24 Those categories may include, but are not limited to, the following  
25 uses: office, retail, transportation, communications and utilities,  
26 light industrial, heavy industrial, research and development, and  
27 warehouse.

28 (B) Conduct a study to determine the impact of the increased  
29 number of employees anticipated to result from the commercial  
30 or industrial development upon the cost of providing school  
31 facilities within the district. For the purpose of making that  
32 determination, the study shall utilize employee generation estimates  
33 that are calculated on either an individual project or categorical  
34 basis, in accordance with subparagraph (A). Those employee  
35 generation estimates shall be based upon commercial and industrial  
36 factors within the district or upon, in whole or in part, the  
37 applicable employee generation estimates set forth in the January  
38 1990 edition of “San Diego Traffic Generators,” a report of the  
39 San Diego Association of Governments.

1 (C) The governing board shall take into account the results of  
2 that study in making the findings described in this subdivision.

3 (2) In addition to any other requirement imposed by law, in the  
4 case of any development project against which a fee, charge,  
5 dedication, or other requirement is to be imposed ~~pursuant to~~  
6 ~~Section 53080~~ on the basis of a category of commercial or  
7 industrial development, as described in paragraph (1), the  
8 governing board shall provide a process that permits the party  
9 against whom the fee, charge, dedication, or other requirement is  
10 to be imposed the opportunity for a hearing to appeal that  
11 imposition. The grounds for that appeal include, but are not limited  
12 to, the inaccuracy of including the project within the category  
13 pursuant to which the fee, charge, dedication, or other requirement  
14 is to be imposed, or that the employee generation or pupil  
15 generation factors utilized under the applicable category are  
16 inaccurate as applied to the project. The party appealing the  
17 imposition of the fee, charge, dedication, or other requirement  
18 shall bear the burden of establishing that the fee, charge, dedication,  
19 or other requirement is improper.

20 SEC. 3. If the Commission on State Mandates determines that  
21 this act contains costs mandated by the state, reimbursement to  
22 local agencies and school districts for those costs shall be made  
23 pursuant to Part 7 (commencing with Section 17500) of Division  
24 4 of Title 2 of the Government Code.