

AMENDED IN ASSEMBLY MARCH 24, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2048

Introduced by Assembly Member Torlakson

February 17, 2010

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2048, as amended, Torlakson. School facilities.

Existing law prohibits a city or county from issuing a building permit for any construction absent certification from the appropriate school district that any fee, charge, dedication, or other requirement levied by the governing board of that school district has been complied with, as specified.

This bill would additionally prohibit the Office of Statewide Health Planning and Development from issuing a building permit for any construction absent certification from the appropriate school district that any fee, charge, dedication, or other requirement levied by the governing board of that school district has been complied with, as specified.

~~(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-no*.

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

1 the first building permit is issued for any portion of that
2 construction.

3 (B) To new residential construction.

4 (C) (i) Except as otherwise provided in clause (ii), to other
5 residential construction, only if the resulting increase in assessable
6 space exceeds 500 square feet. The calculation of the “resulting
7 increase in assessable space” for this purpose shall reflect any
8 decrease in assessable space in the same residential structure that
9 also results from that construction. Where authorized under this
10 paragraph, the fee, charge, dedication, or other requirement is
11 applicable to the total resulting increase in assessable space.

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

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

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

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

26 (A) The regular maintenance or routine repair of school
27 buildings and facilities.

28 (B) The inspection, sampling, analysis, encapsulation, or
29 removal of asbestos-containing materials, except where incidental
30 to school facilities construction or reconstruction for which the
31 expenditure of fees or other consideration collected pursuant to
32 this section is not prohibited.

33 (C) The purposes of deferred maintenance described in Section
34 17582.

35 (4) The appropriate city or county may be authorized, pursuant
36 to contractual agreement with the governing board, to collect and
37 otherwise administer, on behalf of the school district, any fee,
38 charge, dedication, or other requirement levied under this
39 subdivision. In the event of any agreement authorizing a city or
40 county to collect that fee, charge, dedication, or other requirement

1 in any area within the school district, the certification requirement
2 set forth in subdivision (b) or (c), as appropriate, is deemed to be
3 complied with as to any residential construction within that area
4 upon receipt by that city or county of payment of the fee, charge,
5 dedication, or other requirement imposed on that residential
6 construction.

7 (5) Fees or other consideration collected pursuant to this section
8 may be expended by a school district for the costs of performing
9 any study or otherwise making the findings and determinations
10 required under subdivisions (a), (b), and (d) of Section 66001 of
11 the Government Code, or in preparing the school facilities needs
12 analysis described in Section 65995.6 of the Government Code.
13 In addition, an amount not to exceed, in any fiscal year, 3 percent
14 of the fees collected in that fiscal year pursuant to this section may
15 be retained by the school district, city, or county, as appropriate,
16 for reimbursement of the administrative costs incurred by that
17 entity in collecting the fees. When any city or county is entitled,
18 under an agreement as described in paragraph (4), to compensation
19 in excess of that amount, the payment of that excess compensation
20 shall be made from other revenue sources available to the school
21 district. For purposes of this paragraph, “fees collected in that
22 fiscal year pursuant to this section” does not include any amount
23 in addition to the amounts specified in paragraphs (1) and (2) of
24 subdivision (b) of Section 65995 of the Government Code.

25 (b) A city or county, whether general law or chartered, ~~may or~~
26 *the Office of Statewide Health Planning and Development shall*
27 not issue a building permit for any construction absent certification
28 by the appropriate school district that any fee, charge, dedication,
29 or other requirement levied by the governing board of that school
30 district has been complied with, or of the district’s determination
31 that the fee, charge, dedication, or other requirement does not apply
32 to the construction. The school district shall issue the certification
33 immediately upon compliance with the fee, charge, dedication, or
34 other requirement.

35 (c) If, pursuant to subdivision (c) of Section 17621, the
36 governing board specifies that the fee, charge, dedication, or other
37 requirement levied under subdivision (a) is subject to the restriction
38 set forth in subdivision (a) of Section 66007 of the Government
39 Code, the restriction set forth in subdivision (b) of this section
40 does not apply. In that event, however, a city or county, whether

1 general law or chartered, ~~may~~ *shall* not conduct a final inspection
2 or issue a certificate of occupancy, whichever is later, for any
3 residential construction absent certification by the appropriate
4 school district of compliance by that residential construction with
5 any fee, charge, dedication, or other requirement levied by the
6 governing board of that school district pursuant to subdivision (a).

7 (d) Neither subdivision (b) nor (c) shall apply to a city ~~or~~,
8 county, *or the Office of Statewide Health Planning Development*
9 as to any fee, charge, dedication, or other requirement as described
10 in subdivision (a), or as to any increase in that fee, charge,
11 dedication, or other requirement, except upon the receipt by that
12 city ~~or~~, county, *or the Office of Statewide Health Planning*
13 *Development* of notification of the adoption of, or increase in, the
14 fee or other requirement in accordance with subdivision (c) of
15 Section 17621.

16 SECTION 1. ~~Section 17620 of the Education Code is amended~~
17 ~~to read:~~

18 ~~17620. (a) (1) The governing board of any school district is~~
19 ~~authorized to levy a fee, charge, dedication, or other requirement~~
20 ~~against any construction within the boundaries of the district, for~~
21 ~~the purpose of funding the construction or reconstruction of school~~
22 ~~facilities, subject to any limitations set forth in Chapter 4.9~~
23 ~~(commencing with Section 65995) of Division 1 of Title 7 of the~~
24 ~~Government Code. This fee, charge, dedication, or other~~
25 ~~requirement may be applied to construction only as follows:~~

26 ~~(A) To new commercial and industrial construction. The~~
27 ~~chargeable covered and enclosed space of commercial or industrial~~
28 ~~construction shall not be deemed to include the square footage of~~
29 ~~any structure existing on the site of that construction as of the date~~
30 ~~the first building permit is issued for any portion of that~~
31 ~~construction.~~

32 ~~(B) To new residential construction.~~

33 ~~(C) (i) Except as otherwise provided in clause (ii), to other~~
34 ~~residential construction, only if the resulting increase in assessable~~
35 ~~space exceeds 500 square feet. The calculation of the “resulting~~
36 ~~increase in assessable space” for this purpose shall reflect any~~
37 ~~decrease in assessable space in the same residential structure that~~
38 ~~also results from that construction. Where authorized under this~~
39 ~~paragraph, the fee, charge, dedication, or other requirement is~~
40 ~~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, county, or agency may be authorized,~~
25 ~~pursuant to contractual agreement with the governing board, to~~
26 ~~collect and otherwise administer, on behalf of the school district,~~
27 ~~any fee, charge, dedication, or other requirement levied under this~~
28 ~~subdivision. In the event of any agreement authorizing a city,~~
29 ~~county, or agency to collect that fee, charge, dedication, or other~~
30 ~~requirement in any area within the school district, the certification~~
31 ~~requirement set forth in subdivision (b) or (c), as appropriate, is~~
32 ~~deemed to be complied with as to any residential construction~~
33 ~~within that area upon receipt by that city, county, or agency of~~
34 ~~payment of the fee, charge, dedication, or other requirement~~
35 ~~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, county, or agency as
5 appropriate, for reimbursement of the administrative costs incurred
6 by that entity in collecting the fees. When any city, 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, or agency
16 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, 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, county,
38 or agency as to any fee, charge, dedication, or other requirement
39 as described in subdivision (a), or as to any increase in that fee,
40 charge, dedication, or other requirement, except upon the receipt

1 by that city, county, or agency of notification of the adoption of,
2 or increase in, the fee or other requirement in accordance with
3 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 on the basis of~~
6 ~~a category of commercial or industrial development, as described~~
7 ~~in paragraph (1), the governing board shall provide a process that~~
8 ~~permits the party against whom the fee, charge, dedication, or other~~
9 ~~requirement is to be imposed the opportunity for a hearing to appeal~~
10 ~~that imposition. The grounds for that appeal include, but are not~~
11 ~~limited to, the inaccuracy of including the project within the~~
12 ~~category pursuant to which the fee, charge, dedication, or other~~
13 ~~requirement is to be imposed, or that the employee generation or~~
14 ~~pupil generation factors utilized under the applicable category are~~
15 ~~inaccurate as applied to the project. The party appealing the~~
16 ~~imposition of the fee, charge, dedication, or other requirement~~
17 ~~shall bear the burden of establishing that the fee, charge, dedication,~~
18 ~~or other requirement is improper.~~
19 ~~SEC. 3. If the Commission on State Mandates determines that~~
20 ~~this act contains costs mandated by the state, reimbursement to~~
21 ~~local agencies and school districts for those costs shall be made~~
22 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
23 ~~4 of Title 2 of the Government Code.~~