

AMENDED IN SENATE JUNE 21, 2010

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 ~~Section 17620~~ *Sections 17620 and 17621* of the Education Code, and to amend *Section 65995* of the Government 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, *and would make conforming changes.*

Existing law requires the building department of the city or county issuing the building permit to make the determination of the chargeable covered and enclosed space within the perimeter of a commercial or industrial structure, in accordance with the building standards of that city or county.

This bill would, for any commercial or industrial construction required to be approved by the Office of Statewide Health Planning and Development, require the project architect of record to make the determination of the chargeable covered and enclosed space for these purposes, in accordance with the building standards of the office.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: 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
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.

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

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

3 (2) For purposes of this section, “construction” and “assessable
4 space” have the same ~~meaning~~ *meanings* as defined in Section
5 65995 of the Government Code.

6 (3) For purposes of this section and Section 65995 of the
7 Government Code, “construction or reconstruction of school
8 facilities” does not include any item of expenditure for any of the
9 following:

10 (A) The regular maintenance or routine repair of school
11 buildings and facilities.

12 (B) The inspection, sampling, analysis, encapsulation, or
13 removal of asbestos-containing materials, except where incidental
14 to school facilities construction or reconstruction for which the
15 expenditure of fees or other consideration collected pursuant to
16 this section is not prohibited.

17 (C) The purposes of deferred maintenance described in Section
18 17582.

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

32 (5) Fees or other consideration collected pursuant to this section
33 may be expended by a school district for the costs of performing
34 any study or otherwise making the findings and determinations
35 required under subdivisions (a), (b), and (d) of Section 66001 of
36 the Government Code, or in preparing the school facilities needs
37 analysis described in Section 65995.6 of the Government Code.
38 In addition, an amount not to exceed, in any fiscal year, 3 percent
39 of the fees collected in that fiscal year pursuant to this section may
40 be retained by the school district, city, or county, *or the Office of*

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

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

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

34 (d) Neither subdivision (b) nor (c) shall apply to a city, county,
35 or the Office of Statewide Health Planning *and* Development as
36 to any fee, charge, dedication, or other requirement as described
37 in subdivision (a), or as to any increase in that fee, charge,
38 dedication, or other requirement, except upon the receipt by that
39 city, county, or the Office of Statewide Health Planning *and*
40 Development of notification of the adoption of, or increase in, the

1 fee or other requirement in accordance with subdivision (c) of
2 Section 17621.

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

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

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

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

1 or other requirement. The school district governing board shall
2 specify, pursuant to that notification, whether or not the collection
3 of the fee or other charge is subject to the restriction set forth in
4 subdivision (a) of Section 66007 of the Government Code.

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

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

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

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

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

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

38 (2) In addition to any other requirement imposed by law, in the
39 case of any development project against which a fee, charge,
40 dedication, or other requirement is to be imposed pursuant to

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

15 *SEC. 3. Section 65995 of the Government Code is amended to*
16 *read:*

17 65995. (a) Except for a fee, charge, dedication, or other
18 requirement authorized under Section 17620 of the Education
19 Code, or pursuant to Chapter 4.7 (commencing with Section
20 65970), a fee, charge, dedication, or other requirement for the
21 construction or reconstruction of school facilities may not be levied
22 or imposed in connection with, or made a condition of, any
23 legislative or adjudicative act, or both, by any state or local agency
24 involving, but not limited to, the planning, use, or development of
25 real property, or any change in governmental organization or
26 reorganization, as defined in Section 56021 or 56073.

27 (b) Except as provided in Sections 65995.5 and 65995.7, the
28 amount of any fees, charges, dedications, or other requirements
29 authorized under Section 17620 of the Education Code, or pursuant
30 to Chapter 4.7 (commencing with Section 65970), or both, may
31 not exceed the following:

32 (1) In the case of residential construction, including the location,
33 installation, or occupancy of manufactured homes and
34 mobilehomes, one dollar and ninety-three cents (\$1.93) per square
35 foot of assessable space. "Assessable space," for this purpose,
36 means all of the square footage within the perimeter of a residential
37 structure, not including any carport, walkway, garage, overhang,
38 patio, enclosed patio, detached accessory structure, or similar area.
39 The amount of the square footage within the perimeter of a
40 residential structure shall be calculated by the building department

1 of the city or county issuing the building permit, in accordance
2 with the standard practice of that city or county in calculating
3 structural perimeters. “Manufactured home” and “mobilehome”
4 have the meanings set forth in subdivision (f) of Section 17625 of
5 the Education Code. The application of any fee, charge, dedication,
6 or other form of requirement to the location, installation, or
7 occupancy of manufactured homes and mobilehomes is subject to
8 Section 17625 of the Education Code.

9 (2) In the case of any commercial or industrial construction,
10 thirty-one cents (\$0.31) per square foot of chargeable covered and
11 enclosed space. “Chargeable covered and enclosed space,” for this
12 purpose, means the covered and enclosed space determined to be
13 within the perimeter of a commercial or industrial structure, not
14 including any storage areas incidental to the principal use of the
15 construction, garage, parking structure, unenclosed walkway, or
16 utility or disposal area. The determination of the chargeable
17 covered and enclosed space within the perimeter of a commercial
18 or industrial structure shall be made by the building department
19 of the city or county issuing the building permit, in accordance
20 with the building standards of that city or county. *For any*
21 *commercial or industrial construction required to be approved by*
22 *the Office of Statewide Health Planning and Development, the*
23 *determination of the chargeable covered and enclosed space within*
24 *the perimeter of a commercial or industrial structure shall be made*
25 *by the project architect of record submitting the project plans and*
26 *specifications to the Office of Statewide Health Planning and*
27 *Development, in accordance with the building standards of the*
28 *office.*

29 (3) The amount of the limits set forth in paragraphs (1) and (2)
30 shall be increased in 2000, and every two years thereafter,
31 according to the adjustment for inflation set forth in the statewide
32 cost index for class B construction, as determined by the State
33 Allocation Board at its January meeting, which increase shall be
34 effective as of the date of that meeting.

35 (c) (1) Notwithstanding any other provision of law, during the
36 term of a contract entered into between a subdivider or builder and
37 a school district, city, county, or city and county, whether general
38 law or chartered, on or before January 1, 1987, that requires the
39 payment of a fee, charge, or dedication for the construction of
40 school facilities as a condition to the approval of residential

1 construction, neither Section 17620 of the Education Code nor this
2 chapter applies to that residential construction.

3 (2) Notwithstanding any other provision of state or local law,
4 construction that is subject to a contract entered into between a
5 person and a school district, city, county, or city and county,
6 whether general law or chartered, after January 1, 1987, and before
7 the operative date of the act that adds paragraph (3) that requires
8 the payment of a fee, charge, or dedication for the construction of
9 school facilities as a condition to the approval of construction, may
10 not be affected by the act that adds paragraph (3).

11 (3) Notwithstanding any other provision of state or local law,
12 until January 1, 2000, any construction not subject to a contract
13 as described in paragraph (2) that is carried out on real property
14 for which residential development was made subject to a condition
15 relating to school facilities imposed by a state or local agency in
16 connection with a legislative act approving or authorizing the
17 residential development of that property after January 1, 1987, and
18 before the operative date of the act adding this paragraph, shall be
19 required to comply with that condition.

20 Notwithstanding any other provision of state or local law, on
21 and after January 1, 2000, any construction not subject to a contract
22 as described in paragraph (2) that is carried out on real property
23 for which residential development was made subject to a condition
24 relating to school facilities imposed by a state or local agency in
25 connection with a legislative act approving or authorizing the
26 residential development of that property after January 1, 1987, and
27 before the operative date of the act adding this paragraph, may not
28 be subject to a fee, charge, dedication, or other requirement
29 exceeding the amount specified in paragraphs (1) and (2) of
30 subdivision (b), or, if a district has increased the limit specified in
31 paragraph (1) of subdivision (b) pursuant to either Section 65995.5
32 or 65995.7, that increased amount.

33 (4) Any construction that is not subject to a contract as described
34 in paragraph (2), or to paragraph (3), and that satisfies both of the
35 requirements of this paragraph, may not be subject to any increased
36 fee, charge, dedication, or other requirement authorized by the act
37 that adds this paragraph beyond the amount specified in paragraphs
38 (1) and (2) of subdivision (b).

1 (A) A tentative map, development permit, or conditional use
2 permit was approved before the operative date of the act that
3 amends this subdivision.

4 (B) A building permit is issued before January 1, 2000.

5 (d) For purposes of this chapter, “construction” means new
6 construction and reconstruction of existing building for residential,
7 commercial, or industrial. “Residential, commercial, or industrial
8 construction” does not include any facility used exclusively for
9 religious purposes that is thereby exempt from property taxation
10 under the laws of this state, any facility used exclusively as a
11 private full-time day school as described in Section 48222 of the
12 Education Code, or any facility that is owned and occupied by one
13 or more agencies of federal, state, or local government. In addition,
14 “commercial or industrial construction” includes, but is not limited
15 to, any hotel, inn, motel, tourist home, or other lodging for which
16 the maximum term of occupancy for guests does not exceed 30
17 days, but does not include any residential hotel, as defined in
18 paragraph (1) of subdivision (b) of Section 50519 of the Health
19 and Safety Code.

20 (e) The Legislature finds and declares that the financing of
21 school facilities and the mitigation of the impacts of land use
22 approvals, whether legislative or adjudicative, or both, on the need
23 for school facilities are matters of statewide concern. For this
24 reason, the Legislature hereby occupies the subject matter of
25 requirements related to school facilities levied or imposed in
26 connection with, or made a condition of, any land use approval,
27 whether legislative or adjudicative act, or both, and the mitigation
28 of the impacts of land use approvals, whether legislative or
29 adjudicative, or both, on the need for school facilities, to the
30 exclusion of all other measures, financial or nonfinancial, on the
31 subjects. For purposes of this subdivision, “school facilities” means
32 any school-related consideration relating to a school district’s
33 ability to accommodate enrollment.

34 (f) Nothing in this section shall be interpreted to limit or prohibit
35 the use of Chapter 2.5 (commencing with Section 53311) of
36 Division 2 of Title 5 to finance the construction or reconstruction
37 of school facilities. However, the use of Chapter 2.5 (commencing
38 with Section 53311) of Division 2 of Title 5 may not be required
39 as a condition of approval of any legislative or adjudicative act,

1 or both, if the purpose of the community facilities district is to
2 finance school facilities.

3 (g) (1) The refusal of a person to agree to undertake or cause
4 to be undertaken an act relating to Chapter 2.5 (commencing with
5 Section 53311) of Division 2 of Title 5, including formation of,
6 or annexation to, a community facilities district, voting to levy a
7 special tax, or authorizing another to vote to levy a special tax,
8 may not be a factor when considering the approval of a legislative
9 or adjudicative act, or both, involving, but not limited to, the
10 planning, use, or development of real property, or any change in
11 governmental organization or reorganization, as defined in Section
12 56021 or 56073, if the purpose of the community facilities district
13 is to finance school facilities.

14 (2) If a person voluntarily elects to establish, or annex into, a
15 community facilities district and levy a special tax approved by
16 landowner vote to finance school facilities, the present value of
17 the special tax specified in the resolution of formation shall be
18 calculated as an amount per square foot of assessable space and
19 that amount shall be a credit against any applicable fee, charge,
20 dedication, or other requirement for the construction or
21 reconstruction of school facilities. For purposes of this paragraph,
22 the calculation of present value shall use the interest rate paid on
23 the United States Treasury's 30-year bond on the date of the
24 formation of, or annexation to, the community facilities district,
25 as the capitalization rate.

26 (3) For purposes of subdivisions (f), (h), and (i), and this
27 subdivision, "school facilities" means any school-related
28 consideration relating to a school district's ability to accommodate
29 enrollment.

30 (h) The payment or satisfaction of a fee, charge, or other
31 requirement levied or imposed pursuant to Section 17620 of the
32 Education Code in the amount specified in Section 65995 and, if
33 applicable, any amounts specified in Section 65995.5 or 65995.7
34 are hereby deemed to be full and complete mitigation of the
35 impacts of any legislative or adjudicative act, or both, involving,
36 but not limited to, the planning, use, or development of real
37 property, or any change in governmental organization or
38 reorganization as defined in Section 56021 or 56073, on the
39 provision of adequate school facilities.

1 (i) A state or local agency may not deny or refuse to approve a
2 legislative or adjudicative act, or both, involving, but not limited
3 to, the planning, use, or development of real property, or any
4 change in governmental organization or reorganization as defined
5 in Section 56021 or 56073 on the basis of a person's refusal to
6 provide school facilities mitigation that exceeds the amounts
7 authorized pursuant to this section or pursuant to Section 65995.5
8 or 65995.7, as applicable.

O