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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 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~~ *under the jurisdiction of* the Office of Statewide Health Planning and Development, require the ~~project~~ architect of record to ~~make the determination of~~ *determine* the chargeable covered and enclosed space ~~for these purposes, in accordance with the building standards of the office~~ *within the perimeter of a commercial or industrial structure.*

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.

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

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

1 the Government Code, or in preparing the school facilities needs
2 analysis described in Section 65995.6 of the Government Code.
3 In addition, an amount not to exceed, in any fiscal year, 3 percent
4 of the fees collected in that fiscal year pursuant to this section may
5 be retained by the school district, city, or county, ~~or the Office of~~
6 ~~Statewide Health Planning and Development, as appropriate, for~~
7 *as appropriate, for* reimbursement of the administrative costs
8 incurred by that entity in collecting the fees. When any city or
9 county, ~~or the Office of Statewide Health Planning and~~
10 ~~Development~~ is entitled, under an agreement as described in
11 paragraph (4), to compensation in excess of that amount, the
12 payment of that excess compensation shall be made from other
13 revenue sources available to the school district. For purposes of
14 this paragraph, “fees collected in that fiscal year pursuant to this
15 section” does not include any amount in addition to the amounts
16 specified in paragraphs (1) and (2) of subdivision (b) of Section
17 65995 of the Government Code.

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

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

1 (d) Neither subdivision (b) nor (c) shall apply to a city, county,
2 or the Office of Statewide Health Planning and Development as
3 to any fee, charge, dedication, or other requirement as described
4 in subdivision (a), or as to any increase in that fee, charge,
5 dedication, or other requirement, except upon the receipt by that
6 city, county, or the Office of Statewide Health Planning and
7 Development of notification of the adoption of, or increase in, the
8 fee or other requirement in accordance with subdivision (c) of
9 Section 17621.

10 SEC. 2. Section 17621 of the Education Code is amended to
11 read:

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

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

1 (c) Upon adopting or increasing a fee, charge, dedication, or
2 other requirement pursuant to subdivision (a) or (b), the school
3 district shall transmit a copy of the resolution to each city and each
4 county in which the district is situated, ~~and to the Office of~~
5 ~~Statewide Health Planning and Development~~, accompanied by all
6 relevant supporting documentation and a map clearly indicating
7 the boundaries of the area subject to the fee, charge, dedication,
8 or other requirement. The school district governing board shall
9 specify, pursuant to that notification, whether or not the collection
10 of the fee or other charge is subject to the restriction set forth in
11 subdivision (a) of Section 66007 of the Government Code.

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

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

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

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

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

1 1990 edition of “San Diego Traffic Generators,” a report of the
2 San Diego Association of Governments.

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

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

22 SEC. 3. Section 65995 of the Government Code is amended
23 to read:

24 65995. (a) Except for a fee, charge, dedication, or other
25 requirement authorized under Section 17620 of the Education
26 Code, or pursuant to Chapter 4.7 (commencing with Section
27 65970), a fee, charge, dedication, or other requirement for the
28 construction or reconstruction of school facilities may not be levied
29 or imposed in connection with, or made a condition of, any
30 legislative or adjudicative act, or both, by any state or local agency
31 involving, but not limited to, the planning, use, or development of
32 real property, or any change in governmental organization or
33 reorganization, as defined in Section 56021 or 56073.

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

39 (1) In the case of residential construction, including the location,
40 installation, or occupancy of manufactured homes and

1 mobilehomes, one dollar and ninety-three cents (\$1.93) per square
2 foot of assessable space. “Assessable space,” for this purpose,
3 means all of the square footage within the perimeter of a residential
4 structure, not including any carport, walkway, garage, overhang,
5 patio, enclosed patio, detached accessory structure, or similar area.
6 The amount of the square footage within the perimeter of a
7 residential structure shall be calculated by the building department
8 of the city or county issuing the building permit, in accordance
9 with the standard practice of that city or county in calculating
10 structural perimeters. “Manufactured home” and “mobilehome”
11 have the meanings set forth in subdivision (f) of Section 17625 of
12 the Education Code. The application of any fee, charge, dedication,
13 or other form of requirement to the location, installation, or
14 occupancy of manufactured homes and mobilehomes is subject to
15 Section 17625 of the Education Code.

16 (2) In the case of any commercial or industrial construction,
17 thirty-one cents (\$0.31) per square foot of chargeable covered and
18 enclosed space. “Chargeable covered and enclosed space,” for this
19 purpose, means the covered and enclosed space determined to be
20 within the perimeter of a commercial or industrial structure, not
21 including any storage areas incidental to the principal use of the
22 construction, garage, parking structure, unenclosed walkway, or
23 utility or disposal area. The determination of the chargeable
24 covered and enclosed space within the perimeter of a commercial
25 or industrial structure shall be made by the building department
26 of the city or county issuing the building permit, in accordance
27 with the building standards of that city or county. For ~~any~~
28 ~~commercial or industrial construction required to be approved by~~
29 ~~the Office of Statewide Health Planning and Development, the~~
30 ~~determination of the chargeable covered and enclosed space within~~
31 ~~the perimeter of a commercial or industrial structure shall be made~~
32 ~~by the project architect of record submitting the project plans and~~
33 ~~specifications to the Office of Statewide Health Planning and~~
34 ~~Development, in accordance with the building standards of the~~
35 ~~office; the determination of chargeable fees to be paid to the~~
36 ~~appropriate school district in connection with any commercial or~~
37 ~~industrial construction under the jurisdiction of the Office of~~
38 ~~Statewide Health Planning and Development, the architect of~~
39 ~~record shall determine the chargeable covered and enclosed space~~
40 *within the perimeter of a commercial or industrial structure.*

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

7 (c) (1) Notwithstanding any other provision of law, during the
8 term of a contract entered into between a subdivider or builder and
9 a school district, city, county, or city and county, whether general
10 law or chartered, on or before January 1, 1987, that requires the
11 payment of a fee, charge, or dedication for the construction of
12 school facilities as a condition to the approval of residential
13 construction, neither Section 17620 of the Education Code nor this
14 chapter applies to that residential construction.

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

23 (3) Notwithstanding any other provision of state or local law,
24 until January 1, 2000, any construction not subject to a contract
25 as described in paragraph (2) that is carried out on real property
26 for which residential development was made subject to a condition
27 relating to school facilities imposed by a state or local agency in
28 connection with a legislative act approving or authorizing the
29 residential development of that property after January 1, 1987, and
30 before the operative date of the act adding this paragraph, shall be
31 required to comply with that condition.

32 Notwithstanding any other provision of state or local law, on
33 and after January 1, 2000, any construction not subject to a contract
34 as described in paragraph (2) that is carried out on real property
35 for which residential development was made subject to a condition
36 relating to school facilities imposed by a state or local agency in
37 connection with a legislative act approving or authorizing the
38 residential development of that property after January 1, 1987, and
39 before the operative date of the act adding this paragraph, may not
40 be subject to a fee, charge, dedication, or other requirement

1 exceeding the amount specified in paragraphs (1) and (2) of
2 subdivision (b), or, if a district has increased the limit specified in
3 paragraph (1) of subdivision (b) pursuant to either Section 65995.5
4 or 65995.7, that increased amount.

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

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

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

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

30 (e) The Legislature finds and declares that the financing of
31 school facilities and the mitigation of the impacts of land use
32 approvals, whether legislative or adjudicative, or both, on the need
33 for school facilities are matters of statewide concern. For this
34 reason, the Legislature hereby occupies the subject matter of
35 requirements related to school facilities levied or imposed in
36 connection with, or made a condition of, any land use approval,
37 whether legislative or adjudicative act, or both, and the mitigation
38 of the impacts of land use approvals, whether legislative or
39 adjudicative, or both, on the need for school facilities, to the
40 exclusion of all other measures, financial or nonfinancial, on the

1 subjects. For purposes of this subdivision, “school facilities” means
2 any school-related consideration relating to a school district’s
3 ability to accommodate enrollment.

4 (f) Nothing in this section shall be interpreted to limit or prohibit
5 the use of Chapter 2.5 (commencing with Section 53311) of
6 Division 2 of Title 5 to finance the construction or reconstruction
7 of school facilities. However, the use of Chapter 2.5 (commencing
8 with Section 53311) of Division 2 of Title 5 may not be required
9 as a condition of approval of any legislative or adjudicative act,
10 or both, if the purpose of the community facilities district is to
11 finance school facilities.

12 (g) (1) The refusal of a person to agree to undertake or cause
13 to be undertaken an act relating to Chapter 2.5 (commencing with
14 Section 53311) of Division 2 of Title 5, including formation of,
15 or annexation to, a community facilities district, voting to levy a
16 special tax, or authorizing another to vote to levy a special tax,
17 may not be a factor when considering the approval of a legislative
18 or adjudicative act, or both, involving, but not limited to, the
19 planning, use, or development of real property, or any change in
20 governmental organization or reorganization, as defined in Section
21 56021 or 56073, if the purpose of the community facilities district
22 is to finance school facilities.

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

35 (3) For purposes of subdivisions (f), (h), and (i), and this
36 subdivision, “school facilities” means any school-related
37 consideration relating to a school district’s ability to accommodate
38 enrollment.

39 (h) The payment or satisfaction of a fee, charge, or other
40 requirement levied or imposed pursuant to Section 17620 of the

1 Education Code in the amount specified in Section 65995 and, if
2 applicable, any amounts specified in Section 65995.5 or 65995.7
3 are hereby deemed to be full and complete mitigation of the
4 impacts of any legislative or adjudicative act, or both, involving,
5 but not limited to, the planning, use, or development of real
6 property, or any change in governmental organization or
7 reorganization as defined in Section 56021 or 56073, on the
8 provision of adequate school facilities.

9 (i) A state or local agency may not deny or refuse to approve a
10 legislative or adjudicative act, or both, involving, but not limited
11 to, the planning, use, or development of real property, or any
12 change in governmental organization or reorganization as defined
13 in Section 56021 or 56073 on the basis of a person's refusal to
14 provide school facilities mitigation that exceeds the amounts
15 authorized pursuant to this section or pursuant to Section 65995.5
16 or 65995.7, as applicable.