

INCREASING SCHOOL FACILITIES FEES

INTRODUCTION

The law which sets the limits on Level 1 school facilities fees also provides that the “caps” are increased biannually (in even numbered years) by the adjustment for inflation in the statewide cost index for Class B construction adopted by the State Allocation Board (SAB) at its January meeting. State law also provides, however, that certain steps must be taken by school districts before they levy and collect fees at these higher levels. These steps include giving notice to the public before increasing fees at a regularly scheduled board meeting and reviewing the need for school facilities fees to ensure that they are legally entitled to collect fees at the higher levels.

The first part of this attachment will discuss those actions that must be taken before increasing school facilities fees. The second part will discuss in some detail how to determine the need for school facilities fees and how to prepare a “Superintendent’s Report” which documents and supports a determination that higher school facilities fees are necessary and appropriate.

I. WHAT MUST BE DONE TO INCREASE FEES?

Before the board takes action on increasing fees, the following preliminary actions must be taken:

A. If the district is currently sharing statutory fees with another district(s), the current fee allocation arrangements should be reviewed to determine if revision is needed. (Education Code Section 17623 provides for mandatory arbitration if two districts sharing territory cannot agree on these arrangements. This section also requires that each district send a copy of their agreement to the State Allocation Board.)

B. A Superintendent's Report (or other “justification” document) must be prepared which documents the district's continuing need for school facilities fees and justifies a fee increase. For many districts, it will only be necessary to update the prior Superintendent's Report, noting increased costs (as evidenced by the SAB's adjustment for inflation in the statewide cost index for Class B construction) and any changes in district facilities. If the district has approved a School Facilities Needs Analysis (“SFNA”) in conjunction with the adoption of Level 2 and Level 3 fees, it can and usually should be included by reference and incorporated in the Superintendent's Report. A full discussion on the preparation of a Superintendent's Report is found in Section II below.

C. Consideration of the resolution must be placed on the agenda of a regularly scheduled board meeting and notices given as required by Government Code section 6062a. Included with this memorandum is a notice which has been drafted for this purpose. It can be modified as necessary.

D. At the time and place scheduled for the board meeting, the board must conduct a public hearing. If after the hearing and based on the information contained in the

Superintendent's Report and other evidence presented at the hearing, the board determines that fees should be continued and at the levels recommended, the board should adopt the resolution.

E. In adopting the resolution, an effective date for the increased fees must be set not earlier than 60 days after the board's adoption of them. As was done by many, if not most, districts in their original adoption of fees, we recommend that districts in the same city or county select a common effective date to facilitate the implementation of the higher fees.

F. After adoption of the resolution, notice must be given to the same local agencies notified originally that fees will be levied at a higher rate. This is especially important where a school district has entered into arrangements with the city or county for that agency to collect fees on its behalf.

II. PREPARATION OF THE SUPERINTENDENT'S REPORT

A. General

Education Code sections 17621 and 17622 and Government Code section 66001 require boards to make certain findings before adopting school facilities fees. These requisite findings, as well as others mandated by state law, are reflected in Attachments 2 and 3. Education Code section 17621 specifically requires that the findings related to commercial or industrial construction must be made on either an individual project basis or on the basis of categories of such construction. (For example, office; retail; transportation; communications and utilities; light industrial; heavy industrial; research and development; and warehouse.) This subsection also requires that the district conduct a study to determine the impact of the increased number of employees anticipated to result from the commercial or industrial construction upon the cost of providing school facilities within the district, utilizing employee generated estimates that are based on commercial and industrial factors within the district, calculated on either an individual project or categorical basis.

The primary purpose of the Superintendent's Report is to provide the evidence on which these requisite findings can be based. Its secondary purpose is to introduce and explain this evidence so as to give the readers (e.g., board members, members of the public, and perhaps a Superior Court judge) a clear understanding of why it is reasonable to impose school facilities fees on residential, commercial, and industrial construction in a particular school district.

Of course, the appropriate level of effort in this regard can only be determined on a district-by-district basis. Each district must review the need for school facilities fees to ensure that it is legally entitled to collect them. In some instances, it may be prudent to employ an outside consultant to assist a district (or group of districts) in data collection or report preparation. In other instances, district staff can be used for these tasks. In still other instances, it may not be appropriate to spend more than minimal district resources for this purpose. Although fees collected under Education Code section 17620 can be used to pay for this review, it is not legally mandated, nor prudent, to spend most of the money collected in trying to justify its collection.

Some factors to be considered in this regard are the following:

1. The amount of district resources reasonably available to carry out these tasks;
2. The ability and availability of district employees to prepare an adequate Superintendent's Report and the costs, both direct and indirect, of having them do it;
3. The availability of assistance from other public agencies, such as other school districts in their area which have already adopted school facilities fees;
4. The cost of employing outside consultants and other experts to assist in this effort;
5. How much residential, commercial, or industrial construction is expected in the district;
6. Whether the district is going to make its commercial/industrial findings on an individual project or categorical basis (see B "7" below); and
7. The potential for controversy or litigation on the school facilities fees issue.

If the district has approved a School Facilities Needs Analysis, it can be included by reference and incorporated in the Superintendent's Report.

B. Suggested Format

Superintendents' Reports which have been prepared by districts reflect a variety of formats, writing styles, and length. Despite these differences, each of the reports considered to be legally adequate (that is, accomplishing the report's primary purpose of providing the evidence necessary to support the board's findings) share certain common elements. In addition, some reports are more successful at accomplishing the report's secondary purpose of explaining the need for school facilities fees. Included here are some of the elements and approaches found in these reports in our suggested format as noted above. With this in mind, we suggest that the following format be used as a guide in formulating your district's Superintendent's Report:

"1. Introduction."

Although not a "legal" requirement, we suggest that each Superintendent's Report begin with an introduction which briefly explains the purpose of the report and summarizes its conclusions. Sometimes it is useful in the introduction to provide a brief history and description of the district, covering such things as when the district was formed, what its geographic boundaries are, what grade levels it serves, and other facts which can quickly give the reader a "feel" for the district. It is also useful if the introduction is written so that it can stand alone as a brief and readable statement of the district's reasons for imposing school facilities fees.

“2. District's Enrollment History and Projections.”

As suggested by its title, this section provides the district's enrollment history and projections for future enrollment. In many districts, reference can and should be made to existing documents providing this information, (e.g., the district's application for State funding). These or other documents providing the information can also be attached as an appendix to the report.

Whether the information is included in the text or merely referenced or attached, this section should summarize that information and identify any significant trends. In addition, this section (or other referenced or attached documents) should explain the source of enrollment figures and projections and provide any other information reflecting on the accuracy and dependability of those figures. (If your district is a declining enrollment district, or experiencing no or slow growth, and is planning only to reconstruct existing facilities, call legal counsel for individualized review and assistance.)

“3. Existing School Facilities”

This section should provide an “inventory” of existing school facilities, showing the district's current enrollment capacity. Because school facilities fees may be used to finance both the construction and reconstruction of school facilities, we believe that this enrollment capacity must be based on “adequate” facilities and not on all existing facilities, if some or all of them are inadequate. Therefore, factors to be considered and explained in determining the district's enrollment capacity include, but are not limited to, the number of classrooms and supporting facilities, the age and condition of those classrooms and facilities, student loading factors (including those for special education or other specialized classes), and the location of classes and facilities.

Of course, it may be best to make reference to already existing documents or other material attached as an appendix rather than trying to include all this information in the text of the report. If this is done, however, the text of this section should provide a clear picture on its own of what the district's current enrollment capacity is and show that the district does not have enough adequate facilities to meet the needs of students currently enrolled or projected in section 2.

“4. School Facilities Plan”

The purpose of this section is to show how the district intends to meet the facilities shortage demonstrated in section 2. It also serves to identify the facilities to be financed by the fees required by Government Code section 66001(a)(2). The identification of each public improvement on which fees are to be expended should be as specific as possible.

This can be done by referring to the project(s) by name if there is one (e.g., “construction of comprehensive high school #4, Bali High School”), or by describing

the project(s) in a way which identifies the nature and scope of the improvement(s) (e.g., “construction of one new classroom of approximately 1,000 square feet at Dr. Watson Elementary School”). This section should also ensure that the district retains some flexibility in the utilization of school facilities fees. For example, it could include language such as the following:

“Any fees collected pursuant to Education Code section 17620 may be used to acquire and install relocatable classrooms on an interim or permanent basis at existing school sites. The precise timing of their acquisition and location of their installation will depend on the place and pattern of actual residential, commercial, and industrial construction in the district; however, the district will acquire and install relocatable classrooms as such construction generates both the funds and necessity to do so.”

(Similar language would probably be appropriate for small districts which have not yet developed long-range plans for dealing with expected growth.)

This section should also indicate that fees may also be expended for administration and other costs associated with the adoption, collecting, and reporting of the fees as authorized by Education Code section 17620.

Section 66001 expressly permits reference to a “capital improvement plan” as specified in Government Code section 66002(c) or in other public documents that identify the public facilities for which the fee is charged. These other public documents can include each district’s application to the State Allocation Board for state funding of construction or reconstruction projects, or other short-and long-range school facilities plans developed by the district.

If reference is made to other documents or to information contained in an appendix, we suggest that the text to this section briefly summarize those referenced documents or information so as to give the reader a general description of the facilities to be constructed or reconstructed. In addition, as noted above, if these referenced documents or information do not themselves do so, the text of this section should ensure that the district retains some flexibility in the utilization of school facilities fees.

Finally, if the district intends to use school facilities fees to finance the reconstruction of existing facilities, special attention must be given in this section (and in sections 2, 6, and 7) to explain how that reconstruction is related to the construction projects in which fees will be assessed. As noted above, State law expressly permits the use of school facilities fees on reconstruction projects. However, State law also requires that the district demonstrate the connection between the construction projects on which fees are assessed and the construction funded with those fees, and more

specifically, what portion of the reconstruction is attributable to those construction projects.

“5. Cost of School Facilities”

This section should show what it would cost on a per student basis to provide the school facilities identified in section 4 above.

This can be done in a number of ways, depending on what facilities the district has identified in section 4 and on what data is available to the district. As has been stated in other contexts, the text of this section should identify the source of any information used. (Obviously, authoritative non-district sources, e.g., an architect, are desirable if the district is not using data based on its own prior building projects.) Here is a hypothetical example of how this might be done:

Assume a high school district which plans to build a new high school to ease overcrowding, and further assume that the State Allocation Board has determined that 91 square feet should be allocated for each student and that it costs \$150 per square foot to build a high school. The district could show a cost of \$13,650 per student as follows:

$$91 \text{ Ft.}^2 \text{ (per student)} \times \$150 \text{ (per Ft.}^2) = \$13,650$$

In determining the cost of reconstruction, it is especially important to include all associated costs of such projects, including, as a prime example, the cost of leasing and installing relocatable classrooms to house students during the reconstruction project. Likewise, for new construction, in districts where land values are especially high, this fact should be reflected in the per student cost.

“6. Facilities Cost Attributable to Residential Construction”

In this section, the report must first show that residential construction is expected to produce a certain number (or fractional number) of students per square foot. This figure can then be applied to the facility cost per student so as to obtain a cost per square foot for residential construction. An example:

Assume the high school district in the example in 5 above has obtained information from the planning department indicating that each residential unit in the district produces .3 students and averages 1,500 square feet. Since the district has determined that it costs \$13,650.00 per student to construct new facilities, the fiscal impact of residential construction can be calculated as follows:

$$\frac{.3 \text{ [student per dwelling]} \times \$13,650 \text{ [cost per student]}}{1,500 \text{ Ft.}^2} = \$2.73/\text{Ft.}^2$$

“7. Facility Cost Attributable to Commercial or Industrial Construction”

This section of the report must provide the evidence necessary to support the levying of fees on commercial or industrial construction. Education Code section 17621 requires each of the following of a board's findings supporting the imposition of fees on commercial or industrial construction:

a. *The findings must be made on either an individual project basis or on the basis of categories of commercial or industrial construction. Section 17621 provides the following examples of such categories: (1) office; (2) retail; (3) transportation, communications, and utilities; (4) light industrial; (5) heavy industrial; (6) research and development; and (7) warehouse;*

b. *The findings must be based on a study which does each of the following:*

(1) *Determines what impact the increased number of employees anticipated to result from the commercial or industrial construction will have upon the district's cost of providing school facilities; and*

(2) *Utilizes employee generation estimates that are based on commercial and industrial factors within the district. These estimates must be calculated on either an individual project or categorical basis, depending on how the board elects to make its findings.*

The requirements imposed by Education Code section 17621 mean that this section of the report must also deal with two related questions: First, should the district adopt fees on an individual project or categorical basis, and, second, if fees are to be adopted on a categorical basis, what categories should be used. Each of the questions can only be answered on a district-by-district basis, and perhaps only after consultation with the district's legal counsel. However, we do have some general guidance as to each of these questions.

Ever since the adoption of the language now found in Education Code section 17621, we have advised our clients that districts should, if possible, adopt fees on a categorical basis. As to what categories can and should be used, we begin by noting that Education Code section 17621 does not, by listing certain specific categories of commercial or industrial construction, mandate that each of those categories be used by a governing board. The law requires that findings as to any category of commercial or construction must be based on employee generation estimates which are based on commercial or industrial factors within the district. Thus, it can be expected that the categories used by a district will differ depending on differing economic factors in each district, as well as differing ways in which information regarding those factors is developed and maintained by other governmental agencies.

Two categories of commercial or industrial construction have been expressly identified and exempted in the board's prior resolution referred to in section 4 of Attachment 2 ("exempt agricultural building" and "temporary"). Thus, the requirement in Education Code section 17621 that fees be imposed on the basis of "categories of commercial or industrial construction" would be satisfied by using only these two categories plus the general residual category of "other commercial or industrial."

The propriety of this approach depends on a number of facts. Some of these are the same as those (discussed in I-A above) to be considered when deciding whether to employ outside assistance in preparing this report. In addition, however, the district should consider each of the following:

- (1) What categories of commercial or industrial construction are used by local city and/or county planning and building departments in making their own decisions?*
- (2) Are there any categories of commercial or industrial construction present or planned in the district which should be separately considered because of their number or uniqueness?*
- (3) If different categories are identified in 1 and 2 above, is there any practical impact on these categories considering the statutory limit placed on fees imposed on commercial or industrial construction?*
- (4) What is the relative difficulty and cost of identifying and analyzing the effect of other possible categories of commercial or industrial construction?*

As noted above, this decision should be discussed with the district's counsel. However, it is our belief that for many districts, impositions of fees on the basis of the three categories cited above, and use of a residual "other commercial or industrial," would be reasonable if the district offers the proponent of each project the opportunity for individualized review and findings, as set forth in the enclosed resolution.

Regardless of which categories are used, the study carried out by the district must "determine the impact of the increased number of employees anticipated to result from the commercial or industrial construction upon the cost of providing school facilities within the district." This study must also utilize employee generation estimates that are based on commercial and industrial factors within the district. Because facilities fees are generally imposed on a per square foot basis regardless of how many categories the district uses, the report must show for each category of commercial or industrial construction how many employees can be expected to be generated by a given number of square feet of chargeable covered and enclosed space. This number can then be used to determine the number of students expected to be generated by each square foot of chargeable covered and enclosed space so as to obtain the cost per square foot of commercial or industrial construction.

How this is done depends on a number of factors. But if, for example, the hypothetical district discussed in 5 and 6 above has shown a need of \$2.73 per square foot of residential construction and cannot collect in excess of the statutory limit of \$2.24 per square foot, it is reasonable to look to another source to make up this short fall—namely commercial/industrial construction. The following is an example of ways a district might reasonably show the impact commercial or industrial construction has on the district if the local building department has a requirement that any type of commercial or industrial construction must have one parking space for each 2,000 square feet:

Local zoning requirements require, at a minimum, one parking space per 2,000 square feet of any type of commercial or industrial construction. Since this minimum is based on a non-customer use, it can reasonably be assumed that this reflects the expected number of employees generated. Therefore, it is concluded that 2,000 square feet of commercial or industrial space equates to a minimum of one employee. In this regard, these employees will impact the district in at least one of two ways:

- a. *By buying or renting new residences, which as shown above generate insufficient school facilities fees to wholly mitigate their impact on the district; or*
- b. *By buying or renting existing but unoccupied residences not covered under the current school facility fee structure, which will generate additional students without generating any additional revenue to mitigate that effect.*

Even assuming that only one of every two employees occupy a dwelling unit in the district (two employees forming one household), then the following formula can be applied to compute the cost to the district of each square foot of commercial/industrial construction:

- a. $.3 \text{ [students per dwelling]} \div 2 \text{ [employees per dwelling]} = .15 \text{ students per employee}$
- b. $.15 \text{ [student per employee]} \times \$13,650 = \$2,047.50/\text{employee}$
- c. $\$2,047.50 \text{ per employee} \div 2000 \text{ Ft.}^2 \text{ (per employee)} = \$1.02/\text{Ft.}^2$

In addition to the above, elementary and unified districts should refer to the fact that Education Code section 48204 permits parents to enroll their children in elementary schools in the districts in which they are employed as well as where they reside (assuming passage of AB 97). This means that commercial or industrial construction may impact the district even if its employees do not reside in the district.

We also recommend that each district (individually or collectively) contact the county agricultural commissioner or county director of the cooperative extension service regarding the levying of fees on agricultural projects and that the results of this contact be reflected in the report.

“8. Recommendations”

In this section, the text should summarize the information provided above (if not done in section 1) and succinctly state the Superintendent's recommendation to the board, regardless of whether school facilities fees should be adopted and if so, at what levels. Of course, if the report does not show a need for levying fees on either one or both types of construction, the recommendation should reflect this. In this case, if the district is, or will be, seeking hardship funding under the State school building program, legal counsel should be contacted to ensure that the findings and evidence will meet the State Allocation Board's requirements for not collecting fees.