



LAW UPDATE SCHOOL BUSINESS

PHONE: (661) 636-4830 • FAX: (661) 636-4843
E-mail: sls@kern.org • www.schoolslegalservice.org

March 2022

AB 602 – NEW REQUIREMENTS FOR ADOPTING FEE JUSTIFICATION STUDY

Earlier this month we sent out an advisory notifying school districts that as part of its biennial review the State Allocation Board (SAB) adopted an inflationary increase to the “Level 1” school impact fee at the SAB’s February 23, 2022 meeting. The Level 1 fee increased to \$4.79 per square foot for residential construction and \$0.78 per square foot for commercial construction.

To collect “school impact” or “developer” fees, school districts must adopt a justification study for Level 1 fees and a School Facilities Needs Analysis (SFNA) for Level 2 fees. Some districts may have existing studies that already justify the increased rates noted above. If your district’s existing study(ies) does/do not justify the increased amount, you will need to prepare a new study(ies). As of January 1, 2022, school districts must comply with the requirements of Assembly Bill 602 (AB 602) when preparing Level 1 fee justification studies and Level 2 SFNAs.

Most of AB 602 is inapplicable to school districts. Specifically:

- AB 602 amended Government Code section 65940.1, which only applies to “city, county and special districts,” and therefore, does not apply to school districts;
- AB 602 amended Government Code section 66019, which expressly excludes fees levied by school districts pursuant to Education Code section 17620 (which authorizes Level 1 fees) and Government Code sections 65995.5 and 65995.7 (which authorize Level 2 and Level 3 fees);
- AB 602 added Health and Safety Code section 50466.5 which requires the California Department of Housing and Community Development to create an impact fee nexus study template on or before January 1, 2024 that may be used by local agencies, including school districts.

The final, and only immediately applicable part of AB 602 for school districts, is the addition of Government Code section 66016.5. This section, which became effective January 1, 2022, imposes the following new requirements on any local jurisdiction, including school districts, that adopt a fee justification study or SFNA:

1. **Before** the adoption of an associated development fee, an impact fee nexus study shall be adopted. Previously, school districts could adopt them simultaneously in the same resolution. Now, with this new rule, we suggest that a school district adopt the fee study by one resolution, and then later on the same agenda adopt the increase development fee amount by a separate resolution. This would satisfy the required sequencing.
2. When applicable, the nexus study shall identify the existing level of service for each public facility, identify the proposed new level of service, and include an ***explanation of why the new level of service is appropriate***. If the study supports an increase to the existing fee, the local agency must ***review the assumptions*** of the nexus study supporting the original fee and evaluate the amount of fees collected under the original fee.
3. A local agency must now provide ***at least a 30-day notice of the public hearing*** at which the fee study will be adopted and provide that same notice individually to any member of the public that requests such notice. School districts were previously only required to provide a 14-day notice of the public hearing where studies and fees could be adopted.
4. Level 1 justification studies must now be ***updated at least every eight (8) years***, from the period beginning on January 1, 2022. This may reduce the shelf life of some districts' existing Level 1 studies. In the past, once enacted, Level 1 fees remained effective without any express termination date. Level 2 studies require annual adoption, so this requirement does not impact Level 2 SFNAs.

We know that these changes and existing law can be difficult to navigate. You do not have to do it alone. Please do not hesitate to contact our office if you have any questions about AB 602, need further guidance in how to update, prepare and adopt your Level 1 fee justification study and/or Level 2 SFNAs or have any other questions, comments or concerns related to school impact fees.

~ Candace B. Neal

School Business Law Updates are intended to alert clients to developments in legislation, opinions of courts and administrative bodies and related matters. They are not intended as legal advice in any specific situation. Please consult legal counsel as to how the issue presented may affect your particular circumstances.