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March 2, 2022

IMMEDIATE ACTION REQUIRED

TO: All Districts Levying School Facilities Fees

FROM: Candace B. Neal

RE: Increasing Level 1 School Facilities Fees

At its February 2022 meeting, the State Allocation Board (SAB) adopted a 17.45% increase to its Class B construction index “caps” which are tied to allowable Level 1 school facilities fee increases. The maximum fee on residential development is now set at \$4.79 per square foot. The maximum fee on commercial and industrial development is now set at \$0.78 per square foot.

Attachment 1 to this memorandum discusses, in detail, the steps that must be followed before levying Level 1 fees at these higher rates. Neither Attachment 1 nor this memorandum will address the alternative fees permitted by SB 50—frequently referred to as Level 2 and Level 3 fees, which are governed by different procedures and requirements.

Attachment 2 to this memorandum is a resolution to increase statutory school facilities fees to the amounts now permitted by the SAB’s action. This resolution does the following:

1. Provides for increasing fees as authorized by Government Code Section 65995 by the increase of the State Allocation Board’s statewide cost index adopted in February.
2. Provides for review of the district’s continuing need to levy fees and to increase those fees as authorized and described in item 1 above.
3. Provides for inclusion of a Fee Justification Study other justification document(s) (see Attachment 1) as Exhibit “A” to the resolution your board adopts, and includes a page marked as Exhibit “A.”

4. Reflects the advice given by this office that most districts may levy fees on commercial or industrial projects on the basis of an undifferentiated “commercial or industrial” category. As explained in Attachment 1, this is appropriate for most districts because they have already adopted exemption procedures which expressly exempt certain specified categories of commercial or industrial construction, i.e., agricultural projects and temporary buildings. If you have determined that it is appropriate for your board to adopt fees on the basis of other specific categories, please feel free to modify paragraph 6(b) as needed or contact us for assistance.
5. Provides for allocation of fees for districts sharing territory.

Clients which have entered into agreements that are up for renewal or are adopting new agreements this year should use Version 1 of page 4. Any updated fee-sharing agreements should be attached as Exhibit “B” to the resolution. (If your district needs assistance in this regard, please contact us.) (For high school districts with separate fee levels for each component elementary district, we suggest that an Attachment 1 to Exhibit “B” list those separate rates.)

Clients which have entered into fee-sharing arrangements that are not up for renewal this year should use Version 2 of page 4. For these districts, Exhibit “B” is not necessary.

Unified or other districts not requiring fee-sharing arrangements should use Version 3 of page 4 which deletes mention of these arrangements. For these districts, Exhibit “B” is not necessary.

6. Provides for an effective date of July 1, 2022. This date reflects the past practice followed by our clients and is recommended by the Kern County Superintendent of School's School District Facilities Services Department (with the approval of the Kern County School District Facilities Services Advisory Board). Of course, the fee increase can become effective 60 days after adoption of the resolution, and any district electing to may also change the effective date. However, we do recommend that districts sharing territory, districts within the same city and/or county, and/or districts whose fees are collected by another agency seriously consider adopting a uniform effective date.

Attachment 3 is a notice which can be used to give the notice required by Government Code Section 6062a. This section requires notice to be published twice in a newspaper published weekly or more often, with at least five days between the two publications and the first publication at least ten days prior to the board meeting.

All Districts Levying School Facilities Fees
March 2, 2022
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If you have any questions or problems, or if your District's individual situation requires tailoring of a specific resolution or other documents, please feel free to contact this office for assistance.

CBN/aag

INCREASING SCHOOL FACILITIES FEES

INTRODUCTION

The law which sets the limits on Level 1 school facilities fees also provides that the “caps” are increased biennially (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 February 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.

This attachment will discuss those actions that must be taken before increasing school facilities fees. In the past we have provided detailed instructions on preparing a Superintendent’s Report justifying an increase in Level 1 School Facility Fees for districts not inclined to retain a consultant. Effective with this Memo, we are no longer recommending that districts prepare their own Level 1 fee justification studies. Recent court decisions have invalidated school fee justification studies for failing to adequately address certain complicated nuances in the law that allow such fees to be charged. We recommend that professional consultants be retained to produce a Level 1 Fee Justification Study that will support 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 Fee Justification Study (or other “justification” document) must be prepared which documents the district’s continuing need for school facilities fees and justifies a fee increase. 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 Fee Justification Study.

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 Fee Justification Study 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. THE FEE JUSTIFICATION STUDY

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.

The primary purpose of the Fee Justification Study 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.

Each district must review the need for school facilities fees to ensure that it is legally entitled to collect them. In most, if not all, instances, it would be prudent to employ an outside consultant to assist a district (or group of districts) in data collection and study preparation. Fees collected under Education Code section 17620 can be used to pay for this work.

**RESOLUTION OF THE GOVERNING BOARD
OF THE _____ SCHOOL DISTRICT
REGARDING SCHOOL FACILITIES FEES**

1. Authority and Reasons for Adopting Resolution.

a. This Board has adopted a resolution levying school facilities fees under Education Code section 17620 and has subsequently adopted resolutions increasing the amount of those fees as authorized in that section. Those resolutions are incorporated by reference into this Resolution. It is appropriate at this time to review the findings made in those resolutions to determine if it is still necessary to levy fees under Education Code section 17620 and, if so, at what levels;

b. The State Allocation Board determined the adjustment for inflation in the statewide cost index for Class B construction at its February 2022 meeting, by which fees imposed under Education Code section 17620 may be changed; and

c. This Board has conducted a public hearing on the issues referred to above at a duly noticed public meeting, during which this Board received and considered evidence on these issues, including a report from its consultant, _____, analyzing the capital facilities needs of the District and the revenue sources available. That report indicates that the District is overcrowded and that it is both necessary and appropriate to continue levying fees under the authority of section 17620 in the amounts set forth below. That report is attached as Exhibit "A" and is incorporated by reference.

2. What This Resolution Does.

This Resolution updates, amends, and confirms prior resolutions on school facilities fees and increases fees to be assessed on residential, commercial, and industrial construction projects pursuant to Education Code section 17620.

3. Levying of Fees Exempt From CEQA.

Based on its earlier Resolutions and pursuant to Education Code section 17621(a), this Board finds again that the levying of fees pursuant to Education Code section 17620 is exempt from the provisions of the California Environmental Quality Act (CEQA).

4. Exemptions From Fees.

a. This Board recognizes that various categories of residential, commercial, or industrial construction as well as individual construction projects are or will be exempted from fees imposed under Education Code section 17620 by such statutory provisions as Education Code sections 17621, et seq., Government Code sections 50076, 65995, et seq., 66000, et seq., and judicial decisions.

b. In compliance with statutory and decisional law, and pursuant to Government Code sections 66008-66009 and Education Code sections 17621(e) and 35014, this Board has

adopted the procedures, criteria, and definitions contained in this Board's "Resolution Regarding School Facilities Fees Exemption Procedures," as amended.

c. By adopting these criteria and procedures, this Board has ensured that no fees will be levied upon any individual construction project without the project's proponent being afforded an opportunity for individualized review by this Board of the propriety of imposing fees on that project and, as to commercial or industrial construction projects, for the findings required by Government Code section 66001(a) and (b) to be made on an individual project basis as provided in Education Code section 17621(e)(1).

5. School Facilities Fees Are Necessary and Reasonable.

Based on all of the above, the findings and evidence contained in the Board's earlier Resolutions on this subject, and the evidence presented to this Board at the hearing and in Exhibit "A" this Board confirms its earlier Resolutions, adopts the findings and conclusions set forth in Exhibit "A" as its own, and finds each of the following:

a. The purpose of the fees adopted and confirmed in this Resolution is to fund the construction or reconstruction of school facilities;

b. These fees will be used to fund the construction or reconstruction of school facilities needed to reduce overcrowding which exists in the District and impairs the normal functioning of educational programs;

c. The overcrowding to be reduced by use of these fees exists because the enrollment projected to result from continuing residential, commercial, or industrial construction exceeds the capacity of the District to provide adequate housing;

d. The amount of fees to be paid pursuant to this Resolution bears a reasonable relationship and is limited to the needs of the community for elementary or high school facilities and is reasonably related and limited to the need for schools caused by residential, commercial, or industrial construction; and

e. The amount of fees to be paid pursuant to this Resolution does not exceed the estimated reasonable costs of providing for the construction or reconstruction of school facilities necessitated by the construction projects from which the fees are to be collected.

6. Adoption and Confirmation of Fees.

a. Based on all of the above, the findings and evidence contained in the Board's earlier Resolutions on this subject, and the evidence presented to the Board at the hearing and in Exhibit "A," this Board adopts and levies the following increased fees for the purpose of funding the construction or reconstruction of school facilities upon residential construction projects within the boundaries of the District.

(1) \$4.79 per square foot of assessable space of all new residential construction and of all other residential construction to the extent of any resulting increase in assessable space in excess of 500 square feet; or

(2) Any lesser amount as may be determined pursuant to the procedures, criteria, and definitions contained in the Resolution referred to in 4b above.

b. Based on all of the above, the findings and evidence contained in the Board's earlier Resolutions on this subject, and the evidence presented to the Board at the hearing and in Exhibit "A," this Board adopts and levies the following increased fees for the purpose of funding the construction or reconstruction of school facilities upon commercial or industrial construction projects within the boundaries of the District:

(1) \$0.78 per square foot of all chargeable covered and enclosed space of any new commercial or industrial construction not within a category expressly exempted by this Board in the Resolution referred to in 4 above; or

(2) Any lesser amount as may be determined pursuant to the procedures, criteria, and definitions contained in the Resolution referred to in 4b above.

c. This Board determines that the fees to be levied will be collected for public improvements or facilities for which an account has been established and funds appropriated, and for which this Board has adopted a proposed construction schedule or plan. Based on this determination, and pursuant to Government Code section 66007, this Board orders that payment of the fees specified above will be required prior to issuance of a building permit. This Board will review the facilities fee account every fiscal year, and if the District has unexpended or uncommitted fees within five (5) years of collection, this Board will either make the findings required by Government Code section 66001 or direct the refund of the fees.

d. Pursuant to Government Code section 65995(b)(3), these rates shall be increased each even numbered calendar year according to the adjustment for inflation set forth in the statewide cost index for Class B construction, or a lesser amount as determined by the State Allocation Board at its February meeting or the relevant Fee Justification Study.

e. This Board directs its Superintendent, or designee, to cause a copy of this Resolution to be delivered to the building official of the Cities and County within the School District's boundaries and the Office of Statewide Health Planning and Development ("OSHPD") along with a copy of all the supporting documentation referenced herein and a map of the School District clearly indicating the boundaries thereof, advising the Cities, County, and OSHPD that new residential and commercial/industrial development is subject to the Statutory School Fees readopted pursuant to this Resolution and requesting that no building permit or approval for occupancy be issued by any of these entities for any new residential development project, mobile home or manufactured home subject to the Statutory School Fees absent a certification from this School District of compliance of such project with the requirements of the Statutory School Fees, nor that any building permit be issued for any

non-residential development absent a certification from this School District of compliance with the requirements of the applicable Statutory School Fees.

7. Allocation of Fee Revenue.

This District has been informed by other district(s) sharing territory with it that it (they) too is (are) overcrowded and intend(s) to levy, or continue to levy, fees pursuant to Education Code section 17620. Because these fees are limited by law to a maximum of \$4.79 per square foot of residential construction and \$0.78 per square foot of commercial/industrial construction for K-12 school facilities, Education Code section 17623 provides in these cases that the districts involved shall enter into an agreement specifying the allocation of fee revenue and the duration of the agreement. Exhibit "C," attached hereto is incorporated by reference, as a proposed agreement to allocate the revenues of those district(s). This Board finds that the allocation of the fee revenues contained in the agreement attached as Exhibit "C," as well as the method of effectuating that allocation, is both fair and reasonable and authorizes the Superintendent to execute that memorandum on its behalf. The Superintendent (or designee) is directed to transmit a copy of that agreement to the State Allocation Board.

8. Superintendent Authorized to Take Necessary and Appropriate Action.

The Board further directs and authorizes the Superintendent to take further action on its behalf as necessary and appropriate to effectuate this Resolution.

9. Certification of Resolution.

This Resolution was adopted on _____, 2022 by the following vote:

AYES: _____
NOES: _____
ABSTENTION(S): _____
ABSENT: _____

BOARD OF TRUSTEES OF _____
SCHOOL DISTRICT

By _____
Authorized Agent

VERSION 1

7. Allocation of Fee Revenue.

This District has been informed by other district(s) sharing territory with it that it (they) too is (are) overcrowded and intend(s) to levy, or continue to levy, fees pursuant to Education Code section 17620. Because these fees are limited by law to a maximum of \$4.79 per square foot of residential construction and \$0.78 per square foot of commercial/industrial construction for K-12 school facilities, Education Code section 17623 provides in these cases that the districts involved shall enter into an agreement specifying the allocation of fee revenue and the duration of the agreement. This District has entered into such an arrangement which is to remain in effect until revised or cancelled.

8. Superintendent Authorized to Take Necessary and Appropriate Action.

The Board further directs and authorizes the Superintendent to take further action on its behalf as necessary and appropriate to effectuate this Resolution.

9. Certification of Resolution.

This Resolution was adopted on _____, 2022 by the following vote:

AYES: _____
NOES: _____
ABSTENTION(S): _____
ABSENT: _____

BOARD OF TRUSTEES OF _____
SCHOOL DISTRICT

By _____
Authorized Agent

VERSION 2

7. Superintendent Authorized to Take Necessary and Appropriate Action.

The Board further directs and authorizes the Superintendent to take further action on its behalf as necessary and appropriate to effectuate this Resolution.

8. Certification of Resolution.

This Resolution was adopted on _____, 2022 by the following vote:

AYES: _____

NOES: _____

ABSTENTION(S): _____

ABSENT: _____

BOARD OF TRUSTEES OF _____
SCHOOL DISTRICT

By _____
Authorized Agent

VERSION 3

EXHIBIT "A"

[The Fee Justification Study analyzing the capital facilities needs of the District and the revenue sources available]

**NOTICE OF PROPOSED ADOPTION
OF INCREASED SCHOOL FACILITIES FEES**

NOTICE IS HEREBY GIVEN that the Board of Trustees of the _____ School District will consider input from the public on the proposed adoption of increased school facilities fees on residential, commercial, and industrial construction.

The proposed increased fees will be levied for the purpose of funding the construction and reconstruction of school facilities necessary to maintain current levels of educational services to children in the district.

If you wish additional information concerning the above, please contact Superintendent _____, at _____, or telephone the Superintendent at _____.

The Fee Justification Report on the proposed increased fees is on file in the Office of the Superintendent, and is available for public review. Members of the public are invited to provide comment, in writing, on or before _____, at the above office. The Board's consideration of the increased fees is scheduled for _____.

Any person challenging in court the decision made at the conclusion of such public hearing may be limited to raising only those issues raised at such hearing or in correspondence delivered to the school district prior to the close of such hearing.

Dated: _____.

District Superintendent