

New Construction

Financing

As economic development continues and homes and apartments multiply, school facilities must be built or expanded to accommodate a growing number of students. With time, safety considerations and educational program changes may require the reconstruction of existing facilities. The purchase of school sites and the construction of buildings may be financed by any legally provided means which the district is qualified to employ.

Developer Fees

In order to finance the construction or reconstruction of school facilities needed to accommodate students coming from new development, the Board may levy developer fees on residential, commercial and industrial construction within the district, subject to restrictions specified by law. (Government Code 53080, 65995)

Findings/Fee Levy/Exemptions

Before levying developer fees, the Board shall make all findings required by law. Findings shall show a reasonable relationship between the construction or reconstruction on which the fee is imposed and the need for school facilities. A reasonable relationship also shall be found between the amount of the fee and the cost of the needed school construction. All decisions to levy fees shall be based upon such reasonable relationships. Exemptions from fees shall be granted when reasonable relationships cannot be shown.

Before levying developer fees, the Board shall schedule a public hearing at which it may adopt the resolutions required by law. Information on the anticipated amount of fees, other available funds and funding sources, and the estimated cost of planning, land acquisition and school construction shall be available to the public at least ten days before the hearing. Notice of the hearing shall be given as required by law. (Government Code 54954.1, 54992)

The resolution adopted by the Board shall state the Board's findings which justify the fees and the conditions which have been met to allow collection of the fees at the time when building permits are issued.

The Superintendent or designee shall establish procedures for the timely and consistent levying of developer fees in accordance with the requirements of law. He/she shall cooperate with local governmental agencies in issuing building permits. Before a permit is issued, the Board shall certify that the fee has been paid or that the district has determined that the fee does not apply to the development project. (Government Code 53080)

The Board shall regularly review its school construction plans to evaluate its capital needs and its need for developer fees.

FINANCING (continued)

Fees may be revised in accordance with the increase legally allowed for inflation as determined every two years by the State Allocation Board. (Government Code 65995)

Developer fees shall be deposited, invested, accounted for and expended pursuant to Government Code 66006.

The district shall annually make findings regarding any portion of the fee remaining unexpended or uncommitted in its account five or more years after deposit. The Board will take action based on its findings in accordance with law. (Government Code 66001)

Developer fees shall be deposited in a separate capital facilities account, except for temporary investments allowed by law, and shall be used only for the purpose for which they were collected. Interest income earned by the capital facilities account shall also be deposited in that account and used only for the purpose for which the fee was originally collected. (Government Code 66006)

For each separate account so established, the district shall, within 60 days of the close of each fiscal year, make available to the public the beginning and ending balance for the fiscal year; the fee, interest and other income received; the amount of expenditure; and the amount of refunds made pursuant to Government Code 66001. The Board shall review this information at the first scheduled public Board meeting which occurs 15 days after the information is made available to the public. (Government Code 66006)

Appeals Process

The Superintendent or designee shall establish an appeals process for the handling of protests, including protests made pursuant to Government Code 66008.

Legal Reference:

EDUCATION CODE

15100-15592 Bonds of School District

15700-15754 General Provisions (State Building Aid Law of 1949)

15900-15913 State School Building Aid Bond Law of 1949

16000-16106 State School Building Aid Law of 1952

16600-16613 State School Building Aid Bond Law of 1957

16700-16713 State School Building Aid Bond Law of 1958

17300-17334 Urban School Construction Aid Law of 1968

17680-17693 State School building Lease-Purchase Bond Law of 1982

17695-17695.95 State School Building Lease-Purchase Bond Law of 1984

17696-17696.98 Greene-Hughes School Building Lease-Purchase Bond Law of 1986

17701-17758 State School Building Lease-Purchase Law of 1976

FINANCING (continued)

GOVERNMENT CODE

- 53080 Levies against development projects by school districts
- 53080.1 Procedures for levying fees
- 53080.2 Agreements between districts
- 53080.3 Refund of fee or charge
- 53080.4 Levies against manufactured home or mobile home
- 53080.6 Fee not allowable for reconstruction of structure damaged by disaster
- 53080.15 School districts; levies on enclosed agricultural space
- 53081 School districts; use of fees on construction
- 53175-53179.5 Integrated Financing District Act
- 53311-53317.5 Mello-Roos Community Facilities Act of 1982
- 54954.1 Mailed notice to property owners
- 54992 New or increased levies; meetings; notice; ordinance and resolution
- 65864-65867 Development agreements
- 65962 Single or multifamily development projects; adoption or increase of fee or charge
- 65970-65980.1 Interim school facilities
- 65995-65997 Payment of fees, charges, dedications or other requirements against a development project
- 66000-66009 Fees for development projects.

Management Resources

CDE MANAGEMENT ADVISORIES

- 02151.09 Developer fees for school construction

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DEVELOPER FEES

Government Code 53080 authorizes school boards to levy developer fees to fund new construction or reconstruction of school facilities. These fees apply to all residential, commercial and industrial construction within the district. (AB 2926, Ch. 887, Statutes of 1986)

Under the authority of Government Code 65970 et seq., developer fees levied by cities or counties may be used to finance interim facilities (temporary classrooms and bathrooms) to be used for five (5) years or less.

In total, the above developer fees may not exceed limits specified in Government Code 65995. Cities and counties may impose no other developer fees for school construction. Cities and counties may not issue building permits unless the appropriate school board certifies that developer fees have been paid. (AB 2926, Ch. 887, Statutes of 1986)

GENERAL OBLIGATION BONDS

Proposition 46, approved by California voters in June, 1986, reestablished local governments' authority to issue voter-approved general obligation bonds for capital outlay. Two-thirds voter approval is required for passage of GO bond measures. Such bond measures place financial responsibility on all property owners in the school district, rather than only on those developing new homes or businesses.

MELLO-ROOS BONDS

Under the Mello-Roos Community Facilities Act of 1982 (Government Code 53311 et seq.), a school district may establish a "community facilities district" for the area which such facilities would serve. The community facilities district can issue bonds to finance school construction. To repay the bonds, the district can levy a "special tax" on undeveloped land. Total costs of the school facilities are paid off over the life of those facilities, which corresponds to the term of the bonds.

The special tax levied to pay off Mello-Roos bonds must be approved by two-thirds of the community facilities district voters. In overcrowded districts, this tax is likely to win approval because all the voters reside in the area which will benefit directly from the new facilities.

When fewer than twelve (12) registered voters live within the community facilities district, the landowners must approve the special tax, each having one vote per acre. Developers are likely to support Mello-Roos funding in sparsely populated areas because it could eliminate or diminish the need for a developer fee. Moreover, these districts can borrow money at lower interest than what the developer pays, because Mello-Roos bonds are tax-exempt.

FINANCING (continued)

INTEGRATED FINANCING DISTRICT

By creating an "integrated financing district." school boards can levy an assessment on land which is contingent upon the development of the land. This assessment can be made payable at the time when the project is approved. It can be used in combination with the noncontingent special tax under Mello-Roos, provided the total of both assessments is proportionate to the amount of benefit anticipated for each parcel. To establish this assessment, the Board must hold a public hearing and act upon all protests. If more than half of the property owners protest, the assessment proposal must be withdrawn for a year. (SB 282, Ch. 1512, Statutes of 1986, Government Code 53175 et seq.)

SURPLUS PROPERTY

School surplus property can be another funding source for school construction, particularly in the use of lease revenues for capital outlay purposes. Districts should be aware that (1) they are subject to nonuse payments if a facility is not used for educational purposes for five years, (2) they are required to investigate cooperative agreements with other contiguous districts with respect to housing students before applying for state funds, and (3) districts may not receive state funding for school construction if they have surplus school sites.