

**Facilities**

**FACILITIES FINANCING**

When it is determined that school facilities must be built or expanded to accommodate an increased enrollment, the Governing Board shall consider appropriate methods of financing for the purchase of school sites and the construction of buildings. In addition, financing may be needed when safety considerations and educational program improvements require the replacement, reconstruction or modernization of existing facilities.

The Superintendent or designee shall research funding alternatives and recommend to the Board the method that would best serve district needs as identified in the district's master plan for school facilities.

These funding alternatives may include, but not be limited to:

1. Levying developer fees pursuant to Education Code 17620 and Government Code 65995-65998
2. Forming a community facilities district pursuant to Government Code 53311-53368.3, the Mello-Roos Community Facilities Act
3. Forming a school facilities improvement district pursuant to Education Code 15300-15425
4. Issuing voter-approved general obligation bonds
5. Imposing a qualified parcel tax pursuant to Government Code 50079
6. Using lease revenues for capital outlay purposes from surplus school property

(cf. 7110 - Facilities Master Plan)

(cf. 7211 - Developer Fees)

(cf. 7212 - Mello-Roos Districts)

(cf. 7213 - School Facilities Improvement Districts)

Legal Reference:

**EDUCATION CODE**

15100-17759.2 School bonds, especially:

15122.5 Ballot statement

15300-15425 School facilities improvement districts

17000-17759.2 State School Building Lease-Purchase Law of 1976

17060-17766 Joint venture school facilities construction projects

17070.10-17076.10 Leroy F. Greene School Facilities Act of 1998

17085-17795 State Relocatable Classroom Law of 1979

17582 District deferred maintenance fund

**FACILITIES FINANCING (continued)**

17620 Levies against development projects by school districts

17621 Procedures for levying fees

**GOVERNMENT CODE**

6061 One time notice

6066 Two weeks' notice

50075-50077 Voter-approved special taxes

50079 School districts; qualified special taxes

53175-53187 Integrated Financing District Act

53311-53368.3 Mello-Roos Community Facilities Act of 1982

53753 Assessment notice and hearing requirements

53753.5 Exemptions

54954.1 Mailed notice to property owners

54954.6 New or increased tax or assessment; public meetings and hearings; notice

65864-65867 Development agreements

65970-65980.1 School facilities development project

65995-65998 Payment of fees against a development project

66000-66008 Fees for development projects

66016-66018.5 Development project fees

66020-66025 Protests and audits

**HEALTH AND SAFETY CODE**

33445.5 Overcrowding of schools resulting from redevelopment

33446 School construction by redevelopment agency

**CALIFORNIA CONSTITUTION**

Article 13D, Sections 1-6 Assessment and property related fee reform

**UNCODIFIED STATUTES**

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

**CODE OF REGULATIONS, TITLE 2**

1859-1859.106 School facility program

**COURT DECISIONS**

Loyola Marymount University v. Los Angeles Unified School District (1996) 45 Cal.App.4th 1256

Ehrlich v. City of Culver City (1996) 12 Cal.4th 854

Dolan v. City of Tigard (1994) 114 S. Ct. 2309

Canyon North Co. v. Conejo Valley Unified School District (1993) 19 Cal.App.4th 243, 23 Cal.Rptr.2d 495

**FACILITIES FINANCING (continued)**

Garlic Development Co. v. Hayward Unified School District (1992) 3 Cal.App.4th 320, 4 Cal.Rptr.2d 897

Nollan v. California Coastal Commission (1987) 107 S.Ct. 3141

**ATTORNEY GENERAL OPINIONS**

79 Ops.Cal.Atty.Gen. 149 (1996)

Management Resources:

**WEB SITES**

Department of General Services, Office of Public School Construction:

[http:// www.dgs.ca.gov/opsc/](http://www.dgs.ca.gov/opsc/)

(6/90 2/96) 2/97

11/12/97

10/97

4/8/98

8/11/99

**Facilities**

**FACILITIES FINANCING**

**Developer Fees**

Before levying developer fees, the Governing Board shall schedule a public hearing. 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 10 days before the hearing. Notice of the hearing shall be given as required by law. (Government Code 66016)

At the above hearing, if warranted, the Board shall adopt a resolution for the levying of developer fees. (Government Code 66016) This resolution shall set forth:

1. The purpose of the fee and the public improvement that the fee will be used to finance (Government Code 66006)
2. The Board's findings of reasonable relationship which justify the fees pursuant to Government Code 66001
3. The district's determination of one of the following conditions which allow collection of the fees at the time when building permits are issued: (Government Code 66007)
  - a. That the fees are to reimburse the district for previous expenditures
  - b. That the fees shall be collected for public improvements or facilities for which an account has been established, funds have been appropriated and the district has adopted a proposed construction schedule or plan

The district shall send a copy of any resolution adopting or increasing developer fees to the city and county, accompanied by all relevant supporting documentation and a map indicating the boundaries of the area subject to the fee. (Education Code 17621)

In cooperation with local governmental agencies issuing building permits, the Superintendent or designee shall establish a means by which all of the following shall be accomplished:

1. The project applicant shall receive a written statement of the amount of the fees and notification that the 90-day approval period during which the applicant may protest has begun. (Government Code 66020)
2. The Superintendent or designee shall receive and retain acknowledgment that the above notification was received.

**FACILITIES FINANCING (continued)**

3. 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. (Education Code 17620)

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. 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 Superintendent or designee shall, within 180 days after the last day of each fiscal year, make available to the public the following information for the fiscal year: (Government Code 66006)

1. A brief description of the type of fee in the account or fund
2. The amount of the fee
3. The beginning and ending balance of the account or fund
4. The amount of the fees collected and the interest earned
5. An identification of each public improvement on which fees were expended and the amount of the expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with fees
6. An identification of an approximate date by which the construction of the public improvement will commence if the district determines that sufficient funds have been collected to complete financing on an incomplete public improvement
7. A description of each interfund transfer or loan made from the account or fund, including the public improvement on which the transferred or loaned fees will be expended, and, in the case of an interfund loan, the date on which the loan will be repaid, and the rate of interest that the account or fund will receive on the loan
8. The amount of refunds made pursuant to Government Code 66001(e) and any allocations made pursuant to Government Code 66001(f)

**FACILITIES FINANCING (continued)**

The Board shall review the above information at the first regularly scheduled public Board meeting which occurs 15 days after the information is made available to the public. Fifteen-day prior notice of this meeting shall be mailed to any parties filing a written request pursuant to Government Code 66006. (Government Code 66006)

In addition to discharging its public disclosure duties regarding the levying of developer fees, the Board shall, for the fifth fiscal year after the first deposit into the account or fund and every five years thereafter, make all of the following findings with respect to the portion of the account or fund that remains unexpended, whether committed or uncommitted: (Government Code 66001)

1. Identify the purpose to which the fee is to be put
2. Demonstrate a reasonable relationship between the fee and the purpose for which it is charged
3. Identify all sources and amounts of funding anticipated to complete financing in incomplete improvements originally identified
4. Designate the approximate dates on which the funding referred to in item #3 is expected to be deposited into the appropriate account or fund

When sufficient funds have been collected to complete the financing of public improvements but such improvements remain incomplete, the district shall, within 180 days of the date that a determination of sufficient funding was made, either identify an approximate date by which construction will begin or refund the unexpended revenues in accordance with Government Code 66001. (Government Code 66001)

**Appeals Process for Protests by Developers**

Developers of residential, commercial and industrial projects who claim that the developer fee has been inappropriately levied shall use the following procedures:

1. The developer shall submit his/her request for exemption in writing to the Superintendent or designee within 10 days from the time the fees are due.
2. Within 45 days from filing the request for exemption, the developer shall provide evidence demonstrating that his/her development will have no impact upon the district. Evidence shall include, but not be limited to:

**FACILITIES FINANCING (continued)**

- a. Evidence showing the estimated number of students that will be generated by the project. Such evidence shall include, but not be limited to, the number of students generated by other similar development, if appropriate, within the district on a first- and fifth-year basis, taking into consideration both primary and secondary generations. Primary generations are the growth of population and students due directly to the construction project. Secondary generations are the growth of population and students occurring because of the population increases in the primary category.
  - b. Evidence that the construction project will continue to be used for its current purpose for five or more years rather than being converted to a use that may generate a higher population increase
  - c. An analysis of the cost of needed district facilities as related to the generation of all revenues including developer fees available to reconstruct and construct facilities on a first- and fifth-year basis
3. If the Superintendent or designee determines it appropriate, he/she may request that the evidence submitted by the developer be reviewed by an independent expert to determine its validity. In addition, he/she may request that additional research and analysis be conducted by the independent expert. This work shall be completed within 45 days after the developer submits his/her evidence. The cost of the analysis shall be paid by the developer and deducted from his/her paid developer fees prior to the Board hearing.
  4. Upon receiving all prepared data, including the independent expert's analysis if requested, the Superintendent or designee shall submit the data, the request for exemption and his/her recommendation to the Board at its next regular meeting.
  5. At its meeting, the Board shall conduct a hearing, consider all submitted evidence and recommendations and take action to approve or deny the petition of exemption.
  6. The Board reserves the right to modify the amount of the levy if it determines such action is appropriate.

**School Facilities Improvement District**

Upon determining that a school facilities improvement district is necessary, the Board shall adopt a resolution of intention that states all of the following: (Education Code 15320)

1. The Board's intention to form the proposed school facilities improvement district

**FACILITIES FINANCING (continued)**

2. The purpose for which the proposed district is to be formed, consistent with the requirements of Education Code 15302
3. The estimated cost of the school facilities improvement project
4. That any taxes levied for financing general obligation bonds issued to finance the project shall be levied exclusively upon the lands in the proposed school facilities improvement district
5. That a map showing the exterior boundaries of the proposed district is on file with the Board and available for public inspection, and that these boundaries meet the requirements of Education Code 15301
6. The time and place for a Board hearing on the formation of the proposed district
7. That any interested persons, including all persons owning lands in the district or in the proposed school facilities improvement district, may appear and be heard at the above hearing

Notice of the hearing shall be given by publishing a copy of the resolution of intention in a newspaper of general circulation pursuant to Government Code 6066, starting at least 14 days before the hearing. The resolution shall also be posted in three public places within the proposed school facilities improvement district for at least 14 days before the hearing. (Education Code 15321)

The Board shall hold the above hearing as specified in its resolution and may, at the hearing, adopt a resolution proposing modifications of its above-stated purposes consistent with Education Code 15302. A resolution proposing modification shall describe the proposed modifications, state any change in the estimated cost of carrying out the purpose, and fix a time and place for a related Board hearing. (Education Code 15322, 15323)

At least 14 days before the above hearing, the Board shall publish the resolution proposing modifications one time in the same newspaper in which the resolution of intention was published. (Education Code 15324)

When hearings are concluded, the Board may, by resolution, order the formation of a school facilities improvement district. The resolution shall state the estimated cost of carrying out described purposes and shall number and designate the improvement district as specified in Education Code 15326. (Education Code 15326)

The Superintendent or designee shall establish procedures consistent with Education Code 15330-15425 governing the financing of bonds, bond elections and the issuance and sale of bonds.



**FACILITIES FINANCING (continued)**

**General Obligation Bonds**

Whenever the district calls an election regarding the issuance of general obligation bonds to fund a facilities project, all or part of which will require matching funds from the state, the sample ballot shall contain the statement specified in Education Code 15122.5; this statement shall inform voters that the project proposal assumes that the district will receive matching funds from the state and that passage of the bond measure is therefore not a guarantee that the project will be completed. (Education Code 15122.5)