



School Facilities Fees

Possible Changes in "School Facilities Fees" Linked to Approval of New State School Bond ("Proposition 13") on March 2020 Ballot

The "school facilities fees" that many California public school districts impose on developers may soon be undergoing major changes, including new reductions, exemptions, and limitations in some cases, following the Governor's signature of "**AB-48**" in September 2019. (Stats. 2019, ch. 530.) Those changes in school fees law, however, are dependent upon voter approval of a new \$15 Billion State school bond in March 2020 -- to be known as the "**Public Preschool, K-12, and College Health and Safety Bond Act of 2010.**" The California Attorney General's Office recently confirmed that the bond measure will appear on the March 3, 2020 statewide ballot under a familiar designation – "Proposition 13." (This measure will reportedly appear on the ballot as "Proposition 13 [2020]" to try to minimize confusion with the more famous 1978 tax-limitation measure.)

Proposition 13 [2020] would not only generate \$15 Billion of funding for educational facilities (\$9 Billion for K-12; \$6 Billion for Higher Education) but would also trigger legislative changes to state school finance laws, including school fees. Those changes should provide significant improvements to the state laws that control the way such school facilities fees are to be calculated and limit the amount of school fees. State laws on school finance and school facilities fees last underwent major reform back in 1998, with the enactment of "SB-50" and passage of Proposition 1A (1998), a \$9.2 billion bond issue. Like that 1998 legislation, **AB-48** links its important amendments to existing school fees laws to passage of the new \$15 Billion state school bond authorized for the March 2020 ballot, and reflects months of hard work, negotiations and compromise among a wide range of stakeholders. The bond will provide State funding for construction and modernization of many kinds of public education facilities, from pre-school to college. After negotiations in Sacramento regarding the allocation of the bond proceeds, the bill passed with strong support in both the Assembly and State Senate. Governor Newsom signed "**AB-48**" on October 7, 2019, and portrayed the bill as being important in continuing California's support for public education at all levels, as well as being consistent with the Governor's efforts to promote more affordable housing.

If approved in March, the new school fee legislation would amend the current State school funding program, and would make many changes to school fee practices, several of which would likely be of significant benefit to home builders – particularly for multi-family residential projects. The more significant and substantive changes that should operate to provide some "fee relief" for home-builders and buyers include:

- 1) Reducing or eliminating fees on Multi-Family Housing. Multi-family housing -- defined as a structure containing more than one dwelling unit – would benefit from two important changes that would be operative until 2026:
 - a) Multi-family housing being developed "no further than 1/2 mile from a major transit stop" (as defined in PRC 21155) shall be completely EXEMPT from any fee or other requirement regarding school facilities;
 - b) All other multi-family housing shall only be subject to reduced fees, i.e., the amount of any otherwise applicable Level 1 or Level 2 development fee or requirement imposed for school facilities would be reduced by 20% from the amount of fees as otherwise calculated under the fee act;



- 2) Suspension of “Level 3” school fees. Passage of Proposition 13 [2020] would create new State school bonding authority, assuring that Level 3 fees remain suspended until at least January 1, 2028. Under existing state law, eligible school districts may only impose fees at “Level 3” rates – which may be twice the rate of Level 2 fees – when Government Code section 65995.7 is operative. That section only becomes operative if and when State school bond funding is unavailable and the State Allocation Board (“SAB”) is not making apportionments of new school construction funds. In 2016, the SAB determined that state funds were (temporarily) unavailable; however, following the passage of Proposition 51 in November 2016 (\$9 billion State school bond) SAB resumed making apportionments. In addition, passage of Proposition 13 [2020] assures the continued prohibition against any demands on new development for any other “mitigation” of impacts on schools or for fees in excess of those limited fees allowed under SB 50.
- 3) School facilities master plans. As a condition of participating in the State’s school facilities program, individual school districts would be required to submit the district’s “five-year school facilities master plan” to the State Department of Education. That master plan must contain specified information relevant to the district’s eligibility for State bond funding, including: an inventory of the district’s existing facilities and property and the capacity of those facilities; projected enrollment growth over the next five years; a capital planning budget outlining proposed projects; financing and other funding sources for proposed new projects; and the district’s deferred maintenance plan. The mandatory inclusion of this type of information in an adopted master plan is anticipated to improve the accuracy and reality of fee calculations by districts using the methodology specified by the Fee Act, and responds to instances of some districts improperly inflating their calculation of fees based on hypothetical school facilities that the district has no adopted plan for actually constructing.
- 4) Increased district bond capacity for local school bonds. The measure would enhance the opportunities for school districts to generate financing independent of the State by enacting local bond measures. Subject to certain conditions, the statutory bonding capacity of unified school districts and community college districts would be increased from 2.5% of assessed valuation to 4%; and the bond capacity of non-unified school districts would be increased from 1.25 % to 2%.
- 5) SAB’s Method for Awarding Funds. The methods and standards used by the SAB to prioritize applications from school districts for State new construction and modernization funds would be revised and specified by statute. Instead of the current “first come, first served” basis, the SAB is required to establish a point-based system for prioritizing applications, giving preference to financial hardship projects, projects addressing health and safety issues, over-crowding, and deferred maintenance.
- 6) Accounting and Transparency. New accounting and public transparency requirements would be established, requiring public hearings, audits, and the public posting of project and audit information. Annual notifications by school districts to the SAB would be required as to sites which have been acquired for school purposes but which remain unused.

For more information about school facilities fees, please do not hesitate to contact [Dave Lanferman](#), [Matt Francois](#), or [Jeff Farano](#).

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