SixTen and Associates
Mandate Reimbursement Services

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June 25, 2003

RECEIVED
JUN 27 2003
COMMISSION ON
STATE MANDATES

Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: TEST CLAIM OF Clovis Unified School District
Statutes of 2002/Chapter 1016
Developer Fees

Dear Ms. Higashi:

Enclosed are the original and seven copies of the Clovis Unified School District test claim for the above referenced mandate.

I have been appointed by the District as its representative for the test claim. The District requests that all correspondence originating from your office and documents subject to service by other parties be directed to me, with copies to:

William McGuire,
Associate Superintendent, Business Services
Clovis Unified School District
1450 Herndon Avenue
Clovis, California 93611

The Commission regulations provide for an informal conference of the interested parties

within thirty days. If this meeting is deemed necessary, I request that it be conducted in conjunction with a regularly scheduled Commission hearing.

Sincerely,

for Keith B. Petersen

C: William McGuire, Associate Superintendent, Business Services
Clovis Unified School District

State of California
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
CSM 2 (1/91)

For Official Use Only

RECEIVED
JUN 27 2003
COMMISSION ON STATE MANDATES

TEST CLAIM FORM

Claim No. 02-TC-12

Local Agency or School District Submitting Claim

CLOVIS UNIFIED SCHOOL DISTRICT

Contact Person	Telephone Number
Keith B. Petersen, President SixTen and Associates 5252 Balboa Avenue, Suite 807 San Diego, California 92117	Voice: 858-514-8605 Fax: 858-514-8645

Claimant Address

Clovis Unified School District
1450 Herndon Avenue
Clovis, CA 93611

Representative Organization to be Notified

Dr. Carol Berg, Consultant, Education Mandated Cost Network c/o School Services of California 1121 L Street, Suite 1060 Sacramento, CA 95814	Voice: 916-446-7517 Fax: 916-446-2011

This claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code citation(s) within the chaptered bill, if applicable.

1016/02 Developer Fees
See: Attachment

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative	Telephone No.
William McGuire, Associate Superintendent	Voice: 559-327-9110

Signature of Authorized Representative	Day:
X	June 23, 2003

Attachment To:
COSM Form CSM 2 (1/91)
Test Claim of Clovis Unified School District
Chapter 1016, Statutes of 2002
Developer Fees

Chapter 1016, Statutes of 2002
Chapter 33, Statutes of 2002
Chapter 135, Statutes of 2000
Chapter 858, Statutes of 1999
Chapter 300, Statutes of 1999
Chapter 689, Statutes of 1998
Chapter 407, Statutes of 1998
Chapter 772, Statutes of 1997
Chapter 799, Statutes of 1996
Chapter 569, Statutes of 1996
Chapter 549, Statutes of 1996
Chapter 277, Statutes of 1996
Chapter 686, Statutes of 1995
Chapter 1228, Statutes of 1994
Chapter 983, Statutes of 1994
Chapter 300, Statutes of 1994
Chapter 1195, Statutes of 1993
Chapter 589, Statutes of 1993
Chapter 1354, Statutes of 1992
Chapter 605, Statutes of 1992
Chapter 487, Statutes of 1992
Chapter 231, Statutes of 1992
Chapter 169, Statutes of 1992
Chapter 536, Statutes of 1991
Chapter 1572, Statutes of 1990
Chapter 633, Statutes of 1990
Chapter 1217, Statutes of 1989
Chapter 1209, Statutes of 1989
Chapter 170, Statutes of 1989
Chapter 926, Statutes of 1988
Chapter 912, Statutes of 1988
Chapter 418, Statutes of 1988
Chapter 160, Statutes of 1988
Chapter 29, Statutes of 1988
Chapter 1346, Statutes of 1987
Chapter 1184, Statutes of 1987
Chapter 1037, Statutes of 1987
Chapter 1002, Statutes of 1987
Chapter 927, Statutes of 1987
Chapter 888, Statutes of 1986
Chapter 887, Statutes of 1986
Chapter 685, Statutes of 1986
Chapter 136, Statutes of 1986
Chapter 1498, Statutes of 1985
Chapter 1062, Statutes of 1984
Chapter 1254, Statutes of 1983
Chapter 921, Statutes of 1983
Chapter 923, Statutes of 1982
Chapter 201, Statutes of 1981
Chapter 1354, Statutes of 1980
Chapter 282, Statutes of 1979
Chapter 955, Statutes of 1977

Education Code Section 17620
Education Code Section 17621
Education Code Section 17622
Education Code Section 17623
Education Code Section 17624
Education Code Section 17625
Education Code Section 17626

Attachment To:
COSM Form CSM 2 (1/91)
Test Claim of Clovis Unified School District
Chapter 1016, Statutes of 2002
Developer Fees

Government Code Section 65970
Government Code Section 65971
Government Code Section 65972
Government Code Section 65973
Government Code Section 65974
Government Code Section 65974.5
Government Code Section 65975
Government Code Section 65976
Government Code Section 65977
Government Code Section 65978
Government Code Section 65979
Government Code Section 65980
Government Code Section 65981
Government Code Section 65995
Government Code Section 65995.1
Government Code Section 65995.2
Government Code Section 65995.5
Government Code Section 65995.6
Government Code Section 65995.7
Government Code Section 65996
Government Code Section 65997
Government Code Section 65998
Government Code Section 66002
Government Code Section 66004
Government Code Section 66005
Government Code Section 66006
Government Code Section 66007
Government Code Section 66008
Government Code Section 66016
Government Code Section 66017
Government Code Section 66018
Government Code Section 66018.5
Government Code Section 66020
Government Code Section 66022
Government Code Section 66023
Government Code Section 66024
Government Code Section 66025
Government Code Section 66030
Government Code Section 66031
Government Code Section 66032
Government Code Section 66034
Government Code Section 66037

Claim Prepared By:
Keith B. Petersen
SixTen and Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117
Voice: (858) 514-8605

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

Test Claim of:	)	
	)	No. CSM _____
Clovis Unified School District	)	Developer Fees
	)	
Test Claimant	)	
	)	Chapter 1016, Statutes of 2002
	)	Chapter 33, Statutes of 2002
	)	Chapter 135, Statutes of 2000
	)	Chapter 858, Statutes of 1999
	)	Chapter 300, Statutes of 1999
	)	Chapter 689, Statutes of 1998
	)	Chapter 407, Statutes of 1998
	)	Chapter 772, Statutes of 1997
	)	Chapter 799, Statutes of 1996
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	)	Chapter 300, Statutes of 1994
	)	Chapter 1195, Statutes of 1993
	)	Chapter 589, Statutes of 1993
	)	Chapter 1354, Statutes of 1992
	)	Chapter 605, Statutes of 1992
	)	Chapter 487, Statutes of 1992
	)	
	)	(Continued on Next Page)
	)	
	)	Developer Fees
	)	TEST CLAIM FILING

) Chapter 231, Statutes of 1992
) Chapter 169, Statutes of 1992
) Chapter 536, Statutes of 1991
) Chapter 1572, Statutes of 1990
) Chapter 633, Statutes of 1990
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) Chapter 1498, Statutes of 1985
) Chapter 1062, Statutes of 1984
) Chapter 1254, Statutes of 1983
) Chapter 921, Statutes of 1983
) Chapter 923, Statutes of 1982
) Chapter 201, Statutes of 1981
) Chapter 1354, Statutes of 1980
) Chapter 282, Statutes of 1979
) Chapter 955, Statutes of 1977
)
) Education Code Sections
) 17620, 17621, 17622, 17623, 17624,
) 17625, 17626
)
) Government Code Sections
) 65970, 65971, 65972, 65973, 65974,
)
) (Continued on Next Page)
)
) Developer Fees
) TEST CLAIM FILING

)	Government Code Sections
)	65974.5, 65975, 65976,65977, 65978,
)	65979, 65980, 65981, 65995, 65995.1,
)	65995.2, 65995.5, 65995.6, 65995.7,
)	65996, 65997, 65998, 66001, 66002,
)	66004, 66005, 66006, 66007, 66008,
)	66016, 66017, 66018, 66018.5, 66020,
)	66020, 66022, 66023, 66024, 66025,
)	66030, 66031, 66032, 66034, 66037
)	
)	

PART I. AUTHORITY FOR THE CLAIM

The Commission on State Mandates has the authority pursuant to Government Code Section 17551(a) to "...hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to be reimbursed by the state for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution." Clovis Unified School District is a "school district" as defined in Government Code Section 17519.[1]

PART II. LEGISLATIVE HISTORY OF THE CLAIM

This test claim alleges mandated costs subject to reimbursement by the state for school districts to establish and implement policies and procedures to comply with the collection of developer fees.

SECTION 1. LEGISLATIVE HISTORY PRIOR TO JANUARY 1, 1975

Prior to January 1, 1975 there was no state statute or executive order in effect

[1] Government Code Section 17519, as added by Chapter 1459/84:
""School District" means any school district, community college district, or county superintendent of schools."

which required school districts to establish procedures to collect fees from developers to provide funding for the additional school facility resources needed in response to increased student population.

SECTION 2. LEGISLATIVE HISTORY AFTER JANUARY 1, 1975

Chapter 955, Statutes of 1977, Section 1, added Government Code Section 65970[2] to set forth legislative findings and declarations.

Chapter 955, Statutes of 1977, Section 1, added Government Code Section 65971[3] to require the governing board of a school district to notify the city council or

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[2] Government Code Section 65970, as added by Chapter 955, Statutes of 1977, Section 1:

"The Legislature finds and declares as follows:

(a) Adequate school facilities should be available for children residing in new residential developments.

(b) Public and private residential developments may require the expansion of existing public schools or the construction of new school facilities.

(c) In many areas of the state, the funds for the construction of new classroom facilities are not available when new development occurs, resulting in the overcrowding of existing schools.

(d) New housing developments frequently cause conditions of overcrowding in existing school facilities which cannot be alleviated under existing law within a reasonable period of time.

(e) That, for these reasons, new and improved methods of financing for interim school facilities necessitated by new development are needed in California."

[3] Government Code Section 65971, as added by Chapter 955, Statutes of 1977, Section 1:

"If the governing body of a school district which operates an elementary or high school makes a finding supported by clear and convincing evidence that: (a) conditions of overcrowding exist in one or more attendance areas within the district which will impair the normal functioning of educational programs including the reason for such conditions existing; and (b) that all reasonable methods of mitigating conditions of overcrowding have been evaluated and no feasible method for reducing such conditions exist, the governing body of the school district shall notify the city council or board of supervisors of the city or county within which the school district lies. The notice of findings sent to the city or county shall specify the mitigation measures considered by

board of supervisors when the governing body of a school district finds by clear and convincing evidence that (a) conditions of overcrowding exist in one or more attendance areas within the district which will impair the normal functioning of educational programs and (b) that all reasonable methods of mitigating the conditions of overcrowding have been evaluated and no feasible method for reducing such conditions exists. If the council or board concurs in those findings, the provisions of Section 65972 shall be applicable to residential development by the council or board.

Chapter 955, Statutes of 1977, Section 1, added Government Code Section 65972[4] which prohibits the city council or board of supervisors from approving an ordinance re-zoning property to a residential use, granting a discretionary permit for residential use, or approval of a tentative subdivision map for residential purposes within the attendance area where it has been determined that conditions of overcrowding exist except upon a finding that an ordinance pursuant to Section 65974

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the school district. If the city council or board of supervisors concurs in such findings the provisions of Section 65972 shall be applicable to actions taken on residential development by such council or board."

[4] Government Code Section 65972, as added by Chapter 955, Statutes of 1977, Section 1:

"Within the attendance area where it has been determined pursuant to Section 65971 that conditions of overcrowding exist, the city council or board of supervisors shall not approve an ordinance rezoning property to a residential use, grant a discretionary permit for residential use, or approve a tentative subdivision map for residential purposes, within such area, unless the city council or board of supervisors makes one of the following findings:

(1) That an ordinance pursuant to Section 65974 has been adopted, or

(2) That there are specific overriding fiscal, economic, social, or environmental factors which in the judgment of the city council or board of supervisors would benefit the city or county, thereby justifying the approval of a residential development otherwise subject to Section 65974."

has been adopted, or (2), that there are specific overriding fiscal, economic, social, or environmental factors which justify the approval of a residential development.

Chapter 955, Statutes of 1977, Section 1, added Government Code Section 65973[5] to provide relevant definitions.

Chapter 955, Statutes of 1977, Section 1, added Government Code Section 65974[6], where overcrowded conditions exist, to allow a city, county, or city and county,

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[5] Government Code Section 65973, as added by Chapter 955, Statutes of 1977, Section 1:

"As used in this chapter:

(a) "Conditions of overcrowding" means that the total enrollment of a school, including enrollment from proposed development, exceeds the capacity of such school as determined by the governing body of the district.

(b) "Reasonable methods for mitigating conditions of overcrowding" shall include, but are not limited to, agreements between a subdivider and the affected school district whereby temporary-use buildings will be leased to the school district or temporary-use buildings owned by the school district will be used.

(c) "Residential development" means a project containing residential dwellings, including mobilehomes, of one or more units or a subdivision of land for the purpose of constructing one or more residential dwelling units."

[6] Government Code Section 65974, as added by Chapter 955, Statutes of 1977, Section 1:

"For the purpose of establishing an interim method of providing classroom facilities where overcrowding conditions exist as determined necessary pursuant to Section 65971 and notwithstanding Section 66478, a city, county, or city and county may, by ordinance, require the dedication of land, the payment of fees in lieu thereof, or a combination of both, for classroom and related facilities for elementary or high schools as a condition to the approval of a residential development, provided that all of the following occur:

(a) The general plan provides for the location of public schools.

(b) The ordinance has been in effect for a period of 30 days prior to the implementation of the dedication or fee requirement.

(c) The land or fees, or both, transferred to a school district shall be used only for the purpose of providing interim elementary or high school classroom and related facilities.

(d) The location and amount of land to be dedicated or the amount of fees to be paid, or both, shall bear a reasonable relationship and will be limited to the needs of the

by ordinance, to require a dedication of land, payment of fees, or both, as a condition of residential development approval, and for the purpose of providing interim classroom facilities. Subdivision (c) demands the land or fees, or both, be used only for the purpose of providing interim elementary or high school classroom and related facilities. Required fees shall be paid at the time the building permit is issued. Land dedications are not required of subdivisions containing 50 parcels or less.

Chapter 955, Statutes of 1977, Section 1, added Government Code Section 65976[7] to require school districts to submit a schedule specifying how it will use the land or fees, or both, to solve the conditions of overcrowding. The schedule shall

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community for interim elementary or high school facilities and shall be reasonably related and limited to the need for schools caused by the development.

(e) A finding is made by the city council or board of supervisors that the facilities to be constructed from such fees or the land to be dedicated, or both, is consistent with the general plan.

The ordinance may specify the methods for mitigating the conditions of overcrowding which the school district shall consider when making the finding required by subdivision (b) of Section 65971.

If the payment of fees is required, the payment shall be made at the time the building permit is issued.

Only the payment of fees may be required in subdivisions containing fifty (50) parcels or less."

[7] Government Code Section 65976, as added by Chapter 955, Statutes of 1977, Section 1:

"Following the decision by the city or county to require the dedication of land or the payment of fees, or both, the governing body of the school district shall submit a schedule specifying how it will use the land or fees, or both, to solve the conditions of overcrowding. The schedule shall include the school sites to be used, the classroom facilities to be made available, and the times when those facilities will be available. In the event the governing body of the school district cannot meet the schedule, it shall submit modifications to the city council or board of supervisors and the reasons for the modifications."

include how the school sites are to be used, the classroom facilities to be made available, and the time when those facilities will be available. In the event the governing body of the school district cannot meet the schedule, it is required to submit modifications, along with the reason for the modifications, to the city council or board of supervisors.

Chapter 955, Statutes of 1977, Section 1, added Government Code Section 65977[8] which, where two separate school districts share an attendance area where overcrowded conditions exist for both, both districts are required to enter into an agreement with the governing body of the city or county for the purpose of determining the distribution of revenues from the fees.

Chapter 955, Statutes of 1977, Section 1, added Government Code Section 65978[9] which requires school districts to maintain funds in a separate account. School

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[8] Government Code Section 65977, as added by Chapter 955, Statutes of 1977, Section 1:

"Where two separate school districts operate schools in an attendance area where overcrowding conditions exist for both school districts, the governing body of the city or county shall enter into an agreement with the governing body of each school district for the purpose of determining the distribution of revenues from the fees levied pursuant to this chapter."

[9] Government Code Section 65978, as added by Chapter 955, Statutes of 1977, Section 1:

"Any school district receiving funds pursuant to this chapter shall maintain a separate account for any fees paid and shall file a report with the city council or board of supervisors on the balance in the account at the end of the previous fiscal year and the facilities leased, purchased, or constructed during the previous fiscal year. In addition, the report shall specify which attendance areas will continue to be overcrowded when the fall term begins and where conditions of overcrowding will no longer exist. Such report shall be filed by August 1 of each year and shall be filed more frequently at the request of the board of supervisors or city council.

If overcrowding conditions no longer exist, the city or county shall cease levying

districts are required to file a report by August 1 of each year, or more frequently upon request, with the city council or board of supervisors on the balance in the account at the end of the previous fiscal year and the facilities leased, purchased, or constructed during the previous fiscal year. The report shall specify which attendance areas will continue to be overcrowded when the fall term begins and where conditions of overcrowding will no longer exist. If overcrowding no longer exists, the city or county shall cease levying fees or requiring dedication of land.

Chapter 282, Statutes of 1979, Section 53, amended Government Code Section 65974[10], subdivision (d), to limit fees to the amount of five annual lease payments for interim facilities. It also offers the builder an option, at his or her expense, to provide interim facilities, at a place designated by the school district. At the end of the fifth school year, the builder will, at the builder's expense, remove the facilities.

Chapter 282, Statutes of 1979, Section 54, added Government Code Section

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any fee or requiring the dedication of any land pursuant to this chapter."

[10] Government Code Section 65974, as amended by Chapter 282, Statutes of 1979, Section 53:

"(d) The location and amount of land to be dedicated or the amount of fees to be paid, or both, shall bear a reasonable relationship and will be limited to the needs of the community for interim elementary or high school facilities and shall be reasonably related and limited to the need for schools caused by the development; provided, the fees shall not exceed the amount necessary to pay five annual lease payments for the interim facilities. In lieu of the fees, the builder of a residential development may, at his or her option and at his or her expense, provide interim facilities, owned or controlled by such builder, at the place designated by the school district, and at the conclusion of the fifth school year the builder shall, at the builder's expense, remove the interim facilities from such place."

65979[11] which prohibits any fee or dedication to the district after such school district has received an apportionment pursuant to the Leroy F. Greene State School Building Lease-Purchase Law of 1976.

Chapter 282, Statutes of 1979, Section 55, added Government Code Section 65980[12] to prohibit building interim facilities with permanent foundations.

Chapter 282, Statutes of 1979, Section 56, added Government Code Section 65981[13] which requires a school district to recommend the fees for providing interim facilities within 60 days following the issuance of the initial building permit or the

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[11] Government Code Section 65979, as added by Chapter 282, Statutes of 1979, Section 54:

"After a school district has received an apportionment pursuant to the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code), the city or county shall not be permitted thereafter, pursuant to this chapter or pursuant to any other school facilities financing arrangement such district may have with builders of residential developments, to levy any fee or to require the dedication of any land within the attendance area of the district."

[12] Government Code Section 65980, as added by Chapter 282, Statutes of 1979, Section 55:

"Interim facilities for purposes of Section 65974 shall be limited to temporary classrooms, including their utilities, furnishings, and toilet facilities not constructed with permanent foundations."

[13] Government Code Section 65981, as added by Chapter 282, Statutes of 1979, Section 56:

"If an ordinance has been adopted pursuant to Section 65974 which provides for the school district governing body to recommend the fees for providing interim facilities that are to be assessed on a development as a condition of city or county approval of a subdivision, such recommendation shall be required to be submitted to the respective city or county within 60 days following the issuance of the initial permit for the development. Failure to provide the recommendation of fees to be assessed within the 60-day period shall constitute a waiver by the governing body of the school district of its authority to request fees pursuant to this chapter."

district's authority to request fees shall be waived.

Chapter 1354, Statutes of 1980, Section 62.5, amended Government Code Section 65979[14] to change the restriction to receive fees after an apportionment pursuant to the Leroy F. Greene State School Building Lease-Purchase Law of 1976 to one year after the apportionment and only when such apportionment was for the construction of a school. The amendment also provides that, any time after receipt of the apportionment, when there is the further finding that (1), during the period of construction, additional overcrowding will occur from continued residential development, and (2) that the fee can be used to avoid the additional overcrowding before the school is made available to the school district, additional fees and dedications may be required. Any amounts of fees collected or land dedicated, after the receipt of the

[14] Government Code Section 65979, as amended by Chapter 1354, Statutes of 1980, Section 62.5:

"~~After a school district has received~~ One year after receipt of an apportionment pursuant to the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code) for the construction of a school, the city or county shall not be permitted thereafter, pursuant to this chapter or pursuant to any other school facilities financing arrangement such district may have with builders of residential developments, to levy any fee or to require the dedication of any land within the attendance area of the district. However, any time after receipt of the apportionment there may be a determination of overcrowding pursuant to Section 65971, if there is the further finding that (1) during the period of construction additional overcrowding would occur from continued residential development, and (2) that any fee levied and any required dedication of land levied after the receipt of the construction apportionment can be used to avoid the additional overcrowding prior to the school being available for use by the school district. Any amounts of fees collected or land dedicated after the receipt of the construction apportionment and not used to avoid overcrowding shall be returned to the person who paid the fee or made the land dedication."

construction apportionment and not used to avoid overcrowding, shall be returned to the person who paid the fee or made the land dedication.

Chapter 1354, Statutes of 1980, Section 62.6, amended Government Code Section 65980[15] to limit the definition of interim facilities to only "classroom facilities", "classroom and related facilities", and "elementary or high school facilities." Subdivision (a) defines "temporary classrooms." Subdivision (b) defines "temporary classrooms toilet facilities." Subdivision (c) was added to allow for reasonable site preparation and the installation of temporary classrooms.

Chapter 201, Statutes of 1981, Section 1, amended Government Code Section 65978[16] to change the report filing date from August 1 to October 15.

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[15] Government Code Section 65980, as amended by Chapter 1354, Statutes of 1980, Section 62.6:

"For the purposes of Section 65974, "classroom facilities," "classroom and related facilities," and "elementary or high school facilities" mean "interim facilities" as defined in this Section and shall include no other facilities.

Interim facilities for purposes of Section 65974 shall be limited to the following:

(a) Temporary classrooms~~, including their utilities, furnishings, and~~ not constructed with permanent foundation and defined as a structure containing one or more rooms, each of which is designed, intended, and equipped for use as a place for formal instruction of pupils by a teacher in a school.

(b) Temporary classroom toilet facilities not constructed with permanent foundations.

(c) Reasonable site preparation and installation of temporary classrooms."

[16] Government Code Section 65978, as amended by Chapter 201, Statutes of 1981, Section 1:

"Any school district receiving funds pursuant to this chapter shall maintain a separate account for any fees paid and shall file a report with the city council or board of supervisors on the balance in the account at the end of the previous fiscal year and the facilities leased, purchased, or constructed during the previous fiscal year. In addition, the report shall specify which attendance areas will continue to be overcrowded when the fall term begins and where conditions of overcrowding will no

Chapter 923, Statutes of 1982, Section 3, amended Government Code Section 65974 to make technical changes.

Chapter 921, Statutes of 1983, Section 1, added Government Code Section 53077[17] to require that developer fees are to be deposited in a separate capital facilities account and to require that interest earned be expended for the same purpose as the original fee. "Local agency" was defined to include school districts.

Chapter 1254, Statutes of 1983, Section 5, added Government Code Section 65975[18]. Subdivision (a) allows a school district to use any or all fees collected for

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longer exist. Such report shall be filed by ~~August 1~~ October 15 of each year and shall be filed more frequently at the request of the board of supervisors or city council.

If overcrowding conditions no longer exist, the city or county shall cease levying any fee or requiring the dedication of any land pursuant to this chapter."

[17] Government Code Section 53077, as added by Chapter 921, Statutes of 1983, Section 1:

"If a local agency requires the payment of a fee in order to provide for an improvement to be constructed to serve a residential development as a condition to approving that development, the local agency receiving the fee shall deposit it with the other fees for the improvement in a separate capital facilities account fund in a manner to avoid any commingling of the fees with other revenues and funds of the local agency, except for temporary investments, and expend those fees solely for the purpose for which the fee was collected. Any interest income earned on the fund shall also be deposited in that fund and shall be expended only for the purpose for which the fee was originally collected, except that the requirements of this sentence shall not apply to interest on the fees paid pursuant to Section 66477 until January 1, 1985.

For purposes of this Section, "local agency" means a county, city, city and county, school district, special district, or any other municipal public corporation or district."

[18] Government Code Section 65975, as added by Chapter 1254, Statutes of 1983, Section 5:

"(a) Whenever a school district has received approval, under the State School Building Lease-Purchase Law of 1976, (Ch. 22 (commencing with Section 17700), Pt. 10, Ed. C.) of a school project to be constructed in an attendance area where fees have

interim facilities toward the 10 percent funding contribution from school districts, as required for joint venture projects, toward school construction approved under the State School Lease-Purchase Law of 1976. This does not increase the amount of fees that might be collected under Section 65974. Subdivision (b) allows the use of fair market value of any land toward the 10 percent requirement when land has been dedicated.

Chapter 1062, Statutes of 1984, Section 1, amended Government Code Section 65978[19] to allow a 30-day extension for filing the account report in the case of

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been collected pursuant to Section 65974, all or a portion of the fees so collected for interim facilities may be used by the district to provide its 10 percent of the project as required by item (1) of Section 17761 of the Education Code. Nothing in this Section shall increase the amount of fees that would otherwise be collected pursuant to Section 65974.

(b) Whenever a school district has received approval, under the State School Building Lease-Purchase Law of 1976 (Ch. 22 (commencing with Section 17700), Pt. 10, Ed. C.), of a school project to be constructed in an attendance area where land has been received pursuant to Section 65974, the district may use the fair market value of the land to provide all or a portion of its 10 percent of the school project as required by item (1) of subdivision (a) of Section 17761. In order to use the value of land to meet the 10 percent match requirement, the district shall construct the capital outlay project on the land used to make the match, and shall provide the full 10 percent of the project cost at one time as provided in item (1) of subdivision (a) of Section 17761 of the Education Code."

[19] Government Code Section 65978, as amended by Chapter 1062, Statutes of 1984, Section 1:

"Any school district receiving funds pursuant to this chapter shall maintain a separate account for any fees paid and shall file a report with the city council or board of supervisors on the balance in the account at the end of the previous fiscal year; ~~and~~ the facilities leased, purchased, or constructed; and the dedication of land during the previous fiscal year. In addition, the report shall specify which attendance areas will continue to be overcrowded when the fall term begins and where conditions of overcrowding will no longer exist. Such report shall be filed by October 15 of each year and shall be filed more frequently at the request of the board of supervisors or city council.

The board of supervisors or city council may approve a 30-day extension for the filing of the report in the case of extenuating circumstances, as determined by the board

extenuating circumstances.

Chapter 1498, Statutes of 1985, Section 1.5, amended Government Code Section 65971[20], subdivision (b), to require the city council or board of supervisors to

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of supervisors or city council.

During the time that the report has not been filed in the manner prescribed in this Section, there shall be a waiver of any performance of the payment of fees or the dedication of land.

If overcrowding conditions no longer exist, the city or county shall cease levying any fee or requiring the dedication of any land pursuant to this chapter."

[20] Government Code Section 65971, as amended by Chapter 1498, Statutes of 1985, Section 1.5:

"~~If the~~(a) The governing body of a school district which operates an elementary or high school shall notify the city council or board of supervisors of the city or county within which the school district is located if the governing body makes ~~a finding~~ both of the following findings supported by clear and convincing evidence ~~that: (a)~~

(1) That conditions of overcrowding exist in one or more attendance areas within the district which will impair the normal functioning of educational programs including the reason for ~~such~~ the existence of those conditions ~~existing; and~~

(~~b~~2) ~~that~~ That all reasonable methods of mitigating conditions of overcrowding have been evaluated and no feasible method for reducing ~~such~~ those conditions exist~~, the governing body of the school district shall notify the city council or board of supervisors of the city or county within which the school district lies.~~

(b) The notice of findings sent to the city or county pursuant to subdivision (a) shall specify the mitigation measures considered by the school district. If the city council or board of supervisors concurs in those findings, Section 65972 shall be applicable to actions taken on residential development by the city council or board of supervisors. The city council or board of supervisors shall take no action on the notice of findings sent to the city or county pursuant to subdivision (a) until the findings have been made available to the public for 60 days after the date of receipt by the city or county. The city council or board of supervisors shall either concur or not concur in the notice of findings within 61 days to 150 days after the date of receipt of the findings. The city council or board of supervisors may extend the period to concur or not to concur for one 30-day period. The failure of the city council or board of supervisors to either concur or not concur within the time period prescribed in this subdivision shall not be deemed as an act of concurrence in the notice of findings by the council or board.

The date of receipt of the notice of findings is the date when all of the materials required by this section are completed and filed by the school district with the city

either concur or not concur within 61 to 150 days after receipt of the findings. They may have one 30-day extension of time.

Chapter 1498, Statutes of 1985, Section 2.5, amended Government Code Section 65973[21] to allow reasonable methods of mitigation to include agreements between affected schools and other school districts with surplus facilities which may be leased or purchased.

Chapter 1498, Statutes of 1985, Section 3, amended Government Code Section 65974[22], subdivision (4), to provide that any fees used to purchase land will not be used

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council or board of supervisors."

[21] Government Code Section 65973, as amended by Chapter 1498, Statutes of 1985, Section 2.5:

"As used in this chapter the following terms means:

(a) "Conditions of overcrowding" means that the total enrollment of a school, including enrollment from proposed development, exceeds the capacity of ~~such~~ the school as determined by the governing body of the district.

(b) "Reasonable methods for mitigating conditions of overcrowding" shall include, but are not limited to, agreements between a subdivider or builder and the affected school district whereby temporary-use buildings will be leased to the school district or temporary-use buildings owned by the school district will be used and agreements between the affected school district and other school districts whereby the affected school district agrees to lease or purchase surplus or underutilized school facilities from other school districts.

(c) "Residential development" means a project containing residential dwellings, including mobilehomes, of one or more units or a subdivision of land for the purpose of constructing one or more residential dwelling units."

[22] Government Code Section 65974, as amended by Chapter 1498, Statutes of 1985, Section 3:

"(4) The location and amount of land to be dedicated or the amount of fees to be paid, or both, shall bear a reasonable relationship and will be limited to the needs of the community for interim elementary or high school facilities and shall bear a reasonable relationship and shall be limited to the needs of the community for interim elementary or high school facilities and shall be reasonably related and limited to the need for schools caused by the development. ~~(c)~~However, the value of the land to be dedicated or the

to purchase more land than is necessary for the placement of interim facilities.

Chapter 1498, Statutes of 1985, Section 4.5, amended Government Code Section 65976[23] to provide that the notice required in Section 69571 may include an increase in the amount of fee or dedication.

Chapter 1498, Statutes of 1985, Section 5, amended Government Code Section 65979 to make technical changes.

Chapter 1498, Statutes of 1985, Section 6, amended Government Code Section 65980[24] to add the definition of "approval of a residential development" in new

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amount of fees to be paid, or both, shall not exceed the amount necessary to pay five annual lease payments for the interim facilities. In lieu of the dedication of land or the payment of fees, or both, the builder of a residential development may, at his or her option and at his or her expense, provide interim facilities, owned or controlled by the builder, at the place designated by the school district, and at the conclusion of the fifth school year the builder shall, at the builder's expense, remove the interim facilities from that place."

[23] Government Code Section 65976, as amended by Chapter 1498, Statutes of 1985, Section 4.5:

"~~Following the decision by the city or county~~ As a part of the notice required by Section 65971, or in any event before the city council or board of supervisors make a decision to require the dedication of land or the payment of fees, or both, or to increase the amount of land to be dedicated or the fees to be paid, or both, the governing body of the school district shall submit a schedule to the city council or board of supervisors specifying how ~~it~~ the school district will use the land or fees, or both, to solve the conditions of overcrowding. The schedule shall include the school sites to be used, the classroom facilities to be made available, and the times when those facilities will be available. ~~In the event~~ If the governing body of the school district cannot meet the schedule, it shall submit modifications to the city council or board of supervisors and the reasons for the modifications."

[24] Government Code Section 65980, as amended by Chapter 1498, Statutes of 1985, Section 6:

"For the purposes of Section 65974 the following terms mean:

(a) "Approval of a residential development" means any approval for the development prior to and including the issuance of a building permit for the

subdivision (a). Former subdivisions (a) and (b) were re-lettered (b) and (c) respectively. New subdivision (c) was amended to add subparagraph (4) to add land necessary for the placement of temporary classrooms and toilet facilities to the definition of interim facilities.

Chapter 136, Statutes of 1986, Section 1, amended Government Code Section 65979[25] to permit the levying of developer fees after the construction of facilities has

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development.

(b) "Classroom facilities," "classroom and related facilities," and "elementary or high school facilities" mean "interim facilities" as defined in this Section and shall include no other facilities.

(c) Interim facilities ~~for purposes of Section 65974 shall be~~ are limited to the following:

(~~a~~ 1) Temporary classrooms not constructed with permanent foundation and defined as a structure containing one or more rooms, each of which is designed, intended, and equipped for use as a place for formal instruction of pupils by a teacher in a school.

(~~b~~ 2) Temporary classroom toilet facilities not constructed with permanent foundations.

(c 3) Reasonable site preparation and installation of temporary classrooms.

(4) Land necessary for the placement thereon of any of the facilities described in paragraph (1) or (2)."

[25] Government Code Section 65979, as amended by Chapter 136, Statutes of 1986, Section 1:

"One year after receipt of an apportionment pursuant to the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code) for the construction of a school, the city or county shall not be permitted thereafter, pursuant to this chapter or pursuant to any other school facilities financing arrangement the district may have with builders of residential development, to levy any fee or to require the dedication of any land within the attendance area of the school for which the apportionment was received. However, any time after receipt of the apportionment there may be a determination of overcrowding pursuant to Section 65971, if both of the further findings are made:

(1) That during the period of construction, or after construction has been completed, additional overcrowding would occur from continued residential development.

been completed, if additional overcrowding occurs.

Chapter 685, Statutes of 1986, Section 1, added Government Code Section 53077.5[26]. Subdivisions (a) provides that fees or charges imposed on a residential

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(2) That any fee levied and any required dedication of land levied after the receipt of the construction apportionment can be used to avoid the additional overcrowding prior to the school being available for use by the school district.

(b) Any amounts of fees collected or land dedicated after the receipt of the construction apportionment and not used to avoid overcrowding shall be returned to the person who paid the fee or made the land dedication."

[26] Government Code Section 53077.5, as amended by Chapter 136, Statutes of 1986, Section 1:

"(a) Except as otherwise provided in subdivision (b), any local agency which imposes any fees or charges on a residential development for the construction of public improvements or facilities shall not require the payment of those fees or charges, notwithstanding any other provision of law, until the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs last, provided, that utility service fees may be collected at the time an application for utility service is received. If the residential development contains more than one dwelling, the local agency may determine whether the fees or charges shall be paid on a pro rata basis for each dwelling when it receives its final inspection or certificate of occupancy, whichever occurs last; on a pro rata basis when a certain percentage of the dwellings have received their final inspection or certificate of occupancy, whichever occurs last; or on a lump-sum basis when the last dwelling in the development receives its final inspection or certificate of occupancy, whichever occurs first.

(b) Notwithstanding subdivision (a), the local agency may require the payment of those fees or charges at an earlier time if (1) the local agency determines that the fees or charges will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency has adopted a proposed construction schedule or plan prior to final inspection or issuance of the certificate of occupancy or (2) the fees or charges are to reimburse the local agency for expenditures previously made. "Appropriated," as used in this subdivision, means authorization by the governing body of the local agency for which the fee is collected, to make expenditures and incur obligations for specific purposes.

(c) "Local agency," as used in this section, means a county, city, or city and county, whether general law or chartered, or district. "District" means an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

(d) This section applies only to fees collected by a local agency to fund the

development for the construction of public improvements, shall not require payment until the date of the final inspection or the date the certificate of occupancy is issued. If the residential development contains more than one dwelling, the local agency may determine whether the fees or charges shall be paid on a pro rata basis or on a lump-sum. Subdivision (b) allows the local agency to require the payment of those fees or charges at an earlier time if (1) the local agency determines that the fees or charges will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency has adopted a proposed construction schedule or plan prior to final inspection or issuance of the certificate of occupancy or (2) the fees or charges are to reimburse the local agency for expenditures previously made. "Appropriated," as used in this subdivision, means authorization by the governing body of the local agency for which the fee is collected, to make expenditures and incur obligations for specific purposes. Subdivision (c) defines

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construction of public improvements or facilities. It does not apply to fees collected to cover the cost of code enforcement or inspection services, or to other fees collected to pay for the cost of enforcement of local ordinances or state law.

(e) "Final inspection" or "certificate of occupancy," as used in this section, have the same meaning as described in Sections 305 and 307 of the Uniform Building Code, International Conference of Building Officials, 1985 Edition.

(f) The Legislative Analyst shall submit a report to the Legislature by January 1, 1992, which evaluates the implementation of this section. In preparing the report, the Legislative Analyst shall consult with individuals and associations who, in the opinion of the Legislative Analyst, are knowledgeable about the impact of this section. Those individuals and associations shall include, but not be limited to, representatives of builders, landowners, planners, civil engineers, land surveyors, counties, cities, school districts, special districts, and public utilities.

(g) This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1993, deletes or extends that date."

"local agency" and "district." Subdivision (d) limits this section only to fees collected by a local agency to fund the construction of public improvements or facilities. It does not apply to fees collected to cover the cost of code enforcement or inspection services, or to other fees collected to pay for the cost of enforcement of local ordinances or state law. Subdivision (e) defines "final inspection" or "certificate of occupancy." Subdivision (f) requires the Legislative Analyst to submit a report to the Legislature by January 1, 1992, which evaluates the implementation of this section. In preparing the report, the Legislative Analyst were to consult with individuals and associations who were knowledgeable about the impact of this section, including school districts. Subdivision (g) sets a sunset date for this section as January 1, 1993.

Chapter 887, Statutes of 1986, Section 9, added Government Code Section 53081[27] to provide that a school district may pay any bonds, notes, loans, leases or

[27] Government Code Section 53081, as added by Chapter 887, Statutes of 1986, Section 9:

"A school district that imposes any fees on construction within the school district may use those fees to pay any bonds, notes, loans, leases or other installment agreements including, but not limited to, bonds issued by the authority or loans, leases or other installment agreements that secure bonds issued by the authority. The authority may issue bonds, in accordance with Section 17883, to finance projects for one or more participating school districts that have imposed fees on construction within the district, which bonds may be payable from and secured by those fees in whole or in part. For this purpose, participating school districts may pledge and assign all or any part of those fees to the authority, and the fees so pledged and assigned to the authority, and any income thereon, may be pledged and assigned by the authority to the payment of bonds issued by the authority to finance projects for those participating school districts. While it is the intent of the Legislature that the amount of financing provided to a participating school district pursuant to this Section shall be reasonably related, in the judgment of the authority, to the amount of fees on construction expected by the authority to be derived from or attributable to that participating school district, nothing in this Section or any other provision of law shall be deemed to require a

other installment agreements using fees imposed on construction within the school district.

Chapter 887, Statutes of 1986, Section 10, amended Government Code Section 65974[28], to add subdivision (e), which provides that contracts between a builder and a school district, entered into pursuant to a School Facilities Master Plan for a

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proportionate or other relationship between the amount of the financing actually provided to a participating school district pursuant to this Section and the amount of fees on construction actually derived from or attributable to that participating school district pursuant to this Section or used by the authority to secure or pay any bonds of the authority issued pursuant to this Section.

[28] Government Code Section 65974, as amended by Chapter 887, Statutes of 1986, Section 10:

"(e) Notwithstanding any other provision of this chapter, contracts entered into or contracts to be entered into pursuant to a School Facilities Master Plan administered by a Join Powers Authority created under Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code for a designated community plan area adopted by a city, county, or city and county, whether general law or chartered, on or before September 1, 1986, that requires the payment of a fee, charge, or dedication for the construction of school facilities as a condition to the approval of residential development shall not be subject to the provisions of subdivision (b) of Section 65995. Provided, however, that in determining developer fees under that school facilities master plan, the cost and maximum building area standards for school buildings prescribed by Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code shall apply, and the school district or districts involved are required to have on file with the Office of Local Assistance, and actively pursue in good faith, an application for preliminary determination of eligibility for project funding under that chapter, and shall actively pursue in good faith the establishment of a community capital facilities district or other permanent financing mechanisms to reduce or eliminate developer fees

Any fees collected or land dedicated after September 1, 1986, pursuant to this Section, and not used to avoid overcrowding of the facilities to be built pursuant to the school facilities master plan, shall be subject to disposition in accordance with subdivision (b) of Section 65979.

Fees collected in excess of the limitations set forth in subdivision (b) of Section 65995 for schools constructed under that school facilities master plan shall neither advantage nor disadvantage a school district's application for project funding under Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code."

designated community plan area, are not subject to square foot rate limitations. School districts are required to have on file with the Office of Local Assistance an application for preliminary determination of eligibility for project funding and should actively pursue in good faith other permanent financing mechanisms to reduce or eliminate developer fees.

Chapter 887, Statutes of 1986, Section 11, added Government Code Section 65995[29]. Subdivision (a) prohibits any fee, charge, dedication or other form of

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[29] Government Code Section 65995, as added by Chapter 887, Statutes of 1986, Section 11:

"(a) Except for a dedication or fee, or both, required under Section 53080, or pursuant to Chapter 4.7 (commencing with Section 65970), no fee, charge, dedication, or other form of requirement shall be levied by the legislative body of a local agency against a development project, as defined by Section 65928, for the construction or reconstruction of school facilities.

(b) In no event shall the amount of any fee, charge, dedication, or other form of requirement, as described in subdivision (a), including the amount of fees to be paid or the value of land to be dedicated, or both, under Chapter 4.7 (commencing with Section 65970), exceed the following:

(1) One dollar and fifty cents ($1.50) per square foot of covered or enclosed space, in the case of any residential development.

(2) Twenty-five cents ($0.25) per square foot of covered and enclosed space, in the case of any commercial or industrial development. No fee, charge, dedication, or other form of the requirement may be levied by any school district governing board upon any commercial or industrial development unless and until the governing board has first made the finding that the location and amount of land to be dedicated or the amount of fees to be paid, or both, shall bear a reasonable relationship and be limited to the needs of the community for elementary or high school facilities, and shall be reasonably related and limited to the need for schools caused by the development.

(3) The amount of the limits set forth in paragraphs (1) and (2) shall be annually increased according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the State Allocation Board at its January meeting.

(c) Subdivision (a) does not apply during the term of any contract entered into between a subdivider or builder and a school district, city, county, or city and county,

requirement be levied for the construction or reconstruction of school facilities, except for certain dedications or fees under Section 53080 or Chapter 4.7 (commencing with Section 65970). Subdivision (b) limits fees and charges under Chapter 4.7 to no more than one dollar and fifty cents ($1.50) per square foot for residential development and twenty-five cents ($0.25) per square foot for commercial or industrial development. These fees may be levied only when there is a finding, by the school district governing board, that the fees imposed are reasonably related and limited to the need for schools caused by the development. Subdivision (c) excludes development projects during the term of any contract between a builder and a school district before the effective date of the chapter. Any project commenced on or before September 1, 1986, is subject to only those fees in existence on that date. Subdivision (d) states a legislative finding and declaration that the Legislature occupies the subject matter of mandatory development fees and other development requirements for school facilities finance to the exclusion of

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whether general law or chartered, on or before the effective date of this chapter that requires the payment of a fee, charge, or dedication for the construction of school facilities as a condition to the approval of residential development. In addition, any development project for which a final map was approved and construction had commenced on or before September 1, 1986, is subject to only the fee, charge, dedication, or other form of requirement prescribed in any local ordinance in existence on that date and applicable to the project.

(d) The Legislature finds and declares that the subject of the financing of school facilities with development fees is a matter of statewide concern. For this reason the Legislature hereby occupies the subject matter of mandatory development fees and other development requirements for school facilities finance to the exclusion of all local measures on the subject.

(f) Nothing in this Section shall be interpreted to limit or prohibit the use of Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 to finance the construction or reconstruction of school facilities."

all local measures on the subject. Subdivision (f) states that this Section is not intended to limit or prohibit the use of Government Code Section 53311, also known as the "Mello-Roos Community Facilities Act of 1982", to finance the construction or reconstruction of school facilities.

Chapter 887, Statutes of 1986, Section 11, added Government Code Section 65996[30] to list the code sections that exclusively mitigate the environmental effects related to the adequacy of school facilities when considering the approval of a development project.

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[30] Government Code Section 65996, as added by Chapter 887, Statutes of 1986, Section 11:

"The following provisions shall be the exclusive methods of mitigating environmental effects related to the adequacy of school facilities when considering the approval or the establishment of conditions for the approval of a development project, as defined in Section 65928 of the Government Code pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code:

(a) Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 of the Government Code.

(b) Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 of the Government Code.

(c) Chapter 4.5 (commencing with Section 15450) of Part 10 of the Education Code.

(d) Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code.

(e) Chapter 28 (commencing with Section 17870) of Part 10 of the Education Code.

(f) Chapter 25 (commencing with Section 17785) of Part 10 of the Education Code.

(g) Article 2.5 (commencing with Section 39327) of Chapter 3 of Part 23 of the Education Code.

(h) Article 3 (commencing with Section 42260) of Chapter 7 of Part 24 of the Education Code.

No public agency shall, pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code or Division 2 (commencing with Section 66410) of this code, deny approval of a project on the basis of the adequacy of school facilities."

Chapter 888, Statutes of 1986, Section 6, added Government Code Section 53080[31]. Subdivision (a) provides that any school district is authorized to levy a fee, charge, dedication, or other form of requirement against any new commercial and industrial construction and new residential construction within the boundaries of the district for the purpose of funding the construction or reconstruction of school facilities. Subdivision (b) requires the school district to provide certification that a development project has complied with the required levy of fees prior to the issuance of a building permit.

Chapter 927, Statutes of 1987, Section 1, added Government Code Section 66000[32] to provide relevant definitions. Subdivision (c) defines "local agency" to include

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[31] Government Code Section 53080, as added by Chapter 888, Statutes of 1986, Section 6:

"(a) The governing board of any school district is authorized to levy a fee, charge, dedication, or other form of requirement against any development project, as defined in Section 65928, within the boundaries of the district, for the purpose of funding construction or reconstruction of school facilities, subject to any limitations set forth in Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7. This fee, charge, dedication, or other form of requirement may be applied only to new commercial and industrial construction, and, as to residential development, to new construction, and other construction to the extent of the resulting increase in habitable area.

(b) No city or county, whether general law or chartered, may issue a building permit for any development absent certification by the appropriate school district of compliance by that development project with any fee, charge, dedication, or other form of requirement levied by the governing board of that school district pursuant to subdivision (a).

(c) In the case of the sale of a manufactured home or mobilehome, the payment of fees to either the school district or other entity shall occur at the time of occupancy pursuant to the sale or lease of the manufactured home or mobilehome pursuant to Section 18080.5 of the Health and Safety Code."

[32] Government Code Section 66000, as added by Chapter 927, Statutes of 1987, Section 1:

"As used in this chapter:

a school district.

Chapter 927, Statutes of 1987, Section 1, added Government Code Section 66001[33]. Subdivision (a) requires local agencies to identify the purpose of the fee and

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(a) "Development project" means any project undertaken for the purpose of development. "Development project" includes a project involving the issuance of a permit for construction or reconstruction, but not a permit to operate.

(b) "Fee" means a monetary exaction other than a tax or special assessment, which is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, but does not include fees specified in Section 66477, fees for processing applications for governmental regulatory actions or approvals, fees collected under development agreements adopted pursuant to Article 2.5 (commencing with Section 65864) of Chapter 4.

(c) "Local agency" means a county, city, whether general law or chartered, city and county, school district, special district, or any other municipal public corporation or district; provided that "local agency" does not include a school district if Senate Bill No. 97 of the 1987-88 Regular Session is enacted and becomes effective on or before January 1,1988.

(d) "Public facilities" includes public improvements, public services and community amenities."

[33] Government Code Section 66001, as added by Chapter 927, Statutes of 1987, Section 1:

"(a) In any action establishing, increasing, or imposing a fee as a condition of approval of a development project by a local agency on or after January 1, 1989, the local agency shall do all of the following:

(1) Identify the purpose of the fee.

(2) Identify the use to which the fee is to be put. If the use is financing public facilities, the facilities shall be identified. That identification may, but need not, be made by reference to a capital improvement plan as specified in Section 65403 or 66002, may be made in applicable general or specific plan requirements, or may be made in other public documents that identify the public facilities for which the fee is charged.

(3) Determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed.

(4) Determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.

(b) In any action imposing a fee as a condition of approval of a development project by a local agency on or after January 1, 1989, the local agency shall determine

the use to which the fee is to be put. They must also identify the facility, and determine the reasonable relationship between the need for a facility and the type of development project. Subdivision (b) requires local agencies to determine how there is a reasonable relationship between amount of fee and the cost of the facility. Subdivision (c) requires public agencies to deposit, invest, account for and expend fees pursuant to Section 53077. Subdivision (d) requires local agencies to make findings each fiscal year regarding any unexpended or uncommitted fees still on account five or more years after

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how there is a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed.

(c) Upon receipt of a fee subject to this Section, the local agency shall deposit, invest, account for, and expend the fees pursuant to Section 53077.

(d) The local agency shall make findings once each fiscal year with respect to any portion of the fee remaining unexpended or uncommitted in its account five or more years after deposit of the fee to identify the purpose to which the fee is to be put and to demonstrate a reasonable relationship between the fee and the purpose for which it is charged. The findings required by this subdivision need only be made for moneys in the possession of the local agency and need not be made with respect to letters of credit, bonds, or other instruments taken to secure payment of the fee at a future date.

(e) The local agency shall refund to the then current record owner or owners of lots or units of the development project or projects on a prorated basis the unexpended or uncommitted portion of the fee, and any interest accrued thereon, for which need cannot be demonstrated pursuant to this subdivision. A local agency may refund the unexpended or uncommitted revenues by direct payment, by providing a temporary suspension of fees, or by any other means consistent with the intent of this Section. The determination by the governing body of the local agency of the means by which those revenues are to be refunded is a legislative act.

If the administrative costs of refunding unexpended or uncommitted revenues pursuant to this subdivision exceed the amount to be refunded, the local agency, after a public hearing, notice of which has been published pursuant to Section 6061 and posted in three prominent places within the area of the development project, may determine that the revenues shall be allocated for some other purpose for which fees are collected subject to this chapter and which serves the project on which the fee was originally imposed."

its initial deposit. The findings must identify the purpose of the fee and its reasonable relationship to the purpose for which it is charged. Subdivision (e) requires local agencies to refund prorated fees and interest if its purpose or relationship cannot be shown.

Chapter 927, Statutes of 1987, Section 1, added Government Code Section 66002[34]. Subdivision (a) provides that local agencies which levy a fee may adopt a

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[34] Government Code Section 66002, as added by Chapter 927, Statutes of 1987, Section 1:

"(a) Any local agency which levies a fee subject to Section 66001 may adopt a capital improvement plan, which shall indicate the approximate location, size, time of availability, and estimates of cost for all facilities or improvements to be financed with the fees.

(b) The capital improvement plan shall be adopted by, and shall be annually updated by, a resolution of the governing body of the local agency adopted at a noticed public hearing. Notice of the hearing shall be given pursuant to Section 65090. In addition, mailed notice shall be given to any city or county which may be significantly affected by the capital improvement plan. This notice shall be given no later than the date the local agency notices the public hearing pursuant to Section 65090. The information in the notice shall be not less than the information contained in the notice of public hearing and shall be given by first-class mail or personal delivery.

(c) "Facility" or "improvement," as used in this Section, means any of the following:

(1) Public buildings, including schools and related facilities; provided that school facilities shall not be included if Senate Bill 97 of the 1987-88 Regular Session is enacted and becomes effective on or before January 1, 1988.

(2) Facilities for the storage, treatment, and distribution of nonagricultural water.

(3) Facilities for the collection, treatment, reclamation, and disposal of sewage.

(4) Facilities for the collection and disposal of storm waters and for flood control purposes.

(5) Facilities for the generation of electricity and the distribution of gas and electricity.

(6) Transportation and transit facilities, including but not limited to streets and supporting improvements, roads, overpasses, bridges, harbors, ports, airports, and related facilities.

capital improvement plan, which shall indicate the approximate location, size, time of availability, and estimates of cost for all facilities or improvements to be financed with the fees. Subdivision (b) requires the capital improvement plan be adopted, and annually updated, by the governing body of the local agency at a noticed public hearing. Mailed notice shall be given to any city or county which may be significantly affected by the capital improvement plan. Subdivision (c) defines "facility" or "improvement" to include schools and related facilities.

Chapter 927, Statutes of 1987, Section 1, added Government Code Section 66003[35], to provide that the chapter does not apply to a fee imposed pursuant to a reimbursement agreement with a property owner or developer.

Chapter 1002, Statutes of 1987, Section 1, amended Government Code Section 53077[36] to add subdivisions (c) and (d). Subdivision (b) was amended to add

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(7) Parks and recreation facilities.
(8) Any other capital project identified in the capital facilities plan adopted pursuant to Section 66002."

[35] Government Code Section 66003, as added by Chapter 927, Statutes of 1987, Section 1:
"This chapter does not apply to a fee imposed pursuant to a reimbursement agreement by and between a city or county and a property owner or developer for that portion of the cost of a public facility paid by the property owner or developer which exceeds the need for the public facility attributable to and reasonably related to the development. This chapter shall become operative on January 1, 1989."

[36] Government Code Section 53077, as amended by Chapter 1002, Statutes of 1987, Section 1:
"(a) If a local agency requires the payment of a fee ~~in order to provide for an improvement to be constructed to serve a residential development as a condition to approving that development~~ specified in paragraph (2) of subdivision (b) in connection with the approval of a development project, the local agency receiving the fee shall deposit it with the other fees for the improvement in a separate capital facilities account

definitions for the section. Subdivision (c) provides the opportunity to request an audit of any local agency fee or charge to any person. Subdivision (d) states the legislative intent that developer fees be held in a separate capital facilities account and allocated only for the purpose intended for the fee. Other technical changes were also made.

Chapter 1037, Statutes of 1987, Section 1, added Government Code Section 53080.15[37]. Subdivision (a) restricts the imposition of fees on a greenhouse or other

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or fund in a manner to avoid any commingling of the fees with other revenues and funds of the local agency, except for temporary investments, and expend those fees solely for the purpose for which the fee was collected. Any interest income earned ~~on~~ by moneys in the capital facilities account or fund shall also be deposited in that account or fund and shall be expended only for the purpose for which the fee was originally collected, except that the requirements of this sentence shall not apply to interest on the fees paid pursuant to Section 66477 until January 1, 1985.

(b) For purposes of this section, ~~"local~~:

(1) "Development project" means any project undertaken for the purpose of development. "Development project" includes a project involving the issuance of a permit for construction or reconstruction, but not a permit to operate.

(2) "Fee" means any fee imposed to provide for an improvement to be constructed to serve a development project, or which is a fee within the meaning of subdivision (b) Section 66000, as added by Assembly Bill 1600 of the 1987-88 Regular Session, if enacted, and that is imposed by the local agency as a condition of approving the development project.

(3) "Local agency" means a county, city, whether general law or chartered, city and county, school district, special district, or any other municipal public corporation or district.

(c) Any person may request an audit of any local agency fee or charge that is subject to Section 54997, including fees or charges of school districts, in accordance with that section.

(d) The Legislature finds and declares that untimely or improper allocation of development fees hinders economic growth and is, therefore, a matter of statewide interest and concern. It is, therefore, the intent of the Legislature that subdivision (a) shall supersede all conflicting local laws and shall apply in charter cities."

[37] Government Code Section 53080.15, as added by Chapter 1037, Statutes of 1987, Section 1:

"(a) No fee, charge, dedication, or other requirement may be levied by any school district pursuant to Section 53080 upon any greenhouse or other space that is

agricultural purpose structure unless the district makes a finding supported by substantial evidence that the amount of the fees are limited to the needs of the community for school facilities caused by the development and do not exceed the cost of providing those school facilities and prohibits the imposition of fees if there is not an increase in the number of employees or those employees will be housed by their employer, against which housing a fee has already been applied. The governing board shall consult with the county agricultural commissioner or the county director of the cooperative extension service.

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covered or enclosed for agricultural purposes, unless and until the district first complies with subdivisions (b) and (c).

(b) The school district governing board shall make a finding, supported by substantial evidence, of both of the following:

(1) The amount of the proposed fees or other requirements and the location of the land, if any, to be dedicated, bear a reasonable relationship and are limited to the needs of the community for elementary or high school facilities caused by the development.

(2) The amount of the proposed fees or other requirements does not exceed the estimated reasonable cost of providing for the construction or reconstruction of the school facilities necessitated by the development projects from which the fees or other requirements are to be collected.

(c) In determining the amount of the fees or other requirements, if any, to be levied on the development of any structure as described in subdivision (a), the school district governing board shall consider the relationship between the proposed increase in the number of employees, if any, the size and specific use of the structure, and the cost of the construction. No fee, charge, dedication, or other form of requirement, as authorized under Section 53080, shall be applied to the development of any structure described in subdivision (a) where the governing board finds either that the number of employees is not increased as a result of that development, or that housing has been provided for those employees, to the extent of any increase, by their employer, against which housing a fee, charge, or dedication, or other form of requirement has been applied under Section 53080. In developing the funding described in this Section, the governing board shall consult with the county agricultural commissioner or the county director of the cooperative extension service."

Chapter 1184, Statutes of 1987, Section 6, amended Government Code Section 53077.5 to make technical changes.

Chapter 1346, Statutes of 1987, Section 1, added Government Code Section 53080.4[38]. Subdivision (a) limits the cases where a fee may be levied against a

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[38] Government Code Section 53080.4, as added by Chapter 1346, Statutes of 1987, Section 1:

"(a) Notwithstanding any other provision of law, any fee, charge, dedication, or other form of requirement levied by the governing board of a school district under Section 53080 may apply, as to any manufactured home or mobilehome, only pursuant to compliance with all of the following conditions:

(1) The fee, charge, dedication, or other form of requirement is applied to the initial location, installation, or occupancy of the manufactured home or mobilehome within the school district.

(2) The manufactured home or mobilehome is to be located, installed, or occupied on a space or site on which no other manufactured home or mobilehome was previously located, installed, or occupied.

(3) The manufactured home or mobilehome is to be located, installed, or occupied on a space in a mobilehome park, or on any site or in any development outside a mobilehome park, on which the construction of the pad or foundation system commenced after September 1, 1986.

(b) Compliance on the part of any manufactured home or mobilehome with any fee, charge, dedication, or other form of requirement, as described in subdivision (a), or certification by the appropriate school district of that compliance, shall be required as a condition of the following, as applicable:

(1) The close of escrow, where the manufactured home or mobilehome is to be located, installed, or occupied on a mobilehome park space, or on any site or in any development outside a mobilehome park, as described in subdivision (a), and the sale or transfer of the manufactured home or mobilehome is subject to escrow as provided in Section 18035 or 18035.2 of the Health and Safety Code.

(2) The approval of the manufactured home or mobilehome for occupancy pursuant to Section 18551 or 18613 of the Health and Safety Code, in the event that paragraph (1) does not apply.

(c) No fee or other requirement levied under Section 53080 shall be applied to any of the following:

(1) Any manufactured home or mobilehome located, installed, or occupied on a space in a mobilehome park on or before September 1, 1986, or on any date thereafter, if construction on that space, pursuant to a building permit,

manufactured home or mobilehome. Before levying any fee, charge, dedication, or other requirement as to any manufactured home or mobilehome, all of the following conditions must be true: the home is installed or occupied for the first time within the school district, it is the first time any home has been installed on that specific site, and

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commenced on or before September 1, 1986.

(2) Any manufactured home or mobilehome located, installed, or occupied on any site outside of a mobilehome park on or before September 1, 1986, or on any date thereafter if construction on that site pursuant to a building permit commenced on or before September 1, 1986.

(3) The replacement of or addition to a manufactured home or mobilehome located, installed, or occupied on a space in a mobilehome park, subsequent to the original location, installation, or occupancy of any manufactured home or mobilehome on that space.

(4) The replacement of a manufactured home or mobilehome that was destroyed or damaged by fire or any form of natural disaster.

(5) A manufactured home or mobilehome accessory structure, as defined in Section 18008.5 or 18213 of the Health and Safety Code.

(6) The conversion of a rental mobilehome park to a subdivision, cooperative, or condominium for mobilehomes, or its conversion to any other form of resident ownership of the park, as described in Section 50561 of the Health and Safety Code.

(d) Where any fee or other requirement levied under Section 53080 is required as to any manufactured home or mobilehome that is subsequently replaced by a permanent residential structure constructed on the same lot, the amount of that fee or other requirement shall apply toward the payment of any fee or other requirement under Section 53080 applied to that permanent residential structure.

(e) Notwithstanding any other provision of law, any school district that, on or after January 1, 1987, collected any fee, charge, dedication, or other form of requirement from any manufactured home, mobilehome, mobilehome park, or other development, shall immediately repay the fee, charge, dedication, or other form of requirement to the person or persons who made the payment to the extent the fee, charge, dedication, or other form of requirement collected would not have been authorized under subdivision (a). This subdivision shall not apply, however, to the extent that, pursuant to Section 16 of Article I of the California Constitution, it would impair the obligation of any contract entered into by any school district, on or before the effective date of this section.

(f) For purposes of this section, "manufactured home," "mobilehome," and "mobilehome park" have the meanings set forth in Sections 18007, 18008, and 18214, respectively, of the Health and Safety Code."

the home is installed on a foundation system built after September 1, 1986. Subdivision (b) requires fees to be paid at the close of escrow or on approval for occupancy. Subdivision (c) disallows any fee in the following cases: (1) any home was installed on the site on or before September 1, 1986; (2) construction on the site pursuant to a building permit commenced on or before September 1, 1986; (3) the home replaces another on that site; (4) the home replaces one destroyed by fire or natural disaster; (5) construction is an accessory structure, such as an awning, porch, or storage cabinet as defined in Health and Safety Code Section 18008.5 or 18213; and (6) a rental mobilehome park is converted to any form of resident ownership of the park. Subdivision (d) states that where a permanent residential structure constructed on the same lot replaces a manufactured home or mobilehome and a fee was levied for the previous home under Section 53080, the original fee will be applied to any additional amount required. Subdivision (e) holds that any fee collected on or after January 1, 1987, from a manufactured home, mobilehome, or mobilehome park that would not be authorized under subdivision (a), should be refunded unless it would impair contract obligations of the school district as agreed before the effective date of the section. Subdivision (f) defines the terms "manufactured home," "mobilehome," and "mobilehome park" as set in Sections 18007, 18008, and 18214, respectively, of the Health and Safety Code.

Chapter 29, Statutes of 1988, Section 2, amended Government Code Section

53080[39], subdivision (a), to require that the imposition of developer fees on residential construction that is not new be limited to projects having a value greater than $20,000.

Chapter 29, Statutes of 1988, Section 3, amended Government Code Section 65995[40], subdivision (b), to replace the paragraph (1) phrase "covered or enclosed space" to "habitable space" for residential development.

Chapter 29, Statutes of 1988, Section 4, added Government Code Section 65995.1[41]. Subdivision (a) provides that fees, charges, dedications and other forms of

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[39] Government Code Section 53080, as amended by Chapter 29, Statutes of 1988, Section 2:

"(a) The governing board of any school district is authorized to levy a fee, charge, dedication, or other form of requirement against any development project, as defined in Section 65928, within the boundaries of the district~~,~~ for the purpose of funding the construction or reconstruction of school facilities, subject to any limitations set forth in Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7. This fee, charge, dedication, or other form of requirement may be applied only to new commercial and industrial construction, ~~and, as~~ to new residential ~~development, to new~~ construction, and ~~other construction~~, to the extent of the resulting increase in habitable ~~area~~ space, as defined in Section 65995, to other residential construction as to any development project having a value in excess of twenty thousand dollars ($20,000)."

[40] Government Code Section 65995, as amended by Chapter 29, Statutes of 1988, Section 3:

"(1) One dollar and fifty cents ($1.50) per square foot of ~~covered or enclosed~~ habitable space, in the case of any residential development. "Habitable space," for this purpose, means the space determined by the building department of the city, or county issuing the building permit, in accordance with the building standards of that city or county, to be within the perimeter of a residential structure, not including any carport, walkway, garage, overhang, patio, detached accessory structure, or similar area."

[41] Government Code Section 65995.1, as added by Chapter 29, Statutes of 1988, Section 4:

"(a) Notwithstanding any other provision of law, as to any development project used exclusively for the housing of senior citizens, as described in Section 51.3 of the Civil Code, any fee, charge, dedication, or other form of requirement that is levied under Section 53080 may be applied only to new construction, and is subject to the limits and conditions applicable under subdivision (b) of Section 65995 in the case of commercial

requirements for development projects used exclusively for the housing of senior citizens may be applied only to new construction. Subdivision (b) provides that any senior citizen housing development project against which school facilities fees or other requirements have been levied may not be converted to another use without city or county approval. Approval cannot be granted without school district certification.

Chapter 160, Statutes of 1988, Section 70, amended Government Code Section 65996 to make technical changes.

Chapter 418, Statutes of 1988, Section 7, amended Government Code Section 66000[42] to delete the school district exception dependent upon Senate Bill No. 97.

Chapter 418, Statutes of 1988, Section 8, amended Government Code Section 66001 to make technical changes.

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or industrial development.

(b) Any development project against which school facilities fees or other requirements have been levied in accordance with the limit set forth in subdivision (a) may be converted to any use other than the housing of senior citizens only with the approval of the city or county that issued the building permit for the project. That approval shall not be granted absent certification by the appropriate school district that payment has been made on the part of the development project at the rate of the school facilities fee, charge, dedication, or other form of requirement applied by the district under Section 53080 to residential development as of the date of conversion, less the amount of any school facilities fees or other requirements paid on the part of the project in accordance with the limits set forth in subdivision (a)."

[42] Government Code Section 66000, as amended by Chapter 418, Statutes of 1988, Section 7:

"(c) "Local agency" means a county, city, whether general law or chartered, city and county, school district, special district, or any other municipal public corporation or district~~; provided that "local agency" does not include a school district if Senate Bill No. 97 of the 1987-88 Regular Session is enacted and becomes effective on or before January 1, 1988~~."

Chapter 418, Statutes of 1988, Section 9, amended Government Code Section 66003 to make technical changes.

Chapter 418, Statutes of 1988, Section 10, added Government Code Section 66004[43] to require new fees or an increase in fees be subject to Government Code Section 54994.1, regarding specific notice of fees.

Chapter 926, Statutes of 1988, Section 1, renumbered and amended Government Code Section 53077 as Government Code Section 66006[44]. The

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[43] Government Code Section 66004, as added by Chapter 418, Statutes of 1988, Section 10:

"The establishment or increase of any fee pursuant to this chapter shall be subject to the requirements of Chapter 13.1 (commencing with Section 54994.1) of Part 1 of Division 2 of Title 5."

[44] Government Code Section 66006 (formerly Section 53077), as amended by Chapter 926, Statutes of 1988, Section 1:

"(a) If a local agency requires the payment of a fee specified in ~~paragraph (2) of~~ subdivision (b) in connection with the approval of a development project, the local agency receiving the fee shall deposit it with the other fees for the improvement in a separate capital facilities account or fund in a manner to avoid any commingling of the fees with other revenues and funds of the local agency, except for temporary investments, and expend those fees solely for the purpose for which the fee was collected. Any interest income earned by moneys in the capital facilities account or fund shall also be deposited in that account or fund and shall be expended only for the purpose for which the fee was originally collected~~, except that the requirements of this sentence shall not apply to interest on the fees paid pursuant to Section 66477 until January 1, 1985~~.

(b) For purposes of this section~~:~~

~~(1) "Development project" means any project undertaken for the purpose of development. "Development project" includes a project involving the issuance of a permit for construction or reconstruction, but not a permit to operate.~~

~~(2) "Fee"~~, "fee" means any fee imposed to provide for an improvement to be constructed to serve a development project, or which is a fee within the meaning of subdivision (b) Section 66000, ~~as added by Assembly Bill 1600 of the 1987-88 Regular Session, if enacted,~~ and that is imposed by the local agency as a condition of approving the development project.

amendment also provided other technical changes.

Chapter 912, Statutes of 1988, Section 2, renumbered and amended Government Code Section 53077.5 as Government Code Section 66007[45].

~~(3) "Local agency" means a county, city, whether general law or chartered, city and county, school district, special district, or any other municipal public corporation or district.~~

(c) Any person may request an audit of any local agency fee or charge that is subject to Section 54997, including fees or charges of school districts, in accordance with that section.

(d) The Legislature finds and declares that untimely or improper allocation of development fees hinders economic growth and is, therefore, a matter of statewide interest and concern. It is, therefore, the intent of the Legislature that subdivision (a) shall supersede all conflicting local laws and shall apply in charter cities."

[45] Government Code Section 66007, as amended by 912, Statutes of 1988, Section 2:

"(a) Except as otherwise provided in subdivision (b), any local agency which imposes any fees or charges on a residential development for the construction of public improvements or facilities shall not require the payment of those fees or charges, notwithstanding any other provision of law, until the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs first. However, ~~provided, that~~ utility service fees may be collected at the time an application for utility service is received. If the residential development contains more than one dwelling, the local agency may determine whether the fees or charges shall be paid on a pro rata basis for each dwelling when it receives its final inspection or certificate of occupancy, whichever occurs first; on a pro rata basis when a certain percentage of the dwellings have received their final inspection or certificate of occupancy, whichever occurs first; or on a lump-sum basis when the ~~last~~ first dwelling in the development receives its final inspection or certificate of occupancy, whichever occurs first.

(b) Notwithstanding subdivision (a), the local agency may require the payment of those fees or charges at an earlier time if (1) the local agency determines that the fees or charges will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency has adopted a proposed construction schedule or plan prior to final inspection or issuance of the certificate of occupancy or (2) the fees or charges are to reimburse the local agency for expenditures previously made. "Appropriated," as used in this subdivision, means authorization by the governing body of the local agency for which the fee is collected, to make expenditures and incur obligations for specific purposes.

(c) ~~"Local agency," as used in this section, means a county, city, or city and county, whether general law or chartered, or district. "District" means an agency~~

1 The former subdivision (c) was deleted and replaced with a new subdivision (c).

~~of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.~~

(1) If any fee or charge specified in subdivision (a) is not fully paid prior to issuance of a building permit for construction of any portion of the residential development encumbered thereby, the local agency issuing the building permit may require the applicant, as a condition of issuance of the building permit, to execute a contract to pay the fee or charge, or applicable portion thereof, within the time specified in subdivision (a). If the fee or charge is prorated pursuant to subdivision (a), the obligation under the contract shall be similarly prorated.

(2) The obligation to pay the fee or charge shall inure to the benefit of, and be enforceable by, the local agency that imposed the fee or charge, regardless of whether it is a party to the contract. The contract shall be recorded in the office of the county recorder of the county and from the date of recondition, shall constitute a lien for the payment of the fee or charge, which shall be enforceable against successors in interest to the initial holder of the building permit. The contract shall be recorded in the grantor-grantee index in the name of the public agency issuing the building permit as grantee and in the name of the building permit holder as grantor.

(3) The contract may require the building permit holder to provide appropriate notification of the opening of any escrow for the sale of the property for which the building permit was issued and to provide in the escrow instructions that the fee or charge be paid to the local agency imposing the same from the sale proceeds in escrow prior to disbursing proceeds to the seller.

(d) This section applies only to fees collected by a local agency to fund the construction of public improvements or facilities. It does not apply to fees collected to cover the cost of code enforcement or inspection services, or to other fees collected to pay for the cost of enforcement of local ordinances or state law.

(e) "Final inspection" or "certificates of occupancy," as used in this section, have the same meaning as described in Sections 305 and 307 of the Uniform Building Code, International Conference of Building Officials, 1985 Edition.

~~(f) The Legislative Analyst shall submit a report to the Legislature by January 1, 1992, which evaluates the implementation of this section. In preparing the report, the Legislative Analyst shall consult with individuals and associations who, in the opinion of the Legislative Analyst, are knowledgeable about the impact of this section. Those individuals and associations shall include, but not be limited to, representatives of builders, landowners, planners, civil engineers, land surveyors, counties, cities, school districts, special districts, and public utilities.~~

(~~g~~ f) This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1993, deletes or extends that date."

Subparagraph (1) of new subdivision (c) provides for the developer to enter into a contract to pay any fee or charge not fully paid prior to the issuance of a building permit. Subparagraph (2) requires the contract to be recorded in the office of the county recorder and shall constitute a lien for the payment of the fee or charge. Subparagraph (3) provides for the notification of the opening of escrow instructions which shall pay the local agency for the fee or charge prior to disbursing proceeds to the seller. Former subdivisions (c) and (d) were re-lettered as subdivisions (d) and (e) respectively. Former subdivision (e) was deleted.

Chapter 170, Statutes of 1989, Section 2, amended Government Code Section 66003[46] to change the wording "city or county" to "local agency."

Chapter 170, Statutes of 1989, Section 3, amended Government Code Section 66006[47], to add a new subdivision (b) which requires local agencies to make a report

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[46] Government Code Section 66003, as amended by Chapter 170, Statutes of 1989, Section 2:

"Sections 66001 and 66002 do not apply to a fee imposed pursuant to a reimbursement agreement by and between a ~~city or county~~ local agency and a property owner or developer for that portion of the cost of a public facility paid by the property owner or developer which exceeds the need for the public facility attributable to and reasonably related to the development. This chapter shall become operative on January 1, 1989."

[47] Government Code Section 66006, as amended by Chapter 170, Statutes of 1989, Section 3:

"(b) For each separate account or fund established pursuant to subdivision (a), the local agency 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 and the fee, interest, and other income and the amount of expenditure by public facility and the amount of refunds made pursuant to subdivision (e) of Section 66001 during the fiscal year. The local agency shall review this information at the next regularly scheduled public meeting not less than 15 days after the availability of the information required by this

available for each account within 60 days of the close of each fiscal year. The report will include the beginning and ending balance for the fiscal year, and the fee, interest, and other income and the amount of expenditure by public facility and the amount of refunds. The local agency shall review this information at the next regularly scheduled public meeting not less than 15 days after the availability of the information.

Chapter 1209, Statutes of 1989, Section 19, amended Government Code Section 53080[48]. Subdivision (a), subparagraph (1) limits fees for the construction or

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subdivision."

[48] Government Code Section 53080, as amended by Chapter 1209, Statutes of 1989, Section 19:

"(a) (1) The governing board of any school district is authorized to levy a fee, charge, dedication, or other ~~form of~~ requirement against any development project, ~~as defined in Section 65928, for new construction~~ within the boundaries of the district for the purpose of funding the construction or reconstruction of school facilities, subject to any limitations set forth in Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7. This fee, charge, dedication, or other requirement may be applied to construction only as follows:

(A) To new commercial and industrial construction. The chargeable covered and enclosed space of a commercial or industrial development project, as defined in Section 65995, shall not be deemed to include the square footage of any structure existing on the site of that development project as of the date the first building permit is issued for any portion of that development project.

(B) To new residential construction.

(C) To other residential construction, only if the resulting increase in assessable space, as defined in Section 65995, exceeds 500 square feet. The calculation of the "resulting increase in assessable space", for this purpose shall reflect any decrease in assessable space in the same residential structure that also results from that construction. Where authorized under this paragraph, the fee, charge, dedication, or other requirement is applicable to the total resulting increase in assessable space.

(2) For purposes of this Section, "development project" means any project undertaken for the purpose of development, and includes a project involving the issuance of a permit for construction or reconstruction, but not a permit to

operate.

(3) For purposes of this Section, construction or reconstruction of school facilities does not include any item of expenditure for any of the following:

(A) The regular maintenance or routine repair of school buildings and facilities.

(B) The inspection, sampling, analysis, encapsulation, or removal of asbestos containing materials, except where incidental to school facilities construction or reconstruction for which the expenditure of fees or other consideration collected pursuant to this Section is not prohibited.

(C) The purposes of deferred maintenance described in Section 39618 of the Education Code.

(4) The appropriate city or county may be authorized pursuant to contractual agreement with the governing board, to collect and otherwise administer, on behalf of the school district, any fee, charge, dedication, or other requirement levied under this subdivision. In the event of any agreement authorizing a city or county to collect that fee, charge, dedication, or other requirement in any area within the school district, the certification requirement set forth in subdivision (b) or (c), as appropriate, is deemed to be complied with as to any residential development project within that area upon receipt by that city or county of payment of the fee, charge, dedication, or other requirement imposed on that project.

(5) Fees or other consideration collected pursuant to this Section may be expended by a school district for the costs of performing any study or otherwise making the findings and determinations required under subdivisions (a), (b), and (d) of Section 66001. In addition, an amount not to exceed, in any fiscal year, 3 percent of the fees collected in that fiscal year pursuant to this Section may be retained by the school district, city, or county, as appropriate, for reimbursement of the administrative costs incurred by that entity in collecting the fees. When any city or county is entitled, under an agreement as described in paragraph (4), to compensation in excess of that amount, the payment of that excess compensation shall be made from other revenue sources available to the school district.

(b) No city or county, whether general law or chartered, may issue a building permit for any development absent certification by the appropriate school district of compliance by that development project with any fee, charge, dedication, or other ~~form of~~ requirement levied by the governing board of that school district pursuant to subdivision (a)

~~(c) In the case of the sale of a manufactured home or mobilehome, the payment of fees to either the school district or other entity shall occur at the time of occupancy pursuant to the sale or lease of the manufactured home or mobilehome pursuant to Section 18080.5 of the Health and Safety Code.~~

reconstruction of school facilities be applied only to (A) new commercial and industrial construction, (B) new residential construction, and (C) other residential construction if the assessable space exceeds 500 square feet. Subdivision (a) was amended to add subparagraph (4) which allows a school district to enter into a contractual agreement with the city or county to collect and otherwise administer the fees. Subdivision (a) was amended to add subparagraph (5) which allows a school district to expend fees for the purpose of performing studies or making required findings and determinations. No more than 3 percent of the fees may be retained to cover administrative costs. Costs over 3 percent shall be reimbursed from other revenue sources available to the school district. Former subdivision (c) was deleted and new subdivision (c) requires school district certification prior to conducting a final inspection or issuance of a certificate of occupancy.

Chapter 1209, Statutes of 1989, Section 20, added Government Code Section

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or of the district's determination that the fee, charge, dedication, or other requirement does not apply to the development project.

(c) If, pursuant to subdivision (c) of Section 53080.1, the governing board specifies that the fee, charge, dedication, or other requirement levied under subdivision (a) is subject to the restriction set forth in subdivision (a) of Section 66007, the restriction set forth in subdivision (b) of this Section does not apply. In that event, however, no city or county, whether general law or chartered, may conduct a final inspection or issue a certificate of occupancy, whichever is later, for any residential development project absent certification by the appropriate school district of compliance by that development project with any fee, charge, dedication, or other requirement levied by the governing board of that school district pursuant to subdivision (a).

(d) Neither subdivision (b) nor (c) shall apply to a city or county as to any fee, charge, dedication, or other requirement as described in subdivision (a), or as to any increase in that fee, charge, dedication, or other requirement, except upon the receipt by that city or county of notification of the adoption of, or increase in, the fee or other requirement in accordance with subdivision (c) of Section 53080.1."

53080.1[49]. Subdivision (a) provides that fees enacted in accordance with

[49] Government Code Section 53080.1, as added by Chapter 1209, Statutes of 1989, Section 20:

"(a) Any resolution adopting or increasing a fee, charge, dedication, or other requirement pursuant to Section 53080, for application to residential, commercial, or industrial development, shall be enacted in accordance with Chapter 5 (commencing with Section 66000) of Division 1 of Title 7, with Section 54994.1, and with the procedures for mailed notice set forth in Section 54992. The adoption, increase, or imposition of any fee, charge, dedication, or other requirement pursuant to Section 53080 shall not be subject to Division 13 (commencing with Section 21000) of the Public Resources Code. The adoption of, or increase in, the fee, charge, dedication, or other requirement shall be effective no sooner than 60 days following the final action on that adoption or increase, except as specified in subdivision (b).

(b) Without following the procedure otherwise required for adopting or increasing a fee, charge, dedication, or other requirement, the governing board of a school district may adopt an urgency measure as an interim authorization for a fee, charge, dedication, or other requirement, or increase in a fee, charge, dedication, or other requirement, where necessary to respond to a current and immediate threat to the public health, welfare, or safety. The interim authorization shall require a four-fifths vote of the governing board for adoption, and shall contain findings describing the current and immediate threat to the public health, welfare, or safety. The interim authorization shall have no force or effect on and after a date 30 days after its adoption. After notice and hearing in accordance with subdivision (a), the governing board, upon a four-fifths vote of the board, may extend the interim authority for an additional 30 days. Not more than two extensions may be granted.

(c) Upon adopting or increasing a fee, charge, dedication, or other requirement pursuant to subdivision (a) or (b), the school district shall transmit a copy of the resolution to each city and each county in which the district is situated, accompanied by all relevant supporting documentation and a map clearly indicating the boundaries of the area subject to the fee, charge, dedication, or other requirement. The school district governing board shall specify, pursuant to that notification, whether or not the collection of the fee or other charge is subject to the restriction set forth in subdivision (a) of Section 66007.

(d) Any party on whom a fee, charge, dedication, or other requirement has been directly imposed pursuant to Section 53080 may protest the establishment or imposition of that fee, charge, dedication, or other requirement in accordance with Section 66009, except that the procedures set forth in Section 66008 are deemed to apply, for this purpose, to commercial and industrial development, as well as to residential development.

(e) In the case of any commercial or industrial development, the following procedures shall also apply:

Government Code Section 66000 et seq. are not effective sooner than 60 days following the final action. Fees are not subject to Public Resources Code Section 21000 which regulates activities found to affect the quality of the environment. Subdivision (b) requires school districts to adopt an interim authorization as an emergency measure to respond to current and immediate threats to the public health,

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(1) The school district governing board shall, in the course of making the findings required under subdivisions (a) and (b) of Section 66001, do all of the following:

(A) Make the findings on either an individual project basis or on the basis of categories of commercial or industrial development. Those categories may include, but are not limited to, the following uses: office, retail, transportation, communications and utilities, light industrial, heavy industrial, research and development, and warehouse.

(B) Conduct a study to determine the impact of the increased number of employees anticipated to result from the commercial or industrial development upon the cost of providing school facilities within the district. For the purpose of making that determination, the study shall utilize employee generation estimates that are based on commercial and industrial factors within the district, as calculated on either an individual project or categorical basis, in accordance with subparagraph (A). The governing board shall take into account the results of that study in making the findings described in this subdivision.

(2) In addition to any other requirement imposed by law, in the case of any development project against which a fee, charge, dedication, or other requirement is to be imposed pursuant to Section 53080 on the basis of a category of commercial or industrial development, as described in paragraph (1), the governing board shall provide a process that permits the party against whom the fee, charge, dedication, or other requirement is to be imposed the opportunity for a hearing to appeal that imposition. The grounds for that appeal include, but are not limited to, the inaccuracy of including the project within the category pursuant to which the fee, charge, dedication, or other requirement is to be imposed, or that the employee generation or pupil generation factors utilized under the applicable category are inaccurate as applied to the project. The party appealing the imposition of the fee, charge, dedication, or other requirement shall bear the burden of establishing that the fee, charge, dedication, or other requirement is improper."

welfare, or safety. Subdivision (c) requires the school district to transmit a copy of the emergency resolution to each city and each county in the school district, along with all relevant supporting documentation, and a map clearly indicating the boundaries of the area subject to the fee. Subdivision (d) allows a party, on whom a fee, charge, dedication or other requirement has been imposed, to protest the establishment or imposition of that fee, charge, dedication or other requirement. Subdivision (e) describes additional duties of the school district governing board for commercial or industrial developments. In addition to those described above, the school district must make findings based on either individual projects or categories of commercial or industrial development, conduct a study to determine the impact of the increased number of employees upon the cost of providing school facilities within the district, and provide a process that permits the party against whom the fee is to be imposed the opportunity for a hearing to appeal that imposition.

Chapter 1209, Statutes of 1989, Section 21, added Government Code Section 53080.2[50] to require two school districts which share common territorial jurisdiction to

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[50] Government Code Section 53080.2, as added by Chapter 1209, Statutes of 1989, Section 21:

"(a) In the event the fee authorized pursuant to Section 53080 is levied by two nonunified school districts having common territorial jurisdiction, in a total amount that exceeds the maximum fee authorized under Section 65995, the fee revenue for the area of common jurisdiction shall be distributed in the following manner:

(1) The governing boards of the affected school districts shall enter into an agreement specifying the allocation of fee revenue and the duration of the agreement. A copy of that agreement shall be transmitted by each district to the State Allocation Board.

(2) In the event the affected school districts are unable to reach an agreement pursuant to paragraph (1), the districts shall jointly submit the dispute

enter into an agreement specifying the allocation of fee revenue and the duration of the agreement. A copy of that agreement shall be transmitted by each district to the State Allocation Board. If they are unable to agree, the matter of allocation of fees will be determined by an arbitration panel. The decision of the arbitration panel shall be final and binding upon both districts for a period of three years.

Chapter 1209, Statutes of 1989, Section 22, added Government Code Section 53080.3[51]. Subdivision (a) requires school districts to refund any fee collected if the

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to a three-member arbitration panel composed of one representative chosen by each of the districts and one representative chosen jointly by both of the districts. The decision of the arbitration panel shall be final and binding upon both districts for a period of three years.

(b) For purposes of the calculation of the district matching share under Section 17705.5 of the Education Code, the fee revenue allocated to the applicant district pursuant to subdivision (a) is deemed to be, as to that district, the maximum fee authorized under Section 53080, or Chapter 4.7 (commencing with Section 65970) of Division 2 of Title 7, or both."

[51] Government Code Section 53080.3, as added by Chapter 1209, Statutes of 1989, Section 22:

"(a) Any school district that has imposed or, subsequent to the operative date of this Section, imposes, any fee, charge, dedication, or other requirement under Section 53080 against any development project that subsequently meets the description set forth in subdivision (b), shall repay or reconvey, as appropriate, that fee, charge, dedication, or other requirement to the person or persons from whom that fee, charge, dedication, or other requirement was collected, less the amount of the administrative costs incurred in collecting and repaying the fee, charge, dedication, or other requirement.

(b) This Section applies to any development project for which the building permit, including any extensions, expires on or after January 1, 1990, without the commencement of construction, as defined in subdivision (c) of Section 65995.

(c) Where the amount of a local matching share required of any school district pursuant to Section 17705.5 of the Education Code includes the amount of a fee or other consideration imposed against a development project that is entitled to reimbursement under this Section, the local matching share shall be reduced by the amount of that fee or other consideration."

building permit expires on or after January 1, 1990 without the commencement of construction. Subdivision (c) requires the local matching share to be reduced by the amount of the fee when a local matching share includes the amount of a fee.

Chapter 1209, Statutes of 1989, Section 23, added Government Code Section 53080.6[52] which prohibits a fee to be applied to the reconstruction of any residential, commercial, or industrial structure after damage or destruction as a result of a natural disaster.

Chapter 1209, Statutes of 1989, Section 24, added Government Code Section 65974.5[53] to allow a school district, which receives funds that are collected under a

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[52] Government Code Section 53080.6, as added by Chapter 1209, Statutes of 1989, Section 23:

"(a) A fee, charge, dedication, or other requirement authorized under section 53080, whether or not allowable under Chapter 6 (commencing with Section 66010) of Division 1 of Title 7, may not be applied to the reconstruction of any residential, commercial, or industrial structure that is damaged or destroyed as a result of a disaster, except to the extent the square footage of the reconstructed structure exceeds the square footage of the structure that was damaged or destroyed. That square footage comparison shall be made, in the case of a commercial or industrial structure, on the basis of chargeable covered and enclosed space, as defined in Section 65995, or, in the case of a residential structure, on the basis of assessable space, as defined in Section 65995.

(b) The following definitions apply for the purposes of this section:

(1) "Disaster" means a fire, earthquake, landslide, mudslide, flood, tidal wave, or other unforeseen event that produces material damage or loss.

(2) "Reconstruction" means the construction of property that replaces, and is equivalent in kind to, the damaged or destroyed property."

[53] Government Code Section 65974.5, as added by Chapter 1209, Statutes of 1989, Section 24:

"Notwithstanding any other provision of this chapter, the governing board of any school district that receives funds that are collected pursuant to this chapter under a local ordinance, resolution, or other regulation in existence on September 1, 1986, may expend those funds for any of the construction or reconstruction purposes authorized under Section 53080, where the governing board has first held a public hearing on the

local ordinance, resolution or other regulation in existence on September, 1, 1986, to expend funds for the construction or reconstruction authorized under Section 53080, after it has held a public hearing on the subject of the proposed expenditure.

Chapter 1209, Statutes of 1989, Section 25, amended Government Code Section 65995[54]. Subdivisions (b) was amended to change the charge on residential

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subject of the proposed expenditure."

[54] Government Code Section 65995, as amended by Chapter 1209, Statutes of 1989, Section 25:

"(a) Except for a ~~dedication or fee, or both, required~~ fee, charge, dedication or other requirement authorized under Section 53080, or pursuant to Chapter 4.7 (commencing with Section 65970), no fee, charge, dedication, or other ~~form of~~ requirement shall be levied by the legislative body of a local agency against a development project, as defined ~~by~~ in Section ~~65928~~ 53080, for the construction or reconstruction of school facilities.

(b) In no event shall the amount of any fees, charges, dedications, or other ~~form of requirement, as described in subdivision (a), including the amount of fees to be paid or the value of land to be dedicated, or both, under~~ requirements authorized under Section 53080, or pursuant to Chapter 4.7 (commencing with Section 65970), or both, exceed the following:

(1) One dollar and fifty cents ($1.50) per square foot of ~~habitable~~ assessable space, in the case of any residential development. "~~Habitable~~ Assessable space," for this purpose, means ~~the space determined by the building department of the city, or county issuing the building permit, in accordance with the building standards of that city or county, to be~~ all of the square footage within the perimeter of a residential structure, not including any carport, walkway, garage, overhang, patio, enclosed patio, detached accessory structure, or similar area. The amount of the square footage within the perimeter of a residential structure shall be calculated by the building department of the city or county issuing the building permit, in accordance with the standard practice of that city or county in calculating structural perimeters.

~~(2) Twenty-five cents ($0.25) per square foot of covered and enclosed space, in~~

(2) In the case of any commercial or industrial development, twenty-five cents ($0.25) per square foot of chargeable covered and enclosed space. "Chargeable covered and enclosed space," for this purpose, means the covered and enclosed space determined to be within the perimeter of a commercial or industrial structure, not including any storage areas incidental to the principal use

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of the development, garage, parking structure, unenclosed walkway, or utility or disposal area. ~~No fee, charge, dedication, or other form of the requirement may be levied by any school district governing board upon any commercial or industrial development unless and until the governing board has first made the finding that the location and amount of land to be dedicated or the amount of fees to be paid, or both, shall bear a reasonable relationship and be limited to the needs of the community for elementary or high school facilities, and shall be reasonably related and limited to the need for schools caused by the development.~~ The determination of the chargeable covered and enclosed space within the perimeter of a commercial or industrial structure shall be made by the building department of the city or county issuing the building permit, in accordance with the building standards of that city or county.

(3) The amount of the limits set forth in paragraphs (1) and (2) shall be ~~annually~~ increased in 1990, and every two years thereafter, according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the State Allocation Board at its January meeting.

(c) (1) ~~Subdivision (a) does not apply~~ Notwithstanding any other provision of law, during the term of any contract entered into between a subdivider or builder and a school district, city, county, or city and county, whether general law or chartered, on or before ~~the effective date of this chapter~~ January 1, 1987, that requires the payment of a fee, charge, or dedication for the construction of school facilities as a condition to the approval of residential development, neither Section 53080 nor this chapter applies to that residential development. which increase shall be effective as of the date of that meeting. The State Allocation Board shall not raise the amount of the district matching share calculated under Section 17705.5 of the Education Code, as a result of the increase under this paragraph, until at least 90 days after the date of that increase. ~~In addition, any~~

(2) Any development project for which a final map was approved and construction had commenced on or before September 1, 1986, is subject to only the fee, charge, dedication, or other ~~form of~~ requirement prescribed in any local ordinance in existence on that date and applicable to the project.

(d) For purposes of Section 53080 and this chapter, "residential, commercial, or industrial development" does not include any facility used exclusively for religious purposes that is thereby exempt from property taxation under the laws of this state, any facility used exclusively as a private full-time day school as described in Section 48222 of the Education Code, or any facility that is owned and occupied by one or more agencies of federal, state, or local government. In addition, "commercial or industrial development" includes, but is not limited to, any hotel, inn, motel, tourist home, or other lodging for which the maximum term of occupancy for guests does not exceed 30 days, but does not include any residential hotel, as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code.

development to be on "assessable" space as determined by the building department of the city or county. The change for commercial or industrial development was amended to apply to "chargeable" covered and enclosed space. New subdivision (d) excludes facilities used exclusively for religious purposes, a private full-time day school, or any facility that is owned and occupied by a government agency.

Chapter 1209, Statutes of 1989, Section 26, amended Government Code Section 65995.1[55] to expand the definition of senior citizen housing to include

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(~~d~~ e) The Legislature finds and declares that the subject of the financing of school facilities with development fees is a matter of statewide concern. For this reason the Legislature hereby occupies the subject matter of mandatory development fees and other development requirements for school facilities finance to the exclusion of all local measures on the subject.

(~~e~~ f) Nothing in this Section shall be interpreted to limit or prohibit the use of Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 to finance the construction or reconstruction of school facilities.

[55] Government Code Section 65995.1, as amended by Chapter 1209, Statutes of 1989, Section 26:

"(a) Notwithstanding any other provision of law, as to any development project ~~used exclusively for the housing of senior citizens~~, for the construction of senior citizen housing, as described in Section 51.3 of the Civil Code, a residential care facility for the elderly as described in subdivision (j) of Section 1569.2 of the Health and Safety Code, or a multilevel facility for the elderly as described in paragraph (9) of subdivision (d) of Section 15432, any fee, charge, dedication, or other form of requirement that is levied under Section 53080 may be applied only to new construction, and is subject to the limits and conditions applicable under subdivision (b) of Section 65995 in the case of commercial or industrial development.

(b) Any development project against which school facilities fees or other requirements have been levied or waived in accordance with the limit or exemption set forth in subdivision (a) or (b) may be converted to any use other than ~~the housing of senior citizens~~ those uses described in the statutes cited in that subdivision only with the approval of the city or county that issued the building permit for the project. That approval shall not be granted absent certification by the appropriate school district that payment has been made on the part of the development project at the rate of the school facilities fee, charge, dedication, or other form of requirement applied by the district under Section 53080 to residential development as of the date of conversion,

residential care facilities and multilevel facilities for the elderly.

Chapter 1209, Statutes of 1989, Section 27, added Government Code Section 65995.2[56] to provide that manufactured homes or mobilehomes in areas where

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less the amount of any school facilities fees or other requirements paid on the part of the project in accordance with the limits set forth in subdivision (a)."

[56] Government Code Section 65995.2, as added by Chapter 1209, Statutes of 1989, Section 27:

"(a) Notwithstanding any other provision of law, the imposition of any fee, charge, dedication, or other requirement authorized under Section 53080, or Chapter 4.7 (commencing with Section 65970), or both, against any manufactured home or mobilehome that is located within a mobilehome park, or subdivision, cooperative, or condominium for mobilehomes, in which residence is limited to older persons, as defined pursuant to the federal Fair Housing Amendments Act of 1988, is subject to the limits and conditions that are applicable under subdivision (b) of Section 65995 in the case of commercial and industrial development.

(b) Any mobilehome park, or subdivision, cooperative, or condominium for mobilehomes, in which school facilities fees, charges, dedications, or other requirements have been imposed against one or more manufactured homes or mobilehomes in accordance with the limit set forth in subdivision (a) may subsequently choose to permit the residence of persons other than older persons, in which event it shall so notify the appropriate school district and city or county. As a condition of the first sale, subsequent to that notification, of each manufactured home or mobilehome in the mobilehome park, or subdivision, cooperative, or condominium for mobilehomes, payment shall be made to the school district in the amount of the school facilities fee or other requirement applied by the district under Section 53080, or Chapter 4.7 (commencing with Section 65970), or both, to residential development as of the date of that sale, less the amount of any school facilities fees, charges, dedications, or other requirements imposed against that manufactured home or mobilehome in accordance with the limits described in subdivision (a). Any prospective purchaser of a manufactured home or mobilehome that is subject to the requirement set forth in this subdivision shall be given written notice of the existence of that requirement by the seller prior to entering into any contract for that purchase.

(c) Compliance on the part of any manufactured home or mobilehome with any additional fee or other requirement applied by the school district pursuant to subdivision (b), and certification by the appropriate school district of that compliance, shall be required as a condition of the following, as applicable:

(1) The close of escrow of the first sale of the manufactured home or mobilehome following the notice required by subdivision (b), where the manufactured home or mobilehome is to be located, installed, or occupied in a

residence is limited to older persons as defined by the federal Fair Housing Amendments Act of 1988 will be subject to the same limits and conditions as commercial and industrial development. Subdivision (b) provides that any park or subdivision that subsequently permits the residence of persons other than older persons shall notify the appropriate school district and city or county. As a condition of the first sale, each home will pay the school district facilities fee at the current residential rate less any amount previously paid. Subdivision (c) requires compliance as a condition of closing escrow or approval for initial occupancy.

Chapter 1209, Statutes of 1989, Section 27.5, amended Government Code Section 65996[57] to add Government Code Section 53080 to the list of code Sections

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mobilehome park that has chosen to permit the residence of persons other than older persons pursuant to subdivision (b) and the sale or transfer of the manufactured home or mobilehome is subject to escrow as provided in Section 18035 or 18035.2 of the Health and Safety Code.

(2) The approval of the manufactured home or mobilehomes for initial occupancy pursuant to Section 18551 or 18613 of the Health and Safety Code following the notice required by subdivision (b), where the manufactured home or mobilehome is to be located, installed, or occupied in a mobilehome park that has chosen to permit the residence of persons other than older persons pursuant to subdivision (b), in the event that paragraph (1) does not apply."

[57] Government Code Section 65996, as amended by Chapter 1209, Statutes of 1989, Section 27.5:

"(a) The following provisions shall be the exclusive methods of mitigating environmental effects related to the adequacy of school facilities when considering the approval or the establishment of conditions for the approval of a development project, as defined in Section ~~65928 of the Government Code~~ 53080, pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code:

(~~a~~ 1) Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code.

(~~b~~ 2) Chapter 25 (commencing with Section 17785) of Part 10 of the Education Code.

(~~c~~ 3) Chapter 28 (commencing with Section 17870) of Part 10 of the Education

that mitigate environmental conditions for the approval of a development project.

Chapter 1217, Statutes of 1989, Section 3, amended Government Code Section 66007[58], subdivision (c), to require a legal description of the property to be included in

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Code.

(~~d~~ 4) Article 2.5 (commencing with Section 39327) of Chapter 3 of Part 23 of the Education Code.

(5) Section 53080 of the Government Code.

(~~e~~ 6) Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 of the Government Code.

(~~f~~ 7) Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 of the Government Code.

No public agency shall, pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code or Division 2 (commencing with Section 66410) of this code, deny approval of a project on the basis of the adequacy of school facilities."

[58] Government Code Section 66007, as amended by Chapter 1217, Statutes of 1989, Section 3:

"(c) (1) If any fee or charge specified in subdivision (a) is not fully paid prior to issuance of a building permit for construction of any portion of the residential development encumbered thereby, the local agency issuing the building permit may require the ~~applicant~~ property owner, or lessee if the lessee's interest appears of record, as a condition of issuance of the building permit, to execute a contract to pay the fee or charge, or applicable portion thereof, within the time specified in subdivision (a). If the fee or charge is prorated pursuant to subdivision (a), the obligation under the contract shall be similarly prorated.

(2) The obligation to pay the fee or charge shall inure to the benefit of, and be enforceable by, the local agency that imposed the fee or charge, regardless of whether it is a party to the contract. The contract shall contain a legal description of the property affected, shall be recorded in the office of the county recorder of the county and, from the date of recondition, shall constitute a lien for the payment of the fee or charge, which shall be enforceable against successors in interest to the ~~initial holder~~ property owner or lessee at the time of issuance. The contract shall be recorded in the grantor-grantee index in the name of the public agency issuing the building permit as grantee and in the name of the ~~building permit holder as grantor.~~ property owner or lessee as grantor. The local agency shall record a release of the obligation, containing a legal description of the property, in the event the obligation is paid in full, or a partial release in the event the fee or charge is prorated pursuant to subdivision (a).

the contract. Subdivision (f) was added to specify two methods of complying with a proposed construction schedule or plan: (1) the adoption of the capital improvement plan as described in Section 66002, and (2) the submittal of a five-year plan for construction and rehabilitation of school facilities. The former subdivision (f) was re-lettered as subdivision (g).

Chapter 633, Statutes of 1990, Section 2, amended Government Code Section 53080.1[59], subdivision (e), to require the employee generation estimates be based on

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(3) The contract may require the ~~building permit holder~~ property owner or lessee to provide appropriate notification of the opening of any escrow for the sale of the property for which the building permit was issued and to provide in the escrow instructions that the fee or charge be paid to the local agency imposing the same from the sale proceeds in escrow prior to disbursing proceeds to the seller.

(d) This Section applies only to fees collected by a local agency to fund the construction of public improvements or facilities. It does not apply to fees collected to cover the cost of code enforcement or inspection services, or to other fees collected to pay for the cost of enforcement of local ordinances or state law.

(e) "Final inspection" or "certificate of occupancy," as used in this Section, have the same meaning as described in Sections 305 and 307 of the Uniform Building Code, International Conference of Building Officials, 1985 Edition.

(f) Methods of complying with the requirement in subdivision (b) that a proposed construction schedule or plan be adopted, include, but are not limited to, (1) the adoption of the capital improvement plan described in Section 66002, or (2) the submittal of a five-year plan for construction and rehabilitation of school facilities pursuant to subdivision (c) of Section 17717.5 of the Education Code.

(g) This Section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1993, deletes or extends that date."

[59] Government Code Section 53080.1, as amended by Chapter 633, Statutes of 1990, Section 2:

"(e) In the case of any commercial or industrial development, the following procedures shall also apply:

(1) The school district governing board shall, in the course of making the findings required under subdivisions (a) and (b) of Section 66001, do all of the following:

the estimates set forth in the January 1990 edition of "San Diego Traffic Generators," a report of the San Diego Association of Governments.

Chapter 633, Statutes of 1990, Section 3, amended Government Code Section 65995.1 to make technical changes.

(A) Make the findings on either an individual project basis or on the basis of categories of commercial or industrial development. Those categories may include, but are not limited to, the following uses: office, retail, transportation, communications and utilities, light industrial, heavy industrial, research and development, and warehouse.

(B) Conduct a study to determine the impact of the increased number of employees anticipated to result from the commercial or industrial development upon the cost of providing school facilities within the district. For the purpose of making that determination, the study shall utilize employee generation estimates that are ~~based on commercial and industrial factors within the district, as~~ calculated on either an individual project or categorical basis, in accordance with subparagraph (A). Those employee generation estimates shall be based upon commercial and industrial factors within the district or upon, in whole or in part, the applicable employee generation estimates set forth in the January 1990 edition of "San Diego Traffic Generators," a report of the San Diego Association of Governments.

(C) The governing board shall take into account the results of that study in making the findings described in this subdivision.

(2) In addition to any other requirement imposed by law, in the case of any development project against which a fee, charge, dedication, or other requirement is to be imposed pursuant to Section 53080 on the basis of a category of commercial or industrial development, as described in paragraph (1), the governing board shall provide a process that permits the party against whom the fee, charge, dedication, or other requirement is to be imposed the opportunity for a hearing to appeal that imposition. The grounds for that appeal include, but are not limited to, the inaccuracy of including the project within the category pursuant to which the fee, charge, dedication, or other requirement is to be imposed, or that the employee generation or pupil generation factors utilized under the applicable category are inaccurate as applied to the project. The party appealing the imposition of the fee, charge, dedication, or other requirement shall bear the burden of establishing that the fee, charge, dedication, or other requirement is improper. "

Chapter 1572, Statutes of 1990, Section 15, amended Government Code Section 66000[60], subdivision (b), to exclude fees collected under redevelopment plan agreements pursuant to the Community Redevelopment Law as described in Section 33000 of the Health and Safety Code. Subdivision (d) adds other political subdivisions of the state to the definition of "local agency."

Chapter 1572, Statutes of 1990, Section 15, amended Government Code Section 66004[61] to change the reference of Chapter 13.1 to Government Code Section 66018.

Chapter 1572, Statutes of 1990, Section 20, added Government Code Section

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[60] Government Code Section 66000, as amended by Chapter 1572, Statutes of 1990, Section 14:

"(b) "Fee" means a monetary exaction other than a tax or special assessment, which is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, but does not include fees specified in Section 66477, fees for processing applications for governmental regulatory actions or approvals, fees collected under development agreements adopted pursuant to Article 2.5 (commencing with Section 65864) of Chapter 4, or fees collected pursuant to agreements with redevelopment agencies which provide for the redevelopment of property in furtherance or for the benefit of a redevelopment project for which a redevelopment plan has been adopted pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code.

(c) "Local agency" means a county, city, whether general law or chartered, city and county, school district, special district, ~~or~~ authority, agency, any other municipal public corporation or district, or other political subdivision of the state."

[61] Government Code Section 66004, as amended by Chapter 1572, Statutes of 1990, Section 15:

"The establishment or increase of any fee pursuant to this chapter shall be subject to the requirements of ~~Chapter 13.1 (commencing with Section 54994.1) of Part 1 of Division 2 of Title 5~~ Section 66018."

66016[62]. Subdivision (a) requires a public meeting, as part of a regularly scheduled meeting, to be held prior to levying a new fee or increasing an existing fee. Notice of

[62] Government Code Section 66016, as added by Chapter 1572, Statutes of 1990, Section 20:

"(a) Prior to levying a new fee or service charge, or prior to approving an increase in an existing fee or service charge, a local agency shall hold at least one public meeting, at which oral or written presentations can be made, as part of a regularly scheduled meeting. Notice of the time and place of the meeting, including a general explanation of the matter to be considered, and a statement that the data required by this Section is available, shall be mailed at least 14 days prior to the meeting to any interested party who files a written request with the local agency for mailed notice of the meeting on new or increased fees or service charges. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service. At least 10 days prior to the meeting, the local agency shall make available to the public data indicating the amount of cost, or estimated cost, required to provide the service for which the fee or service charge is levied and the revenue sources anticipated to provide the service, including General Fund revenues. Unless there has been voter approval, as prescribed by Section 66013 or 66014, no local agency shall levy a new fee or service charge or increase an existing fee or service charge to an amount which exceeds the estimated amount required to provide the service for which the fee or service charge is levied. If, however, the fees or service charges create revenues in excess of actual cost, those revenues shall be used to reduce the fee or service charge creating the excess.

(b) Any action by a local agency to levy a new fee or service charge or to approve an increase in an existing fee or service charge shall be taken only by ordinance or resolution.

(c) Any costs incurred by a local agency in conducting the meeting or meetings required pursuant to subdivision (a) may be recovered from fees charged for the services which were the subject of the meeting.

(d) This Section shall apply only to fees and charges as described in Sections 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of this code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, and Section 21671.5 of the Public Utilities Code.

(e) Any judicial action or proceeding to attack, review, set aside, void, or annul the ordinance, resolution, or motion levying a fee or service charge subject to this section shall be brought pursuant to Section 66022."

the time and place of the meeting, including a general explanation of the matter to be considered, and a statement that the data required by this section is available, shall be mailed at least 14 days prior to the meeting to any interested party who files a written request with the local agency for mailed notice of the meeting. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service. At least 10 days prior to the meeting, the local agency shall make available to the public, data indicating the amount of the cost required to provide the service for which the fee or service charge is levied and the revenue sources anticipated to provide the service, including General Fund revenues. The local agency shall not levy a new fee or increase an existing fee to an amount which exceeds the estimated amount required to provide the service. Subdivision (b) requires that any action by a local agency to levy a new fee or to approve an increase in an existing fee shall be taken only by ordinance or resolution. Subdivision (c) allows costs incurred in conducting the meeting to be recovered from the fees charged for the service. Subdivision (d) lists the applicable code sections. Subdivision (e) requires that judicial actions to stop the ordinance or resolution shall be subject to Section 66022.

Chapter 1572, Statutes of 1990, Section 20, added Government Code Section 66017[63]. Subdivision (a) requires that any action regarding a fee on a development

[63] Government Code Section 66017, as added by Chapter 1572, Statutes of 1990, Section 20:

"(a) Any action adopting a fee or charge, or increasing a fee or charge adopted, upon a development project, as defined in Section 66000, which applies to the filing, accepting, reviewing, approving, or issuing of an application, permit, or entitlement to use shall be enacted in accordance with the notice and public hearing procedures

project will be in accordance with the notice and public hearing procedures as described in Sections 66016 and 54986 and will be effective no sooner than 60 days following the final action. Subdivision (b) allows for an interim authorization to respond to current and immediate threats to the public health, welfare, or safety. The interim authorization requires a four-fifths vote based on findings describing the threat. The interim authorization is limited to 30 days with up to two extensions.

Chapter 1572, Statutes of 1990, Section 20, added Government Code Section 66018[64]. Subdivision (a) requires that, prior to adopting a new fee or increasing an

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specified in Section 54986 or 66016 and shall be effective no sooner that 60 days following the final action on the adoption of the fee or charge or increase in the fee or charge.

(b) Without following the procedure otherwise required for the adoption of a fee or charge, or increasing a fee or charge, the legislative body of a local agency may adopt an urgency measure as an interim authorization for a fee or charge, or increase in a fee or charge, to protect the public health, welfare and safety. The interim authorization shall require four-fifths vote of the legislative body for adoption. The interim authorization shall have no force or effect 30 days after its adoption. The interim authority shall contain findings describing the current and immediate threat to the public health, welfare and safety. After notice and public hearing pursuant to Section 54986 or 66016, the legislative body may extend the interim authority for an additional 30 days. Not more than two extensions may be granted. Any extension shall also require a four-fifths vote of the legislative body."

[64] Government Code Section 66018, as added by Chapter 1572, Statutes of 1990, Section 20:

"(a) Prior to adopting an ordinance, resolution, or other legislative enactment adopting a new fee or approving an increase in an existing fee to which this Section applies, a local agency shall hold a public hearing, at which oral or written presentations can be made, as part of a regularly scheduled meeting. Notice of the time and place of the meeting, including a general explanation of the matter to be considered, shall be published in accordance with Section 6062a.

(b) Any costs incurred by a local agency in conducting the hearing required pursuant to subdivision (a) may be recovered as part of the fees which were the subject of the hearing.

existing fee, a local agency shall hold a public hearing, at which oral or written presentations can be made, as part of a regularly scheduled meeting. The notice of time, location, and a general explanation of the matter shall be published for 10 days, in accordance with Section 6062a. Subdivision (b) allows costs incurred by a local agency in conducting the hearing to be recovered as part of the fees which were the subject of the hearing. Subdivision (c) provides that the section applies only when a specific statutory notice requirement does not apply.

Chapter 1572, Statutes of 1990, Section 20, added Government Code Section 66018.5[65] to define "local agency" to have the same meaning as Section 66000, which includes school districts.

Chapter 1572, Statutes of 1990, Section 22, added Government Code Section 66020[66]. Subdivision (a) allows any party to protest the imposition of fees on a

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(c) This Section applies only to the adopting or increasing of fees to which a specific statutory notice requirement, other than Section 54954.2, does not apply.
(d) As used in this section, "fees" do not include rates or charges for water, sewer, or electrical service."

[65] Government Code Section 66018.5, as added by Chapter 1572, Statutes of 1990, Section 20:
""Local agency," as used in this chapter, has the same meaning as provided in Section 66000."

[66] Government Code Section 66020, as added by Chapter 1572, Statutes of 1990, Section 22:
"(a) Any party may protest the imposition of any fees, dedications, reservations, or other exactions imposed on a residential housing development by a local agency by meeting both of the following requirements:
(1) Tendering any required payment in full or providing satisfactory evidence of arrangements to ensure performance of the conditions necessary to meet the requirements of the imposition.
(2) Serving written notice on the governing body of the entity, which notice

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shall contain all of the following information:

(A) A statement that the required payment is tendered, or that any conditions which have been imposed are provided for or satisfied, under protest.

(B) A statement informing the governing body of the factual elements of the dispute and the legal theory forming the basis for the protest.

(b) Compliance by any party with subdivision (a) shall not be the basis for a local agency to withhold approval of any map, plan, permit, zone change, license, or other form of permission, or concurrence, whether discretionary, ministerial, or otherwise, incident to, or necessary for, the development of the residential housing development. This Section does not limit the ability of a local agency to ensure compliance with all applicable provisions of law in determining whether or not to approve or disapprove a development project.

(c) Where a reviewing local agency makes proper and valid findings that the construction of certain public improvements or facilities, the need for which is directly attributable to the proposed residential housing development, is required for reasons related to the public health, safety, and welfare, and elects to impose a requirement for construction of those improvements or facilities as a condition of approval of the proposed development, then in the event a protest is lodged pursuant to this Section, that approval shall be suspended pending withdrawal of the protest, the expiration of the limitation period of subdivision (d) without the filing of an action, or resolution of any action filed, This subdivision confers no new or independent authority for imposing fees, dedications, reservations, or other exactions not presently governed by other law.

(d) A protest filed pursuant to subdivision (a) shall be filed at the time of approval or conditional approval of the development or within 90 days after the date of the imposition of the fees, dedications, reservations, or other exactions to be imposed on a residential housing development. Any party who files a protest pursuant to subdivision (a) may file an action to attack, review, set aside, void, or annul the imposition of the fees, dedications, reservations, or other exactions imposed on a residential housing development by a local agency within 180 days after the date of the imposition. Thereafter, notwithstanding any other law to the contrary, all persons are barred from any action or proceeding or any defense of invalidity or unreasonableness of the imposition. Any proceeding brought pursuant to this subdivision shall take precedence over all matters of the calendar of the court except criminal, probate, eminent domain, forcible entry, and unlawful detainer proceedings.

(e) If the court finds in favor of the plaintiff in any action or proceeding brought pursuant to subdivision (d), the court shall direct the local agency to refund the unlawful portion of the payment, with interest at the rate of 8 percent per annum, or return the unlawful portion of the exaction imposed.

(f) Approval or conditional approval of a development occurs, for the purposes of

residential development if they first pay the required fee amount in full, under protest, or ensure performance of the conditions, and serve written notice on the governing body stating that the payment is satisfied under protest and including the factual elements of the dispute and the legal theory forming the basis for the protest. Subdivision (d) requires that a protest be filed at the time of development approval or within 90 days after the imposition of the fees. The deadline to file a protest is 180 days. All persons are barred from any action after that time. Any party who files a protest may file an action to attack, review, set aside, void, or annul the imposition of the fees, dedications, reservations, or other exactions imposed. If the court finds for the plaintiff, the local agency should refund the unlawful portion of the payment, with interest at the rate of 8 percent per annum. Subdivision (f) provides that approval has occurred when the tentative map is approved or when the parcel map is recorded if a tentative map is not required. Subdivision (g) provides that the imposition of fees has occurred when they are imposed or levied on a specific development.

Chapter 1572, Statutes of 1990, Section 22, added Government Code Section 66021[67]. Subdivision (a) allows any party, on whom a fee, tax, assessment, dedication,

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this Section, when the tentative map, tentative parcel map, or parcel map is approved or conditionally approved or when the parcel map is recorded if a tentative map or tentative parcel map is not required.

(g) The imposition of fees, dedications, reservations, or other exactions occurs, for the purposes of this Section, when they are imposed or levied on a specific development."

[67] Government Code Section 66021, as added by Chapter 1572, Statutes of 1990, Section 22:

"(a) Any party on whom a fee, tax, assessment, dedication, reservation, or other

reservation, or other exaction has been imposed, to protest against imposed fees as provided in Sections 66020 and 66475.4. Subdivision (b) prohibits the protest of any tax or assessment levied pursuant to a principal act that contains protest procedures, or used to secure payment of bonds or other public indebtedness.

Chapter 1572, Statutes of 1990, Section 22, added Government Code Section 66022[68]. Subdivision (a) requires any judicial action regarding new fees or increases to an existing fee be commenced within 120 days of the effective date for the fee.

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exaction has been imposed, the payment or performance of which is required to obtain governmental approval of a development, as defined by Section 65927, or development project, may protest, as provided in Sections 66020 and 66475.4, the establishment or imposition of the fee, tax, assessment, dedication, reservation, or other exaction. If a party files a protest under both Sections 66020 and 66475.4, Section 66475.4 shall prevail over Section 66020 to the extent of any conflict between those two Sections.

(b) The protest procedures of subdivision (a) do not apply to the protest of any tax or assessment (1) levied pursuant to a principal act that contains protest procedures, or (2) that is pledged to secure payment of the principal of, or interest on, bonds or other public indebtedness."

[68] Government Code Section 66022, as added by Chapter 1572, Statutes of 1990, Section 22:

"(a) Any judicial action or proceeding to attack, review, set aside, void, or annul an ordinance, resolution, or motion adopting a new fee or service charge, or modifying or amending an existing fee or service charge, adopted by a local agency, as defined in Section 66000, shall be commenced within 120 days of the effective date of the ordinance, resolution, or motion.

If an ordinance, resolution, or motion provides for an automatic adjustment in a fee or service charge, and the automatic adjustment results in an increase in the amount of a fee or service charge, any action or proceeding to attack, review, set aside, void, or annul the increase shall be commenced within 120 days of the effective date of the increase.

(b) Any action by a local agency or interested person under this Section shall be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

(c) This Section shall apply only to fees, capacity charges, and service charges described in and subject to Sections 66013 and 66014."

Subdivision (b) requires that judicial action be brought pursuant to Section 860 of the Code of Civil Procedure, which states that a public agency may bring an action in the county superior court. Subdivision (c) limits this Section to only fees, capacity charges, and service charges described in and subject to Sections 66013 and 66014.

Chapter 1572, Statutes of 1990, Section 22, added Government Code Section 66023[69]. Subdivision (a) allows any person to request an audit. The legislative body of the local agency may retain an independent auditor to conduct an audit to determine whether the fee or charge is reasonable for the product or service. Subdivision (b)

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[69] Government Code Section 66023, as added by Chapter 1572, Statutes of 1990, Section 22:

"(a) Any person may request an audit in order to determine whether any fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of any product or service provided by the local agency. If a person makes that request, the legislative body of the local agency may retain an independent auditor to conduct an audit to determine whether the fee or charge is reasonable.

(b) Any costs incurred by a local agency in having an audit conducted by an independent auditor pursuant to subdivision (a) may be recovered from the person who requests the audit.

(c) Any audit conducted by an independent auditor to determine whether a fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of providing the product or service shall conform to generally accepted auditing standards.

(d) The procedures specified in this Section shall be alternative and in addition to those specified in Section 54985.

(e) The Legislature finds and declares that oversight of local agency fees is a matter of statewide interest and concern. It is, therefore, the intent of the Legislature that this chapter shall supersede all conflicting local laws and shall apply in charter cities.

(f) This Section shall not be construed as granting any additional authority to any local agency to levy any fee or charge which is not otherwise authorized by another provision of law, nor shall its provisions be construed as granting authority to any local agency to levy a new fee or charge when other provisions of law specifically prohibit the levy of a fee or charge."

allows the local agency to recover any costs incurred during audit from the person who requested the audit. Subdivision (c) requires the audit to conform to generally accepted auditing standards. Subdivision (d) provides that this section is alternative and additional to Section 54985. Subdivision (e) states a legislative intent that this Section supersede all conflicting local laws and shall apply in charter cities. Subdivision (f) provides that this section does not grant any additional authority to any local agency to levy a fee.

Chapter 1572, Statutes of 1990, Section 22, added Government Code Section 66024[70]. Subdivision (a) requires that the city, county, or district have the burden of producing evidence to establish that the development fee does not exceed the cost of

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[70] Government Code Section 66024, as added by Chapter 1572, Statutes of 1990, Section 22:

"(a) In any judicial action or proceeding to validate, attack, review, set aside, void, or annul any ordinance or resolution providing for the imposition of a development fee by any city, county, or district in which there is at issue whether the development fee is a special tax within the meaning of Section 50076, the city, county, or district has the burden of producing evidence to establish that the development fee does not exceed the cost of the service, facility, or regulatory activity for which it is imposed.

(b) No party may initiate any action or proceeding pursuant to subdivision (a) unless both of the following requirements are met:

(1) The development fee was directly imposed on the party as a condition of project approval.

(2) At least 30 days prior to initiating the action or proceeding, the party requests the city, county, or district to provide a copy of the documents which establish that the development fee does not exceed the cost of the service, facility, or regulatory activity for which it is imposed. In accordance with Section 6257, the city, county, or district may charge a fee for copying the documents requested pursuant to this paragraph.

(c) For purposes of this Section, costs shall be determined in accordance with fundamental fairness and consistency of method as to the allocation of costs, expenses, revenues, and other items included in the calculation."

the service, facility, or regulatory activity in defense to a judicial action alleging the development fee to be a special tax within the meaning of Section 50076[71].

Chapter 1572, Statutes of 1990, Section 22, added Government Code Section 66025[72] to define "local agency" to include a school district.

Chapter 536, Statutes of 1991, Section 1, amended Government Code Section 65995.1[73] to add a new subdivision (b), which provides that state owned agricultural migrant worker housing is exempt from developer fees. The previous subdivision (b) was re-lettered subdivision (c), and other technical changes were made.

Chapter 1354, Statutes of 1992, Section 3, amended Government Code Section

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[71] Government Code Section 50076:
"As used in this article, "special tax" shall not include any fee which does not exceed the reasonable cost of providing the service or regulatory activity for which the fee is charged and which is not levied for general revenue purposes."

[72] Government Code Section 66025, as added by Chapter 1572, Statutes of 1990, Section 22:
""Local agency," as used in this chapter, means a local agency as defined in Section 66000."

[73] Government Code Section 65995.1, amended by Chapter 536, Statutes of 1991, Section 1:
"(b) Notwithstanding any other provision of law, as to any development project for the construction of agricultural migrant worker housing financed in whole or part pursuant to Chapter 8.5 (commencing with Section 50710) of Part 2 of Division 31 of the Health and Safety Code, no fees, charges, dedications, or other forms of requirements that are levied under Section 53080 shall be applied to new construction, reconstruction, or rehabilitation of this housing. The exemption provided by this subdivision shall be applicable only to that agricultural migrant worker housing which is owned by the state and which is subject to a contract ensuring compliance with the requirements of Chapter 8.5 (commencing with Section 50710) of Part 2 of Division 31 of the Health and Safety Code."

65995[74] to add subdivision (g) which states that the section shall become inoperative on January 1, 1993, and shall remain inoperative until the date that Assembly Constitutional Amendment 6 of the 1991-92 Regular Session fails to receive the approval of a majority of the voters voting on the measure, and as of that date this section would become operative.

Chapter 1354, Statutes of 1992, Section 6, amended Government Code Section 65996[75] to add subdivision (c) providing that this Section shall become inoperative on January 1, 1993, and shall remain inoperative until the date that Assembly Constitutional Amendment 6 of the 1991-92 Regular Session fails to receive the approval of a majority of the voters voting on the measure, and as of that date this Section shall become operative. Subdivisions (a) through (g) were reassigned to numbers (1) through (7), inclusively.

Chapter 169, Statutes of 1992, Section 1, amended Government Code Section

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[74] Government Code Section 65995, amended by Chapter 1354, Statutes of 1992, Section 3:
"(g) This section shall become inoperative on January 1, 1993, and shall remain inoperative until the date that Assembly Constitutional Amendment 6 of the 1991-92 Regular Session fails to receive the approval of a majority of the voters voting on the measure, and as of that date this section shall become operative."

[75] Government Code Section 65996, amended by Chapter 1354, Statutes of 1992, Section 6:
"(c) This section shall become inoperative on January 1, 1993, and shall remain inoperative until the date that Assembly Constitutional Amendment 6 of the 1991-92 Regular Session fails to receive the approval of a majority of the voters voting on the measure, and as of that date this Section shall become operative."

66006[76] to add subparagraph (2) to subdivision (b). The local agency shall review the information made available to the public at the next regularly scheduled public meeting not less than 15 days after the information is made available. Notice of the time and place of the meeting, including the address where this information may be reviewed, shall be mailed, at least 15 days prior to the meeting, to any interested party who files a

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[76] 1. Government Code Section 66006, amended by Chapter 169, Statutes of 1992, Section 1:

"(b)(1) For each separate account or fund established pursuant to subdivision (a), the local agency 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 and the fee, interest, and other income and the amount of expenditure by public facility and the amount of refunds made pursuant to subdivision (~~e~~ 3) of Section 66001 and any allocations pursuant to subdivision (f) of Section 66001 during the fiscal year.

(2) The local agency shall review ~~this~~ the information made available to the public pursuant to paragraph (1) at the next regularly scheduled public meeting not less than 15 days after ~~the availability of the~~ this information is made available to the public, as required by this subdivision. Notice of the time and place of the meeting, including the address where this information may be reviewed, shall be mailed, at least 15 days prior to the meeting, to any interested party who files a written request with the local agency for mailed notice of the meeting. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service.

(c) For purposes of this Section, "fee" means any fee imposed to provide for an improvement to be constructed to serve a development project, or which is a fee for public improvements within the meaning of subdivision (b) of Section 66000, and that is imposed by the local agency as a condition of approving the development project.

(d) Any person may request an audit of any local agency fee or charge that is subject to Section ~~54997~~ 66023, including fees or charges of school districts, in accordance with that Section.

(e) The Legislature finds and declares that untimely or improper allocation of development fees hinders economic growth and is, therefore, a matter of statewide interest and concern. It is, therefore, the intent of the Legislature that subdivision (a) shall supersede all conflicting local laws and shall apply in charter cities."

written request with the local agency for mailed notice of the meeting. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service.

Chapter 231, Statutes of 1992, Section 2, amended Government Code Section 66007 to make technical changes.

Chapter 487, Statutes of 1992, Section 1, amended Government Code Section 66016 to add Public Resources Code Section 41901 to the list of code sections to which these fees and charges apply.

Chapter 605, Statutes of 1992, Section 1, amended Government Code Section 66020[77] to add a new subdivision (f). Subparagraph (1), provides if a court grants judgment to the plaintiff, the local agency is to refund the unlawful portion of the payment, plus interest at an annual rate equal to the average rate accrued by the

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[77] Government Code Section 66020, as amended by Chapter 605, Statutes of 1992, Section 1:

"(f) (1) If the court grants a judgment to a plaintiff invalidating, as enacted, all or a portion of an ordinance or resolution enacting a fee, dedication, reservation, or other exaction, the court shall direct the local agency to refund the unlawful portion of the payment, plus interest at an annual rate equal to the average rate accrued by the Pooled Money Investment Account during the time elapsed since the payment occurred, or to return the unlawful portion of the exaction imposed.

(2) If an action is filed within 120 days of the date at which an ordinance or resolution to establish or modify a fee, dedication, reservation, or other exactions to be imposed on a residential housing takes effect, the portion of the payment or exaction invalidated shall also be returned to any other person who, under protest pursuant to this Section and under that invalid portion of that same ordinance or resolution as enacted, tendered the payment or provided for or satisfied the exaction during the period from 90 days prior to the date of the filing of the action which invalidates the payment or exaction to the date of the entry of the judgment referenced in paragraph (1)."

Pooled Money Investment Account during the time elapsed since the payment occurred. Subparagraph (2) provides that payment should be refunded to any other parties that filed a protest and tendered payment under the invalid portion of that same ordinance as enacted. Former subdivisions (f) and (g) were re-lettered as subdivisions (g) and (h), respectively.

Chapter 589, Statutes of 1993, Section 80, amended Government Code Section 66020 to make technical changes.

Chapter 1195, Statutes of 1993, Section 12.7, amended Government Code Section 53080.1 to make technical changes.

Chapter 983, Statutes of 1994, Section 3, amended Government Code Section 53080.4[78] to add subdivision (g). Subparagraph (1) allows a school district to waive a

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[78] Government Code Section 53080.4, as amended by Chapter 983, Statutes of 1992, Section 3:

"(g) (1) Whenever a manufactured home or a mobilehome owned by a person 55 years of age or older who is also a member of a lower income household as defined by Section 50079.5 of the Health and Safety Code, and which has been moved from a mobilehome park space located in one school district, where the mobilehome owner has resided, to a space or lot located in a mobilehome park or a subdivision, cooperative, or condominium for mobilehomes or manufactured homes located in another school district, is subject to any fee or other requirement under Section 53080, this Section, and Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7, the district in which the manufactured home or mobilehome has been newly located may waive the fee or other requirement under Section 53080, this Section, and Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7, or otherwise shall be required to grant the homeowner the necessary approval for occupancy of the home, and permission to pay the amount of the fee or other requirement thereafter, in installments, over a period totaling no less than 36 months. A school district may require that the installments be paid monthly, quarterly, or every six months during the 36-month period, and that the fee be secured as a lien perfected against the mobilehome or manufactured home pursuant to Section 18080.7 of

developer fee or to grant permission to pay the fee in installments where a home in a mobilehome park space located in one school district is moved to a space in another school district where it would be subject to a fee for the new district and the owner is 55 years or older and a member of a lower income household. Fees paid in installments may be secured as a lien perfected against the mobilehome or manufactured home pursuant to Section 18080.7 of the Health and Safety Code. Costs of filing the lien and reasonable late charges or interest may be added to the amount of the lien.

Chapter 1228, Statutes of 1994, Section 6, amended Government Code Section

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the Health and Safety Code.

(2) Costs of filing the lien and reasonable late charges or interest may be added to the amount of the lien. This subdivision does not apply where a school facilities fee, charge, or other requirement is imposed pursuant to Section 65995.2."

65971[79] to change the office designated to receive a completed application from the Office of Local Assistance to the Office of Public School Construction.

Chapter 1228, Statutes of 1994, Section 7, amended Government Code Section 65974 to make technical changes.

Chapter 300, Statutes of 1994, Section 1, added Government Code Section

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[79] Government Code Section 65971, as amended by Chapter 1228, Statutes of 1994, Section 6:

"(a) The governing body of a school district which operates an elementary or high school shall notify the city council or board of supervisors of the city or county within which the school district is located if the governing body makes both of the following findings supported by clear and convincing evidence:

(1) That conditions of overcrowding exist in one or more attendance areas within the district which will impair the normal functioning of educational programs including the reason for the existence of those conditions.

(2) That all reasonable methods of mitigating conditions of overcrowding have been evaluated and no feasible method for reducing those conditions exist.

(b) The notice of findings sent to the city or county pursuant to subdivision (a) shall specify the mitigation measures considered by the school district. The notice of findings shall include a completed application to the Office of ~~Local Assistance~~ Public School Construction for preliminary determination of eligibility under the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code). The city council or board of supervisors shall take no action on the notice of findings sent to the city or county pursuant to subdivision (a) until the findings have been made available to the public for 60 days after the date of receipt by the city or county. The city council or board of supervisors shall either concur or not concur in the notice of findings within 61 days to 150 days after the date of receipt of the findings. The city council or board of supervisors may extend the period to concur or not to concur for one 30-day period. The failure of the city council or board of supervisors to either concur or not concur within the time period prescribed in this subdivision shall not be deemed as an act of concurrence in the notice of findings by the council or board.

The date of receipt of the notice of findings is the date when all of the materials required by this Section are completed and filed by the school district with the city council or board of supervisors.

If the city council or board of supervisors concurs in those findings, Section 65972 shall be applicable to actions taken on residential development by the city council or board of supervisors."

66030[80] to state the legislative intent to establish formal mediation processes for land use disputes.

Chapter 300, Statutes of 1994, Section 1, added Government Code Section

[80] Government Code Section 66030, as added by Chapter 300, Statutes of 1994, Section 1:

"(a) The Legislature finds and declares all of the following:

(1) Current law provides that aggrieved agencies, project proponents, and affected residents may bring suit against the land use decisions of state and local governmental agencies. In practical terms, nearly anyone can sue once a project has been approved.

(2) Contention often arises over projects involving local general plans and zoning, redevelopment plans, the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), development impact fees, annexations and incorporations, and the Permit Streamlining Act (Chapter 4.5 (commencing with Section 65920)).

(3) When a public agency approves a development project that is not in accordance with the law, or when the prerogative to bring suit is abused, lawsuits can delay development, add uncertainty and cost to the development process, make housing more expensive, and damage California's competitiveness. This litigation begins in the superior court, and often progresses on appeal to the Court of Appeal and the Supreme Court, adding to the workload of the state's already overburdened judicial system.

(b) It is, therefore, the intent of the Legislature to help litigants resolve their differences by establishing formal mediation processes for land use disputes. In establishing these mediation processes, it is not the intent of the Legislature to interfere with the ability of litigants to pursue remedies through the courts."

66031[81]. Subdivision (a) lists the superior court actions that will be subject to

[81] Government Code Section 66031, as added by Chapter 300, Statutes of 1994, Section 1:

"(a) Notwithstanding any other provision of law, any action brought in the superior court relating to any of the following subjects may be subject to a mediation proceeding conducted pursuant to this chapter:

(1) The approval or denial by a public agency of any development project.

(2) Any act or decision of a public agency made pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(3) The failure of a public agency to meet the time limits specified in Chapter 4.5 (commencing with Section 65920), commonly known as the Permit Streamlining Act, or in the Subdivision Map Act (Division 2 (commencing with Section 66410)).

(4) Fees determined pursuant to Sections 53080 to 53082, inclusive, or Chapter 4.9 (commencing with Section 65995).

(5) Fees determined pursuant to Chapter 5 (commencing with Section 66000).

(6) The adequacy of a general plan or specific plan adopted pursuant to Chapter 3 (commencing with Section 65100).

(7) The validity of any sphere of influence, urban service area, change of organization or reorganization, or any other decision made pursuant to the Cortese-Knox Local Government Reorganization Act (Division 3 (commencing with Section 56000) of Title 5).

(8) The adoption or amendment of a redevelopment plan pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code).

(b) Within five days after the deadline for the respondent or defendant to file its reply to an action, the court may invite the parties to consider resolving their dispute by selecting a mutually acceptable person to serve as a mediator, or an organization or agency to provide a mediator.

(c) In selecting a person to serve as a mediator, or an organization or agency to provide a mediator, the parties shall consider the following:

(1) The council of governments having jurisdiction in the county where the dispute arose.

(2) Any subregional or countywide council of governments in the county where the dispute arose.

(3) The Office of Permit Assistance within the Trade and Commerce Agency, pursuant to its authority in Article 1 (commencing with Section 15399.50) of Chapter 11 of Part 6.7 of Division 3 of Title 2.

(4) Any other person with experience or training in mediation including

mediation. These subjects are: (1) any decision of a public agency of any development project; (2) any decision of a public agency made pursuant to the California Environmental Quality Act; (3) the failure of a public agency to meet the time limits specified in the Permit Streamlining Act; (4) in the Subdivision Map Act; (5) fees determined pursuant to Sections 53080 to 53082 or Section 66000; (6) the adequacy of a general plan or specific plan adopted pursuant Section 65100; (7) the validity of any sphere of influence, urban service area, change of organization or reorganization, or any other decision made pursuant to the Cortese-Knox Local Government Reorganization Act; or (8) the adoption or amendment of a redevelopment plan pursuant to the Community Redevelopment Law. Subdivision (b) provides that the court may invite the parties to consider a mediator within 5 days after the deadline for either the respondent or defendant to file its reply to an action. Subdivision (c) lists the mediator selection considerations as the council of governments having jurisdiction of the dispute, any sub-regional or countywide council of governments in the county, the Office of Permit Assistance within the Trade and Commerce Agency, or any other person or agency with experience in the mediation of land use issues. Subdivision (d)

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those with experience in land use issues, or any other organization or agency which can provide a person with experience or training in mediation, including those with experience in land use issues.

(d) If the court invites the parties to consider mediation, the parties shall notify the court within 30 days if they have selected a mutually acceptable person to serve as a mediator. If the parties have not selected a mediator within 30 days, the action shall proceed. The court shall not draw any implication, favorable or otherwise, from the refusal by a party to accept the invitation by the court to consider mediation. Nothing in this Section shall preclude the parties from using mediation at any other time while the action is pending."

requires the parties to notify the court of their decision of mediator within 30 days. If the parties choose not to use a mediator or cannot agree on one, the action shall proceed. The court shall not be draw any implication, favorable or otherwise by a decision not to use mediation but mediation remains an option while the action is pending.

Chapter 300, Statutes of 1994, Section 1, added Government Code Section 66032[82]. Subdivision (a) requires all time limits shall be tolled during mediation. Subdivision (b) prohibits any meeting held by a mediator that involve less than a quorum of a legislative body or a state body pursuant to the Ralph M. Brown Act or the

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[82] Government Code Section 66032, as added by Chapter 300, Statutes of 1994, Section 1:

"(a) Notwithstanding any provision of law to the contrary, all time limits with respect to an action shall be tolled while the mediator conducts the mediation, pursuant to this chapter.

(b) Mediations conducted by a mediator pursuant to this chapter that involve less than a quorum of a legislative body or a state body shall not be considered meetings of a legislative body pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), nor shall they be considered meetings of a state body pursuant to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2).

(c) Any action taken regarding mediation conducted pursuant to this chapter shall be taken in accordance with the provisions of current law.

(d) Ninety days after the commencement of the mediation, and every 90 days thereafter, the action shall be reactivated unless the parties to the action do either of the following:

(1) Arrive at a settlement and implement it in accordance with the provisions of current law.

(2) Agree by written stipulation to extend the mediation for an another 90-day period.

(e) A mediator shall not file, and a court shall not consider, any declaration or finding of any kind by the mediator, other than a required statement of agreement or nonagreement, unless all parties in the mediation expressly agree otherwise, in writing.

(f) Sections 703.5 and 1152.5 of the Evidence Code shall apply to any mediation conducted pursuant to this chapter."

Bagley-Keene Open Meeting Act. Subdivision (c) requires the mediator act in accordance with the provisions of current law. Subdivision (d) limits the mediation period to 90 days unless the parties arrive at a settlement and implement it or agree by written stipulation to extend the mediation for another 90 day period. Subdivision (e) requires all parties to expressly agree, in writing, to any declaration or finding, excluding a required statement of agreement or non-agreement. Subdivision (f) applies the rules of Evidence Code Sections 703.5 and 1152.5 to any mediation.

Chapter 300, Statutes of 1994, Section 1, added Government Code Section 66033[83]. Subdivision (a) requires the mediator to file a report with the Office of Permit Assistance at the end of mediation. The report will state the title of the action, the names of the parties, and an estimate of the costs avoided by using mediation instead of litigation. The purpose of the report is to collect information as needed by the Office of Permit Assistance for its report to the Legislature.

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[83] Government Code Section 66033, as added by Chapter 300, Statutes of 1994, Section 1:

"(a) At the end of the mediation, the mediator shall file a report with the Office of Permit Assistance, consistent with Section 1152.5 of the Evidence Code, containing each of the following:

(1) The title of the action.

(2) The names of the parties to the action.

(3) An estimate of the costs avoided, if any, because the parties used mediation instead of litigation to resolve their dispute.

(b) The sole purpose of the report required by this Section is the collection of information needed by the office to prepare its report to the Legislature pursuant to Section 66036."

Chapter 300, Statutes of 1994, Section 1, added Government Code Section 66034[84] to provide that, in the event of a mediation failure, the court may schedule a settlement conference before a judge of the superior court. If the action is later heard on its merits, the judge hearing the action shall not be the same judge who conducted the settlement conference.

Chapter 300, Statutes of 1994, Section 1, added Government Code Section 66035[85] to allow the Judicial Council to adopt rules, forms, and standards as necessary.

Chapter 300, Statutes of 1994, Section 1, added Government Code Section 66036[86] to require a report from the Office of Permit Assistance within the Trade and Commerce Agency and the Judicial Council regarding the implementation of this

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[84] Government Code Section 66034, as added by Chapter 300, Statutes of 1994, Section 1:
"If the mediation does not resolve the action, the court may, in its discretion, schedule a settlement conference before a judge of the superior court. If the action is later heard on its merits, the judge hearing the action shall not be the same judge who conducted the settlement conference, except in counties with only one judge of the superior court."

[85] Government Code Section 66035, as added by Chapter 300, Statutes of 1994, Section 1:
"The Judicial Council may adopt rules, forms, and standards necessary to implement this chapter."

[86] Government Code Section 66036, as added by Chapter 300, Statutes of 1994, Section 1:
"By January 1, 2001, the Office of Permit Assistance within the Trade and Commerce Agency, in cooperation with the Judicial Council, shall report to the Legislature regarding the implementation of this chapter. The office shall consult with persons and interest groups with knowledge of the mediation process, and affected public agencies, including, but not limited to, councils of governments. The report may recommend the extension of the chapter, changes to the chapter, or the repeal of the chapter."

chapter. The office shall consult with persons and interest groups with knowledge of the mediation process, and affected public agencies, including councils of governments. The report may recommend changes to this chapter.

Chapter 300, Statutes of 1994, Section 1, added Government Code Section 66037[87] to provide a sunset date of January 1, 2002 for this chapter.

Chapter 686, Statutes of 1995, Section 6.5, amended Government Code Section 66016[88], subdivision (a) to provide that the public meeting, prior to levying a new fee or

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[87] Government Code Section 66037, as added by Chapter 300, Statutes of 1994, Section 1:

"No action filed on or after January 1, 2002, shall be subject to this chapter unless a later enacted statute which is chaptered before January 1, 2002, extends this date or deletes this Section."

[88] Government Code Section 66016, as amended by Chapter 686, Statutes of 1995, Section 6.5:

"(a) Prior to levying a new fee or service charge, or prior to approving an increase in an existing fee or service charge, a local agency shall hold at least one open and public meeting, at which oral or written presentations can be made, as part of a regularly scheduled meeting. Notice of the time and place of the meeting, including a general explanation of the matter to be considered, and a statement that the data required by this Section is available, shall be mailed at least 14 days prior to the meeting to any interested party who files a written request with the local agency for mailed notice of the meeting on new or increased fees or service charges. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service. At least 10 days prior to the meeting, the local agency shall make available to the public data indicating the amount of cost, or estimated cost, required to provide the service for which the fee or service charge is levied and the revenue sources anticipated to provide the service, including General Fund revenues. Unless there has been voter approval, as prescribed by Section 66013 or 66014, no local agency shall levy a new fee or service charge or increase an existing fee or service charge to an amount which exceeds the estimated amount required to provide the service for which the fee or service charge is levied. If, however, the fees or service charges create revenues in

service charge shall must be open. Subdivision(b) prohibits the legislative body of a local agency from delegating the authority to adopt a new fee or to increase a fee. Subdivision (d) adds Section 51287 of the Government Code to the sections to which the section applies.

Chapter 686, Statutes of 1995, Section 7, amended Government Code Section 66031[89] to add the validity of any zoning decision to the list of subjects for mediation.

Chapter 277, Statutes of 1996, Sections 7, 8, 9, 10, 11, 12, and 13 repealed the following Government Code sections, Section 3 restated and renumbered these sections into the Education Code.

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excess of actual cost, those revenues shall be used to reduce the fee or service charge creating the excess.

(b) Any action by a local agency to levy a new fee or service charge or to approve an increase in an existing fee or service charge shall be taken only by ordinance or resolution. The legislative body of a local agency shall not delegate the authority to adopt a new fee or service charge, or to increase a fee or service charge.

(c) Any costs incurred by a local agency in conducting the meeting or meetings required pursuant to subdivision (a) may be recovered from fees charged for the services which were the subject of the meeting.

(d) This Section shall apply only to fees and charges as described in Sections 51287, 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of this code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code.

(e) Any judicial action or proceeding to attack, review, set aside, void, or annul the ordinance, resolution, or motion levying a fee or service charge subject to this Section shall be brought pursuant to Section 66022."

[89] Government Code Section 66031, as amended by Chapter 686, Statutes of 1995, Section 7:

"(9) The validity of any zoning decision made pursuant to Chapter 4 (commencing with Section 65800)."

Former Government Code Section:	Renumbered Education Code:
7) 53080	3) 17620
8) 53080.1	3) 17621
9) 53080.15	3) 17622
10) 53080.2	3) 17623
11) 53080.3	3) 17624
12) 53080.4	3) 17625
13) 53080.6	3) 17626

Chapter 277, Statutes of 1996, Section 14, repealed Government Code Section 53081.

Chapter 549, Statutes of 1996, Section 1, amended Government Code Section 66000[90], subdivision (b), to provide that taxes or special assessments on either broad

[90] Government Code Section 66000, amended by Chapter 549, Statutes of 1996, Section 1:

"(b) "Fee" means a monetary exaction other than a tax or special assessment, ~~which~~ whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, but does not include fees specified in Section 66477, fees for processing applications for governmental regulatory actions or approvals, fees collected under development agreements adopted pursuant to Article 2.5 (commencing with Section 65864) of Chapter 4, or fees collected pursuant to agreements with redevelopment agencies which provide for the redevelopment of property in furtherance or for the benefit of a redevelopment project for which a redevelopment plan has been adopted pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code."

class of projects, or specific project, are not included within the definition of "fee" for this chapter.

Chapter 799, Statutes of 1996, Section 6.7, added Government Code Section 66000.5[91] to name Chapters 5, 6, 7, 8, and 9, the "Mitigation Fee Act."

Chapter 569, Statutes of 1996, Section 1, amended Government Code Section 66001[92], subdivision (d) to provide that findings need not be submitted until the fifth

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[91] Government Code Section 66000.5, added by Chapter 799, Statutes of 1996, Section 6.7:

"This chapter, Chapter 6 (commencing with Section 66010), Chapter 7 (commencing with Section 66012), Chapter 8 (commencing with Section 66016), and Chapter 9 (commencing with Section 66020) shall be known and may be cited as the Mitigation Fee Act."

[92] Government Code Section 66001, amended by Chapter 569, Statutes of 1996, Section 1:

"(d) ~~The~~ For the fifth fiscal year following the first deposit into the account or fund, and every five years thereafter, the local agency shall make all of the following findings ~~once each fiscal year~~ with respect to ~~any~~ that portion of the ~~fee~~ account or fund remaining unexpended ~~or uncommitted in its account five or more years after deposit of the fee to identify~~, whether committed or uncommitted:

(1) Identify the purpose to which the fee is to be put ~~and to demonstrate~~.

(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 identified in paragraph (2) of subdivision (a).

(4) Designate the approximate dates on which the funding referred to in paragraph (3) is expected to be deposited into the appropriate account or fund.

When findings are required by this subdivision, they shall be made in connection with the public information required by subdivision (b) of Section 66006. The findings required by this subdivision need only be made for moneys in ~~the~~ possession of the local agency, and need not be made with respect to letters of credit, bonds, or other instruments taken to secure payment of the fee at a future date. If the findings are not made as required by this subdivision, the local agency shall refund the moneys in the account or fund as provided in subdivision (e).

fiscal year after first deposit. These findings must be determined even when the fees are committed. Additional required information includes the sources and amounts of funding anticipated to complete financing, and the approximate dates when those anticipated funds will be deposited into the appropriate account or fund. If all of the information cannot be determined, the money should be refunded. When sufficient funds have been collected to complete financing on incomplete public improvements, the local agency shall identify, within 180 days, an approximate date by which the construction of the public improvement will be commenced. If construction does not

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(e) Except as provided in subdivision (f), when sufficient funds have been collected, as determined pursuant to subparagraph (F) of paragraph (1) of subdivision (b) of Section 66006, to complete financing on incomplete public improvements identified in paragraph (2) of subdivision (a), and the public improvements remain incomplete, the local agency shall identify, within 180 days of the determination that sufficient funds have been collected, an approximate date by which the construction of the public improvement will be commenced, or shall refund to the then current record owner or owners of the lots or units, as identified on the last equalized assessment roll, of the development project or projects on a prorated basis, the unexpended ~~or uncommitted~~ portion of the fee, and any interest accrued thereon, ~~for which need cannot be demonstrated pursuant to subdivision (d). A~~ By means consistent with the intent of this Section, a local agency may refund the unexpended ~~or uncommitted~~ revenues by direct payment, by providing a temporary suspension of fees, or by any other reasonable means ~~consistent with the intent of this Section.~~ The determination by the governing body of the local agency of the means by which those revenues are to be refunded is a legislative act.

(f) If the administrative costs of refunding unexpended ~~or uncommitted~~ revenues pursuant to subdivision (e) exceed the amount to be refunded, the local agency, after a public hearing, notice of which has been published pursuant to Section 6061 and posted in three prominent places within the area of the development project, may determine that the revenues shall be allocated for some other purpose for which fees are collected subject to this chapter and which serves the project on which the fee was originally imposed."

commence, the local agency shall refund the unexpended portion of the fee and interest. Subdivision (f) removes the reference to uncommitted revenues.

Chapter 569, Statutes of 1996, Section 2, amended Government Code Section 66006[93], subdivision (b), to make changes to the report that local agencies must publish

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[93] Government Code Section 66006, as amended by Chapter 569, Statutes of 1996, Section 2:

"(a) If a local agency requires the payment of a fee specified in subdivision (c) in connection with the approval of a development project, the local agency receiving the fee shall deposit it with the other fees for the improvement in a separate capital facilities account or fund in a manner to avoid any commingling of the fees with other revenues and funds of the local agency, except for temporary investments, and expend those fees solely for the purpose for which the fee was collected. Any interest income earned by moneys in the capital facilities account or fund shall also be deposited in that account or fund and shall be expended only for the purpose for which the fee was originally collected.

(b)(1) For each separate account or fund established pursuant to subdivision (a), the local agency shall, within ~~60~~ 180 days ~~of~~ after the ~~close~~ last day of each fiscal year, make available to the public the following information for the fiscal year:

(A) A brief description of the type of fee in the account or fund.

(B) The amount of the fee.

(C) The beginning and ending balance ~~for the fiscal year and the fee, interest, and other income~~ of the account or fund.

(D) The amount of the fees collected and the interest earned.

(E) An identification of each public improvement on which fees were expended and the amount of ~~expenditure by public facility and~~ the expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with fees.

(F) An identification of an approximate date by which the construction of the public improvement will commence if the local agency determines that sufficient funds have been collected to complete financing on an incomplete public improvement, as identified in paragraph (2) of subdivision (a) of Section 66001, and the public improvement remains incomplete.

(G) 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.

(H) The amount of refunds made pursuant to subdivision (~~3~~ e) of

for each capital facilities account. The due date for the report is extended from 60 days to 180 days after the last day of the fiscal year. The information to be reported now includes: a description of the type of fee in the account, the amount of the fee, the beginning and ending balance, the amount of fees collected, the interest earned, identification of the public improvement on which fees were expended, the percentage of the cost of the improvement funded by fees, the approximate date that construction

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Section 66001 and any allocations pursuant to subdivision (f) of Section 66001 ~~during the fiscal year~~.

(2) The local agency shall review the information made available to the public pursuant to paragraph (1) at the next regularly scheduled public meeting not less than 15 days after this information is made available to the public, as required by this subdivision. Notice of the time and place of the meeting, including the address where this information may be reviewed, shall be mailed, at least 15 days prior to the meeting, to any interested party who files a written request with the local agency for mailed notice of the meeting. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service.

(c) For purposes of this Section, "fee" means any fee imposed to provide for an improvement to be constructed to serve a development project, or which is a fee for public improvements within the meaning of subdivision (b) of Section 66000, and that is imposed by the local agency as a condition of approving the development project.

(d) Any person may request an audit of any local agency fee or charge that is subject to Section 66023, including fees or charges of school districts, in accordance with that Section.

(e) The Legislature finds and declares that untimely or improper allocation of development fees hinders economic growth and is, therefore, a matter of statewide interest and concern. It is, therefore, the intent of the Legislature that ~~subdivision (a)~~ this section shall supersede all conflicting local laws and shall apply in charter cities.

(f) At the time the local agency imposes a fee for public improvements on a specific development project, it shall identify the public improvement that the fee will be used to finance."

will commence, a description of any inter-fund transfers or loans, and the amount of any refunds. Subdivision (f) was added to provide that the public improvement must be identified at the time that the local agency imposes a fee.

Chapter 549, Statutes of 1996, Section 2, amended Government Code Section 66020[94], subdivision (d), to provide that each local agency shall provide a notice in

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[94] Government Code Section 66020, amended by Chapter 549, Statutes of 1996, Section 2:

"(a) Any party may protest the imposition of any fees, dedications, reservations, or other exactions imposed on a ~~residential housing~~ development project, as defined in Section 66000, by a local agency by meeting both of the following requirements:

(1) Tendering any required payment in full or providing satisfactory evidence of arrangements to pay the fee when due or ensure performance of the conditions necessary to meet the requirements of the imposition.

(2) Serving written notice on the governing body of the entity, which notice shall contain all of the following information:

(A) A statement that the required payment is tendered or will be tendered when due, or that any conditions which have been imposed are provided for or satisfied, under protest.

(B) A statement informing the governing body of the factual elements of the dispute and the legal theory forming the basis for the protest.

(b) Compliance by any party with subdivision (a) shall not be the basis for a local agency to withhold approval of any map, plan, permit, zone change, license, or other form of permission, or concurrence, whether discretionary, ministerial, or otherwise, incident to, or necessary for, the development ~~of the residential housing development~~ project. This Section does not limit the ability of a local agency to ensure compliance with all applicable provisions of law in determining whether or not to approve or disapprove a development project.

(c) Where a reviewing local agency makes proper and valid findings that the construction of certain public improvements or facilities, the need for which is directly attributable to the proposed ~~residential housing~~ development, is required for reasons related to the public health, safety, and welfare, and elects to impose a requirement for construction of those improvements or facilities as a condition of approval of the proposed development, then in the event a protest is lodged pursuant to this Section,

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that approval shall be suspended pending withdrawal of the protest, the expiration of the limitation period of subdivision (d) without the filing of an action, or resolution of any action filed. This subdivision confers no new or independent authority for imposing fees, dedications, reservations, or other exactions not presently governed by other law.

(d) (1) A protest filed pursuant to subdivision (a) shall be filed at the time of approval or conditional approval of the development or within 90 days after the date of the imposition of the fees, dedications, reservations, or other exactions to be imposed on a ~~residential housing development.~~ development project. Each local agency shall provide to the project applicant a notice in writing at the time of the approval of the project or at the time of the imposition of the fees, dedications, reservations, or other exactions, a statement of the amount of the fees or a description of the dedications, reservations, or other exactions, and notification that the 90-day approval period in which the applicant may protest has begun.

(2) Any party who files a protest pursuant to subdivision (a) may file an action to attack, review, set aside, void, or annul the imposition of the fees, dedications, reservations, or other exactions imposed on a ~~residential housing~~ development project by a local agency within 180 days after the ~~date~~ delivery of the ~~imposition~~ notice. Thereafter, notwithstanding any other law to the contrary, all persons are barred from any action or proceeding or any defense of invalidity or unreasonableness of the imposition. Any proceeding brought pursuant to this subdivision shall take precedence over all matters of the calendar of the court except criminal, probate, eminent domain, forcible entry, and unlawful detainer proceedings.

(e) If the court finds in favor of the plaintiff in any action or proceeding brought pursuant to subdivision (d), the court shall direct the local agency to refund the unlawful portion of the payment, with interest at the rate of 8 percent per annum, or return the unlawful portion of the exaction imposed.

(f) (1) If the court grants a judgment to a plaintiff invalidating, as enacted, all or a portion of an ordinance or resolution enacting a fee, dedication, reservation, or other exaction, the court shall direct the local agency to refund the unlawful portion of the payment, plus interest at an annual rate equal to the average rate accrued by the Pooled Money Investment Account during the time elapsed since the payment occurred, or to return the unlawful portion of the exaction imposed.

(2) If an action is filed within 120 days of the date at which an ordinance or resolution to establish or modify a fee, dedication, reservation, or other exactions

writing, at the time of time of the project approval or at the time of the imposition of the fees, a statement of the amount of the fees and notification that the 90-day approval period, in which the applicant may protest, has begun.

Chapter 799, Statutes of 1996, Section 7 amended Government Code Section 66031[95] to add the validity of any decision made pursuant to Section 21670 of the Public Utilities Code to the list of subjects for mediation. This Section deals with airport land use.

Chapter 772, Statutes of 1997, Section 7, amended Government Code Section 66032 to remove subdivision (f), where a mediator is restricted from any filing unless expressly agreed to, in writing, by all parties.

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to be imposed on a ~~residential housing~~ development project takes effect, the portion of the payment or exaction invalidated shall also be returned to any other person who, under protest pursuant to this Section and under that invalid portion of that same ordinance or resolution as enacted, tendered the payment or provided for or satisfied the exaction during the period from 90 days prior to the date of the filing of the action which invalidates the payment or exaction to the date of the entry of the judgment referenced in paragraph (1).

(g) Approval or conditional approval of a development occurs, for the purposes of this Section, when the tentative map, tentative parcel map, or parcel map is approved or conditionally approved or when the parcel map is recorded if a tentative map or tentative parcel map is not required.

(h) The imposition of fees, dedications, reservations, or other exactions occurs, for the purposes of this Section, when they are imposed or levied on a specific development."

[95] Government Code Section 66031, as amended by Chapter 799, Statutes of 1997, Section 7:

"(10) The validity of any decision made pursuant to Article 3.5 (commencing with Section 21670) of Chapter 4 of Part 1 of Division 9 of the Public Utilities Code."

Chapter 772, Statutes of 1997, Section 8, amended Government Code Section 66033 to make technical changes.

Chapter 407, Statutes of 1998, Section 12, amended Education Code Section 17620[96], subdivision (a)(1)(D), to add mobile homes to construction eligible for the

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[96] Education Code Section 17620, as amended by Chapter 407, Statutes of 1998, Section 12:

"(a) (1) The governing board of any school district is authorized to levy a fee, charge, dedication, or other requirement against any ~~development project~~ construction within the boundaries of the district, for the purpose of funding the construction or reconstruction of school facilities, subject to any limitations set forth in Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7 of the Government Code. This fee, charge, dedication, or other requirement may be applied to construction only as follows:

(A) To new commercial and industrial construction. The chargeable covered and enclosed space of ~~a~~ commercial or industrial ~~development project, as defined in Section 65995 of the Government Code,~~ construction shall not be deemed to include the square footage of any structure existing on the site of that ~~development project~~ construction as of the date the first building permit is issued for any portion of that ~~development project~~ construction.

(B) To new residential construction.

(C) To other residential construction, only if the resulting increase in assessable space~~, as defined in Section 65995 of the Government Code,~~ exceeds 500 square feet. The calculation of the "resulting increase in assessable space" for this purpose shall reflect any decrease in assessable space in the same residential structure that also results from that construction. Where authorized under this paragraph, the fee, charge, dedication, or other requirement is applicable to the total resulting increase in assessable space.

(D) To location, installation, or occupancy of manufactured homes and mobilehomes, as defined in Section 17625.

(2) For purposes of this section, "~~development project" means any project undertaken for the purpose of development, and includes a project involving the issuance of a permit for~~ "construction" ~~or reconstruction, but not a permit to operate.~~ and "assessable space" have the same meaning as defined in Section 65995 of the Government Code.

(3) For purposes of this section and Section 65995, "construction or reconstruction of school facilities" does not include any item of expenditure for

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any of the following:

(A) The regular maintenance or routine repair of school buildings and facilities.

(B) The inspection, sampling, analysis, encapsulation, or removal of asbestos-containing materials, except where incidental to school facilities construction or reconstruction for which the expenditure of fees or other consideration collected pursuant to this section is not prohibited.

(C) The purposes of deferred maintenance described in Section 17582.

(4) The appropriate city or county may be authorized, pursuant to contractual agreement with the governing board, to collect and otherwise administer, on behalf of the school district, any fee, charge, dedication, or other requirement levied under this subdivision. In the event of any agreement authorizing a city or county to collect that fee, charge, dedication, or other requirement in any area within the school district, the certification requirement set forth in subdivision (b) or (c), as appropriate, is deemed to be complied with as to any residential ~~development project~~ construction within that area upon receipt by that city or county of payment of the fee, charge, dedication, or other requirement imposed on that ~~project~~ residential construction.

(5) Fees or other consideration collected pursuant to this section may be expended by a school district for the costs of performing any study or otherwise making the findings and determinations required under subdivisions (a), (b), and (d) of Section 66001 of the Government Code ~~In addition,~~, or in preparing the school facilities needs analysis described in Section 65995.6 of the Government Code. In addition, an amount not to exceed, in any fiscal year, 3 percent of the fees collected in that fiscal year pursuant to this section may be retained by the school district, city, or county, as appropriate, for reimbursement of the administrative costs incurred by that entity in collecting the fees. When any city or county is entitled, under an agreement as described in paragraph (4), to compensation in excess of that amount, the payment of that excess compensation shall be made from other revenue sources available to the school district. ~~(b) No~~ For purposes of this paragraph, "fees collected in that fiscal year pursuant to this section" does not include any amount in addition to the amounts specified in paragraphs (1) and (2) of subdivision (b) of Section 65995 of the Government Code.

(b) A city or county, whether general law or chartered, may not issue a building permit for any ~~development~~ construction absent certification by the appropriate school district ~~of compliance by~~ that ~~development project with~~ any fee, charge, dedication, or other requirement levied by the governing board of that school district ~~pursuant to subdivision (a)~~ has been complied with, or of the district's determination that the fee, charge, dedication, or other requirement does not apply to the ~~development project.~~

imposition of developer fees. Subdivision (a)(5) provides that fees may be used to prepare school facilities needs analysis as described in Section 65995.6 of the Government Code. Subdivision (b) requires the school district to provide immediate certification to construction projects that have complied with the payment of fees.

Chapter 407, Statutes of 1998, Section 19, amended Government Code Section 65995[97], subdivision (a), to provide that development fees may only be imposed under

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construction. The school district shall issue the certification immediately upon compliance with the fee, charge, dedication, or other requirement.

(c) If, pursuant to subdivision (c) of Section 17621, the governing board specifies that the fee, charge, dedication, or other requirement levied under subdivision (a) is subject to the restriction set forth in subdivision (a) of Section 66007 of the Government Code, the restriction set forth in subdivision (b) of this section does not apply. In that event, however, ~~no~~ a city or county, whether general law or chartered, may not conduct a final inspection or issue a certificate of occupancy, whichever is later, for any residential ~~development project~~ construction absent certification by the appropriate school district of compliance by that ~~development project~~ residential construction with any fee, charge, dedication, or other requirement levied by the governing board of that school district pursuant to subdivision (a).

(d) Neither subdivision (b) nor (c) shall apply to a city or county as to any fee, charge, dedication, or other requirement as described in subdivision (a), or as to any increase in that fee, charge, dedication, or other requirement, except upon the receipt by that city or county of notification of the adoption of, or increase in, the fee or other requirement in accordance with subdivision (c) of Section 17621."

[97] Government Code Section 65995, as amended by Chapter 407, Statutes of 1998, Section 19:

"(a) Except for a fee, charge, dedication, or other requirement authorized under Section ~~53080~~17620 of the Education Code, or pursuant to Chapter 4.7 (commencing with Section 65970), ~~no~~ a fee, charge, dedication, or other requirement ~~shall be levied by the legislative body of a local agency against a development project, as defined in Section 53080,~~ for the construction or reconstruction of school facilities ~~(b) In no event shall~~ may not be levied or imposed in connection with, or made a condition of, any legislative or adjudicative act, or both, by any state or local agency involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization, as defined in Section 56021 or 56073.

(b) Except as provided in Sections 65995.5 and 65995.7, the amount of any

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fees, charges, dedications, or other requirements authorized under Section ~~53080~~17620 of the Education Code, or pursuant to Chapter 4.7 (commencing with Section 65970), or both, may not exceed the following:

(1) ~~One dollar and fifty cents ($1.50~~ In the case of residential construction, including the location, installation, or occupancy of manufactured homes and mobilehomes, one dollar and ninety-three cents ($1.93) per square foot of assessable space~~, in the case of any residential development~~. "Assessable space," for this purpose, means all of the square footage within the perimeter of a residential structure, not including any carport, walkway, garage, overhang, patio, enclosed patio, detached accessory structure, or similar area.

The amount of the square footage within the perimeter of a residential structure shall be calculated by the building department of the city or county issuing the building permit, in accordance with the standard practice of that city or county in calculating structural perimeters. "Manufactured home" and "mobilehome" have the meanings set forth in subdivision (f) of Section 17625 of the Education Code. The application of any fee, charge, dedication, or other form of requirement to the location, installation, or occupancy of manufactured homes and mobilehomes is subject to Section 17625 of the Education Code.

(2) In the case of any commercial or industrial ~~development~~ construction, ~~twenty-five~~ thirty-one cents ($0.~~25~~ 31) per square foot of chargeable covered and enclosed space. "Chargeable covered and enclosed space," for this purpose, means the covered and enclosed space determined to be within the perimeter of a commercial or industrial structure, not including any storage areas incidental to the principal use of the ~~development~~ construction, garage, parking structure, unenclosed walkway, or utility or disposal area. The determination of the chargeable covered and enclosed space within the perimeter of a commercial or industrial structure shall be made by the building department of the city or county issuing the building permit, in accordance with the building standards of that city or county.

(3) The amount of the limits set forth in paragraphs (1) and (2) shall be increased in ~~1990~~ 2000, and every two years thereafter, according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the State Allocation Board at its January meeting, which increase shall be effective as of the date of that meeting. ~~The State Allocation Board shall not raise the amount of the district matching share calculated under Section 17705.5 of the Education Code, as a result of the increase under this paragraph, until at least 90 days after the date of that increase.~~

(c) (1) Notwithstanding any other provision of law, during the term of ~~any~~ a contract entered into between a subdivider or builder and a school district, city, county, or city and county, whether general law or chartered, on or before

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January 1, 1987, that requires the payment of a fee, charge, or dedication for the construction of school facilities as a condition to the approval of residential ~~development~~ construction, neither Section ~~5308~~17620 of the Education Code nor this chapter applies to that residential ~~development. (2) Any development project for which a final map was approved and construction had commenced on or before September 1, 1986, is subject to only the~~ construction.

(2) Notwithstanding any other provision of state or local law, construction that is subject to a contract entered into between a person and a school district, city, county, or city and county, whether general law or chartered, after January 1, 1987, and before the operative date of the act that adds paragraph (3) that requires the payment of a fee, charge, or dedication for the construction of school facilities as a condition to the approval of construction, may not be affected by the act that adds paragraph (3).

(3) Notwithstanding any other provision of state or local law, until January 1, 2000, any construction not subject to a contract as described in paragraph (2) that is carried out on real property for which residential development was made subject to a condition relating to school facilities imposed by a state or local agency in connection with a legislative act approving or authorizing the residential development of that property after January 1, 1987, and before the operative date of the act adding this paragraph, shall be required to comply with that condition.

Notwithstanding any other provision of state or local law, on and after January 1, 2000, any construction not subject to a contract as described in paragraph (2) that is carried out on real property for which residential development was made subject to a condition relating to school facilities imposed by a state or local agency in connection with a legislative act approving or authorizing the residential development of that property after January 1, 1987, and before the operative date of the act adding this paragraph, may not be subject to a fee, charge, dedication, or other requirement ~~prescribed in any local ordinance in existence on that date and applicable to the project~~ exceeding the amount specified in paragraphs (1) and (2) of subdivision (b), or, if a district has increased the limit specified in paragraph (1) of subdivision (b) pursuant to either Section 65995.5 or 65995.7, that increased amount.

(4) Any construction that is not subject to a contract as described in paragraph (2), or to paragraph (3), and that satisfies both of the requirements of this paragraph, may not be subject to any increased fee, charge, dedication, or other requirement authorized by the act that adds this paragraph beyond the amount specified in paragraphs (1) and (2) of subdivision (b).

(A) A tentative map, development permit, or conditional use permit was approved before the operative date of the act that amends this subdivision.

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(B) A building permit is issued before January 1, 2000.

(d) For purposes of ~~Section 53080 and~~ this chapter, "construction" means new construction and reconstruction of existing building for residential, commercial, or industrial ~~development~~. "Residential, commercial, or industrial construction" does not include any facility used exclusively for religious purposes that is thereby exempt from property taxation under the laws of this state, any facility used exclusively as a private full-time day school as described in Section 48222 of the Education Code, or any facility that is owned and occupied by one or more agencies of federal, state, or local government. In addition, "commercial or industrial ~~development~~ construction" includes, but is not limited to, any hotel, inn, motel, tourist home, or other lodging for which the maximum term of occupancy for guests does not exceed 30 days, but does not include any residential hotel, as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code.

(e) The Legislature finds and declares that the ~~subject of the~~ financing of school facilities ~~with development fees is a matter~~ and the mitigation of the impacts of land use approvals, whether legislative or adjudicative, or both, on the need for school facilities are matters of statewide concern. For this reason, the Legislature hereby occupies the subject matter of ~~mandatory development fees and other development requirements~~ requirements related to school facilities levied or imposed in connection with, or made a condition of, any land use approval, whether legislative or adjudicative act, or both, and the mitigation of the impacts of land use approvals, whether legislative or adjudicative, or both, on the need for school facilities ~~finance~~, to the exclusion of all ~~local measures on the subject~~ other measures, financial or nonfinancial, on the subjects. For purposes of this subdivision, "school facilities" means any school-related consideration relating to a school district's ability to accommodate enrollment.

(f) Nothing in this Section shall be interpreted to limit or prohibit the use of Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 to finance the construction or reconstruction of school facilities. However, the use of Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 may not be required as a condition of approval of any legislative or adjudicative act, or both, if the purpose of the community facilities district is to finance school facilities.

(g) (1) The refusal of a person to agree to undertake or cause to be undertaken an act relating to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 ~~to finance~~, including formation of, or annexation to, a community facilities district, voting to levy a special tax, or authorizing another to vote to levy a special tax, may not be a factor when considering the approval of a legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization, as defined in Section 56021 or 56073, if the purpose of the community facilities district is to finance school facilities.

(2) If a person voluntarily elects to establish, or annex into, a community

Education Code Section 17620. Subdivision (b) increases the square foot rate for residential construction from $1.50 to $1.93. Residential construction projects now include manufactured and mobile homes. Commercial and industrial construction

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facilities district and levy a special tax approved by landowner vote to finance school facilities, the present value of the special tax specified in the resolution of formation shall be calculated as an amount per square foot of assessable space and that amount shall be a credit against any applicable fee, charge, dedication, or other requirement for the construction or reconstruction of school facilities.

~~(g) This Section shall become inoperative on January 1, 1993, and shall remain inoperative until the date that Assembly Constitutional Amendment 6 of the 1991-92 Regular Session fails to receive the approval of a majority of the voters voting on the measure, and as of that date this Section shall become operative.~~

~~(b) A city or county, whether general law or chartered, may not issue a building permit for any construction absent certification by the appropriate~~ For purposes of this paragraph, the calculation of present value shall use the interest rate paid on the United States Treasury's 30-year bond on the date of the formation of, or annexation to, the community facilities district, as the capitalization rate.

(3) For purposes of subdivisions (f), (h), and (l), and this subdivision, "school facilities" means any school-related consideration relating to a school ~~district that any fee, charge, dedication~~ district's ability to accommodate enrollment.

(h) The payment or satisfaction of a fee, charge, or other requirement levied or imposed pursuant to Section 17620 of the Education Code in the amount specified in Section 65995 and, if applicable, any amounts specified in Section 65995.5 or 65995.7 are hereby deemed to be full and complete mitigation of the impacts of any legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization as defined in Section 56021 or 56073, on the provision of adequate school facilities.

(l) A state or local agency may not deny or refuse to approve a legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization as defined in Section 56021 or 56073 on the basis of a person's refusal to provide school facilities mitigation that exceeds the amounts authorized pursuant to this Section or pursuant to Section 65995.5 or 65995.7, as applicable."

square foot rates are increased from $0.25 to $0.31. These rates will be increased in 2000 and every two years thereafter. Subdivision (c) provides that any residential construction that results from a contract between a person and a school district is not affected by this act during the term of the contract. Construction not under contract with the school district, between the dates of November 4, 1998 and January 1, 2000,should pay the original square footage rates. After January 1, 2000, construction not under contract will not be required to pay a fee exceeding the square foot rates stated here or the district's increased amounts as allowed by Sections 65995.5 or 65995.7.

The increased fees for construction not subject to a contract can be avoided if a tentative map was approved before November 4, 1998 or the building permit was approved before January 1, 2000. Subdivision (d) defines "construction" as both new construction and reconstruction of existing buildings. Subdivision (e) defines "school facilities" as any school-related consideration relating to a school district's ability to accommodate enrollment. Subdivision (f) provides that this Section does not limit or prohibit the use of Section 53311, "Mello-Roos Community Facilities Act of 1982", but also, does not require its use as a condition of approval if the purpose of the community facilities district is to finance school facilities. Subdivision (g) disallows the refusal of Section 53311 special taxes as a factor in considering the development of real property. Developments that are covered by special taxes under Section 53311 will be credited for the present value of the special taxes against developer fees imposed. Subdivision (h) states that payment of fees fully mitigates against future legislation for the provision of adequate school facilities. Subdivision (l) prohibits a local agency from refusing to

approve legislation on the basis of a person's refusal to provide school facilities mitigation that exceed the amounts authorized.

Chapter 407, Statutes of 1998, Section 20, added Government Code Section 65995.5[98]. Subdivision (a), provides an alternative fee amount imposed on residential

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[98] Government Code Section 65995.5, added by Chapter 407, Statutes of 1998, Section 20:

"(a) The governing board of a school district may impose the amount calculated pursuant to this Section as an alternative to the amount that may be imposed on residential construction calculated pursuant to subdivision (b) of Section 65995.

(b) To be eligible to impose the fee, charge, dedication, or other requirement up to the amount calculated pursuant to this Section, a governing board shall do all of the following:

(1) Make a timely application to the State Allocation Board for new construction funding for which it is eligible and be determined by the board to meet the eligibility requirements for new construction funding set forth in Article 2 (commencing with Section 17071.10) and Article 3 (commencing with Section 17071.75) of Chapter 12.5 of Part 10 of the Education Code. A governing board that submits an application to determine the district's eligibility for new construction funding shall be deemed eligible if the State Allocation Board fails to notify the district of the district's eligibility within 120 days of receipt of the application.

(2) Conduct and adopt a school facility needs analysis pursuant to Section 65995.6.

(3) Until January 1, 2000, satisfy at least one of the requirements set forth in subparagraphs (A) to (D), inclusive, and, on and after January 1, 2000, satisfy at least two of the requirements set forth in subparagraphs (A) to (D), inclusive:

(A) The district is a unified or elementary school district that has a substantial enrollment of its elementary school pupils on a multitrack year-round schedule. "Substantial enrollment" for purposes of this paragraph means at least 30 percent of district pupils in kindergarten and grades 1 to 6, inclusive, in the high school attendance area in which all or some of the new residential units identified in the needs analysis are planned for construction. A high school district shall be deemed to have met the requirements of this paragraph if either of the following apply:

(I) At least 30 percent of the high school district's pupils are on a multitrack year-round schedule.

(ii) At least 40 percent of the pupils enrolled in public schools in kindergarten and grades 1 to 12, inclusive, within the boundaries

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of the high school attendance area for which the school district is applying for new facilities are enrolled in multitrack year-round schools.

(B) The district has placed on the ballot in the previous four years a local general obligation bond to finance school facilities and the measure received at least 50 percent plus one of the votes cast.

(C) The district meets one of the following:

(I) The district has issued debt or incurred obligations for capital outlay in an amount equivalent to 15 percent of the district' s local bonding capacity, including indebtedness that is repaid from property taxes, parcel taxes, the district's general fund, special taxes levied pursuant to Section 4 of Article XIIIA of the California Constitution, special taxes levied pursuant to Chapter 2.5 (commencing with Section 52211) of Division 2 of Title 5 that are approved by a vote of registered voters, special taxes levied pursuant to Chapter 2.5 (commencing with Section 52211) of Division 2 of Title 5 that are approved by a vote of landowners prior to November 4, 1998, and revenues received pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code). Indebtedness or other obligation to finance school facilities to be owned, leased, or used by the district, that is incurred by another public agency, shall be counted for the purpose of calculating whether the district has met the debt percentage requirement contained herein.

(ii) The district has issued debt or incurred obligations for capital outlay in an amount equivalent to 30 percent of the district' s local bonding capacity, including indebtedness that is repaid from property taxes, parcel taxes, the district's general fund, special taxes levied pursuant to Section 4 of Article XIIIA of the California Constitution, special taxes levied pursuant to Chapter 2.5 (commencing with Section 52211) of Division 2 of Title 5 that are approved by a vote of registered voters, special taxes levied pursuant to Chapter 2.5 (commencing with Section 52211) of Division 2 of Title 5 that are approved by a vote of landowners after November 4, 1998, and revenues received pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code). Indebtedness or other obligation to finance school facilities to be owned, leased, or used by the district, that is incurred by another public agency, shall be counted for the purpose of calculating

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whether the district has met the debt percentage requirement contained herein.

(D) At least 20 percent of the teaching stations within the district are relocatable classrooms.

(c) The maximum square foot fee, charge, dedication, or other requirement authorized by this Section that may be collected in accordance with Chapter 6 (commencing with Section 17620) of Part 10.5 of the Education Code shall be calculated by a governing board of a school district, as follows:

(1) The number of unhoused pupils identified in the school facilities needs analysis shall be multiplied by the appropriate amounts provided in subdivision (a) of Section 17072.10. This sum shall be added to the site acquisition and development cost determined pursuant to subdivision (h).

(2) The full amount of local funds the governing board has dedicated to facilities necessitated by new construction shall be subtracted from the amount determined pursuant to paragraph (1). Local funds include fees, charges, dedications, or other requirements imposed on commercial or industrial construction.

(3) The resulting amount determined pursuant to paragraph (2) shall be divided by the projected total square footage of assessable space of residential units anticipated to be constructed during the next five-year period in the school district or the city and county in which the school district is located. The estimate of the projected total square footage shall be based on information available from the city or county within which the residential units are anticipated to be constructed or a market report prepared by an independent third party.

(d) A school district that has a common territorial jurisdiction with a district that imposes the fee, charge, dedication, or other requirement up to the amount calculated pursuant to this Section or Section 65995.7, may not impose a fee, charge, dedication, or other requirement on residential construction that exceeds the limit set forth in subdivision (b) of Section 65995 less the portion of that amount it would be required to share pursuant to Section 17623 of the Education Code, unless that district is eligible to impose the fee, charge, dedication, or other requirement up to the amount calculated pursuant to this Section or Section 65995.7.

(e) Nothing in this Section is intended to limit or discourage the joint use of school facilities or to limit the ability of a school district to construct school facilities that exceed the amount of funds authorized by Section 17620 of the Education Code and provided by the state grant program, if the additional costs are funded solely by local revenue sources other than fees, charges, dedications, or other requirements imposed on new construction.

(f) A fee, charge, dedication, or other requirement authorized under Section 17620 of the Education Code or pursuant to Chapter 4.7 (commencing with Section 65970) shall be expended solely on the school facilities identified in the needs analysis

construction. Subdivisions (b)(1), (b)(2), and (b)(3) describe the eligibility requirements to impose a fee up to the amount calculated in this Section. The district must apply to the State Allocation Board and meet requirements set forth in Chapter 12.5 of the Education Code, known as the Leroy F. Greene School Facilities Act of 1998. The district must conduct a school facility need analysis. Until January 1, 2000, the district must satisfy at least one of the requirements set forth in subparagraphs (A) to (D). On and after January 1, 2000, the district must satisfy at least two of the requirements set forth in subparagraphs (A) to (D). Subparagraph (A) requires a "substantial enrollment" in a multi-track year-round schedule. Substantial enrollment is at least 30 percent of kindergarten and grades 1 to 6 for unified or elementary school districts. A high school district has met the requirements of this paragraph if at least 30 percent of the high school district's pupils are on a multitrack year-round schedule or at least 40 percent of the pupils enrolled in public schools in kindergarten and grades 1 to 12. Subparagraph

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as being attributable to projected enrollment growth from the construction of new residential units.

(g) "Residential units" and "residences" as used in this Section and in Sections 65995.6 and 65995.7 means the development of single-family detached housing units, single-family attached housing units, manufactured homes and mobile homes, as defined in subdivision (f) of Section 17625 of the Education Code, condominiums, and multifamily housing units, including apartments, residential hotels, as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code, and stock cooperatives, as defined in Section 1351 of the Civil Code.

(h) Site acquisition costs shall not exceed half the amount determined by multiplying the land acreage determined to be necessary under the guidelines of the State Department of Education, as published in the "School Site Analysis and Development Handbook," as that handbook read as of January 1, 1998, by the estimated cost determined pursuant to Section 17072.12 of the Education Code. Site development costs shall not exceed two times the amount funded by the State Allocation Board."

(B) requires that the district has placed on the ballot in the previous four years a local general obligation bond to finance school facilities and the measure received at least 50 percent plus one of the votes. Subparagraph (C) requires that the district has issued debt or incurred obligations for capital outlay in an amount equivalent to 15 percent prior to November 4, 1998 or 30 percent after November 4, 1998, of the district' s local bonding capacity. Subparagraph (D) requires that at least 20 percent of the teaching stations within the district are relocatable classrooms. Subdivision (c) provides a formula to determine the maximum fee authorized. The number of unhoused pupils identified in the school facilities needs analysis is multiplied by fixed amounts for each of elementary, middle school, and high school pupils, as described in subdivision (a) of Section 17072.10. This sum shall be added to the site acquisition and development cost determined pursuant to subdivision (h). The full amount of local funds is to be subtracted from this amount. This result shall be divided by the projected total square footage of assessable space of residential units anticipated to be constructed during the next five-year period in the school district or the city and county in which the school district is located. The estimate of the projected total square footage shall be based on information available from the city or county within which the residential units are anticipated to be constructed or a market report prepared by an independent third party. Subdivision (d) provides that a school district that has a common territorial jurisdiction with a district that imposes a fee up to the amount calculated pursuant to this Section or Section 65995.7, may not impose a fee on residential construction that exceeds the limit set forth in subdivision (b) of Section 65995 less the portion of that amount it would

be required to share pursuant to Section 17623 of the Education Code, unless that district is eligible to impose the fee, charge, dedication, or other requirement up to the amount calculated pursuant to this Section or Section 65995.7. Subdivision (e) assures that nothing in this Section is intended to limit or discourage the joint use of school facilities or to limit the ability of a school district to construct school facilities. Subdivision (f) requires fees to be expended solely on the school facilities identified in the needs analysis. Subdivision (g) defines "residential units" and "residences" as single-family detached housing units, single-family attached housing units, manufactured homes and mobile homes, condominiums, and multifamily housing units. Subdivision (h) limits site acquisition costs to two times the amount funded by the State Allocation Board.

Chapter 407, Statutes of 1998, Section 21, added Government Code Section 65995.6[99]. Subdivision (a) requires the governing board of a school district to

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[99] Government Code Section 65995.6, as added by Chapter 407, Statutes of 1998, Section 21:

"(a) The school facilities needs analysis required by paragraph (2) of subdivision (b) of Section 65995.5 shall be conducted by the governing board of a school district to determine the need for new school facilities for unhoused pupils that are attributable to projected enrollment growth from the development of new residential units over the next five years. The school facilities needs analysis shall project the number of unhoused elementary, middle, and high school pupils generated by new residential units, in each category of pupils enrolled in the district. This projection of unhoused pupils shall be based on the historical student generation rates of new residential units constructed during the previous five years that are of a similar type of unit to those anticipated to be constructed either in the school district or the city or county in which the school district is located, and relevant planning agency information, such as multiphased development projects, that may modify the historical figures. For purposes of this paragraph, "type" means a single family detached, single family attached, or multifamily unit. The existing school building capacity shall be calculated pursuant to Article 2 (commencing with

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Section 17071.10) of Chapter 12.5 of Part 10 of the Education Code. If a district meets the requirements of paragraph (3) of subdivision (b) of Section 65995.5 by having a substantial enrollment on a multitrack year-round schedule, the determination of whether the district has school building capacity area shall reflect the additional capacity created by the multitrack year-round schedule.

(b) When determining the funds necessary to meet its facility needs, the governing board shall do each of the following:

(1) Identify and consider any surplus property owned by the district that can be used as a schoolsite or that is available for sale to finance school facilities.

(2) Identify and consider the extent to which projected enrollment growth may be accommodated by excess capacity in existing facilities.

(3) Identify and consider local sources other than fees, charges, dedications, or other requirements imposed on residential construction available to finance the construction or reconstruction of school facilities needed to accommodate any growth in enrollment attributable to the construction of new residential units.

(c) The governing board shall adopt the school facility needs analysis by resolution at a public hearing. The school facilities needs analysis may not be adopted until the school facilities needs analysis in its final form has been made available to the public for a period of not less than 30 days during which time the school facilities needs analysis shall be provided to the local agency responsible for land use planning for its review and comment. Prior to the adoption of the school facilities needs analysis, the public shall have the opportunity to review and comment on the school facilities needs analysis and the governing board shall respond to written comments it receives regarding the school facilities needs analysis.

(d) Notice of the time and place of the hearing, including the location and procedure for viewing or requesting a copy of the proposed school facilities needs analysis and any proposed revision of the school facilities needs analysis, shall be published in at least one newspaper of general circulation within the jurisdiction of the school district that is conducting the hearing no less than 30 days prior to the hearing. If there is no paper of general circulation, the notice shall be posted in at least three conspicuous public places within the jurisdiction of the school district not less than 30 days prior to the hearing. In addition to these notice requirements, the governing board shall mail a copy of the school facilities needs analysis and any proposed revision to the school facilities needs analysis not less than 30 days prior to the hearing to any person who has made a written request if the written request was made 45 days prior to the hearing. The governing board may charge a fee reasonably related to the cost of providing these materials to those persons who request the school facilities needs analysis or revision.

(e) The school facilities needs analysis may be revised at any time in the same

perform a school facilities needs analysis. The analysis will project the number of unhoused elementary, middle, and high school pupils generated by new residential units. The projection should be based on the historical student generation rates of new residential units constructed during the previous five years that are of a similar type of unit (single family detached, single family attached, or multifamily unit) to those anticipated to be constructed either in the school district or the city or county in which the school district is located, and relevant planning agency information, such as multi-phased development projects, that may modify the historical figures. The existing school building capacity shall be calculated pursuant to the Leroy F. Greene School Facilities Act of 1998. If a district has a substantial enrollment on a multi-track year-round schedule, the determination of whether the district has school building capacity area shall reflect the additional capacity created by the multi-track year-round schedule. Subdivision (b) requires the governing board to identify and consider three issues when

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manner, and the revision is subject to the same conditions and requirements, applicable to the adoption of the school facilities needs analysis.

(f) A fee, charge, dedication, or other requirement in an amount authorized by this Section or Section 65995.7, shall be adopted by a resolution of the governing board as part of the adoption or revision of the school facilities needs analysis and may not be effective for more than one year. Notwithstanding subdivision (a) of Section 17621 of the Education Code, or any other provision of law, the fee, charge, dedication, or other requirement authorized by the resolution shall take effect immediately after the adoption of the resolution.

(g) Division 13 (commencing with Section 21000) of the Public Resources Code may not apply to the preparation, adoption, or update of the school facilities needs analysis, or adoption of the resolution specified in this Section.

(h) Notice and hearing requirements other than those provided in this Section may not be applicable to the adoption or revision of a school facilities needs analysis or the resolutions adopted pursuant to this Section."

determining the funds necessary to meet its facility needs. First, any surplus property owned by the district that can be used as a school-site or that is available for sale to finance school facilities. Second, the extent to which projected enrollment growth may be accommodated by excess capacity in existing facilities. Third, local sources other than fees imposed on residential construction available to finance the construction or reconstruction of school facilities needed to accommodate any growth in enrollment attributable to the construction of new residential units. Subdivision (c) requires the governing board to adopt the school facility needs analysis by resolution at a public hearing. The school facilities needs analysis may not be adopted until it is in its final form and has been made available to the public for a period of not less than 30 days. During that time, the analysis shall be provided to the local agency responsible for land use planning for its review and comment. Prior to its adoption, the public shall have the opportunity to review and comment on the analysis and the governing board shall respond to written comments it receives. Subdivision (d) provides that notice of the time and place of the hearing, including the location and procedure for viewing or requesting a copy of the proposed school facilities needs analysis and any proposed revisions, shall be published in at least one newspaper of general circulation within the jurisdiction of the school district that is conducting the hearing no less than 30 days prior to the hearing. If there is no paper of general circulation, the notice shall be posted in at least three conspicuous public places within the jurisdiction of the school district not less than 30 days prior to the hearing. In addition to these notice requirements, the governing board shall mail a copy of the school facilities needs

analysis and any proposed revision to the school facilities needs analysis not less than 30 days prior to the hearing to any person who has made a written request if the written request was made 45 days prior to the hearing. The governing board may charge a fee reasonably related to the cost of providing these materials to those persons who request the school facilities needs analysis or revision. Subdivision (e) allows the school facilities needs analysis to be revised at any time in the same manner, and the revision is subject to the same conditions and requirements, applicable to the adoption of the school facilities needs analysis. Subdivision (f) requires that a fee in an amount authorized by this Section or Section 65995.7, be adopted by a resolution of the governing board as part of the adoption or revision of the school facilities needs analysis and may not be effective for more than one year. The resolution takes effect immediately after adoption. Subdivision (g) provides that these actions are not subject to the environmental concerns of Public Resources Code 21000. Subdivision (h) provides that notice and hearing requirements other than those provided in this Section may not be applicable to the adoption or revision of a school facilities needs analysis or the resolutions adopted pursuant to this section.

Chapter 407, Statutes of 1998, Section 22, added Government Code Section 65995.7[100]. Subdivision (a) allows a school district to increase the alternative fee

[100] Government Code Section 65995.7, as added by Chapter 407, Statutes of 1998, Section 22:

"(a) If state funds for new school facility construction are not available, the governing board of a school district that complies with Section 65995.5 may increase the alternative fee, charge, dedication, or other requirement calculated pursuant to subdivision (c) of Section 65995.5 by an amount that may not exceed the amount

pursuant to Government Code Section 65995.5 where no state funds are available and cannot be subtracted from the amount calculated in subdivision (c) of Section 65995.5. State funds are not available if the State Allocation Board is no longer approving apportionments for new construction due to a lack of funds available for new construction. In this case, the State Allocation Board shall notify the Secretary of the Senate and the Chief Clerk of the Assembly, in writing, of that determination and the date when state funds are no longer available for publication in the respective journal of

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calculated pursuant to subdivision (c) of Section 65995.5, except that for the purposes of calculating this additional amount, the amount identified in paragraph (2) of subdivision (c) of Section 65995.5 may not be subtracted from the amount determined pursuant to paragraph (1) of subdivision (c) of Section 65995.5. For purposes of this Section, state funds are not available if the State Allocation Board is no longer approving apportionments for new construction pursuant to Article 5 (commencing with Section 17072.20) of Chapter 12.5 of Part 10 of the Education Code due to a lack of funds available for new construction. Upon making a determination that state funds are no longer available, the State Allocation Board shall notify the Secretary of the Senate and the Chief Clerk of the Assembly, in writing, of that determination and the date when state funds are no longer available for publication in the respective journal of each house.

(b) A governing board may offer a reimbursement election to the person subject to the fee, charge, dedication, or other requirement that provides the person with the right to monetary reimbursement of the supplemental amount authorized by this Section, to the extent that the district receives funds from state sources for construction of the facilities for which that amount was required, less any amount expended by the district for interim housing. At the option of the person subject to the fee, charge, dedication, or other requirement the reimbursement election may be made on a tract or lot basis. Reimbursement of available funds shall be made within 30 days as they are received by the district.

(c) A governing board may offer the person subject to the fee, charge, dedication, or other requirement an opportunity to negotiate an alternative reimbursement agreement if the terms of the agreement are mutually agreed upon.

(d) A governing board may provide that the rights granted by the reimbursement election or the alternative reimbursement agreement are assignable."

each house. Subdivision (b) allows a governing board to offer a reimbursement to the person subject to the fee when the district receives funds from state sources for construction of the facilities for which that amount was required, less any amount expended by the district for interim housing. The person may elect the reimbursement be made on a tract or lot basis. Reimbursement of available funds shall be made within 30 days as they are received by the district. Subdivision (c) also allows a governing board to offer the person subject to the fee an opportunity to negotiate an alternative reimbursement agreement if the terms of the agreement are mutually agreed upon. Subdivision (d) permits a governing board to assign the rights granted by the reimbursement election or the alternative reimbursement agreement.

Chapter 407, Statutes of 1998, Section 23, amended Government Code Section 65996[101], subdivision (a), to change the list of methods for mitigating impacts on school

[101] Government Code Section 65996, as amended by Chapter 407, Statutes of 1998, Section 23:

"(a) ~~The following provisions shall be the exclusive methods of mitigating environmental effects related to the adequacy of school facilities when considering the approval or the establishment of conditions for the approval of a development project, as defined in Section 53080, pursuant to~~

Notwithstanding Section 65858, or Division 13 (commencing with Section 21000) of the Public Resources Code~~:~~

~~(1) Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code or Chapter 12.5 (commencing with Section 17070.10).~~

~~(2) Chapter 25 (commencing with Section 17785) of Part 10~~, or any other provision of state or local law, the following provisions shall be the exclusive methods of considering and mitigating impacts on school facilities that occur or might occur as a result of any legislative or adjudicative act, or both, by any state or local agency involving, but not limited to, the planning, use, or development of real property or any change of governmental organization or reorganization, as defined in Section 56021 or 56073:

(1) Section 17620 of the Education Code.

facilities to only Education Code Section 17620. Subdivision (b) relies on this Section

~~(3) Chapter 28 (commencing with Section 17870) of Part 10 of the Education Code.~~

~~(4) Article 2.5 (commencing with Section 39327) of Chapter 3 of Part 23 of the Education Code.~~

~~(5) Section 53080 of the Government Code.~~

~~(6) Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 of the Government Code.~~

~~(7~~2) Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 ~~of the Government Code.~~

~~(b) A public agency may not, pursuant to.~~

(b) The provisions of this chapter are hereby deemed to provide full and complete school facilities mitigation and, notwithstanding Section 65858, or Division 13 (commencing with Section 21000) of the Public Resources Code or ~~Division 2 (commencing with Section 66410) of this code, deny approval of a project on the basis of the adequacy of~~ any other provision of state or local law, a state or local agency may not deny or refuse to approve a legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property or any change in governmental organization or reorganization, as defined in Section 56021 or 56073, on the basis that school facilities

~~(c~~ are inadequate.

(c) For purposes of this Section, "school facilities" means any school-related consideration relating to a school district's ability to accommodate enrollment.

(d) Nothing in this chapter shall be interpreted to limit or prohibit the ability of a local agency to utilize other methods to provide school facilities if these methods are not levied or imposed in connection with, or made a condition of, a legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property or a change in governmental organization or reorganization, as defined in Section 56021 or 56073. Nothing in this chapter shall be interpreted to limit or prohibit the assessment or reassessment of property in conjunction with ad valorum taxes, or the placement of a parcel on the secured roll in conjunction with qualified special taxes as that term is used in Section 50079.

(e) Nothing in this Section shall be interpreted to limit or prohibit the ability of a local agency to mitigate the impacts of land use approvals other than on the need for school facilities, as defined in this Section.

(f) This Section shall become inoperative ~~on January 1, 1993, and shall remain inoperative until the date that Assembly Constitutional Amendment 6 of the 1991-92 Regular Session fails to receive the approval of a majority of the voters voting on the measure, and as of that date~~ during any time that Section 65997 is operative and this Section shall become operative at any time that Section 65997 is inoperative."

as a full and complete school facilities mitigation and prohibits refusal of development on the basis that school facilities are inadequate. Subdivision (c) defines "school facilities" as any school-related consideration relating to a school district's ability to accommodate enrollment. Subdivision (d) allows local agencies to utilize other methods to provide school facilities including property assessment in conjunction with ad valorum taxes or qualified special taxes. Subdivision (e) also allows the agency to mitigate the impacts of land use approval for reasons other than the need for school facilities. Subdivision (f) ties the operation of this Section to that of Section 65997.

Chapter 407, Statutes of 1998, Section 24, added Government Code Section 65997[102]. Subdivision (a) lists the code Sections that mitigate the environmental effects

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[102] Government Code Section 65997, as added by Chapter 407, Statutes of 1998, Section 24:

"(a) The following provisions shall be the exclusive methods of mitigating environmental effects related to the adequacy of school facilities when considering the approval or the establishment of conditions for the approval of a development project, as defined in Section 17620, pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code:

(1) Chapter 12 (commencing with Section 17000) of Part 10 of the Education Code or Chapter 12.5 (commencing with Section 17070.10).
(2) Chapter 14 (commencing with Section 17085) of Part 10 of the Education Code.
(3) Chapter 18 (commencing with Section 17170) of Part 10 of the Education Code.
(4) Article 2.5 (commencing with Section 17430) of Chapter 4 of Part 10.5 of the Education Code.
(5) Section 17620 of the Education Code.
(6) Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 of the Government Code.
(7) Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 of the Government Code.

(b) A public agency may not, pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code or Division 2 (commencing with Section 66410) of

related to the adequacy of school facilities when considering the approval or the establishment of conditions for the approval of a development project, as defined in Section 17620 of the Education Code pursuant to Public Resources Code Section 21000. The Government Code Sections are 53311, known as the "Mello-Roos Community Facilities Act of 1982"; and 65970. The Education Code Sections are 17000, 17085, 17170, 17430, and 17620. Subdivision (b) states that no project will be denied on the basis of the adequacy of school facilities pursuant to Public Resources Code Section 21000 or Government Code Section 66410. Subdivision (c) says that this Section will become operative on or after any statewide election in 2006 if a bond

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this code, deny approval of a project on the basis of the adequacy of school facilities.

(c) (1) This Section shall become operative on or after any statewide election in 2006, if a statewide general obligation bond measure submitted for voter approval in 2006 or thereafter that includes bond issuance authority to fund construction of kindergarten and grades 1 to 12, inclusive, public school facilities is submitted to the voters and fails to be approved.

(2) (A) This Section shall become inoperative if subsequent to the failure of a general obligation bond measure described in paragraph (1) a statewide general bond measure as described in paragraph (1) is approved by the voters.

(B) Thereafter, this Section shall become operative if a statewide general obligation bond measure submitted for voter approval that includes bond issuance authority to fund construction of kindergarten and grades 1 to 12, inclusive, public school facilities is submitted to the voters and fails to be approved and shall become inoperative if subsequent to the failure of the general obligation bond measure a statewide bond measure as described in this subparagraph is approved by the voters.

(d) Notwithstanding any other provision of law, a public agency may deny or refuse to approve a legislative act involving, but not limited to, the planning, use, or development of real property, on the basis that school facilities are inadequate, except that a public agency may not require the payment or satisfaction of a fee, charge, dedication, or other financial requirement in excess of that levied or imposed pursuant to Section 65995 and, if applicable, any amounts specified in Sections 65995.5 or 65995.7."

measure with authority to fund construction of K through 12 public school facilities is submitted and fails to be approved by voters. It will become inoperative if another bond measure is approved. Subdivision (d) allows a public agency to deny or refuse to approve a legislative act involving the development of real property, on the basis that school facilities are inadequate, except that a public agency may not require the payment or satisfaction of a fee in excess of that levied or imposed pursuant to Section 65995, 65995.5 or 65995.7

Chapter 407, Statutes of 1998, Section 25, added Government Code Section 65998[103]. Subdivision (a) indicates that neither this chapter nor Section 17620 of the Education Code shall be interpreted to limit or prohibit the authority of a local agency to reserve or designate real property for a schoolsite. Subdivision (b) also provides that neither Chapter 4.9 nor Section 17620 of the Education Code shall be interpreted to limit or prohibit the ability of a local agency to mitigate the impacts of a land use approval involving, but not limited to, the planning, use, or development of real property other than on the need for school facilities.

Chapter 689, Statutes of 1998, Section 1.3, amended Education Code Section

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[103] Government Code Section 65998, as added by Chapter 407, Statutes of 1998, Section 25:

"(a) Nothing in this chapter or in Section 17620 of the Education Code shall be interpreted to limit or prohibit the authority of a local agency to reserve or designate real property for a schoolsite.

(b) Nothing in this chapter or in Section 17620 of the Education Code shall be interpreted to limit or prohibit the ability of a local agency to mitigate the impacts of a land use approval involving, but not limited to, the planning, use, or development of real property other than on the need for school facilities."

17621[104], subdivision (a), to remove references to repealed Sections 54994.1 and54992 of the Government Code and to insert the name "California Environmental Quality Act" to the Public Resources Code Section 21000.

Chapter 689, Statutes of 1998, Section 6.5, amended Government Code Section 66007 to make technical changes.

Chapter 689, Statutes of 1998, Section 7, amended Government Code Section 66021 to make technical changes.

Chapter 300, Statutes of 1999, Section 1, amended Education Code Section 17620[105] to add a subparagraph (ii) to subdivision (C) which prohibits the imposition of a levy on any residential construction that consists only of seismic retrofitting

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[104] Education Code Section 17621, as amended by Chapter 689, Statutes of 1998, Section 1.3:

"(a) Any resolution adopting or increasing a fee, charge, dedication, or other requirement pursuant to Section 17620, for application to residential, commercial, or industrial development, shall be enacted in accordance with Chapter 5 (commencing with Section 66000) of Division 1 of Title 7 of the Government Code~~, with Section 54994.1 of the Government Code, and with the procedures for mailed notice set forth in Section 54992 of the Government Code.~~ The adoption, increase, or imposition of any fee, charge, dedication, or other requirement pursuant to Section 17620 shall not be subject to the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code. The adoption of, or increase in, the fee, charge, dedication, or other requirement shall be effective no sooner than 60 days following the final action on that adoption or increase, except as specified in subdivision (b)."

[105] Education Code Section 17620, as amended by Chapter 300, Statutes of 1999, Section 1:

"(ii) This subparagraph does not authorize the imposition of a levy, charge, dedication, or other requirement against residential construction, regardless of the resulting increase in assessable space, if that construction qualifies for the exclusion set forth in subdivision (a) of Section 74.3 of the Revenue and Taxation Code."

improvements to an existing building or structure, as set forth in subdivision (a) of Section 74.3 of the Revenue and Taxation Code.

Chapter 858, Statutes of 1999, Section 16, amended Government Code Section 65995.5[106], subdivision (f), to allow expenditure of fees for school facilities identified in the needs analysis due to new residential units.

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[106] Government Code Section 65995.5, as amended by Chapter 858, Statutes of 1999, Section 16:

"(f) ~~A~~ Except as provided in paragraph (5) of subdivision (a) of Section 17620 of the Education Code, a fee, charge, dedication, or other requirement authorized under ~~Section 17620 of the Education Code or pursuant to Chapter 4.7 (commencing with Section 65970)~~ this section and Section 65995.7 shall be expended solely on the school facilities identified in the needs analysis as being attributable to projected enrollment growth from the construction of new residential units.

This subdivision does not preclude the expenditure of a fee, charge, dedication, or other requirement, authorized pursuant to subparagraph (C) of paragraph (1) of subdivision (a) of Section 17620, on school facilities identified in the needs analysis as necessary due to projected enrollment growth attributable to the new residential units.

(g) "Residential units" and "residences" as used in this section and in Sections 65995.6 and 65995.7 means the development of single-family detached housing units, single-family attached housing units, manufactured homes and ~~mobile homes~~ mobilehomes, as defined in subdivision (f) of Section 17625 of the Education Code, condominiums, and multifamily housing units, including apartments, residential hotels, as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code, and stock cooperatives, as defined in Section 1351 of the Civil Code.

(h) Site acquisition costs shall not exceed half of the amount determined by multiplying the land acreage determined to be necessary under the guidelines of the State Department of Education, as published in the "School Site Analysis and Development Handbook," as that handbook read as of January 1, 1998, by the estimated cost determined pursuant to Section 17072.12 of the Education Code. Site development costs shall not exceed ~~two times~~ the estimated amount that would be funded by the State Allocation Board pursuant to its regulations governing grants for site development costs."

Chapter 858, Statutes of 1999, Section 17, amended Government Code Section 65995.6[107], subdivision (a), to provide that existing school building capacity should be recalculated by the school district during any needs analysis revision.

Chapter 135, Statutes of 2000, Section 33, amended Education Code Section 17620 to make technical changes.

Chapter 33, Statutes of 2002, Section 33, amended Government Code Section 65995.7[108], subdivision (a), to provide that the board should not consider whether funds

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[107] Government Code Section 65995.6, as amended by Chapter 858, Statutes of 1999, Section 17:

"(a) The school facilities needs analysis required by paragraph (2) of subdivision (b) of Section 65995.5 shall be conducted by the governing board of a school district to determine the need for new school facilities for unhoused pupils that are attributable to projected enrollment growth from the development of new residential units over the next five years. The school facilities needs analysis shall project the number of unhoused elementary, middle, and high school pupils generated by new residential units, in each category of pupils enrolled in the district. This projection of unhoused pupils shall be based on the historical student generation rates of new residential units constructed during the previous five years that are of a similar type of unit to those anticipated to be constructed either in the school district or the city or county in which the school district is located, and relevant planning agency information, such as multiphased development projects, that may modify the historical figures. For purposes of this paragraph, "type" means a single family detached, single family attached, or multifamily unit. The existing school building capacity shall be calculated pursuant to Article 2 (commencing with Section 17071.10) of Chapter 12.5 of Part 10 of the Education Code. The existing school building capacity shall be recalculated by the school district as part of any revision of the needs analysis pursuant to subdivision (e) of this section. If a district meets the requirements of paragraph (3) of subdivision (b) of Section 65995.5 by having a substantial enrollment on a multitrack year-round schedule, the determination of whether the district has school building capacity area shall reflect the additional capacity created by the multitrack year-round schedule."

[108] Government Code Section 65995.7, as amended by Chapter 33, Statutes of 2000, Section 33:

"(a) (1) If state funds for new school facility construction are not available, the governing board of a school district that complies with Section 65995.5 may

are available, or whether apportionments are preliminary or final pursuant to Education

increase the alternative fee, charge, dedication, or other requirement calculated pursuant to subdivision (c) of Section 65995.5 by an amount that may not exceed the amount calculated pursuant to subdivision (c) of Section 65995.5, except that for the purposes of calculating this additional amount, the amount identified in paragraph (2) of subdivision (c) of Section 65995.5 may not be subtracted from the amount determined pursuant to paragraph (1) of subdivision (c) of Section 65995.5. For purposes of this Section, state funds are not available if the State Allocation Board is no longer approving apportionments for new construction pursuant to Article 5 (commencing with Section 17072.20) of Chapter 12.5 of Part 10 of the Education Code due to a lack of funds available for new construction. Upon making a determination that state funds are no longer available, the State Allocation Board shall notify the Secretary of the Senate and the Chief Clerk of the Assembly, in writing, of that determination and the date when state funds are no longer available for publication in the respective journal of each house.

For the purposes of making this determination, the board shall not consider whether funds are available for, or whether it is making preliminary apportionments or final apportionments pursuant to, Article 11 (commencing with Section 17078.10).

(2) Paragraph (1) shall become inoperative commencing on the effective date of the measure that amended this Section to add this paragraph, and shall remain inoperative through the earlier of either of the following:

(A) November 5, 2002, if the voters reject the Kindergarten University Public Education Facilities Bond Act of 2002, after which date paragraph (1) shall again become operative.

(B) The date of the 2004 direct primary election after which date paragraph (1) shall again become operative.

(b) A governing board may offer a reimbursement election to the person subject to the fee, charge, dedication, or other requirement that provides the person with the right to monetary reimbursement of the supplemental amount authorized by this Section, to the extent that the district receives funds from state sources for construction of the facilities for which that amount was required, less any amount expended by the district for interim housing. At the option of the person subject to the fee, charge, dedication, or other requirement the reimbursement election may be made on a tract or lot basis. Reimbursement of available funds shall be made within 30 days as they are received by the district.

(c) A governing board may offer the person subject to the fee, charge, dedication, or other requirement an opportunity to negotiate an alternative reimbursement agreement if the terms of the agreement are mutually agreed upon.

(d) A governing board may provide that the rights granted by the reimbursement election or the alternative reimbursement agreement are assignable."

Code Section 17078.10, "Critically Overcrowded School Facilities Program". Subparagraph (2) was added to subdivision (a) to define effective dates. This section becomes operative only if voters rejected the Kindergarten University Public Education Facilities Bond Act of 2002 on November 5, 2002 or after the 2004 direct primary election.

Chapter 1016, Statutes of 2002, Section 9, amended Government Code Section 66037[109] to extend this chapter until January 1, 2006.

PART III. STATEMENT OF THE CLAIM

Section 1. COSTS MANDATED BY THE STATE

The Statutes and the Government and Education Code Sections referenced in this test claim result in school districts and county offices of education incurring costs mandated by the state, as defined in Government Code Section 17514[110], by creating new state-mandated duties related to the uniquely governmental function of providing

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[109] Government Code Section 66037, as amended by Chapter 1016, Statutes of 2002, Section 9:

"No action filed on or after January 1, ~~2002~~ 2006, shall be subject to this chapter unless a later enacted statute which is chaptered before January 1, ~~2002~~ 2006, extends this date or deletes this Section."

[110] Government Code Section 17514, as added by Chapter 1459/84:

"Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIIIB of the California Constitution.

public services and these statutes apply to school districts and do not apply generally to all residents and entities in the state.[111]

The new duties mandated by the state upon school districts and county offices of education require state reimbursement of the direct and indirect costs of labor, materials and supplies, data processing services and software, contracted services and consultants, equipment and capital assets, staff and student training and travel to implement the following activities:

A1) Pursuant to Education Code Section 17620, subdivision (a)(1), to establish policies and procedures to levy a fee, charge, dedication, or other requirement against any construction within the boundaries of the district, for the purpose of funding the construction or reconstruction of school facilities. Levies may be applied (a)(1)(A), to new commercial and industrial construction, (a)(1)(B), to new residential construction, (a)(1)(C)(i), to other residential construction with an increase in assessable space of at least 500 square feet, and (a)(1)(D), to the location, installation, or occupancy of manufactured homes and mobilehomes.

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[111] Public schools are a Article XIII B, Section 6 "program," pursuant to Long Beach Unified School District v. State of California, (1990) 225 Cal.App.3d 155; 275 Cal.Rptr. 449:

"In the instant case, although numerous private schools exist, education in our society is considered to be a peculiarly government function. (Cf. Carmel Valley Fire Protection Dist. V. State of California (1987) 190 Cal.App.3d at p.537) Further, public education is administered by local agencies to provide service to the public. Thus public education constitutes a 'program' within the meaning of Section 6."

A2) Pursuant to Education Code Section 17620, subdivision (a)(4), to enter a contractual agreement with the appropriate city or county to collect and otherwise administer, on behalf of the school district, any fee, charge, dedication, or other requirement levied under this subdivision.

A3) Pursuant to Education Code Section 17620, subdivision (a)(5), to expend the fees or other consideration collected pursuant to this section for the costs of performing any study or otherwise making the findings and determinations required, or in preparing the school facilities needs analysis.

A4) Pursuant to Education Code Section 17620, subdivision (a)(5), to retain no more than 3 percent of the fees collected in that fiscal year for reimbursement of the administrative costs incurred in collecting the fees. Where costs incurred exceed that amount, payment of that excess compensation shall be made from other revenue sources available to the school district

A5) Pursuant to Education Code Section 17620, subdivisions (b) and (c), to issue certification that any fee, charge, dedication, or other requirement levied by the governing board of that school district has been complied with, or of the district's determination that the fee, charge, dedication, or other requirement does not apply to the construction. A city or county, whether general law or chartered, may not issue a building permit or certificate of occupancy for any construction absent certification by the

appropriate school district.

A6) Pursuant to Education Code Section 17620, subdivision (d), to notify a city or county of the adoption of, or increase in, the fee, charge, dedication, or other requirement.

B1) Pursuant to Education Code Section 17621, subdivision (a), to enact a resolution adopting or increasing a fee, charge, dedication, or other requirement for application to residential, commercial, or industrial development, as these terms are defined in Section 66000 of the Government Code.

B2) Pursuant to Education Code Section 17621, subdivision (b), to adopt, by a four-fifths vote of the governing board, an urgency measure as an interim authorization for a fee, charge, dedication, or other requirement, or increase in a fee, charge, dedication, or other requirement, where necessary to respond to a current and immediate threat to the public health, welfare, or safety.

B3) Pursuant to Education Code Section 17621, subdivision (c), to transmit a copy of the resolution to each city and each county in which the district is situated, accompanied by all relevant supporting documentation and a map clearly indicating the boundaries of the area subject to the fee, charge, dedication, or other requirement.

B4) Pursuant to Education Code Section 17621, subdivision (d), to comply with procedures set forth in Section 66021 of the Government Code in

response to a protest of the establishment or imposition of a fee, charge, dedication, or other by any party on whom a fee, charge, dedication, or other requirement has been directly imposed.

B5) Pursuant to Education Code Section 17621, subdivision(e), to make the findings on either an individual project basis or on the basis of categories of commercial or industrial development. Conduct a study to determine the impact of the increased number of employees anticipated to result from the commercial or industrial development upon the cost of providing school facilities within the district utilizing employee generation estimates based upon commercial and industrial factors within the district or upon the applicable employee generation estimates. Provide a process that permits the party against whom the fee, charge, dedication, or other requirement, on the basis of a category of commercial or industrial development, is to be imposed the opportunity for a hearing to appeal that imposition.

C1) Pursuant to Education Code Section 17622, subdivision (a), to restrict any fee, charge, dedication, or other requirement to be levied upon any greenhouse or other space that is covered or enclosed for agricultural purposes, without making a finding, supported by substantial evidence, of both of the following: (1) the amount of the proposed fees or other requirements and the location of the dedicated land bear a reasonable relationship and are limited to the needs of the community for elementary

or high school facilities caused by the development, and (2) the amount of the proposed fees or other requirements does not exceed the estimated reasonable cost of providing for the construction or reconstruction of the school facilities necessitated by the development projects from which the fees or other requirements are to be collected.

C2) Pursuant to Education Code Section 17622, subdivision (c), in determining the amount of the fees or other requirements to be levied on the development of any structure as described in subdivision (a), the school district governing board shall consider the relationship between the proposed increase in the number of employees, if any, the size and specific use of the structure, and the cost of the construction. No fee, charge, dedication, or other form of requirement shall be applied to the development of any structure described in subdivision (a) where the governing board finds either that the number of employees is not increased as a result of that development, or that housing has been provided for those employees by their employer, against which housing a fee, charge, or dedication, or other form of requirement has been applied. The governing board shall consult with the county agricultural commissioner or the county director of the cooperative extension service.

D1) Pursuant to Education Code Section 17623, subdivision (a), to distribute fee revenue between two nonunified school districts having common

territorial jurisdiction by entering into an agreement specifying the allocation of fee revenue and the duration of the agreement.

D2) Pursuant to Education Code Section 17623, subdivision (a), to transmit a copy of that agreement by each district to the State Allocation Board.

D3) Pursuant to Education Code Section 17623, subdivision (b), to jointly submit the dispute, in the event the affected school districts are unable to reach an agreement, to a three-member arbitration panel composed of one representative chosen by each of the districts and one representative chosen jointly by both of the districts. The decision of the arbitration panel shall be final and binding upon both districts for a period of three years.

E) Pursuant to Education Code Section 17624, to repay or reconvey, as appropriate, that fee, charge, dedication, or other requirement to the person or persons from whom that fee, charge, dedication, or other requirement was collected for a project that failed to commence construction prior to building permit expiration, less the amount of the administrative costs incurred in collecting and repaying the fee, charge, dedication, or other requirement.

F1) Pursuant to Education Code Section 17625, to apply a fee, charge, dedication, or other form of requirement levied by the governing board of a school district to any manufactured home or mobilehome when it is the initial location, installation, or occupancy of the manufactured home or

mobilehome within the school district, the space or site is one on which no other manufactured home or mobilehome was previously located, installed, or occupied, and the construction of the pad or foundation system commenced after September 1, 1986.

F2) Pursuant to Education Code Section 17625, subdivision (b), to require compliance with any fee, charge, dedication, or other form of requirement prior to the close of escrow, or the approval of the manufactured home or mobilehome for occupancy.

F3) Pursuant to Education Code Section 17625, subdivision (d), to apply toward the payment of any fee or other requirement to a permanent residential structure the amount of fee or other requirement levied against any manufactured home or mobilehome that was previously on the same lot.

F4) Pursuant to Education Code Section 17625, subdivision (e), to immediately repay the fee, charge, dedication, or other form of requirement to the person or persons who made the payment to the extent the fee, charge, dedication, or other form of requirement collected would not have been authorized under subdivision (a). This subdivision shall not apply, however, to the extent that, pursuant to Section 16 of Article I of the California Constitution, it would impair the obligation of any contract entered into by any school district, on or before the effective date of this section.

F5) Pursuant to Education Code Section 17625, subdivision (g), to permit a fee or other requirement be waived or paid in installments whenever a manufactured home or a mobilehome owned by a person 55 years of age or older who is also a member of a lower income household, and which has been moved from a mobilehome park space located in one school district, where the mobilehome owner has resided, to a space or lot located in a mobilehome park or a subdivision, cooperative, or condominium for mobilehomes or manufactured homes located in another school district. The fee is to be secured as a lien perfected against the mobilehome or manufactured home. Costs of filing the lien and reasonable late charges or interest may be added to the amount of the lien.

G) Pursuant to Education Code Section 17626, subdivision (a), to restrict the levy of a fee, charge, dedication, or other requirement applied to the reconstruction of any residential, commercial, or industrial structure that is damaged or destroyed as a result of a disaster, to the extent the square footage of the reconstructed structure exceeds the square footage of the structure that was damaged or destroyed.

H1) Pursuant to Government Code Section 65971, subdivision (a), to notify the city council or board of supervisors of the city or county within which the school district is located if conditions of overcrowding exist in one or more attendance areas within the district which will impair the normal

functioning of educational programs and the reason for the existence of those conditions, and that all reasonable methods of mitigating conditions of overcrowding have been evaluated and no feasible method for reducing those conditions exist.

H2) Pursuant to Government Code Section 65971, subdivision (b), to specify the mitigation measures considered by the school district. Complete to application to the Office of Public School Construction for preliminary determination of eligibility under the Leroy F. Greene State School Building Lease-Purchase Law of 1976. Make the findings available to the public for 60 days after the date of receipt by the city or county. The date of receipt of the notice of findings is the date when all of the materials required by this section are completed and filed by the school district with the city council or board of supervisors.

I) Pursuant to Government Code Section 65972, to assist the city council or board of supervisors, where conditions of overcrowding exist, in determining if there are specific overriding fiscal, economic, social, or environmental factors which would benefit the city or county, thereby justifying the approval of a residential development.

J1) Pursuant to Government Code Section 65973, subdivision (a), to determine if "conditions of overcrowding", that the total enrollment of a school, including enrollment from proposed development, exceeds the

capacity of the school as determined by the governing body of the district, exists.

J2) Pursuant to Government Code Section 65973, subdivision (b), to evaluate "reasonable methods for mitigating conditions of overcrowding" such as agreements between a subdivider or builder and the affected school district whereby temporary-use buildings will be leased to the school district or temporary-use buildings owned by the school district will be used and agreements between the affected school district and other school districts whereby the affected school district agrees to lease or purchase surplus or underutilized school facilities from other school districts.

K1) Pursuant to Government Code Section 65974, subdivision (a), where overcrowded conditions exist, to assist a city, county, or city and county that may, by ordinance, require the dedication of land, the payment of fees in lieu thereof, or a combination of both, for classroom and related facilities for elementary or high schools as a condition to the approval of a residential development, by providing information regarding all of the following: (1) the general plan provides for the location of public schools, (2) the ordinance has been in effect for a period of 30 days prior to the implementation of the dedication or fee requirement, (3) the land or fees, or both, transferred to a school district shall be used only for the purpose of providing interim elementary or high school classroom and related

facilities. If fees are paid in lieu of the dedication of land and those fees are utilized to purchase land, no more land shall be purchased than is necessary for the placement thereon of interim facilities, (4) the location and amount of land to be dedicated or the amount of fees to be paid, or both, shall bear a reasonable relationship and be limited to the needs of the community for interim elementary or high school facilities and shall be reasonably related and limited to the need for schools caused by the development. The value of the land to be dedicated or the amount of fees to be paid, or both, will not exceed the amount necessary to pay five annual lease payments for the interim facilities, and (5) a finding is made by the city council or board of supervisors that the facilities to be constructed from the fees or the land to be dedicated, or both, is consistent with the general plan.

K2) Pursuant to Government Code Section 65974, subdivision (b), to consider the methods for mitigating the conditions of overcrowding.

K3) Pursuant to Government Code Section 65974, subdivision (c), to collect the payment of fees at the time the building permit is issued or at a later time as may be specified in the ordinance.

K4) Pursuant to Government Code Section 65974, subdivision (e), to determine developer fees under the school facilities master plan. Have on file with the Office of Public School Construction, and actively pursue in

good faith, an application for preliminary determination of eligibility for project funding under that chapter, and shall actively pursue in good faith the establishment of a community capital facilities district or other permanent financing mechanisms to reduce or eliminate developer fees.

L) Pursuant to Government Code Section 65974.5, to expend those funds, collected pursuant to an ordinance dated before September 1, 1986, for any of the construction or reconstruction purposes authorized under Section 53080 / 17620, where the governing board has first held a public hearing on the subject of the proposed expenditure.

M1) Pursuant to Government Code Section 65975, subdivision (a), whenever a school district has received approval for a project, under the State School Building Lease-Purchase Law of 1976, to use all or a portion of the fees so collected for interim facilities may be used by the district to provide its 10 percent of the project.

M2) Pursuant to Government Code Section 65975, subdivision (b), whenever a school district has received approval for a project, under the State School Building Lease-Purchase Law of 1976, to use the fair market value of the land to provide all or a portion of its 10 percent of the school project. Construct the capital outlay project on the land used to make the match, and to provide the full 10 percent of the project cost at one time.

N) Pursuant to Government Code Section 65976, to submit a schedule to the city council or board of supervisors specifying how the school district will

use the land or fees, or both, to solve the conditions of overcrowding. The schedule shall include the school sites to be used, the classroom facilities to be made available, and the times when those facilities will be available. If the governing body of the school district cannot meet the schedule, it shall submit modifications to the city council or board of supervisors and the reasons for the modifications.

O) Pursuant to Government Code Section 65978, to maintain a separate account for any fees paid. File a report with the city council or board of supervisors on the balance in the account at the end of the previous fiscal year; the facilities leased, purchased, or constructed; and the dedication of land during the previous fiscal year. Specify which attendance areas will continue to be overcrowded when the fall term begins and where conditions of overcrowding will no longer exist. File this report by October 15 of each year and shall be filed more frequently at the request of the board of supervisors or city council. Request a 30-day extension for the filing of the report in the case of extenuating circumstances, as determined by the board of supervisors or city council. Waive any performance of the payment of fees or the dedication of land during the time that the report has not been filed in the manner prescribed in this section.

P1) Pursuant to Government Code Section 65979, subdivision (a), where it is less than one year after receipt of an apportionment pursuant to the Leroy

F. Greene State School Building Lease-Purchase Law of 1976, to assist the city or county in determining that during the period of construction, or after construction has been completed, additional overcrowding would occur from continued residential development, and that any fee levied and any required dedication of land levied after the receipt of the construction apportionment can be used to avoid the additional overcrowding prior to the school being available for use by the school district.

P2) Pursuant to Government Code Section 65979, subdivision (b), to return any amounts of fees collected or land dedicated after the receipt of the construction apportionment and not used to avoid overcrowding.

Q) Pursuant to Government Code Section 65981, to submit a recommendation that fees for providing interim facilities are to be assessed on a development as a condition of city or county approval of a subdivision within 60 days following the issuance of the initial permit for the development. Failure to provide the recommendation of fees to be assessed within the 60-day period shall constitute a waiver by the governing body of the school district of its authority to request fees pursuant to this chapter.

R) Pursuant to Government Code Section 65995, subdivision (b), 65995.1, 65995.2 to calculate the amount of a fee, charge, dedication, or other requirement for the construction or reconstruction of school facilities as one dollar and ninety-three cents ($1.93) per square foot of assessable

residential space, as calculated by the building department of the city or county issuing the building permit. Calculate the amount as thirty-one cents ($0.31) per square foot of chargeable covered and enclosed space for commercial, or industrial projects, agricultural projects, or senior citizen occupied mobilehomes, as calculated by the building department of the city or county issuing the building permit.

S1) Pursuant to Government Code Section 65995.5, subdivision (a), to impose the amount calculated pursuant to this section as an alternative to the amount that may be imposed on residential construction calculated pursuant to subdivision (b) of Section 65995.

S2) Pursuant to Government Code Section 65995.5, subdivision (b), to make a timely application to the State Allocation Board for new construction funding for which it is eligible and be determined by the board to meet the eligibility requirements for new construction funding set forth in Article 2 (commencing with Section 17071.10) and Article 3 (commencing with Section 17071.75) of Chapter 12.5 of Part 10 of the Education Code. Conduct and adopt a school facility needs analysis pursuant to Section 65995.6. Qualify as a unified or elementary school district that has a substantial enrollment of its elementary school pupils on a multitrack year-round schedule, or at least 30 percent of the high school district's pupils are on a multitrack year-round schedule, or at least 40 percent of the pupils enrolled in public schools in kindergarten and grades 1 to 12,

inclusive, are enrolled in multitrack year-round schools. Qualify by having placed on the ballot in the previous four years a local general obligation bond to finance school facilities and the measure received at least 50 percent plus one of the votes cast. Qualify by having issued debt or incurred obligations for capital outlay in an amount equivalent to 15 percent of the district's local bonding capacity, including indebtedness that is repaid from property taxes, parcel taxes, the district's general fund, special taxes, and revenues received pursuant to the Community Redevelopment Law, or have issued debt or incurred obligations for capital outlay in an amount equivalent to 30 percent of the district's local bonding capacity, including indebtedness that is repaid from property taxes, parcel taxes, the district's general fund, special taxes, and revenues received pursuant to the Community Redevelopment Law. Qualify by having at least 20 percent of the teaching stations within the district as relocatable classrooms.

S3) Pursuant to Government Code Section 65995.5, subdivision (c), to calculate the maximum square foot fee, charge, dedication, or other requirement as: (1) the number of unhoused pupils identified in the school facilities needs analysis multiplied by the appropriate amounts provided in subdivision (a) of Section 17072.10; (2) this sum shall be added to the site acquisition and development cost; (3) the full amount of local funds the governing board has dedicated to facilities necessitated by new

construction shall be subtracted from this amount; and (4) the resulting amount shall be divided by the projected total square footage of assessable space of residential units anticipated to be constructed during the next five-year period in the school district or the city and county in which the school district is located. The estimate of the projected total square footage shall be based on information available from the city or county within which the residential units are anticipated to be constructed or a market report prepared by an independent third party.

S4) Pursuant to Government Code Section 65995.5, subdivision (f), to expend these fees solely on the school facilities identified in the needs analysis as being attributable to projected enrollment growth from the construction of new residential units.

T1) Pursuant to Government Code Section 65995.6, subdivision (a), to conduct a school facilities needs analysis to determine the need for new school facilities for unhoused pupils that are attributable to projected enrollment growth from the development of new residential units over the next five years. The school facilities needs analysis shall project the number of unhoused elementary, middle, and high school pupils generated by new residential units, in each category of pupils enrolled in the district. This projection of unhoused pupils shall be based on the historical student generation rates of new residential units constructed during the previous five years that are of a similar type of unit to those

anticipated to be constructed either in the school district or the city or county in which the school district is located, and relevant planning agency information, such as multiphased development projects, that may modify the historical figures. Recalculate the existing school building capacity as part of any revision of the needs analysis.

T2) Pursuant to Government Code Section 65995.6, subdivision (b), to identify and consider any surplus property owned by the district that can be used as a schoolsite or that is available for sale to finance school facilities. Identify and consider the extent to which projected enrollment growth may be accommodated by excess capacity in existing facilities. Identify and consider local sources other than fees, charges, dedications, or other requirements imposed on residential construction available to finance the construction or reconstruction of school facilities needed to accommodate any growth in enrollment attributable to the construction of new residential units.

T3) Pursuant to Government Code Section 65995.6, subdivision (c), to adopt the school facility needs analysis by resolution at a public hearing, after it is in its final form and has been made available to the public for a period of not less than 30 days during which time the school facilities needs analysis shall be provided to the local agency responsible for land use planning for its review and comment. Respond to written comments it receives from the public regarding the school facilities needs analysis.

T4) Pursuant to Government Code Section 65995.6, subdivision (d), to publish a notice of the time and place of the hearing, including the location and procedure for viewing or requesting a copy of the proposed school facilities needs analysis and any proposed revision of the school facilities needs analysis, in at least one newspaper of general circulation within the jurisdiction of the school district that is conducting the hearing no less than 30 days prior to the hearing. Charge a fee reasonably related to the cost of providing these materials to those persons who request the school facilities needs analysis or revision.

T5) Pursuant to Government Code Section 65995.6, subdivision (e), to revise the school facilities needs analysis at any time in the same manner, subject to the same conditions and requirements, applicable to the adoption of the school facilities needs analysis.

T6) Pursuant to Government Code Section 65995.6, subdivision (f), to adopt a fee, charge, dedication, or other requirement by a resolution of the governing board as part of the adoption or revision of the school facilities needs analysis.

U1) Pursuant to Government Code Section 65995.7 (a), to increase the alternative fee, charge, dedication, or other requirement if state funds for new school facility construction are not available.

U2) Pursuant to Government Code Section 65995.7 (b), to offer a reimbursement election to the person subject to the fee, charge,

dedication, or other requirement that provides the person with the right to monetary reimbursement of the supplemental amount authorized by this section, to the extent that the district receives funds from state sources for construction of the facilities for which that amount was required, less any amount expended by the district for interim housing.

U3) Pursuant to Government Code Section 65995.7 (c), to offer the person subject to the fee, charge, dedication, or other requirement an opportunity to negotiate an alternative reimbursement agreement if the terms of the agreement are mutually agreed upon.

U4) Pursuant to Government Code Section 65995.7 (d), to provide that the rights granted by the reimbursement election or the alternative reimbursement agreement are assignable.

V1) Pursuant to Government Code Section 65998, subdivision (a), to reserve or designate real property for a schoolsite.

V2) Pursuant to Government Code Section 65998, subdivision (b), to mitigate the impacts of a land use approval involving, but not limited to, the planning, use, or development of real property other than on the need for school facilities.

W1) Pursuant to Government Code Section 66001, subdivision (a)(1), to identify the purpose of the fee.

W2) Pursuant to Government Code Section 66001, subdivision (a)(2), to identify the use to which the fee is to be put. If the use is financing public

facilities, the facilities shall be identified. That identification may, but need not, be made by reference to a capital improvement plan, may be made in applicable general or specific plan requirements, or may be made in other public documents that identify the public facilities for which the fee is charged.

W3) Pursuant to Government Code Section 66001, subdivision (a)(3), to determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed.

W4) Pursuant to Government Code Section 66001, subdivision (a)(4), to determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.

W5) Pursuant to Government Code Section 66001, subdivision (b), to determine how there is a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed.

W6) Pursuant to Government Code Section 66001, subdivision (c), to deposit, invest, account for, and expend the fees pursuant to Section 66006.

W7) Pursuant to Government Code Section 66001, subdivision (d), to identify the purpose to which the fee is to be put for any fund remaining unexpended. Demonstrate a reasonable relationship between the fee and the purpose for which it is charged for any fund remaining

unexpended. Identify all sources and amounts of funding anticipated to complete financing in incomplete improvements for any fund remaining unexpended. Designate the approximate dates on which any fund remaining unexpended is expected to be deposited into the appropriate account or fund. Refund any fund remaining unexpended if the findings are not made as required by this subdivision.

W8) Pursuant to Government Code Section 66001, subdivision (e), to identify, within 180 days, when sufficient funds have been collected to complete financing on incomplete public improvements and the public improvements remain incomplete, an approximate date by which the construction of the public improvement will be commenced, or shall refund to the then current record owner the unexpended portion of the fee, and any interest accrued thereon.

W9) Pursuant to Government Code Section 66001, subdivision (f), if the administrative costs of refunding unexpended revenues exceed the amount to be refunded, the local agency, after a public hearing and notice, may determine that the revenues shall be allocated for some other purpose for which fees are collected and which serves the project on which the fee was originally imposed.

X1) Pursuant to Government Code Section 66002, subdivision (a), to adopt a capital improvement plan, which shall indicate the approximate location,

size, time of availability, and estimates of cost for all facilities or improvements to be financed with the fees.

X2) Pursuant to Government Code Section 66002, subdivision (b), to adopt, and update annually the capital improvement plan shall be, by resolution at a noticed public hearing. Notice of the hearing shall be given as well as maile,d by first-class mail or personal delivery, notice to any city or county which may be significantly affected by the capital improvement plan.

Y) Pursuant to Government Code Section 66005, subdivision (a), to determine the estimated reasonable cost of providing the service or facility for which the fee or exaction is imposed to ensure it does not exceed the amount of the fee or exaction.

Z1) Pursuant to Government Code Section 66006, subdivision (a), to deposit a fee, and any interest income earned, with the other fees for the improvement in a separate capital facilities account or fund in a manner to avoid any commingling of the fees with other revenues and funds of the local agency. Expend those fees, and any interest income earned, solely for the purpose for which the fee was collected.

Z2) Pursuant to Government Code Section 66006, subdivision (b), to make publicly available, for each separate account or fund shall, within 180 days after the last day of each fiscal year, the following information: (A) a brief description of the type of fee in the account or fund, (B) the amount of the fee, (C) the beginning and ending balance of the account or fund, (D) the

amount of the fees collected and the interest earned, (E) 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, (F) an identification of an approximate date by which the construction of the public improvement will commence if the local agency determines that sufficient funds have been collected to complete financing on an incomplete public improvement, (G) 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, and (H) the amount of refunds made pursuant to subdivision (e) of Section 66001 and any allocations pursuant to subdivision (f) of Section 66001. Review the information made available to the public at the next regularly scheduled public meeting not less than 15 days after this information has been available to the public. Mail notice of the time and place of the meeting, including the address where this information may be reviewed at least 15 days prior to the meeting, to any interested party who files a written request with the local agency for mailed notice of the meeting.

Z3) Pursuant to Government Code Section 66006, subdivision (d), to respond to any person may request an audit of any local agency fee or charge, including fees or charges of school districts.

Z4) Pursuant to Government Code Section 66006, subdivision (f), to identify the public improvement that the fee will be used to finance at the time the local agency imposes the fee.

AA1) Pursuant to Government Code Section 66007, subdivision (a), to not require the payment of fees or charges on a residential development for the construction of public improvements or facilities until the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs first. Determine whether the fees or charges shall be paid on a pro rata basis for each dwelling when it receives its final inspection or certificate of occupancy, whichever occurs first; on a pro rata basis when a certain percentage of the dwellings have received their final inspection or certificate of occupancy, whichever occurs first; or on a lump-sum basis when the first dwelling in the development receives its final inspection or certificate of occupancy, whichever occurs first.

AA2) Pursuant to Government Code Section 66007, subdivision (b), to require the payment of those fees or charges at an earlier time if (1) the local agency determines that the fees or charges will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency has adopted a

proposed construction schedule or plan prior to final inspection or issuance of the certificate of occupancy or (2) the fees or charges are to reimburse the local agency for expenditures previously made.

AA3) Pursuant to Government Code Section 66007, subdivision (c), to require the property owner, or lessee if the lessee's interest appears of record, as a condition of issuance of the building permit, to execute a contract to pay the fee or charge. E nforce the obligation to pay the fee or charge. Ensure the contract contains a legal description of the property affected, is recorded in the office of the county recorder of the county and, from the date of recordation, shall constitute a lien for the payment of the fee or charge, which shall be enforceable against successors in interest to the property owner or lessee at the time of issuance of the building permit. Record the contract in the grantor-grantee index in the name of the public agency issuing the building permit as grantee and in the name of the property owner or lessee as grantor. Record a release of the obligation, containing a legal description of the property, in the event the obligation is paid in full, or a partial release in the event the fee or charge is prorated.

AA4) Pursuant to Government Code Section 66007, subdivision (f), to comply with the requirement that a proposed construction schedule or plan be by the adoption of the capital improvement plan, or the submittal of a five-year plan for construction and rehabilitation of school facilities.

BB) Pursuant to Government Code Section 66008, to expend a fee for public improvements solely and exclusively for the purpose or purposes for which the fee was collected. The fee shall not be levied, collected, or imposed for general revenue purposes.

CC1) Pursuant to Government Code Section 66016, subdivision (a), to hold at least one open and public meeting, at which oral or written presentations can be made, as part of a regularly scheduled meeting prior to levying a new fee or service charge, or prior to approving an increase in an existing fee or service charge. Mail notice of the time and place of the meeting, including a general explanation of the matter to be considered, and a statement that the data required by this section, at least 14 days prior to the meeting to any interested party who files a written request with the local agency for mailed notice of the meeting on new or increased fees or service charges. Make available to the public data indicating the amount of cost, or estimated cost, required to provide the service for which the fee or service charge is levied and the revenue sources anticipated to provide the service, including General Fund revenues at least 10 days prior to the meeting. Use any revenue from the fees or service charges in excess of actual cost to reduce the fee or service charge creating the excess.

CC2) Pursuant to Government Code Section 66016, subdivision (b), to take only by ordinance or resolution any action by a local agency to levy a new

fee or service charge or to approve an increase in an existing fee or service charge.

CC3) Pursuant to Government Code Section 66016, subdivision (c), to recover any costs incurred by a local agency in conducting the meeting or meetings from fees charged for the services which were the subject of the meeting.

DD) Pursuant to Government Code Section 66017, subdivision (b), to adopt an urgency measure as an interim authorization for a fee or charge, or increase in a fee or charge, to protect the public health, welfare and safety. The interim authorization shall require four-fifths vote of the legislative body for adoption. The interim authorization shall have no force or effect 30 days after its adoption. The interim authority shall contain findings describing the current and immediate threat to the public health, welfare and safety. After notice and public hearing, the legislative body may extend the interim authority for an additional 30 days. Not more than two extensions may be granted. Any extension shall also require a four-fifths vote of the legislative body.

EE1) Pursuant to Government Code Section 66018, subdivision (a), to hold a public hearing, at which oral or written presentations can be made, as part of a regularly scheduled meeting. Notice of the time and place of the meeting, including a general explanation of the matter to be considered, shall be published.

EE2) Pursuant to Government Code Section 66018, subdivision (b), to recover any costs incurred by a local agency in conducting the hearing as part of the fees which were the subject of the hearing.

FF1) Pursuant to Government Code Section 66020, subdivision (a), to accept any required payment in full or satisfactory evidence of arrangements to pay the fee when due or ensure performance of the conditions necessary to meet the requirements of the imposition from any party that protests the imposition of any fees, dedications, reservations, or other exactions imposed on a development project. Accept written notice from any party that protests the imposition of any fees, dedications, reservations, or other exactions imposed on a development project. Written notice must include: (A) a statement that the required payment is tendered or will be tendered when due, or that any conditions which have been imposed are provided for or satisfied, under protest, and (B) a statement informing the governing body of the factual elements of the dispute and the legal theory forming the basis for the protest.

FF2) Pursuant to Government Code Section 66020, subdivision (b), to not withhold approval of any map, plan, permit, zone change, license, or other form of permission, or concurrence, whether discretionary, ministerial, or otherwise, incident to, or necessary for, the development project where the party has complied with subdivision (a). Ensure compliance with all

applicable provisions of law in determining whether or not to approve or disapprove a development project.

FF3) Pursuant to Government Code Section 66020, subdivision (c), to make proper and valid findings that the construction of certain public improvements or facilities is required for reasons related to the public health, safety, and welfare, and elects to impose a requirement for construction of those improvements or facilities as a condition of approval of the proposed development, then in the event a protest is lodged, that approval shall be suspended pending withdrawal of the protest, the expiration of the limitation period of 180 days without the filing of an action, or resolution of any action filed.

FF4) Pursuant to Government Code Section 66020, subdivision (d), to provide to the project applicant a notice in writing at the time of the approval of the project or at the time of the imposition of the fees, dedications, reservations, or other exactions, a statement of the amount of the fees or a description of the dedications, reservations, or other exactions, and notification that the 90-day approval period in which the applicant may protest has begun.

FF5) Pursuant to Government Code Section 66020, subdivision (e), to refund the unlawful portion of the payment, with interest at the rate of 8 percent per annum, or return the unlawful portion of the exaction imposed if the court finds in favor of the plaintiff.

FF6) Pursuant to Government Code Section 66020, subdivision (f), to refund the unlawful portion of the payment, plus interest at an annual rate equal to the average rate accrued by the Pooled Money Investment Account during the time elapsed since the payment occurred, or to return the unlawful portion of the exaction imposed if the court grants a judgment to a plaintiff invalidating, as enacted, all or a portion of an ordinance or resolution enacting a fee, dedication, reservation, or other exaction. Refund the portion of the payment or exaction to any other person who, under protest of that same ordinance or resolution as enacted, tendered the payment or provided for or satisfied the exaction, if an action is filed within 120 days of the date at which an ordinance or resolution to establish or modify a fee, dedication, reservation, or other exactions to be imposed on a development project takes effect.

GG1) Pursuant to Government Code Section 66023, subdivision (a), to retain an independent auditor to conduct an audit to determine whether the fee or charge is reasonable when requested by any person in order to determine whether any fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of any product or service provided by the local agency.

GG2) Pursuant to Government Code Section 66023, subdivision (b), to recover any costs incurred from the person who requests the audit.

HH1) Pursuant to Government Code Section 66024, subdivision (a), to produce evidence to establish that the development fee does not exceed the cost of the service, facility, or regulatory activity for which it is imposed in any judicial action or proceeding to validate, attack, review, set aside, void, or annul any ordinance or resolution providing for the imposition of a development fee in which there is at issue whether the development fee is a special tax within the meaning of Section 50076.

HH2) Pursuant to Government Code Section 66024, subdivision (b), to provide a copy of the documents which establish that the development fee does not exceed the cost of the service, facility, or regulatory activity for which it is imposed, if requested at least 30 days prior to initiating the action or proceeding. Charge a fee for copying the documents requested.

HH3) Pursuant to Government Code Section 66024, subdivision (c), to determine costs in accordance with fundamental fairness and consistency of method as to the allocation of costs, expenses, revenues, and other items included in the calculation.

II1) Pursuant to Government Code Section 66031, subdivision (a), to be subject to a mediation proceeding.

II2) Pursuant to Government Code Section 66031, subdivision (b), to consider resolving their dispute by selecting a mutually acceptable person to serve as a mediator, or an organization or agency to provide a mediator.

II3) Pursuant to Government Code Section 66031, subdivision (c), to consider, in selecting a person to serve as a mediator, (1) the council of governments having jurisdiction in the county where the dispute arose, (2) any subregional or countywide council of governments in the county where the dispute arose, (3) the Office of Permit Assistance within the Trade and Commerce Agency, or (4) any other person with experience or training in mediation including those with experience in land use issues, or any other organization or agency which can provide a person with experience or training in mediation, including those with experience in land use issues.

II4) Pursuant to Government Code Section 66031, subdivision (d), to notify the court within 30 days if they have selected a mutually acceptable person to serve as a mediator. If the parties have not selected a mediator within 30 days, the action shall proceed. The court shall not draw any implication, favorable or otherwise, from the refusal by a party to accept the invitation by the court to consider mediation. Nothing in this section shall preclude the parties from using mediation at any other time while the action is pending.

JJ) Pursuant to Government Code Section 66032, to arrive at a settlement and implement it in accordance with the provisions of current law or agree by written stipulation to extend the mediation for another 90-day period.

KK) Pursuant to Government Code Section 66034, to attend a settlement conference before a judge of the superior court if the mediation does not resolve the action. Attend a hearing if the action is later heard on its merits.

LL) Pursuant to Government Code Section 66036, to consult with the Office of Permit Assistance within the Trade and Commerce Agency and the Judicial Council regarding their report to the Legislature regarding the implementation of this chapter and may recommend the extension of the chapter, changes to the chapter, or the repeal of the chapter.

Section 2. EXCEPTIONS TO MANDATE REIMBURSEMENT

None of the Government Code Section 17556[112] statutory exceptions to a finding of costs mandated by the state apply to this test claim. Note, that to the extent school districts may have previously performed functions similar to those mandated by the referenced code Sections, such efforts did not establish a preexisting duty that would

[112] Government Code Section 17556, as last amended by Chapter 589, Statutes of 1989:

"The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

(a) The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.

(b) The statute or executive order affirmed for the state that which had been declared existing law or regulation by action of the courts.

(c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.

(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

(e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

(f) The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a statewide election.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction."

relieve the state of its constitutional requirement to later reimburse school districts when these activities became mandated.[113]

Section 3. FUNDING PROVIDED FOR THE MANDATED PROGRAM

No funds are appropriated by the state for reimbursement of these costs mandated by the state and there is no other provision of law for recovery of costs from any other source.

PART IV. ADDITIONAL CLAIM REQUIREMENTS

The following elements of this claim are provided pursuant to Section 1183, Title 2, California Code of Regulations:

Exhibit 1: Declaration of William McGuire
Associate Superintendent
Clovis Unified School District

Exhibit 2: Copies of Statutes Cited

Chapter 1016, Statutes of 2002
Chapter 33, Statutes of 2002
Chapter 135, Statutes of 2000
Chapter 858, Statutes of 1999
Chapter 300, Statutes of 1999
Chapter 689, Statutes of 1998
Chapter 407, Statutes of 1998
Chapter 772, Statutes of 1997
Chapter 799, Statutes of 1996
Chapter 569, Statutes of 1996
Chapter 549, Statutes of 1996
Chapter 277, Statutes of 1996
Chapter 686, Statutes of 1995
Chapter 1228, Statutes of 1994
Chapter 983, Statutes of 1994
Chapter 300, Statutes of 1994
Chapter 1195, Statutes of 1993
Chapter 589, Statutes of 1993
Chapter 1354, Statutes of 1992
Chapter 605, Statutes of 1992
Chapter 487, Statutes of 1992
Chapter 231, Statutes of 1992

[113] Government Code Section 17565, added by Chapter 879, Statutes of 1986: "If a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate."

Chapter 169, Statutes of 1992
Chapter 536, Statutes of 1991
Chapter 1572, Statutes of 1990
Chapter 633, Statutes of 1990
Chapter 1217, Statutes of 1989
Chapter 1209, Statutes of 1989
Chapter 170, Statutes of 1989
Chapter 926, Statutes of 1988
Chapter 912, Statutes of 1988
Chapter 418, Statutes of 1988
Chapter 160, Statutes of 1988
Chapter 29, Statutes of 1988
Chapter 1346, Statutes of 1987
Chapter 1184, Statutes of 1987
Chapter 1037, Statutes of 1987
Chapter 1002, Statutes of 1987
Chapter 927, Statutes of 1987
Chapter 888, Statutes of 1986
Chapter 887, Statutes of 1986
Chapter 685, Statutes of 1986
Chapter 136, Statutes of 1986
Chapter 1498, Statutes of 1985
Chapter 1062, Statutes of 1984
Chapter 1254, Statutes of 1983
Chapter 921, Statutes of 1983
Chapter 923, Statutes of 1982
Chapter 201, Statutes of 1981
Chapter 1354, Statutes of 1980
Chapter 282, Statutes of 1979
Chapter 955, Statutes of 1977

Exhibit 3: Copies of Code Sections Cited

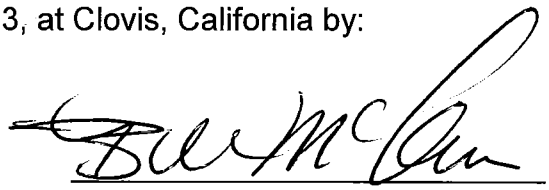
Education Code Sections
17620, 17621, 17622, 17623, 17624, 17625, 17626

Government Code Sections
65970, 65971, 65972, 65973, 65974, 65974.5, 65975, 65976,65977, 65978, 65979, 65980, 65981, 65995, 65995.1, 65995.2, 65995.5, 65995.6, 65995.7, 65996, 65997, 65998, 66001, 66002, 66004, 66005, 66006, 66007, 66008, 66016, 66017, 66018, 66018.5, 66020, 66022, 66023, 66024, 66025, 66030, 66031, 66032, 66034, 66037

PART V. CERTIFICATION

I certify by my signature below, under penalty of perjury, that the statements made in this document are true and complete of my own knowledge or information and belief.

Executed on June 23, 2003, at Clovis, California by:

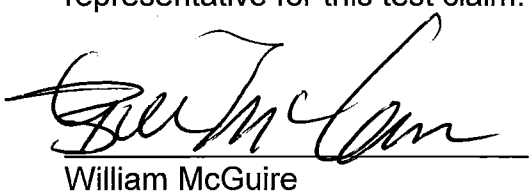


William McGuire
Associate Superintendent

Voice: 559-327-3110
Fax: 559-327-9129

PART VI. APPOINTMENT OF REPRESENTATIVE

Clovis Unified School District appoints Keith B. Petersen, SixTen and Associates, as its representative for this test claim.



6/23/2003

William McGuire
Associate Superintendent

Date

Exhibit 1
Declaration of William McGuire

DECLARATION OF William McGuire

Clovis Unified School District

Test Claim of Clovis Unified School District

COSM No. _____

Chapter 1016, Statutes of 2002
Chapter 33, Statutes of 2002
Chapter 135, Statutes of 2000
Chapter 858, Statutes of 1999
Chapter 300, Statutes of 1999
Chapter 689, Statutes of 1998
Chapter 407, Statutes of 1998
Chapter 772, Statutes of 1997
Chapter 799, Statutes of 1996
Chapter 569, Statutes of 1996
Chapter 549, Statutes of 1996
Chapter 277, Statutes of 1996
Chapter 686, Statutes of 1995
Chapter 1228, Statutes of 1994
Chapter 983, Statutes of 1994
Chapter 300, Statutes of 1994
Chapter 1195, Statutes of 1993
Chapter 589, Statutes of 1993
Chapter 1354, Statutes of 1992
Chapter 605, Statutes of 1992
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Chapter 231, Statutes of 1992
Chapter 169, Statutes of 1992
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Chapter 1572, Statutes of 1990
Chapter 633, Statutes of 1990

Chapter 1217, Statutes of 1989
Chapter 1209, Statutes of 1989
Chapter 170, Statutes of 1989
Chapter 926, Statutes of 1988
Chapter 912, Statutes of 1988
Chapter 418, Statutes of 1988
Chapter 160, Statutes of 1988
Chapter 29, Statutes of 1988
Chapter 1346, Statutes of 1987
Chapter 1184, Statutes of 1987
Chapter 1037, Statutes of 1987
Chapter 1002, Statutes of 1987
Chapter 927, Statutes of 1987
Chapter 888, Statutes of 1986
Chapter 887, Statutes of 1986
Chapter 685, Statutes of 1986
Chapter 136, Statutes of 1986
Chapter 1498, Statutes of 1985
Chapter 1062, Statutes of 1984
Chapter 1254, Statutes of 1983
Chapter 921, Statutes of 1983
Chapter 923, Statutes of 1982
Chapter 201, Statutes of 1981
Chapter 1354, Statutes of 1980
Chapter 282, Statutes of 1979
Chapter 955, Statutes of 1977

Education Code Section 17620
Education Code Section 17621
Education Code Section 17622
Education Code Section 17623

Education Code Section 17624
Education Code Section 17625
Education Code Section 17626

Government Code Section 65970
Government Code Section 65971

Government Code Section 65972
Government Code Section 65973

Government Code Section 65974
Government Code Section 65974.5
Government Code Section 65975
Government Code Section 65976
Government Code Section 65977
Government Code Section 65978
Government Code Section 65979
Government Code Section 65980
Government Code Section 65981
Government Code Section 65995
Government Code Section 65995.1
Government Code Section 65995.2
Government Code Section 65995.5
Government Code Section 65995.6
Government Code Section 65995.7
Government Code Section 65996
Government Code Section 65997
Government Code Section 65998
Government Code Section 66002
Government Code Section 66004
Government Code Section 66005
Government Code Section 66006
Government Code Section 66007
Government Code Section 66008
Government Code Section 66016
Government Code Section 66017
Government Code Section 66018
Government Code Section 66018.5
Government Code Section 66020
Government Code Section 66022
Government Code Section 66023
Government Code Section 66024
Government Code Section 66025
Government Code Section 66030
Government Code Section 66031
Government Code Section 66032
Government Code Section 66034
Government Code Section 66037

1016/02 Developer Fees

I, William McGuire, Associate Superintendent, Clovis Unified School District, make the following declaration and statement.

In my capacity as Associate Superintendent, I am responsible for obtaining funding for facility construction for the district. I am familiar with the provisions and requirements of the Statutes, Education Code Sections and Government Code Sections enumerated above, which require Clovis Unified School District to:

A. Pursuant to Education Code Section 17620, to establish policies and procedures to levy a fee, charge, dedication, or other requirement against any construction within the boundaries of the district. To enter a contractual agreement with the appropriate city or county to collect and administer any fee or other requirement

levied. To expend the fees or other consideration collected for the costs of performing any study, otherwise making findings and determinations, or in preparing the school facilities needs analysis. To retain no more than 3 percent of the fees for the administrative costs incurred in collecting the fees. To issue certification that any fee or other requirement levied has been complied with, or of the district's determination that the fee or other requirement does not apply to the construction. To specify that the fee or other requirement levied is for the construction of public improvements or facilities and delay payment until the date of the final inspection, or the date the certificate of occupancy is issued. To notify a city or county of the adoption of, or increase in, the fee or other requirement.

B. Pursuant to Education Code Section 17621, to enact a resolution adopting or increasing a fee or other requirement. To adopt an urgency measure as an interim authorization for a fee or other requirement, or increase in a fee or other requirement, where necessary to respond to a current and immediate threat to the public health, welfare, or safety. To transmit a copy of the resolution to each city and each county, accompanied by all relevant supporting documentation and a map indicating the boundaries of the area. To comply with procedures in response to a protest of the establishment or imposition of a fee or other requirement by any party on whom a fee or other requirement has been directly imposed. To make the findings on either an individual project basis or on the

basis of categories of commercial or industrial development. To conduct a study to determine the impact of the increased number of employees upon the cost of providing school facilities. To provide a process that permits the party against whom the fee or other requirement is to be imposed the opportunity for a hearing to appeal that imposition.

C. Pursuant to Education Code Section 17622, to restrict any fee or other requirement to be levied upon any greenhouse or agricultural purposes structure, unless and until the district first makes a finding, supported by substantial evidence, that the amount of the proposed fees or other requirements bear a reasonable relationship and are limited to the needs of the community and the cost of providing school facilities. To consider the relationship between the proposed increase in the number of employees the size and specific use of the structure, and the cost of the construction. To consult with the county agricultural commissioner or the county director of the cooperative extension service.

D. Pursuant to Education Code Section 17624, to repay the fee or other requirement to the person from whom that fee or other requirement was collected for a project that failed to commence construction, less the amount of the administrative costs incurred in collecting and repaying the fee or other requirement.

E. Pursuant to Education Code Section 17625, to apply a fee or other form of

requirement to the first installation or occupancy of any manufactured home within the school district. To require compliance with any fee or other form of requirement prior to the close of escrow, or the approval of the manufactured home for occupancy. To apply the amount previously paid by any manufactured home toward the payment of any fee or other requirement to a permanent residential structure on the same lot. To immediately repay the fee or other form of requirement to the person who made the payment to the extent the fee or other form of requirement collected would not have been. To permit a fee or other requirement be waived or paid in installments whenever a manufactured home owned by a lower income person 55 years of age or older, and which has been moved from a space located in one school district, where the owner has resided, to a space in another school district. The fee is to be secured as a lien perfected against the manufactured home. Costs of filing the lien and reasonable late charges or interest may be added to the amount of the lien.

F. Pursuant to Education Code Section 17626, to restrict the levy of a fee or other requirement applied to any structure that is damaged as a result of a disaster, except to the extent the square footage of the reconstructed structure exceeds the square footage of the structure that was damaged.

G. Pursuant to Government Code Section 65971, to notify the city council or board of supervisors if conditions of overcrowding exist in one or more attendance areas within the district which will impair the normal functioning of educational

programs, the reason for those conditions, and that all reasonable methods of mitigating conditions of overcrowding have been evaluated and no feasible method for reducing those conditions exist. To specify the mitigation measures considered by the school district. To complete to application to the Office of Public School Construction for preliminary determination of eligibility. To make these findings available to the public.

H. Pursuant to Government Code Section 65972, to assist the city council or board of supervisors, where conditions of overcrowding exist, in determining if there are specific overriding fiscal, economic, social, or environmental factors which would benefit the city or county, thereby justifying the approval of a residential development.

I. Pursuant to Government Code Section 65973, to determine if "conditions of overcrowding" exist. To evaluate "reasonable methods for mitigating conditions of overcrowding."

J. Pursuant to Government Code Section 65974, to assist a city, county, or city and county by providing information regarding all of the following: (1) the general plan provides for the location of public schools, (2) an ordinance has been in effect for a period of 30 days, (3) the land or fees shall be used only for the purpose of providing interim school classroom and related facilities, (4) the location and amount of land to be dedicated or the amount of fees to be paid bear a reasonable relationship and are limited to the needs of the community for interim

school facilities caused by the development, and (5) a finding is made by the city council or board of supervisors that the facilities to be constructed is consistent with the general plan. To consider the methods for mitigating the conditions of overcrowding. To collect the payment of fees at the time the building permit is issued or at a later time as may be specified in the ordinance. To determine developer fees under the school facilities master plan. To have on file with the Office of Public School Construction an application for preliminary determination of eligibility for project funding. To actively pursue permanent financing mechanisms to reduce or eliminate developer fees.

K. Pursuant to Government Code Section 65974.5, to expend those funds after the governing board has first held a public hearing on the subject of the proposed expenditure.

L. Pursuant to Government Code Section 65976, to submit a schedule to the city council or board of supervisors specifying how the school district will use the land or fees to solve the conditions of overcrowding.

M. Pursuant to Government Code Section 65978, to maintain a separate account for any fees paid. To file a report with the city council or board of supervisors on the balance in the account; the facilities leased, purchased, or constructed; and the dedication of land during the previous fiscal year. To specify which attendance areas will continue to be overcrowded and where conditions of overcrowding will no longer exist. To request a 30-day extension for the filing of

the report in the case of extenuating circumstances, as determined by the board of supervisors or city council. To waive any performance of the payment of fees or the dedication of land during the time that the report has not been filed.

N. Pursuant to Government Code Section 65979, to assist the city or county in determining that, during the period of construction or after construction has been completed and that any fee levied and any required dedication of land levied after the receipt of the construction apportionment can be used to avoid the additional overcrowding prior to the school being available for use by the school district. To return any amounts of fees collected or land dedicated after the receipt of the construction apportionment and not used to avoid overcrowding.

O. Pursuant to Government Code Section 65981, to submit a recommendation that fees for providing interim facilities are to be assessed on a development as a condition of city or county approval of a project.

P. Pursuant to Government Code Section 65995, to calculate the amount of a fee or other requirement for the construction or reconstruction of school facilities.

Q. Pursuant to Government Code Section 65995.5, to impose the amount calculated pursuant to this section as an alternative to the amount that may be imposed on residential construction calculated pursuant to Section 65995. To make a timely application to the State Allocation Board for new construction funding. To conduct and adopt a school facility needs analysis. To expend these fees solely on the school facilities identified in the needs analysis as being

attributable to projected enrollment growth from the construction of new residential units.

R. Pursuant to Government Code Section 65995.6, to conduct a school facilities needs analysis to determine the need for new school facilities for unhoused pupils that are attributable to projected enrollment growth from the development of new residential units. To recalculate the existing school building capacity as part of any revision of the needs analysis. To identify and consider any surplus property owned by the district that can be used as a schoolsite or that is available for sale to finance school facilities. To identify and consider the extent to which projected enrollment growth may be accommodated by excess capacity in existing facilities. To identify and consider local sources other than fees, charges, dedications, or other requirements imposed on residential construction available to finance the construction or reconstruction of school facilities needed to accommodate any growth in enrollment. To adopt the school facility needs analysis by resolution at a public hearing, after it is in its final form and has been made available to the public. To respond to written comments it receives from the public regarding the school facilities needs analysis. To publish a notice of the time and place of the hearing, including the location and procedure for viewing or requesting a copy of the proposed school facilities needs analysis and any proposed revision of the school facilities needs analysis. To charge a fee reasonably related to the cost of providing these materials to those persons who

request the school facilities needs analysis or revision. To revise the school facilities needs analysis. To adopt a fee or other requirement by a resolution of the governing board as part of the adoption or revision of the school facilities needs analysis.

S. Pursuant to Government Code Section 65995.7, to increase the alternative fee or other requirement if state funds for new school facility construction are not available. To offer a reimbursement election that provides the person with the right to monetary reimbursement of the supplemental amount, to the extent that the district receives funds from state sources for construction of the facilities for which that amount was required, less any amount expended by the district for interim housing. To offer an opportunity to negotiate an alternative reimbursement agreement if the terms of the agreement are mutually agreed upon. To provide that the rights granted by the reimbursement election or the alternative reimbursement agreement are assignable.

T. Pursuant to Government Code Section 65998, to reserve or designate real property for a schoolsite. To mitigate the impacts of a land use approval involving the planning, use, or development of real property other than on the need for school facilities.

U. Pursuant to Government Code Section 66001, to identify the purpose and use of the fee. To determine a reasonable relationship between the fee's use and the type of development project on which the fee is imposed, the need for the public

facility and the type of development project, and the amount of the fee and the cost of the public facility attributable to the development on which the fee is imposed. To deposit, invest, account for, and expend the fees. To identify the purpose for any fund remaining unexpended. To demonstrate a reasonable relationship between the fee and the purpose for which it is charged for any fund remaining unexpended. To identify all sources and amounts of funding anticipated to complete financing in incomplete improvements for any fund remaining unexpended. To designate the approximate dates on which any fund remaining unexpended is expected to be deposited into the appropriate account or fund. To refund any fund remaining unexpended if the findings are not made as required by this subdivision. To identify when sufficient funds have been collected to complete financing on incomplete public improvements and the public improvements remain incomplete, an approximate date by which the construction of the public improvement will be commenced, or shall refund, with interest, to the then current record owner the unexpended portion of the fee. If the administrative costs of refunding unexpended revenues exceed the amount to be refunded, the local agency, after a public hearing and notice, determine that the revenues shall be allocated for some other purpose for which fees are collected and which serves the project on which the fee was originally imposed.

V. Pursuant to Government Code Section 66002, to adopt a capital improvement plan to be financed with the fees. To adopt the capital improvement plan by

resolution at a noticed public hearing.

W. Pursuant to Government Code Section 66005, to determine the estimated reasonable cost of providing the service or facility for which the fee or exaction is imposed.

X. Pursuant to Government Code Section 66006, to deposit a fee, and any interest income earned, with the other fees for the improvement in a separate capital facilities account in a manner to avoid any commingling of the fees. To expend those fees, and any interest income earned, solely for the purpose for which the fee was collected. To review the information at the next regularly scheduled public meeting. To respond to any person who may request an audit of fees or charges by school districts.

Y. Pursuant to Government Code Section 66007, to delay the collection of fees or charges on a residential development for the construction of public improvements or facilities until the date of the final inspection or the date the certificate of occupancy is issued. To require the property owner as a condition of issuance of the building permit to execute a contract to pay the fee or charge. To enforce the obligation to pay the fee or charge. To ensure the contract contains a legal description of the property affected, is recorded in the office of the county recorder as a lien for the payment of the fee or charge, enforceable against successors in interest to the property owner at the time of issuance of the building permit. To record the contract in the grantor-grantee index in the

name of the public agency issuing the building permit as grantee and in the name of the property owner or lessee as grantor. To record a release of the obligation in the event the obligation is paid in full, or a partial release in the event the fee or charge is prorated. To adopt the capital improvement plan, or the submittal of a five-year plan for construction and rehabilitation of school facilities.

Z. Pursuant to Government Code Section 66008, to expend fees for public improvements solely and exclusively for the purpose or purposes for which the fee was collected.

AA. Pursuant to Government Code Section 66016, to hold at least one open and public meeting prior to levying a new or increased fee or service charge or an increase in an existing fee or service charge. To mail notice of the time and place of the meeting. To make available to the public, data indicating the cost required to provide the service for which the fee or service charge is levied and the revenue sources anticipated to provide the service, including General Fund revenues. To use any revenue from the fees or service charges in excess of actual cost to reduce the fee or service. To take only by ordinance or resolution any action to levy a new or increased fee or service charge or to approve an increase in an existing fee or service charge. To recover any costs incurred in conducting the meetings from fees charged for the services which were the subject of the meeting.

BB. Pursuant to Government Code Section 66017, to adopt an urgency measure as an interim authorization for a fee or charge, or increase in a fee or charge, to protect the public health, welfare and safety.

CC. Pursuant to Government Code Section 66018, to hold a public hearing, at which oral or written presentations can be made, as part of a regularly scheduled meeting. Notice of the time and place of the meeting, including a general explanation of the matter to be considered, shall be published. To recover any costs incurred by a local agency in conducting the hearing as part of the fees which were the subject of the hearing.

DD. Pursuant to Government Code Section 66020, to accept payment or satisfactory evidence of arrangements to pay the fee from any party that protests the imposition of any fees or other exactions imposed on a development project. To accept written notice from any party that protests the imposition of any fees or other exactions imposed on a development project. To allow approval of any map, plan, permit, zone change, license, or other form of for the development project where the party has complied with the above requirements. To ensure compliance with all applicable provisions of law in determining whether or not to approve or disapprove a development project. To make proper and valid findings that the construction of certain public improvements or facilities is required for reasons related to the public health, safety, and welfare, and elects to impose a requirement for construction of those improvements or facilities as a

condition of approval of the proposed development. To suspend approval in the event a protest is lodged, pending withdrawal of the protest, the expiration of the limitation period without an action, or resolution of any action filed. To provide written notice to the project applicant at the time of the approval of the project or at the time of the imposition of the fees or other exactions, including; a statement of the amount of the fees or other exactions, and notification that the 90-day approval period in which the applicant may protest has begun. To refund the unlawful portion of the payment, with interest, if the court finds in favor of the plaintiff. To refund the unlawful portion of the payment, with interest, if the court grants a judgment to a plaintiff invalidating all or a portion of an ordinance or resolution enacting a fee or other exaction. To refund the portion of the payment or exaction to any other person who, under protest of that same ordinance or resolution as enacted, tendered the payment.

EE. Pursuant to Government Code Section 66023, to retain an independent auditor to conduct an audit to determine whether the fee or charge is reasonable when requested by any person in order to determine whether any fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of any product or service provided by the local agency. To recover any costs incurred from the person who requests the audit.

FF. Pursuant to Government Code Section 66024, to produce evidence to establish that the development fee does not exceed the cost of the service or facility for

which it is imposed in any judicial action or proceeding to validate, attack, review, set aside, void, or annul any ordinance or resolution providing for the imposition of a development fee in which there is at issue whether the development fee is a special tax. To provide a copy of the documents which establish that the development fee does not exceed the cost of the service or facility for which it is imposed.

GG. Pursuant to Government Code Section 66031, to be subject to a mediation proceeding. To consider resolving their dispute by selecting a mutually acceptable person, organization, or agency to serve as a mediator. To notify the court if they have selected a mutually acceptable mediator.

HH. Pursuant to Government Code Section 66032, to arrive at a settlement and implement it in accordance with the provisions of current law or agree by written stipulation to extend the mediation for another 90-day period.

II. Pursuant to Government Code Section 66034, to attend a settlement conference before a judge of the superior court if the mediation does not resolve the action. To attend a hearing if the action is later heard on its merits.

It is estimated that the Clovis Unified School District incurred at least $1,000 in staffing and other costs in excess of any funding provided for the period from July 1, 2001 through June 30, 2002 to implement these new duties mandated by the state for which the district has not been reimbursed by any federal, state, or local government agency, and for which it cannot otherwise obtain reimbursement.

The foregoing facts are known to me personally and, if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury that the foregoing is true and correct except where stated upon information and belief and where so stated I declare that I believe them to be true.

EXECUTED this 23 day of June, 2003, at Clovis, California

William McGuire
Associate Superintendent
Clovis Unified School District

Exhibit 2
Copies of Statutes Cited

CHAPTER 955

An act to add Chapter 4.7 (commencing with Section 65970) to Division 1 of Title 7 of the Government Code, relating to land use.

[Approved by Governor September 21, 1977. Filed with Secretary of State September 21, 1977.]

The people of the State of California do enact as follows:

SECTION 1. Chapter 4.7 (commencing with Section 65970) is added to Division 1 of Title 7 of the Government Code, to read:

CHAPTER 4.7. SCHOOL FACILITIES

65970. The Legislature finds and declares as follows:

(a) Adequate school facilities should be available for children residing in new residential developments.

(b) Public and private residential developments may require the expansion of existing public schools or the construction of new school facilities.

(c) In many areas of the state, the funds for the construction of new classroom facilities are not available when new development occurs, resulting in the overcrowding of existing schools.

(d) New housing developments frequently cause conditions of overcrowding in existing school facilities which cannot be alleviated under existing law within a reasonable period of time.

(e) That, for these reasons, new and improved methods of financing for interim school facilities necessitated by new development are needed in California.

65971. If the governing body of a school district which operates an elementary or high school makes a finding supported by clear and convincing evidence that: (a) conditions of overcrowding exist in one or more attendance areas within the district which will impair the normal functioning of educational programs including the reason for such conditions existing; and (b) that all reasonable methods of mitigating conditions of overcrowding have been evaluated and no

feasible method for reducing such conditions exist, the governing body of the school district shall notify the city council or board of supervisors of the city or county within which the school district lies. The notice of findings sent to the city or county shall specify the mitigation measures considered by the school district. If the city council or board of supervisors concurs in such findings the provisions of Section 65972 shall be applicable to actions taken on residential development by such council or board.

65972. Within the attendance area where it has been determined pursuant to Section 65971 that conditions of overcrowding exist, the city council or board of supervisors shall not approve an ordinance rezoning property to a residential use, grant a discretionary permit for residential use, or approve a tentative subdivision map for residential purposes, within such area, unless the city council or board of supervisors makes one of the following findings:

(1) That an ordinance pursuant to Section 65974 has been adopted, or

(2) That there are specific overriding fiscal, economic, social, or environmental factors which in the judgment of the city council or board of supervisors would benefit the city or county, thereby justifying the approval of a residential development otherwise subject to Section 65974.

65973. As used in this chapter:

(a) "Conditions of overcrowding" means that the total enrollment of a school, including enrollment from proposed development, exceeds the capacity of such school as determined by the governing body of the district.

(b) "Reasonable methods for mitigating conditions of overcrowding" shall include, but are not limited to, agreements between a subdivider and the affected school district whereby temporary-use buildings will be leased to the school district or temporary-use buildings owned by the school district will be used.

(c) "Residential development" means a project containing residential dwellings, including mobilehomes, of one or more units or a subdivision of land for the purpose of constructing one or more residential dwelling units.

65974. For the purpose of establishing an interim method of providing classroom facilities where overcrowding conditions exist as determined necessary pursuant to Section 65971 and notwithstanding Section 66478, a city, county, or city and county may, by ordinance, require the dedication of land, the payment of fees in lieu thereof, or a combination of both, for classroom and related facilities for elementary or high schools as a condition to the approval of a residential development, provided that all of the following occur:

(a) The general plan provides for the location of public schools.

(b) The ordinance has been in effect for a period of 30 days prior to the implementation of the dedication or fee requirement.

(c) The land or fees, or both, transferred to a school district shall

be used only for the purpose of providing interim elementary or high school classroom and related facilities.

(d) The location and amount of land to be dedicated or the amount of fees to be paid, or both, shall bear a reasonable relationship and will be limited to the needs of the community for interim elementary or high school facilities and shall be reasonably related and limited to the need for schools caused by the development.

(e) A finding is made by the city council or board of supervisors that the facilities to be constructed from such fees or the land to be dedicated, or both, is consistent with the general plan.

The ordinance may specify the methods for mitigating the conditions of overcrowding which the school district shall consider when making the finding required by subdivision (b) of Section 65971.

If the payment of fees is required, such payment shall be made at the time the building permit is issued.

Only the payment of fees may be required in subdivisions containing fifty (50) parcels or less.

65976. Following the decision by the city or county to require the dedication of land or the payment of fees, or both, the governing body of the school district shall submit a schedule specifying how it will use the land or fees, or both, to solve the conditions of overcrowding. The schedule shall include the school sites to be used, the classroom facilities to be made available, and the times when such facilities will be available. In the event the governing body of the school district cannot meet the schedule, it shall submit modifications to the city council or board of supervisors and the reasons for the modifications.

65977. Where two separate school districts operate schools in an attendance area where overcrowding conditions exist for both school districts, the governing body of the city or county shall enter into an agreement with the governing body of each school district for the purpose of determining the distribution of revenues from the fees levied pursuant to this chapter.

65978. Any school district receiving funds pursuant to this chapter shall maintain a separate account for any fees paid and shall file a report with the city council or board of supervisors on the balance in the account at the end of the previous fiscal year and the facilities leased, purchased, or constructed during the previous fiscal year. In addition, the report shall specify which attendance areas will continue to be overcrowded when the fall term begins and where conditions of overcrowding will no longer exist. Such report shall be filed by August 1 of each year and shall be filed more frequently at the request of the board of supervisors or city council.

If overcrowding conditions no longer exist, the city or county shall cease levying any fee or requiring the dedication of any land pursuant to this chapter.

Taxation Code because there are no new duties, obligations or responsibilities imposed on local government by this act.

CHAPTER 282

An act to amend Section 19632 of the Business and Professions Code, to amend Sections 16250, 39246, 39247, 39363, 41300, 41301, 41403, 41604, 42103.5, 52171, 60200, 60265, 84370, 84897, 84904, and 85003.5 of, to add Sections 16096.5, 39618, 39619, 39620, 39621, 41601.5,

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54790.3. (a) If the proposal includes the incorporation of a city, as defined in Section 35037, or the formation of a district, as defined in Section 2215 of the Revenue and Taxation Code, the commission shall, pursuant to the provisions of subdivision (b), determine the amount of property tax revenue to be exchanged by the affected local agency.

(b) In making its determination as required by subdivision (a), the commission shall:

(1) Request the county auditor to determine the proportion that the amount of property tax revenue derived by each affected local agency pursuant to subdivision (b) of Section 2237 of the Revenue and Taxation Code bears to the total amount of revenue from all sources, available for general purposes, received by such agency in the prior fiscal year;

(2) Determine, based on information submitted by each affected local agency, an amount equal to the total cost to each affected local agency during the prior fiscal year of providing those services which the new jurisdiction will assume within the area subject to the proposal;

(3) Multiply the amount determined pursuant to paragraph (2) for each affected local agency by the corresponding proportion determined pursuant to paragraph (1) to derive the amount of property tax revenue used to provide services by each affected local agency during the prior fiscal year within the area subject to the proposal.

(4) Following the approval of a proposal subject to this section, the executive officer shall notify the auditor of the amount determined in paragraph (3).

SEC. 53. Section 65974 of the Government Code is amended to read:

65974. For the purpose of establishing an interim method of providing classroom facilities where overcrowding conditions exist, as determined necessary pursuant to Section 65971, and notwithstanding Section 66478, a city, county, or city and county may, by ordinance, require the dedication of land, the payment of fees in lieu thereof, or a combination of both, for classroom and related facilities for elementary or high schools as a condition to the approval of a residential development, provided that all of the following occur:

(a) The general plan provides for the location of public schools.

(b) The ordinance has been in effect for a period of 30 days prior to the implementation of the dedication or fee requirement.

(c) The land or fees, or both, transferred to a school district shall be used only for the purpose of providing interim elementary or high school classroom and related facilities.

(d) The location and amount of land to be dedicated or the amount of fees to be paid, or both, shall bear a reasonable relationship and will be limited to the needs of the community for interim elementary or high school facilities and shall be reasonably

related and limited to the need for schools caused by the development; provided, the fees shall not exceed the amount necessary to pay five annual lease payments for the interim facilities. In lieu of the fees, the builder of a residential development may, at his or her option and at his or her expense, provide interim facilities, owned or controlled by such builder, at the place designated by the school district, and at the conclusion of the fifth school year the builder shall, at the builder's expense, remove the interim facilities from such place.

(e) A finding is made by the city council or board of supervisors that the facilities to be constructed from such fees or the land to be dedicated, or both, is consistent with the general plan.

The ordinance may specify the methods for mitigating the conditions of overcrowding which the school district shall consider when making the finding required by subdivision (b) of Section 65971.

If the payment of fees is required, such payment shall be made at the time the building permit is issued.

Only the payment of fees may be required in subdivisions containing 50 parcels or less.

SEC. 54. Section 65979 is added to the Government Code, to read:

65979. After a school district has received an apportionment pursuant to the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code), the city or county shall not be permitted thereafter, pursuant to this chapter or pursuant to any other school facilities financing arrangement such district may have with builders of residential developments, to levy any fee or to require the dedication of any land within the attendance area of the district.

SEC. 55. Section 65980 is added to the Government Code, to read:

65980. Interim facilities for purposes of Section 65974 shall be limited to temporary classrooms, including their utilities, furnishings, and toilet facilities not constructed with permanent foundations.

SEC. 56. Section 65981 is added to the Government Code, to read:

65981. If an ordinance has been adopted pursuant to Section 65974 which provides for the school district governing body to recommend the fees for providing interim facilities that are to be assessed on a development as a condition of city or county approval of a subdivision, such recommendation shall be required to be submitted to the respective city or county within 60 days following the issuance of the initial permit for the development. Failure to provide the recommendation of fees to be assessed within the 60-day period shall constitute a waiver by the governing body of the school district of its authority to request fees pursuant to this chapter.

SEC. 57. Section 66434.1 is added to the Government Code, to read:

66434.1. In the event that an owner's development lien has been created pursuant to the provisions of Article 2.5 (commencing with

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Any other deadlines required for the development of the budget may be delayed 30 days.

SEC. 103. Sections 8, 18, 19, 20, 21, and 28.5 of this act shall be operative on July 1, 1980.

SEC. 104. If any section, part, clause or phrase of this act is for any reason held to be invalid or unconstitutional, the remainder of the act shall not be affected but will remain in full force and effect.

SEC. 105. (a) No appropriation is made by this act, nor is any obligation created thereby under Section 2231 or 2234 of the Revenue and Taxation Code, for the reimbursement of any local agency or school district for any costs that may be incurred by it in carrying on any program or performing any service required to be carried on or performed by it by this act.

(b) Notwithstanding Section 905.2 of the Government Code, Section 2253 of the Revenue and Taxation Code, or any other provision of law, no local agency or school district shall have standing to make a claim to the State Board of Control for any costs incurred by it under this act pursuant to Part 3 (commencing with Section 900) of Division 3.6 of Title 1 of the Government Code or pursuant to Article 3.5 (commencing with Section 2250) of Chapter 3 of Part 4 of Division 1 of the Revenue and Taxation Code.

(c) Notwithstanding Section 2246 of the Revenue and Taxation Code, the Department of Finance shall not review this act to determine costs or revenue losses and shall not report on this act nor make recommendations to the Legislature on this act concerning reimbursements to local agencies or school districts.

(d) The Legislature finds and declares that the complete waiver of the provisions of Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of the Revenue and Taxation Code is justified for the following reasons:

(1) This act implements an initiative constitutional amendment approved by the people of the State of California.

(2) This act is part of an overall legislative program implementing Article XIII A of the California Constitution, which includes billions of dollars of local assistance to local agencies.

(3) There are administrative savings as well as costs mandated by the provisions of this act.

SEC. 106. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

The adoption of Article XIII A of the California Constitution has reduced the amount of property tax revenues available to local government and schools to meet operating and certain debt expenses, and may cause the curtailment or elimination of programs and services which are vital to the state's public health, safety, education, and welfare. In order that such services not be interrupted, it is necessary that this act take effect immediately.

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CHAPTER 1354

An act to amend Sections 2553, 16301, 17762, 33403, 33502, 33508, 33509, 33510, 33511, 33513, 33514, 33522, 37062, 39146, 39384, 39510, 39619, 41301, 41601, 41604, 41841.5, 41972, 41976, 42123, 42237, 42237.6, 42238, 42240, 42243.5, 42243.7, 46613, 46616, 49531, 49553, 52302.9, 52321, 52324, 52324.5, 81136, 84704, 84720, and 84721 of, to add Sections 2552.5, 12515.5, 17717.5, 17724.5, 17730.2, 41060, 41760.2, 41976.5, 42237.7, 42243.8, 44988, 52213.5, and 54060 to, and to repeal Sections 1705, 2505, 12516, 14070, 14071, 14072, 16302, 16303, 33515, 33517, 33520, 33521, 37062.5, 37063, 37064, 37065.4, 37065.5, 37066, 37067, 37068, 37070, 37071, 37072, 37080, 37081, 37082, 37083, 42210, 42211, 42212, 42213, 42237.6, 46146, 46601, 46605, 46606, 46608, 46610, 46614, 46617, 52317, and 58608 of, the Education Code, to amend Sections 65979 and 65980 of the Government Code, and to amend Section 96 of Chapter 282 of the Statutes of 1979, relating to state and local government, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1980. Filed with Secretary of State September 30, 1980.]

I am deleting the appropriations and related language contained in Section 37.74 of Assembly Bill No. 2196 for the education of adults in correctional facilities. Since the 1980 Budget Act contains $1,080,000 for these costs, this bill would have provided double funding for this program in 1980–81.

I am also eliminating the $1,000,000 appropriation contained in Section 67.5 of AB 2196 for the mandated local costs associated with Assembly Bill No. 3369. This appropriation would duplicate the appropriation contained in AB 3369 for the same purpose.

With these reductions, I approve Assembly Bill No. 2196.

EDMUND G. BROWN JR., Governor

The people of the State of California do enact as follows:

SECTION 1. Section 1705 of the Education Code is repealed.

SEC. 2. Section 2505 of the Education Code is repealed.

SEC. 2.3. Section 2552.5 is added to the Education Code, to read:

2552.5. For purposes of Section 2504 and subdivision (b) of Section 2552, the second condition imposed upon the use of the proceeds for the construction of administration facilities or centers specified in Section 2504 shall not apply for the entire 1979–80 fiscal year and fiscal years thereafter to a county superintendent of schools in a county in which the county board of education became fiscally independent on July 1, 1966.

SEC. 2.5. Section 2553 of the Education Code is amended to read:

2553. For major capital outlay projects or major repair or replacement projects, which cannot be funded by other revenue sources, county superintendents of schools shall be eligible for such funds in the same manner as specified by law for school districts. Any funds apportioned to the county superintendent pursuant to this section shall be restricted to the purposes of this section.

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cent of the state general apportionment provided for in this section shall be made prior to February 1, 1981.

(f) On or before February 15, 1981, the chancellor shall publish, and shall provide to the Legislature, a report on revenues per unit of average daily attendance in the community colleges. The report shall include comparisons on a district-by-district basis, as well as on a statewide basis, of revenues per unit of average daily attendance for fiscal years 1979–80 and 1980–81. The report shall also include information on the amounts of actual and estimated sources of revenue that comprise the basis for the calculation of revenues per unit of average daily attendance.

(g) For purposes of this article "average daily attendance" and "attendance ADA" shall mean the attendance of state residents attending within the district.

(h) If the revenues appropriated by Section 84728 are insufficient to provide for the state general apportionment as calculated pursuant to this section, the amounts appropriated by Section 84728 shall be allocated on a pro rata basis, so that all community college districts receive the same percentage of their state general apportionment that they are otherwise entitled to receive.

SEC. 62.45. Section 84721 of the Education Code is amended to read:

84721. The base 1980–81 fiscal year revenues for each community college district shall be either the sum of those revenues received pursuant to Sections 84701 to 84704, inclusive, plus the 1979–80 income received from motor vehicle license fees pursuant to Section 11003.4 of the Revenue and Taxation Code, or revenues received pursuant to Section 84706, whichever is applicable, minus those revenues received in the 1979–80 fiscal year for apprenticeship average daily attendance in classes of supplemental and related instruction pursuant to Section 3074 of the Labor Code.

SEC. 62.5. Section 65979 of the Government Code is amended to read:

65979. One year after receipt of an apportionment pursuant to the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 22 (commencing with Section 17700 of Part 10 of the Education Code) for the construction of a school, the city or county shall not be permitted thereafter, pursuant to this chapter or pursuant to any other school facilities financing arrangement such district may have with builders of residential development, to levy any fee or to require the dedication of any land within the attendance area of the district. However, any time after receipt of the apportionment there may be a determination of overcrowding pursuant to Section 65971, if there is the further finding that (1) during the period of construction additional overcrowding would occur from continued residential development, and (2) that any fee levied and any required dedication of land levied after the receipt of the construction apportionment can be used to avoid the additional overcrowding prior to the school being available for use by the school district.

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Any amounts of fees collected or land dedicated after the receipt of the construction apportionment and not used to avoid overcrowding shall be returned to the person who paid the fee or made the land dedication.

SEC. 62.6. Section 65980 of the Government Code is amended to read:

65980. For the purposes of Section 65974, "classroom facilities," "classroom and related facilities," and "elementary or high school facilities" mean "interim facilities" as defined in this section and shall include no other facilities.

Interim facilities for the purposes of Section 65974 shall be limited to the following:

(a) Temporary classrooms not constructed with permanent foundation and defined as a structure containing one or more rooms, each of which is designed, intended, and equipped for use as a place for formal instruction of pupils by a teacher in a school.

(b) Temporary classroom toilet facilities not constructed with permanent foundations.

(c) Reasonable site preparation and installation of temporary classrooms.

SEC. 62.65. Section 96 of Chapter 282 of the Statutes of 1979 is amended to read:

Sec. 96. There is hereby appropriated from the General Fund to Section A of the State School Fund the sum of fourteen million six hundred thousand dollars ($14,600,000) for the 1979–80 fiscal year and the sum of seventeen million five hundred eighteen thousand dollars ($17,518,000) for the 1980–81 fiscal year for purposes of Section 42240 of the Education Code.

SEC. 62.7. Notwithstanding the provisions of Section 81523 of the Education Code, the Saddleback Community College District may use temporary-use buildings for a total time in excess of three years until such facilities are replaced by approved relocatable structures, but in no event shall such total time period extend beyond August 16, 1981.

SEC. 63. Any amount paid by a school district to a county superintendent of schools in the 1978–79 fiscal year pursuant to former Section 1705, as added by Chapter 1010 of the Statutes of 1976, shall be reduced from that school district's 1980–81 revenue limit.

This section shall be deemed operative for the entire 1980–81 fiscal year as though it had been enacted into law and become operative on July 1, 1980. The Superintendent of Public Instruction shall, for such purposes, have authority to take all necessary steps to effect the midfiscal year transition involved, including the authority to adjust allowance computations, apportionments, and disbursements ordered from Section A of the State School Fund.

SEC. 64. The sum of fifteen million dollars ($15,000,000) is hereby appropriated from the Capital Outlay Fund for Public Higher Education or, if Assembly Bill No. 2973 or Senate Bill No. 1426 is chaptered and becomes effective before this act, the Special Account for

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struction of administration facilities in Placer County, the county affected by Section 2.3 of this act, the Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the Constitution.

SEC. 70.6. (a) If the Superintendent of Public Instruction determines that there are not sufficient funds available from the amount appropriated pursuant to category (b) of Item 352 of the Budget Act of 1980 to support regional occupational centers and programs operated by county superintendents of schools, then the Superintendent of Public Instruction shall transfer funds appropriated pursuant to category (a) of Item 352 to category (b) to reduce or eliminate the insufficiency.

(b) In the event of application of Section 41972 of the Education Code to apportionments from category (a) of Item 352, transfers authorized by this section shall be similarly adjusted.

SEC. 70.7. Section 8.9 of this act shall become operative only if Assembly Bill No. 2973 of the 1979–80 Regular Session of the Legislature is chaptered.

SEC. 71. Notwithstanding Section 2231 or 2234 of the Revenue and Taxation Code and Section 6 of Article XIII B of the California Constitution, no appropriation is made by this act pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

SEC. 72. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

In order for the provisions of this act to apply for the entire 1980–81 fiscal year and to provide school districts sufficient time to plan and adopt new budgets as early as possible for the 1980–81 fiscal year, it is necessary that this act take effect immediately.

CHAPTER 201

An act to amend Section 65978 of the Government Code, relating to school facilities.

[Approved by Governor July 14, 1981. Filed with Secretary of State July 14, 1981.]

The people of the State of California do enact as follows:

SECTION 1. Section 65978 of the Government Code is amended to read:

65978. Any school district receiving funds pursuant to this chapter shall maintain a separate account for any fees paid and shall file a report with the city council or board of supervisors on the balance in the account at the end of the previous fiscal year and the facilities leased, purchased, or constructed during the previous fiscal year. In addition, the report shall specify which attendance areas will continue to be overcrowded when the fall term begins and where conditions of overcrowding will no longer exist. Such report shall be filed by October 15 of each year and shall be filed more frequently at the request of the board of supervisors or city council.

If overcrowding conditions no longer exist, the city or county shall cease levying any fee or requiring the dedication of any land pursuant to this chapter.

CHAPTER 923

An act to amend Section 39362 of the Education Code, and to amend Sections 65504, 65974, and 66463.5 of the Government Code, relating to local government, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 10, 1982. Filed with Secretary of State September 13, 1982.]

The people of the State of California do enact as follows:

SECTION 1. Section 39362 of the Education Code is amended to read:

39362. The sale may be made for cash, or for part cash and upon such terms of deferred payments as are determined by the action of the governing board and which are secured by purchase money, mortgage, deed of trust, an irrevocable letter of credit issued by a state of federally chartered financial institution, or any other form of security which is acceptable to the governing board.

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The provisions of this section may be applied to sales made before the effective date of the amendments to this section made by the Statutes of 1982, with the consent of the parties to the sale.

SEC. 2. Section 65504 of the Government Code is amended to read:

65504. The legislative body may approve, disapprove, or modify the recommendation of the planning commission on any proposed specific plan, regulation, or amendment thereto. Any modification proposed by the legislative body which was not previously considered by the planning commission during its hearing shall first be referred to the planning commission for its report and recommendation to the legislative body. It shall not be necessary for the planning commission to hold a public hearing on the proposed modification. Failure of the planning commission to report within 40 days after the reference, or such longer period as may be designated by the legislative body, shall be deemed to be approval of the proposed change or addition.

SEC. 3. Section 65974 of the Government Code is amended to read:

65974. For the purpose of establishing an interim method of providing classroom facilities where overcrowded conditions exist, as determined necessary pursuant to Section 65971, and notwithstanding Section 66478, a city, county, or city and county may, by ordinance, require the dedication of land, the payment of fees in lieu thereof, or a combination of both, for classroom and related facilities for elementary or high schools as a condition to the approval of a residential development, provided that all of the following occur:

(a) The general plan provides for the location of public schools.

(b) The ordinance has been in effect for a period of 30 days prior to the implementation of the dedication or fee requirement.

(c) The land or fees, or both, transferred to a school district shall be used only for the purpose of providing interim elementary or high school classroom and related facilities.

(d) The location and amount of land to be dedicated or the amount of fees to be paid or both, shall bear a reasonable relationship and will be limited to the needs of the community for interim elementary or high school facilities and shall be reasonably related and limited to the need for schools caused by the development; provided, the fees shall not exceed the amount necessary to pay five annual lease payments for the interim facilities. In lieu of the fees, the builder of a residential development may, at his or her option and at his or her expense, provide interim facilities, owned or controlled by the builder, at the place designated by the school district, and at the conclusion of the fifth school year the builder shall, at the builder's expense, remove the interim facilities from that place.

(e) A finding is made by the city council or board of supervisors that the facilities to be constructed from the fees or the land to be

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dedicated, or both, is consistent with the general plan.

The ordinance may specify the methods for mitigating the conditions of overcrowding which the school district shall consider when making the finding required by subdivision (b) of Section 65971.

If the payment of fees is required, the payment shall be made at the time the building permit is issued or at a later time as may be specified in the ordinance.

Only the payment of fees may be required in subdivisions containing 50 parcels or less.

SEC. 4. Section 66463.5 of the Government Code is amended to read:

66463.5. (a) When a tentative map is required, an approved or conditionally approved tentative map shall expire 24 months after its approval or conditional approval, or after such additional period of time as may be prescribed by local ordinance, not to exceed an additional 12 months.

(b) The expiration of the approved or conditionally approved tentative map shall terminate all proceedings and no parcel map of all or any portion of the real property included within such tentative map shall be filed without first processing a new tentative map.

(c) Upon application of the subdivider filed prior to the expiration of the approved or conditionally approved tentative map, the time at which such map expires may be extended by the legislative body or by an advisory agency authorized to approve or conditionally approve such tentative maps for a period or periods not exceeding a total of three years. If the advisory agency denies a subdivider's application for extension, the subdivider may appeal to the legislative body within 15 days after the advisory agency has denied the extension.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that local governmental agencies can exercise the additional authority granted them by the provisions of this act at the earliest possible date, it is necessary that this act take effect immediately.

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CHAPTER 921

An act to add Section 53077 to the Government Code, relating to local agencies.

[Approved by Governor September 19, 1983. Filed with Secretary of State September 20, 1983.]

The people of the State of California do enact as follows:

SECTION 1. Section 53077 is added to the Government Code, to read:

53077. If a local agency requires the payment of a fee in order to provide for an improvement to be constructed to serve a residential development as a condition to approving that development, the local agency receiving the fee shall deposit it with the other fees for the improvement in a separate capital facilities account fund in a manner to avoid any commingling of the fees with other revenues and funds of the local agency, except for temporary investments, and expend those fees solely for the purpose for which the fee was collected. Any interest income earned on the fund shall also be deposited in that fund and shall be expended only for the purpose for which the fee was originally collected, except that the requirements of this sentence shall not apply to interest on the fees paid pursuant to Section 66477 until January 1, 1985.

For purposes of this section, "local agency" means a county, city, city and county, school district, special district, or any other municipal public corporation or district.

SEC. 2. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

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CHAPTER 1254

An act to amend Sections 8277.7, 17722, 17761, and 54444.3 of, and to repeal Section 17763 of, the Education Code, and to add Section 65975 to the Government Code, relating to facilities.

[Approved by Governor September 29, 1983. Filed with Secretary of State September 30, 1983.]

(b) The State Allocation Board may grant a waiver of either or both of the requirements prescribed by subdivision (a) in a case of hardship, as defined by the State Allocation Board. This subdivision shall only apply to buildings used solely for housing special education pupils.

SEC. 4. Section 17763 of the Education Code is repealed.

SEC. 5. Section 65975 is added to the Government Code, to read:

65975. (a) Whenever a school district has received approval, under the State School Building Lease-Purchase Law of 1976, (Ch. 22 (commencing with Section 17700), Pt. 10, Ed. C.) of a school project to be constructed in an attendance area where fees have been collected pursuant to Section 65974, all or a portion of the fees so collected for interim facilities may be used by the district to provide its 10 percent of the project as required by item (1) of Section 17761 of the Education Code. Nothing in this section shall increase the amount of fees that would otherwise be collected pursuant to Section 65974.

(b) Whenever a school district has received approval, under the State School Building Lease-Purchase Law of 1976 (Ch. 22 (commencing with Section 17700), Pt. 10, Ed. C.), of a school project to be constructed in an attendance area where land has been received pursuant to Section 65974, the district may use the fair market value of the land to provide all or a portion of its 10 percent of the school project as required by item (1) of subdivision (a) of Section 17761. In order to use the value of land to meet the 10 percent match requirement, the district shall construct the capital outlay project on the land used to make the match, and shall provide the full 10 percent of the project cost at one time as provided in item (1) of subdivision (a) of Section 17761 of the Education Code.

SEC. 6. Section 54444.3 of the Education Code is amended to read:

54444.3. (a) Each operating agency receiving Title I Migrant Education funding shall conduct summer school programs for eligible migrant children in kindergarten and grades 1 to 12, inclusive. The summer school programs shall respond to the individual needs of participating pupils and shall build on and be consistent with the instructional programs offered to these pupils during the regular school year. Each summer school program shall be funded, to the extent that funds are available, by federal funds earmarked for migrant education programs, and shall meet the following criteria:

(1) That summer school programs meet the following time requirements:

(A) For kindergarten classes, not less than 180 minutes per day, based upon the full apportionment day of 240 minutes, including recesses, for not less than 20 teaching days.

(B) For grades 1 to 8, not less than 200 minutes per day, based upon the full apportionment day of 240 minutes, including recesses and passing time but excluding noon intermissions, for not less than

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four times the costs to the prospective user for alternative facilities for the entire period for which the facilities were requested, whichever is greater.

CHAPTER 1062

An act to amend Section 65978 of the Government Code, relating to school districts.

[Approved by Governor September 12, 1984. Filed with Secretary of State September 12, 1984.]

The people of the State of California do enact as follows:

SECTION 1. Section 65978 of the Government Code is amended to read:

65978. Any school district receiving funds pursuant to this chapter shall maintain a separate account for any fees paid and shall file a report with the city council or board of supervisors on the balance in the account at the end of the previous fiscal year; the facilities leased, purchased, or constructed; and the dedication of land during the previous fiscal year. In addition, the report shall specify which attendance areas will continue to be overcrowded when the fall term begins and where conditions of overcrowding will no longer exist. The report shall be filed by October 15 of each year and shall be filed more frequently at the request of the board of supervisors or city council.

The board of supervisors or city council may approve a 30-day extension for the filing of the report in the case of extenuating circumstances, as determined by the board of supervisors or city council.

During the time that the report has not been filed in the manner prescribed in this section, there shall be a waiver of any performance of the payment of fees or the dedication of land.

If overcrowding conditions no longer exist, the city or county shall

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cease levying any fee or requiring the dedication of any land pursuant to this chapter.

CHAPTER 1498

An act to amend Sections 65971, 65973, 65974, 65976, 65979, and 65980 of the Government Code, relating to interim school facilities.

[Approved by Governor October 2, 1985. Filed with Secretary of State October 2, 1985.]

The people of the State of California do enact as follows:

SECTION 1. Section 65971 of the Government Code is amended to read:

65971. (a) The governing body of a school district which operates an elementary or high school shall notify the city council or board of supervisors of the city or county within which the school district is located if the governing body makes both of the following findings supported by clear and convincing evidence:

(1) That conditions of overcrowding exist in one or more attendance areas within the district which will impair the normal functioning of educational programs including the reason for the existence of those conditions.

(2) That all reasonable methods of mitigating conditions of overcrowding have been evaluated and no feasible method for reducing those conditions exist.

(b) The notice of findings sent to the city or county pursuant to subdivision (a) shall specify the mitigation measures considered by the school district. If the city council or board of supervisors concurs in those findings, Section 65972 shall be applicable to actions taken on residential development by the city council or board of supervisors. The city council or board of supervisors shall take no action on the notice of findings sent to the city or county pursuant to subdivision (a) until the findings have been made available to the public for 60 days after the date of receipt by the city or county. The city council or board of supervisors shall either concur or not concur in the notice of findings within 61 days to 150 days after the date of

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receipt of the findings. The city council or board of supervisors may extend the period to concur or not to concur for one 30-day period. The failure of the city council or board of supervisors to either concur or not concur within the time period prescribed in this subdivision shall not be deemed as an act of concurrence in the notice of findings by the council or board.

The date of receipt of the notice of findings is the date when all of the materials required by this section are completed and filed by the school district with the city council or board of supervisors.

SEC. 1.5. Section 65971 of the Government Code is amended to read:

65971. (a) The governing body of a school district which operates an elementary or high school shall notify the city council or board of supervisors of the city or county within which the school district is located if the governing body makes both of the following findings supported by clear and convincing evidence:

(1) That conditions of overcrowding exist in one or more attendance areas within the district which will impair the normal functioning of educational programs including the reason for the existence of those conditions.

(2) That all reasonable methods of mitigating conditions of overcrowding have been evaluated and no feasible method for reducing those conditions exist.

(b) The notice of findings sent to the city or county pursuant to subdivision (a) shall specify the mitigation measures considered by the school district. The notice of findings shall include a completed application to the Office of Local Assistance for preliminary determination of eligibility under the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code). The city council or board of supervisors shall take no action on the notice of findings sent to the city or county pursuant to subdivision (a) until the findings have been made available to the public for 60 days after the date of receipt by the city or county. The city council or board of supervisors shall either concur or not concur in the notice of findings within 61 days to 150 days after the date of receipt of the findings. The city council or board of supervisors may extend the period to concur or not to concur for one 30-day period. The failure of the city council or board of supervisors to either concur or not concur within the time period prescribed in this subdivision shall not be deemed as an act of concurrence in the notice of findings by the council or board.

The date of receipt of the notice of findings is the date when all of the materials required by this section are completed and filed by the school district with the city council or board of supervisors.

If the city council or board of supervisors concurs in those findings, Section 65972 shall be applicable to actions taken on residential development by the city council or board of supervisors.

SEC. 2. Section 65973 of the Government Code is amended to

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read:

65973. As used in this chapter, the following terms mean:

(a) "Conditions of overcrowding" means that the total enrollment of a school, including enrollment from proposed development, exceeds the capacity of the school, as determined by the governing body of the district.

(b) "Reasonable methods for mitigating conditions of overcrowding" shall include, but are not limited to, agreements between a subdivider or builder and the affected school district whereby temporary-use buildings will be leased to the school district or temporary-use buildings owned by the school district will be used and agreements between the affected school district and other school districts whereby the affected school district agrees to lease or purchase surplus school facilities from other school districts.

(c) "Residential development" means a project containing residential dwellings, including mobilehomes, of one or more units or a subdivision of land for the purpose of constructing one or more residential dwelling units.

SEC. 2.5. Section 65973 of the Government Code is amended to read:

65973. As used in this chapter the following terms means:

(a) "Conditions of overcrowding" means that the total enrollment of a school, including enrollment from proposed development, exceeds the capacity of the school as determined by the governing body of the district.

(b) "Reasonable methods for mitigating conditions of overcrowding" shall include, but are not limited to, agreements between a subdivider or builder and the affected school district whereby temporary-use buildings will be leased to the school district or temporary-use buildings owned by the school district will be used and agreements between the affected school district and other school districts whereby the affected school district agrees to lease or purchase surplus or underutilized school facilities from other school districts.

(c) "Residential development" means a project containing residential dwellings, including mobilehomes, of one or more units or a subdivision of land for the purpose of constructing one or more residential dwelling units.

SEC. 3. Section 65974 of the Government Code is amended to read:

65974. (a) For the purpose of establishing an interim method of providing classroom facilities where overcrowded conditions exist, as determined necessary pursuant to Section 65971, and notwithstanding Section 66478, a city, county, or city and county may, by ordinance, require the dedication of land, the payment of fees in lieu thereof, or a combination of both, for classroom and related facilities for elementary or high schools as a condition to the approval of a residential development, if all of the following occur:

(1) The general plan provides for the location of public schools.

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(2) The ordinance has been in effect for a period of 30 days prior to the implementation of the dedication or fee requirement.

(3) The land or fees, or both, transferred to a school district shall be used only for the purpose of providing interim elementary or high school classroom and related facilities. If fees are paid in lieu of the dedication of land and those fees are utilized to purchase land, no more land shall be purchased than is necessary for the placement thereon of interim facilities.

(4) The location and amount of land to be dedicated or the amount of fees to be paid, or both, shall bear a reasonable relationship and be limited to the needs of the community for interim elementary or high school facilities and shall be reasonably related and limited to the need for schools caused by the development. However, the value of the land to be dedicated or the amount of fees to be paid, or both, shall not exceed the amount necessary to pay five annual lease payments for the interim facilities. In lieu of the dedication of land or the payment of fees, or both, the builder of a residential development may, at his or her option and at his or her expense, provide interim facilities, owned or controlled by the builder, at the place designated by the school district, and at the conclusion of the fifth school year the builder shall, at the builder's expense, remove the interim facilities from that place.

(5) A finding is made by the city council or board of supervisors that the facilities to be constructed from the fees or the land to be dedicated, or both, is consistent with the general plan.

(b) The ordinance may specify the methods for mitigating the conditions of overcrowding which the school district shall consider when making the finding required by paragraph (2) of subdivision (a) of Section 65971.

(c) If the payment of fees is required, the payment shall be made at the time the building permit is issued or at a later time as may be specified in the ordinance.

(d) Only the payment of fees may be required in subdivisions containing 50 parcels or less.

SEC. 4. Section 65976 of the Government Code is amended to read:

65976. Before the city council or board of supervisors makes a decision to require the dedication of land or the payment of fees, or both, or to increase the amount of land to be dedicated or the fees to be paid, or both, the governing body of the school district shall submit a schedule to the city council or board of supervisors specifying how the school district will use the land or fees, or both, to solve the conditions of overcrowding. The schedule shall include the school sites to be used, the classroom facilities to be made available, and the times when those facilities will be available. If the governing body of the school district cannot meet the schedule, it shall submit modifications to the city council or board of supervisors and the reasons for the modifications.

SEC. 4.5. Section 65976 of the Government Code is amended to

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read:

65976. As a part of the notice required by Section 65971, or in any event before the city council or board of supervisors make a decision to require the dedication of land or the payment of fees, or both, or to increase the amount of land to be dedicated or the fees to be paid, or both, the governing body of the school district shall submit a schedule to the city council or board of supervisors specifying how the school district will use the land or fees, or both, to solve the conditions of overcrowding. The schedule shall include the school sites to be used, the classroom facilities to be made available, and the times when those facilities will be available. If the governing body of the school district cannot meet the schedule, it shall submit modifications to the city council or board of supervisors and the reasons for the modifications.

SEC. 5. Section 65979 of the Government Code is amended to read:

65979. (a) One year after receipt of an apportionment pursuant to the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 22 (commencing with Section 17700 of Part 10 of the Education Code) for the construction of a school, the city or county shall not be permitted thereafter, pursuant to this chapter or pursuant to any other school facilities financing arrangement the district may have with builders of residential development, to levy any fee or to require the dedication of any land within the attendance area of the school for which the apportionment was received. However, any time after receipt of the apportionment there may be a determination of overcrowding pursuant to Section 65971, if both of the following further findings are made:

(1) That during the period of construction additional overcrowding would occur from continued residential development.

(2) That any fee levied and any required dedication of land levied after the receipt of the construction apportionment can be used to avoid the additional overcrowding prior to the school being available for use by the school district.

(b) Any amounts of fees collected or land dedicated after the receipt of the construction apportionment and not used to avoid overcrowding shall be returned to the person who paid the fee or made the land dedication.

SEC. 5.5. Section 65979 of the Government Code is amended to read:

65979. (a) One year after receipt of an apportionment pursuant to the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 22 (commencing with Section 17700 of Part 10 of the Education Code) for the construction of a school, the city or county shall not be permitted thereafter, pursuant to this chapter or pursuant to any other school facilities financing arrangement the district may have with builders of residential development, to levy any fee or to require the dedication of any land within the attendance area of the school for which the apportionment was

received. However, any time after receipt of the apportionment there may be a determination of overcrowding pursuant to Section 65971, if both of the following further findings are made:

(1) That during the period of construction, or after construction has been completed, additional overcrowding would occur from continued residential development.

(2) That any fee levied and any required dedication of land levied after the receipt of the construction apportionment can be used to avoid the additional overcrowding prior to the school being available for use by the school district.

(b) Any amounts of fees collected or land dedicated after the receipt of the construction apportionment and not used to avoid overcrowding shall be returned to the person who paid the fee or made the land dedication.

SEC. 6. Section 65980 of the Government Code is amended to read:

65980. For the purposes of Section 65974 the following terms mean:

(a) "Approval of a residential development" means any approval for the development prior to and including the issuance of a building permit for the development.

(b) "Classroom facilities," "classroom and related facilities," and "elementary or high school facilities" mean "interim facilities" and shall include no other facilities.

(c) "Interim facilities" are limited to any of the following:

(1) Temporary classrooms not constructed with permanent foundation and defined as a structure containing one or more rooms, each of which is designed, intended, and equipped for use as a place for formal instruction of pupils by a teacher in a school.

(2) Temporary classroom toilet facilities not constructed with permanent foundations.

(3) Reasonable site preparation and installation of temporary classrooms.

(4) Land necessary for the placement thereon of any of the facilities described in paragraph (1) or (2).

SEC. 7. Reimbursement to local agencies and school districts for costs mandated by the state pursuant to this act shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code and, if the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), shall be made from the State Mandates Claims Fund.

SEC. 8. Section 1.5 of this bill incorporates amendments to Section 65971 of the Government Code proposed by both this bill and AB 2089. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1986, (2) each bill amends Section 65971 of the Government Code, and (3) this bill is enacted after AB 2089, in which case Section 1 of this bill shall not become operative.

SEC. 9. Section 2.5 of this bill incorporates amendments to Section 65973 of the Government Code proposed by both this bill and AB 2089. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1986, (2) each bill amends Section 65973 of the Government Code, and (3) this bill is enacted after AB 2089, in which case Section 2 of this bill shall not become operative.

SEC. 10. Section 4.5 of this bill incorporates amendments to Section 65976 of the Government Code proposed by both this bill and AB 2089. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1986, (2) each bill amends Section 65976 of the Government Code, and (3) this bill is enacted after AB 2089, in which case Section 4 of this bill shall not become operative.

SEC. 11. Section 5.5 of this bill incorporates amendments to Section 65979 of the Government Code proposed by both this bill and AB 2089. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1986, (2) each bill amends Section 65979 of the Government Code, and (3) this bill is enacted after AB 2089, in which case Section 5 of this bill shall not become operative.

CHAPTER 136

An act to amend Section 65979 of the Government Code, relating to school facilities.

[Approved by Governor June 5, 1986. Filed with Secretary of State June 6, 1986.]

The people of the State of California do enact as follows:

SECTION 1. Section 65979 of the Government Code is amended to read:

65979. (a) One year after receipt of an apportionment pursuant to the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 22 (commencing with Section 17700 of Part 10 of the Education Code) for the construction of a school, the city or county shall not be permitted thereafter, pursuant to this chapter or pursuant to any other school facilities financing arrangement the district may have with builders of residential development, to levy any fee or to require the dedication of any land within the attendance area of the school for which the apportionment was received. However, any time after receipt of the apportionment there may be a determination of overcrowding pursuant to Section 65971, if both of the following further findings are made:

(1) That during the period of construction, or after construction has been completed, additional overcrowding would occur from continued residential development.

(2) That any fee levied and any required dedication of land levied after the receipt of the construction apportionment can be used to avoid the additional overcrowding prior to the school being available for use by the school district.

(b) Any amounts of fees collected or land dedicated after the receipt of the construction apportionment and not used to avoid overcrowding shall be returned to the person who paid the fee or made the land dedication.

CHAPTER 685

An act to add and repeal Section 53077.5 of the Government Code, relating to local agencies.

[Approved by Governor September 9, 1986. Filed with Secretary of State September 9, 1986.]

The people of the State of California do enact as follows:

SECTION 1. Section 53077.5 is added to the Government Code, to read:

53077.5. (a) Except as otherwise provided in subdivision (b), any local agency which imposes any fees or charges on a residential development for the construction of public improvements or facilities shall not require the payment of those fees or charges, notwithstanding any other provision of law, until the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs last, provided that utility service fees may be collected at the time an application for utility service is received. If the residential development contains more than one dwelling, the local agency may determine whether the fees or charges shall be paid on a pro rata basis for each dwelling when it receives its final inspection or certificate of occupancy, whichever occurs last; on a pro rata basis when a certain percentage of the dwellings have received their final inspection or certificate of occupancy, whichever occurs last; or on a lump-sum basis when the last dwelling in the

development receives its final inspection or certificate of occupancy, whichever occurs first.

(b) Notwithstanding subdivision (a), the local agency may require the payment of those fees or charges at an earlier time if (1) the local agency determines that the fees or charges will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency has adopted a proposed construction schedule or plan prior to final inspection or issuance of the certificate of occupancy or (2) the fees or charges are to reimburse the local agency for expenditures previously made. "Appropriated," as used in this subdivision, means authorization by the governing body of the local agency for which the fee is collected to make expenditures and incur obligations for specific purposes.

(c) "Local agency," as used in this section, means a county, city, or city and county, whether general law or chartered, or district. "District" means an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

(d) This section applies only to fees collected by a local agency to fund the construction of public improvements or facilities. It does not apply to fees collected to cover the cost of code enforcement or inspection services, or to other fees collected to pay for the cost of enforcement of local ordinances or state law.

(e) "Final inspection" or "certificate of occupancy," as used in this section, have the same meaning as described in Sections 305 and 307 of the Uniform Building Code, International Conference of Building Officials, 1985 Edition.

(f) The Legislative Analyst shall submit a report to the Legislature by January 1, 1992, which evaluates the implementation of this section. In preparing the report, the Legislative Analyst shall consult with individuals and associations who, in the opinion of the Legislative Analyst, are knowledgeable about the impact of this section. Those individuals and associations shall include, but not be limited to, representatives of builders, landowners, planners, civil engineers, land surveyors, counties, cities, school districts, special districts, and public utilities.

(g) This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1993, deletes or extends that date.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act does not mandate a new program or higher level of service on local government. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 4 (commencing with Section 17550) of Part 7 of Division 2 of Title 2 of the Government Code.

CHAPTER 887

An act to amend Sections Sections 17739.2, 17788, and 33051 of, and to add Sections 17705.5 and 39015.5 to, the Education Code, to amend Section 65974, and to add Sections 53080 and 53081 and Chapter 4.9 (commencing with Section 65995) to Division 1 of Title 7 of, the Government Code, and to amend Section 6217 of the Public Resources Code, relating to school facilities, and making an appropriation therefor.

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addressed.

(2) The waiver affects a program that requires the existence of a school site council and the school site council did not approve the request.

(3) The appropriate councils or advisory committees, including bilingual advisory committees, did not have an adequate opportunity to review the request and the request did not include a written summary of any objections to the request by the councils or advisory committees.

(4) Pupil or school personnel protections are jeopardized.

(5) Guarantees of parental involvement are jeopardized.

(6) The request would substantially increase state costs.

(7) The exclusive representative of employees, if any, as provided in Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, was not a participant in the development of the waiver.

(b) The State Board of Education shall not approve any request for waiver of any provision of Article 5 (commencing with Section 39390) of Chapter 3 of Part 23 unless the school district seeking the waiver demonstrates all of the following:

(1) The school district provided the written notice required under subdivision (f) of Section 33050.

(2) The school district, after making a good-faith effort to that purpose, was unable to reach agreement with any public agency identified under Section 39394 that seeks to acquire the site under that article on terms and conditions that are consistent with the requirements of the purchase plan adopted by the agency under Section 39397.5 and would enable the district to meet its reasonable financial goals.

(3) The detriment to the school district's ability to financially meet the educational needs of the community resulting from the disposition of the school site pursuant to the sale price or lease rate limitations set forth in Section 39396, as compared to the fair market value of the site, outweighs the need for the use of the site for outdoor recreational and open-space purposes as established by a finding made under Section 39397.

(4) In the event that the school district enters into a long-term lease during the period of the waiver or any extension thereof, the school district shall be exempt from the requirements of Article 5 (commencing with Section 39390) of Chapter 3 of Part 33, for the duration of the lease term for that site.

(c) A waiver shall be approved or renewed by the State Board of Education prior to its implementation for the period of time requested by the governing board of a district, but not to exceed two years, except that a waiver approved pursuant to subdivision (b) may be for up to three years.

SEC. 6. Section 39015.5 is added to the Education Code, to read:

39015.5. The amount of any nonuse payments required of any school district under Section 39015 shall be reduced, without regard

to fiscal year, by the amount of the proceeds, resulting from the lease of district property that is subject to that section, that are expended by the district for the purposes of subdivision (a) or (b) of Section 17705.5, or for the payment of bond debt service costs that are directly related to the actual construction of school facilities.

SEC. 7. The Legislature finds and declares as follows:

(a) Many areas of this state are experiencing substantial development and population growth, resulting in serious overcrowding in school facilities.

(b) Continued economic development requires the availability of the school facilities needed to educate the state's young citizens.

(c) In growing areas of this state, the lack of availability of the public revenues needed to construct school facilities is a serious problem, undermining both the education of the state's children and the continued economic prosperity of California.

(d) For these reasons, a comprehensive school facilities finance program based upon a partnership of state and local governments and the private sector is required to ensure the availability of school facilities to serve the population growth generated by new development.

(e) The Legislature therefore finds that the levying of appropriate fees by school district governing boards at the rates authorized by this act is a reasonable method of financing the expansion and construction of school facilities resulting from new economic development within the district.

SEC. 8. Section 53080 is added to the Government Code, to read:

53080. (a) The governing board of any school district is authorized to levy a fee, charge, dedication, or other form of requirement against any development project, as defined in Section 65928, for new construction within the boundaries of the district, for the construction or reconstruction of school facilities, subject to any limitations set forth in Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7.

(b) No city or county, whether general law or chartered, may issue a building permit for any development absent certification by the appropriate school district of compliance by that development project with any fee, charge, dedication, or other form of requirement levied by the governing board of that school district pursuant to subdivision (a).

(c) In the case of the sale of a manufactured home or mobilehome, the payment of fees to either the school district or other entity shall occur at the time of occupancy pursuant to the sale or lease of the manufactured home or mobilehome pursuant to Section 18080.5 of the Health and Safety Code.

SEC. 9. Section 53081 is added to the Government Code, to read:

53081. A school district that imposes any fees on construction within the school district may use those fees to pay any bonds, notes, loans, leases or other installment agreements including, but not limited to, bonds issued by the authority or loans, leases or other

installment agreements that secure bonds issued by the authority. The authority may issue bonds, in accordance with Section 17883, to finance projects for one or more participating school districts that have imposed fees on construction within the district, which bonds may be payable from and secured by those fees in whole or in part. For this purpose, participating school districts may pledge and assign all or any part of those fees to the authority, and the fees so pledged and assigned to the authority, and any income thereon, may be pledged and assigned by the authority to the payment of bonds issued by the authority to finance projects for those participating school districts. While it is the intent of the Legislature that the amount of financing provided to a participating school district pursuant to this section shall be reasonably related, in the judgment of the authority, to the amount of fees on construction expected by the authority to be derived from or attributable to that participating school district, nothing in this section or any other provision of law shall be deemed to require a proportionate or other relationship between the amount of the financing actually provided to a participating school district pursuant to this section and the amount of fees on construction actually derived from or attributable to that participating school district pursuant to this section or used by the authority to secure or pay any bonds of the authority issued pursuant to this section.

SEC. 10. Section 65974 of the Government Code is amended to read:

65974. (a) For the purpose of establishing an interim method of providing classroom facilities where overcrowded conditions exist, as determined necessary pursuant to Section 65971, and notwithstanding Section 66478, a city, county, or city and county may, by ordinance, require the dedication of land, the payment of fees in lieu thereof, or a combination of both, for classroom and related facilities for elementary or high schools as a condition to the approval of a residential development, if all of the following occur:

(1) The general plan provides for the location of public schools.

(2) The ordinance has been in effect for a period of 30 days prior to the implementation of the dedication or fee requirement.

(3) The land or fees, or both, transferred to a school district shall be used only for the purpose of providing interim elementary or high school classroom and related facilities. If fees are paid in lieu of the dedication of land and those fees are utilized to purchase land, no more land shall be purchased than is necessary for the placement thereon of interim facilities.

(4) The location and amount of land to be dedicated or the amount of fees to be paid, or both, shall bear a reasonable relationship and be limited to the needs of the community for interim elementary or high school facilities and shall be reasonably related and limited to the need for schools caused by the development. However, the value of the land to be dedicated or the amount of fees to be paid, or both, shall not exceed the amount

necessary to pay five annual lease payments for the interim facilities. In lieu of the dedication of land or the payment of fees, or both, the builder of a residential development may, at his or her option and at his or her expense, provide interim facilities, owned or controlled by the builder, at the place designated by the school district, and at the conclusion of the fifth school year the builder shall, at the builder's expense, remove the interim facilities from that place.

(5) A finding is made by the city council or board of supervisors that the facilities to be constructed from the fees or the land to be dedicated, or both, is consistent with the general plan.

(b) The ordinance may specify the methods for mitigating the conditions of overcrowding which the school district shall consider when making the finding required by paragraph (2) of subdivision (a) of Section 65971.

(c) If the payment of fees is required, the payment shall be made at the time the building permit is issued or at a later time as may be specified in the ordinance.

(d) Only the payment of fees may be required in subdivisions containing 50 parcels or less.

(e) Notwithstanding any other provision of this chapter, contracts entered into or contracts to be entered into pursuant to a School Facilities Master Plan administered by a Joint Powers Authority created under Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code for a designated community plan area adopted by a city, county, or city and county, whether general law or chartered, on or before September 1, 1986, that requires the payment of a fee, charge, or dedication for the construction of school facilities as a condition to the approval of residential development shall not be subject to the provisions of subdivision (b) of Section 65995. Provided, however, that in determining developer fees under that school facilities master plan, the cost and maximum building area standards for school buildings prescribed by Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code shall apply, and the school district or districts involved are required to have on file with the Office of Local Assistance, and actively pursue in good faith, an application for preliminary determination of eligibility for project funding under that chapter, and shall actively pursue in good faith the establishment of a community capital facilities district or other permanent financing mechanisms to reduce or eliminate developer fees.

Any fees collected or land dedicated after September 1, 1986, pursuant to this section, and not used to avoid overcrowding of the facilities to be built pursuant to the school facilities master plan, shall be subject to disposition in accordance with subdivision (b) of Section 65979.

Fees collected in excess of the limitations set forth in subdivision (b) of Section 65995 for schools constructed under that school facilities master plan shall neither advantage nor disadvantage a

school district's application for project funding under Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code.

SEC. 11. Chapter 4.9 (commencing with Section 65995) is added to Division 1 of Title 7 of the Government Code, to read:

CHAPTER 4.9. PAYMENT OF FEES, CHARGES, DEDICATIONS, OR OTHER REQUIREMENTS AGAINST A DEVELOPMENT PROJECT

65995. (a) Except for a dedication or fee, or both, required under Section 53080, or pursuant to Chapter 4.7 (commencing with Section 65970), no fee, charge, dedication, or other form of requirement shall be levied by the legislative body of a local agency against a development project, as defined by Section 65928, for the construction or reconstruction of school facilities.

(b) In no event shall the amount of any fee, charge, dedication, or other form of requirement, as described in subdivision (a), including the amount of fees to be paid or the value of land to be dedicated, or both, under Chapter 4.7 (commencing with Section 65970), exceed the following:

(1) One dollar and fifty cents ($1.50) per square foot of covered or enclosed space, in the case of any residential development.

(2) Twenty-five cents ($0.25) per square foot of covered or enclosed space, in the case of any commercial or industrial development. No fee, charge, dedication, or other form of the requirement may be levied by any school district governing board upon any commercial or industrial development unless and until the governing board has first made the finding that the location and amount of land to be dedicated or the amount of fees to be paid, or both, shall bear a reasonable relationship and be limited to the needs of the community for elementary or high school facilities and shall be reasonably related and limited to the need for schools caused by the development.

(3) The amount of the limits set forth in paragraphs (1) and (2) shall be annually increased according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the State Allocation Board at its January meeting.

(c) Subdivision (a) does not apply during the term of any contract entered into between a subdivider or builder and a school district, city, county, or city and county, whether general law or chartered, on or before the effective date of this chapter that requires the payment of a fee, charge, or dedication for the construction of school facilities as a condition to the approval of residential development. In addition, any development project for which a final map was approved and construction had commenced on or before September 1, 1986, is subject to only the fee, charge, dedication, or other form of requirement prescribed in any local ordinance in existence on that date and applicable to the project.

(d) The Legislature finds and declares that the subject of the financing of school facilities with development fees is a matter of

statewide concern. For this reason the Legislature hereby occupies the subject matter of mandatory development fees and other development requirements for school facilities finance to the exclusion of all local measures on the subject.

(e) Nothing in this section shall be interpreted to limit or prohibit the use of Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 to finance the construction or reconstruction of school facilities.

65996. The following provisions shall be the exclusive methods of mitigating environmental effects related to the adequacy of school facilities when considering the approval or the establishment of conditions for the approval of a development project, as defined by Section 65928 of the Government Code pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code:

(a) Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 of the Government Code.

(b) Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 of the Government Code.

(c) Chapter 4.5 (commencing with Section 15450) of Part 10 of the Education Code.

(d) Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code.

(e) Chapter 28 (commencing with Section 17870) of Part 10 of the Education Code.

(f) Chapter 25 (commencing with Section 17785) of Part 10 of the Education Code.

(g) Article 2.5 (commencing with Section 39327) of Chapter 3 of Part 23 of the Education Code.

(h) Article 3 (commencing with Section 42260) of Chapter 7 of Part 24 of the Education Code.

No public agency shall, pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code or Division 2 (commencing with Section 66410) of this code, deny approval of a project on the basis of the adequacy of school facilities.

65997. This chapter shall remain in effect only until such date as any state general obligation bond measure submitted to the voters of this state for their ratification, which measure includes within its purposes the funding of school facilities construction, fails to receive that ratification, and as of that date is repealed.

SEC. 12. Section 6217 of the Public Resources Code, as amended by Chapter 1749 of the Statutes of 1984, is amended to read:

6217. With the exception of revenues derived from state school lands and from sources described in Sections 6217.6, 6301.5, 6301.6, 6855, and 8551 to 8558, inclusive, and Section 6406 (insofar as the proceeds are from property that has been distributed or escheated to the state in connection with unclaimed estates of deceased persons), the commission shall deposit in the State Treasury all revenues, moneys, and remittances received by it under this division, and under Chapter 138 of the Statutes of 1964, First Extraordinary

or any other provision of law may be spent in accordance with Sections 17785 to 17795, inclusive, of the Education Code (Emergency School Classroom Law of 1979).

(g) To the Energy and Resources Fund each fiscal year, commencing with the 1985–86 fiscal year, the amount of sixty-five million dollars ($65,000,000).

(h) To the Special Account for Capital Outlay, the balance of all revenues in excess of the amount distributed under subdivisions (a), (b), (c), (d), (e), (f), and (g).

The commission may, with the approval of the State Board of Control, authorize the refund of moneys received or collected by it illegally or by mistake, inadvertence, or error. Claims authorized by the commission and approved by the State Board of Control shall be filed with the Controller and the Controller shall draw his or her warrant against the General Fund in payment of the refund from any appropriation made for that purpose.

All references in any law to Section 6816 shall be deemed to refer to this section.

SEC. 13. Notwithstanding Sections 13340 and 16361 of the Government Code, and to the extent permitted by federal law, the sum of thirty million dollars ($30,000,000) is hereby appropriated to the State Allocation Board from funds in the Federal Trust Fund, created pursuant to Section 16360 of the Government Code, received by the state either from federal oil overcharge funds in the Petroleum Violations Escrow Account, as defined by either Section 155 of the Further Continuing Appropriations Act of 1983 (P.L. 97-377) or by any other federal law, or from federal oil overcharge funds available pursuant to court judgments, for allocation without regard to fiscal year to school districts for the expenses of air-conditioning equipment and insulation materials pursuant to Section 42250.1 of the Education Code.

SEC. 14. (a) Sections 1 to 21, inclusive, of this act shall become operative only if Senate Bill 327 is enacted and becomes effective on January 1, 1987.

(b) As an additional condition, Sections 2 and 19 of this act shall become operative only if the Greene-Hughes School Building Lease Purchase Bond Law of 1986 was ratified by the voters of this state at the general election of November 4, 1986.

SEC. 15. Reimbursement to local agencies and school districts for costs mandated by the state pursuant to this act shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code and, if the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), shall be made from the State Mandates Claims Fund.

CHAPTER 888

An act to amend Sections 17732, 17742, 17742.5, 17749, and 39619.2 of the Education Code, to amend Section 53080 of the Government Code, to amend Section 6217 of the Public Resources Code, and to amend Section 14 of AB 2926 of the 1985–86 Regular Session, relating to school facilities financing, and making an appropriation therefor.

[Approved by Governor September 18, 1986. Filed with Secretary of State September 18, 1986.]

The people of the State of California do enact as follows:

SECTION 1. Section 17732 of the Education Code is amended to read:

17732. The board shall fix rents for all projects acquired and may change the rents from time to time as may be needed provided the rents shall not in any year exceed the sum of the following:

(a) One dollar ($1).

(b) Any interest earned on funds in the county school lease-purchase fund for the district.

(c) Any unencumbered bond funds of the district.

(d) The net proceeds from the sale or lease of any school buildings or land no longer needed for school purposes, exclusive of proceeds that are used for capital outlay expenditures for school construction that conforms to building area standards established under this chapter, or for the district funding requirement under subdivision (b) of Section 17705.5.

SEC. 2. Section 17742 of the Education Code is amended to read:

17742. (a) The board, by the adoption of rules, shall provide for the manner of determining the area of adequate school construction existing in an applicant school district at the time of application. Those rules shall define and provide for the method of determining building areas that are to be included in, in whole or in part, or to be excluded from, the area of existing adequate school construction. Any building to which Article 3 (commencing with Section 39140) of Chapter 1 of Part 23 of Division 3 of Title 2 does not apply shall not be considered adequate school construction for the purpose of determining the maximum total building area per attendance unit.

The board may make exceptions to the provisions of this section, or to the rules adopted pursuant thereto, if it determines that the exception or exceptions will be for the benefit of pupils affected.

(b) For the purposes of this chapter, the area of adequate school construction existing in an applicant school district does not include, in any school operated on a year-round schedule, any building area that has been in continuous use during the preceding five-year period primarily for the operation of any preschool program or programs.

(c) The board shall provide that building area for covered

(b) The board may reduce the percentage requirement set forth in subdivision (a), as to any applicant, in the event that the quantity of relocatable structures necessary to comply with those requirements is unavailable from the manufacturers of those structures.

(c) The board may reduce or eliminate the percentage requirements set forth in subdivision (a), as to any applicant, where the board finds that special conditions of terrain, climate, or unavailability of space within the attendance area make the use of relocatable structures impractical or inappropriate.

(d) Relocatable structures acquired by an applicant school district up to two years preceding the final approval by the board of the project application submitted by the district shall apply to the percentage requirements set forth in subdivision (a). The cost of acquiring those structures shall apply to fulfilling the district's funding requirement under Section 17705.5.

(e) Whenever at least 10 percent of the allowable new building construction contained in an application is to be utilized for relocatable structures, an additional three square feet of building area shall be allowed.

SEC. 5. Section 39619.2 of the Education Code, as added by Section 30 of SB 327 of the 1985–86 Regular Session, is amended to read:

39619.2. (a) School districts may submit applications to the State Allocation Board for deferred maintenance funding in addition to the amounts specified in Section 39619. In order to be eligible for an additional apportionment, a school district shall do all of the following:

(1) Certify that if an additional apportionment is provided, the district will have matched the additional apportionment amount with an equal amount of district funds that have not been previously used as a match for state aid.

(2) Certify an additional claim of not greater than one-half of 1 percent of the total general funds and adult education funds budgeted by the district for the fiscal year, excluding any amounts budgeted for capital outlay or debt service, but including adult education funds.

(3) Certify that any additional funds will be used to meet deferred maintenance identified in the district's five-year deferred maintenance plan.

(b) The State Allocation Board shall establish rules and regulations regarding the formulas used to apportion additional funds pursuant to this section.

(c) It is the intent of the Legislature that state funds for deferred maintenance be drawn first from excess bond repayments by school districts, revenues pursuant to subdivision (f) of Section 6217 of the Public Resources Code, and proceeds from existing general obligation bonds.

SEC. 6. Section 53080 of the Government Code, as added by

Section 8 of AB 2926 of the 1985–86 Regular Session, is amended to read:

53080. (a) The governing board of any school district is authorized to levy a fee, charge, dedication, or other form of requirement against any development project, as defined in Section 65928, within the boundaries of the district, for the purpose of funding the construction or reconstruction of school facilities, subject to any limitations set forth in Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7. This fee, charge, dedication, or other form of requirement may be applied only to new commercial and industrial construction, and, as to residential development, to new construction, and other construction to the extent of the resulting increase in habitable area.

(b) No city or county, whether general law or chartered, may issue a building permit for any development absent certification by the appropriate school district of compliance by that development project with any fee, charge, dedication, or other form of requirement levied by the governing board of that school district pursuant to subdivision (a).

(c) In the case of the sale of a manufactured home or mobilehome, the payment of fees to either the school district or other entity shall occur at the time of occupancy pursuant to the sale or lease of the manufactured home or mobilehome pursuant to Section 18080.5 of the Health and Safety Code.

SEC. 7. Section 6217 of the Public Resources Code, as amended by Chapter 1749 of the Statutes of 1984, is amended to read:

6217. With the exception of revenues derived from state school lands and from sources described in Sections 6217.6, 6301.5, 6301.6, 6855, and 8551 to 8558, inclusive, and Section 6406 (insofar as the proceeds are from property that has been distributed or escheated to the state in connection with unclaimed estates of deceased persons), the commission shall deposit in the State Treasury all revenues, moneys, and remittances received by it under this division, and under Chapter 138 of the Statutes of 1964, First Extraordinary Session, and these sums shall be applied to the following obligations in the following order:

(a) To the General Fund the revenue necessary to provide in any fiscal year for the following:

(1) Payment of refunds, authorized by the commission and approved by the State Board of Control, out of appropriations made for that purpose by the Legislature.

(2) Payment of expenditures of the commission as provided in the annual Budget Act approved by the Legislature.

(3) Payments to cities and counties of the amounts specified in Section 6817 for the purposes specified in that section, and the revenues so deposited are appropriated for such purpose.

(4) Payments to cities and counties of the amounts agreed to pursuant to the provisions of Section 6875.

(b) To the California Water Fund each fiscal year the amount of

appropriation made for that purpose.

All references in any law to Section 6816 shall be deemed to refer to this section.

SEC. 8. Section 14 of AB 2926 of the 1985–86 Regular Session is amended to read:

Sec. 14. (a) Section 1 to 13 inclusive of this act shall become operative only if Senate Bill 327 is enacted and becomes effective on January 1, 1987.

(b) As and additional condition, Sections 2 and 11 of this act shall become operative only if the Greene-Hughes School Building Lease Purchase Bond Law of 1986 was ratified by the voters of this state at the general election of November 4, 1986.

SEC. 9. Sections 6, 7, and 8 of this act shall become operative only if AB 2926 of the 1985-86 Regular Session is enacted and becomes effective January 1, 1987.

SEC. 10. Sections 1, 2, 3, 4, and 5 of this act shall become operative only if SB 327 of the 1985-86 Regular Session is enacted and becomes effective January 1, 1987.

CHAPTER 927

An act to add Chapter 5 (commencing with Section 66000) to Division 1 of Title 7 of the Government Code, relating to development projects.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987.]

The people of the State of California do enact as follows:

SECTION 1. Chapter 5 (commencing with Section 66000) is added to Division 1 of Title 7 of the Government Code, to read:

CHAPTER 5. FEES FOR DEVELOPMENT PROJECTS

66000. As used in this chapter:

(a) "Development project" means any project undertaken for the purpose of development. "Development project" includes a project involving the issuance of a permit for construction or reconstruction, but not a permit to operate.

(b) "Fee" means a monetary exaction, other than a tax or special assessment, which is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, but does not include fees specified in Section 66477, fees for processing applications for governmental regulatory actions or approvals, or fees collected under development agreements adopted pursuant to Article 2.5 (commencing with Section 65864) of Chapter 4.

(c) "Local agency" means a county, city, whether general law or chartered, city and county, school district, special district, or any other municipal public corporation or district, provided that "local agency" does not include a school district if Senate Bill No. 97 of the 1987-88 Regular Session is enacted and becomes effective on or before January 1, 1988.

(d) "Public facilities" includes public improvements, public services, and community amenities.

66001. (a) In any action establishing, increasing, or imposing a fee as a condition of approval of a development project by a local agency on or after January 1, 1989, the local agency shall do all of the

following:

(1) Identify the purpose of the fee.

(2) Identify the use to which the fee is to be put. If the use is financing public facilities, the facilities shall be identified. That identification may, but need not, be made by reference to a capital improvement plan as specified in Sections 65403 or 66002, may be made in applicable general or specific plan requirements, or may be made in other public documents that identify the public facilities for which the fee is charged.

(3) Determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed.

(4) Determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.

(b) In any action imposing a fee as a condition of approval of a development project by a local agency on or after January 1, 1989, the local agency shall determine how there is a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed.

(c) Upon receipt of a fee subject to this section, the local agency shall deposit, invest, account for, and expend the fees pursuant to Section 53077.

(d) The local agency shall make findings once each fiscal year with respect to any portion of the fee remaining unexpended or uncommitted in its account five or more years after deposit of the fee to identify the purpose to which the fee is to be put and to demonstrate a reasonable relationship between the fee and the purpose for which it was charged. The findings required by this subdivision need only be made for moneys in the possession of the local agency and need not be made with respect to letters of credit, bonds, or other instruments taken to secure payment of the fee at a future date.

(e) The local agency shall refund to the then current record owner or owners of the development project or projects on a prorated basis the unexpended or uncommitted portion of the fee, and any interest accrued thereon, for which need cannot be demonstrated pursuant to this subdivision. A local agency may refund the unexpended or uncommitted revenues by direct payment, by providing a temporary suspension of fees, or by any other means consistent with the intent of this section. The determination by the governing body of the local agency of the means by which those revenues are to be refunded is a legislative act.

If the administrative costs of refunding unexpended or uncommitted revenues pursuant to this subdivision exceed the amount to be refunded, the local agency, after a public hearing, notice of which has been published pursuant to Section 6061 and posted in three prominent places within the area of the development

project, may determine that the revenues shall be allocated for some other purpose for which fees are collected subject to this chapter and which serves the project on which the fee was originally imposed.

66002. (a) Any local agency which levies a fee subject to Section 66001 may adopt a capital improvement plan, which shall indicate the approximate location, size, time of availability, and estimates of cost for all facilities or improvements to be financed with the fees.

(b) The capital improvement plan shall be adopted by, and shall be annually updated by, a resolution of the governing body of the local agency adopted at a noticed public hearing. Notice of the hearing shall be given pursuant to Section 65090. In addition, mailed notice shall be given to any city or county which may be significantly affected by the capital improvement plan. This notice shall be given no later than the date the local agency notices the public hearing pursuant to Section 65090. The information in the notice shall be not less than the information contained in the notice of public hearing and shall be given by first-class mail or personal delivery.

(c) "Facility" or "improvement," as used in this section, means any of the following:

(1) Public buildings, including schools and related facilities; provided that school facilities shall not be included if Senate Bill 97 of the 1987-88 Regular Session is enacted and becomes effective on or before January 1, 1988.

(2) Facilities for the storage, treatment, and distribution of nonagricultural water.

(3) Facilities for the collection, treatment, reclamation, and disposal of sewage.

(4) Facilities for the collection and disposal of storm waters and for flood control purposes.

(5) Facilities for the generation of electricity and the distribution of gas and electricity.

(6) Transportation and transit facilities, including but not limited to streets and supporting improvements, roads, overpasses, bridges, harbors, ports, airports, and related facilities.

(7) Parks and recreation facilities.

(8) Any other capital project identified in the capital facilities plan adopted pursuant to Section 66002.

66003. This chapter does not apply to a fee imposed pursuant to a reimbursement agreement by and between a city or county and a property owner or developer for that portion of the cost of a public facility paid by the property owner or developer which exceeds the need for the public facility attributable to and reasonably related to the development. This chapter shall become operative on January 1, 1989.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution, because this act does not mandate a new program or higher level of service on local government. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement

available to it under Chapter 4 (commencing with Section 17550) of Part 7 of Division 2 of Title 2 of the Government Code.

CHAPTER 1002

An act to amend Sections 53077, 54997, and 54998 of the Government Code, relating to fees.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

The people of the State of California do enact as follows:

SECTION 1. Section 53077 of the Government Code is amended to read:

53077. (a) If a local agency requires the payment of a fee specified in paragraph (2) of subdivision (b) in connection with the approval of a development project, the local agency receiving the fee shall deposit it with the other fees for the improvement in a separate capital facilities account or fund in a manner to avoid any commingling of the fees with other revenues and funds of the local agency, except for temporary investments, and expend those fees solely for the purpose for which the fee was collected. Any interest income earned by moneys in the capital facilities account or fund shall also be deposited in that account or fund and shall be expended only for the purpose for which the fee was originally collected, except that the requirements of this sentence shall not apply to interest on the fees paid pursuant to Section 66477 until January 1, 1985.

(b) For purposes of this section:

(1) "Development project" means any project undertaken for the purpose of development. "Development project" includes a project involving the issuance of a permit for construction or reconstruction, but not a permit to operate.

(2) "Fee" means any fee imposed to provide for an improvement to be constructed to serve a development project, or which is a fee within the meaning of subdivision (b) of Section 66000, as added by Assembly Bill 1600 of the 1987–88 Regular Session, if enacted, and that is imposed by the local agency as a condition of approving the development project.

(3) "Local agency" means a county, city, whether general law or chartered, city and county, school district, special district, or any other municipal public corporation or district.

(c) Any person may request an audit of any local agency fee or charge that is subject to Section 54997, including fees or charges of school districts, in accordance with that section.

(d) The Legislature finds and declares that untimely or improper allocation of development fees hinders economic growth and is, therefore, a matter of statewide interest and concern. It is, therefore, the intent of the Legislature that subdivision (a) shall supersede all conflicting local laws and shall apply in charter cities.

SEC. 2. Section 54997 of the Government Code is amended to

read:

54997. (a) Any person may request an audit in order to determine whether any fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of any product or service provided by the local agency. If a person makes that request, the legislative body of the local agency may retain an independent auditor to conduct an audit to determine whether the fee or charge is reasonable.

(b) Any costs incurred by a local agency in having an audit conducted by an independent auditor pursuant to subdivision (a) may be recovered from the person who requests the audit.

(c) Any audit conducted by an independent auditor to determine whether a fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of providing the product or service shall conform to generally accepted auditing standards.

(d) The procedures specified in this section shall be alternative and in addition to those specified in Section 54985.

(e) "Local agency," as used in this chapter, means a county, city, whether general law or chartered, city and county, school district, special district, or any other municipal public corporation or district.

(f) The Legislature finds and declares that oversight of local agency fees is a matter of statewide interest and concern. It is, therefore, the intent of the Legislature that this chapter shall supersede all conflicting local laws and shall apply in charter cities.

SEC. 3. Section 54998 of the Government Code is amended to read:

54998. This chapter shall not be construed as granting any additional authority to any local agency to levy any fee or charge which is not otherwise authorized by another provision of law nor shall its provisions be construed as granting authority to any local agency to levy a new fee or charge when other provisions of law specifically prohibit the levy of a fee or charge.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 1037

An act to add Section 53080.15 to the Government Code, relating to school facilities.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

The people of the State of California do enact as follows:

SECTION 1. Section 53080.15 is added to the Government Code, to read:

53080.15. (a) No fee, charge, dedication, or other requirement may be levied by any school district pursuant to Section 53080 upon any greenhouse or other space that is covered or enclosed for agricultural purposes, unless and until the district first complies with subdivisions (b) and (c).

(b) The school district governing board shall make a finding, supported by substantial evidence, of both of the following:

(1) The amount of the proposed fees or other requirements and

the location of the land, if any, to be dedicated, bear a reasonable relationship and are limited to the needs of the community for elementary or high school facilities caused by the development.

(2) The amount of the proposed fees or other requirements does not exceed the estimated reasonable cost of providing for the construction or reconstruction of the school facilities necessitated by the development projects from which the fees or other requirements are to be collected.

(c) In determining the amount of the fees or other requirements, if any, to be levied on the development of any structure as described in subdivision (a), the school district governing board shall consider the relationship between the proposed increase in the number of employees, if any, the size and specific use of the structure, and the cost of the construction. No fee, charge, dedication, or other form of requirement, as authorized under Section 53080, shall be applied to the development of any structure described in subdivision (a) where the governing board finds either that the number of employees is not increased as a result of that development, or that housing has been provided for those employees, to the extent of any increase, by their employer, against which housing a fee, charge, or dedication, or other form of requirement has been applied under Section 53080. In developing the finding described in this section, the governing board shall consult with the county agricultural commissioner or the county director of the cooperative extension service.

CHAPTER 1184

An act to amend Section 30801 of the Food and Agricultural Code, to amend Sections 1780, 15646, 25355, 38792, 53077.5, and 57384 of the Government Code, to amend Sections 1920 and 6490 of the Health and Safety Code, to add Section 15210 to the Probate Code, to amend Section 5554 of the Public Resources Code, to amend Sections 98.6, 2189, 3708, 3716, 4105.2, 4222, 4336, 4337, 5097, and 5097.2 of, to repeal and add Section 2922 of, and to repeal Section 4105.3 of, the Revenue and Taxation Code, to amend Sections 22507, 22526, 22567, 22572, 22587, 22594, 22605, 22620, 22646, and 22662.5 of the Streets and Highways Code, and to amend Section 21967 of the Vehicle Code, relating to local government.

[Approved by Governor September 25, 1987. Filed with Secretary of State September 26, 1987.]

The people of the State of California do enact as follows:

SECTION 1. Section 30801 of the Food and Agricultural Code is amended to read:

30801. (a) A board of supervisors may provide for the issuance of serially numbered metallic dog licenses pursuant to this section. The dog licenses shall be:

(1) Stamped with the name of the county and the year of issue.

(2) Unless the board of supervisors designates the animal control department to issue the licenses, issued by the county clerk directly or through judges of justice or municipal courts, to owners of dogs, that make application.

(b) The licenses shall be issued for a period of not to exceed two years.

(c) In addition to the authority provided in subdivisions (a) and (b), a license may be issued, as provided by this section, by a board of supervisors for a period not to exceed three years for dogs that have attained the age of 12 months, or older, and who have been vaccinated against rabies. The person to whom the license is to be issued pursuant to this subdivision may choose a license period as established by the board of supervisors of up to one, two, or three years. However, when issuing a license pursuant to this subdivision, the license period shall not extend beyond the remaining period of validity for the current rabies vaccination.

SEC. 2. Section 1780 of the Government Code is amended to

subdivision, shall not exceed 50 percent of the license fee otherwise imposed.

SEC. 6. Section 53077.5 of the Government Code is amended to read:

53077.5. (a) Except as otherwise provided in subdivision (b), any local agency which imposes any fees or charges on a residential development for the construction of public improvements or facilities shall not require the payment of those fees or charges, notwithstanding any other provision of law, until the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs first, provided, that utility service fees may be collected at the time an application for utility service is received. If the residential development contains more than one dwelling, the local agency may determine whether the fees or charges shall be paid on a pro rata basis for each dwelling when it receives its final inspection or certificate of occupancy, whichever occurs first; on a pro rata basis when a certain percentage of the dwellings have received their final inspection or certificate of occupancy, whichever occurs first; or on a lump-sum basis when the first dwelling in the development receives its final inspection or certificate of occupancy, whichever occurs first.

(b) Notwithstanding subdivision (a), the local agency may require the payment of those fees or charges at an earlier time if (1) the local agency determines that the fees or charges will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency has adopted a proposed construction schedule or plan prior to final inspection or issuance of the certificate of occupancy or (2) the fees or charges are to reimburse the local agency for expenditures previously made. "Appropriated," as used in this subdivision, means authorization by the governing body of the local agency for which the fee is collected to make expenditures and incur obligations for specific purposes.

(c) "Local agency," as used in this section, means a county, city, or city and county, whether general law or chartered, or district. "District" means an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

(d) This section applies only to fees collected by a local agency to fund the construction of public improvements or facilities. It does not apply to fees collected to cover the cost of code enforcement or inspection services, or to other fees collected to pay for the cost of enforcement of local ordinances or state law.

(e) "Final inspection" or "certificate of occupancy," as used in this section, have the same meaning as described in Sections 305 and 307 of the Uniform Building Code, International Conference of Building Officials, 1985 Edition.

(f) The Legislative Analyst shall submit a report to the Legislature by January 1, 1992, which evaluates the implementation of this

section. In preparing the report, the Legislative Analyst shall consult with individuals and associations who, in the opinion of the Legislative Analyst, are knowledgeable about the impact of this section. Those individuals and associations shall include, but not be limited to, representatives of builders, landowners, planners, civil engineers, land surveyors, counties, cities, school districts, special districts, and public utilities.

(g) This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1993, deletes or extends that date.

SEC. 7. Section 57384 of the Government Code is amended to read:

57384. (a) Except as provided in subdivision (b), whenever a city has been incorporated from territory formerly unincorporated, the board of supervisors shall continue to furnish, without additional charge, to the area incorporated all services furnished to the area prior to the incorporation. Those services shall be furnished for the remainder of the fiscal year during which the incorporation became effective or until the city council requests discontinuance of the services, whichever occurs first.

(b) This subdivision applies only to incorporations for which the petition or resolution of application for incorporation is filed with the commission on or after January 1, 1987. Prior to the commission adopting a resolution making determinations, the board of supervisors may request that the city reimburse the county for the net cost of services provided pursuant to subdivision (a). The commission shall impose this requirement as a term and condition of its resolution. The city shall be obligated to reimburse the county within five years of the effective date of the incorporation or for a period in excess of five years, if the board of supervisors agrees to a longer period. As used in this subdivision, "net cost of services" means the total direct and indirect expense to the county of providing services, as determined pursuant to paragraph (2) of subdivision (c) of Section 56842, adjusted by any subsequent change in the California Consumer Price Index, less any revenues which the county retains that were generated from the formerly unincorporated territory during the period of time the services are furnished pursuant to subdivision (a). This subdivision applies only to those services which are to be assumed by the city.

(c) At the request of the city council, the board of supervisors, by resolution, may determine to furnish, without charge, to the area incorporated all or a portion of services furnished to the area prior to the incorporation for an additional period of time after the end of the fiscal year during which the incorporation became effective. The additional period of time after the end of the fiscal year during which the incorporation became effective for which the board of supervisors determines to provide services, without charge, and the specific services to be provided shall be specifically stated in the resolution adopted by the board of supervisors.

CHAPTER 1346

An act to add Section 53080.4 to the Government Code, and to amend Sections 18035 and 18035.2 of the Health and Safety Code, relating to school facilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1987. Filed with Secretary of State September 29, 1987.]

The people of the State of California do enact as follows:

SECTION 1. Section 53080.4 is added to the Government Code, to read:

53080.4. (a) Notwithstanding any other provision of law, any fee, charge, dedication, or other form of requirement levied by the governing board of a school district under Section 53080 may apply, as to any manufactured home or mobilehome, only pursuant to compliance with all of the following conditions:

(1) The fee, charge, dedication, or other form of requirement is applied to the initial location, installation, or occupancy of the manufactured home or mobilehome within the school district.

(2) The manufactured home or mobilehome is to be located, installed, or occupied on a space or site on which no other manufactured home or mobilehome was previously located, installed, or occupied.

(3) The manufactured home or mobilehome is to be located, installed, or occupied on a space in a mobilehome park, or on any site or in any development outside a mobilehome park, on which the construction of the pad or foundation system commenced after September 1, 1986.

(b) Compliance on the part of any manufactured home or mobilehome with any fee, charge, dedication, or other form of requirement, as described in subdivision (a), or certification by the appropriate school district of that compliance, shall be required as a condition of the following, as applicable:

(1) The close of escrow, where the manufactured home or mobilehome is to be located, installed, or occupied on a mobilehome park space, or on any site or in any development outside a mobilehome park, as described in subdivision (a), and the sale or transfer of the manufactured home or mobilehome is subject to escrow as provided in Section 18035 or 18035.2 of the Health and Safety Code.

(2) The approval of the manufactured home or mobilehome for occupancy pursuant to Section 18551 or 18613 of the Health and Safety Code, in the event that paragraph (1) does not apply.

(c) No fee or other requirement levied under Section 53080 shall be applied to any of the following:

(1) Any manufactured home or mobilehome located, installed, or occupied on a space in a mobilehome park on or before September 1, 1986, or on any date thereafter if construction on that space, pursuant to a building permit, commenced on or before September 1, 1986.

(2) Any manufactured home or mobilehome located, installed, or occupied on any site outside of a mobilehome park on or before September 1, 1986, or on any date thereafter if construction on that site pursuant to a building permit commenced on or before September 1, 1986.

(3) The replacement of or addition to a manufactured home or mobilehome located, installed, or occupied on a space in a mobilehome park, subsequent to the original location, installation, or occupancy of any manufactured home or mobilehome on that space.

(4) The replacement of a manufactured home or mobilehome that was destroyed or damaged by fire or any form of natural disaster.

(5) A manufactured home or mobilehome accessory structure, as defined in Section 18008.5 or 18213 of the Health and Safety Code.

(6) The conversion of a rental mobilehome park to a subdivision, cooperative, or condominium for mobilehomes, or its conversion to

any other form of resident ownership of the park as described in Section 50561 of the Health and Safety Code.

(d) Where any fee or other requirement levied under Section 53080 is required as to any manufactured home or mobilehome, which manufactured home or mobilehome is subsequently replaced by a permanent residential structure constructed on the same lot, the amount of that fee or other requirement shall apply toward the payment of any fee or other requirement under Section 53080 applied to that permanent residential structure.

(e) Notwithstanding any other provision of law, any school district that, on or after January 1, 1987, collected any fee, charge, dedication, or other form of requirement from any manufactured home, mobilehome, mobilehome park, or other development, shall immediately repay the fee, charge, dedication, or other form of requirement to the person or persons who made the payment to the extent the fee, charge, dedication, or other form of requirement collected would not have been authorized under subdivision (a). This subdivision shall not apply, however, to the extent that, pursuant to Section 16 of Article I of the California Constitution, it would impair the obligation of any contract entered into by any school district, on or before the effective date of this section.

(f) For purposes of this section, "manufactured home," "mobilehome," and "mobilehome park" have the meanings set forth in Sections 18007, 18008, and 18214, respectively, of the Health and Safety Code.

SEC. 2. Section 18035 of the Health and Safety Code is amended to read:

18035. (a) For every sale by a dealer of a new or used manufactured home or mobilehome subject to registration under this part, the dealer shall execute in writing and obtain the buyer's signature on a purchase order, conditional sale contract, or other document evidencing the purchase contemporaneous with, or prior to, the receipt of any cash or cash equivalent from the buyer, shall establish an escrow account with an escrow agent, and shall cause to be deposited into that escrow account any cash or cash equivalent received at any time prior to the close of escrow as a deposit, downpayment, or whole or partial payment for the manufactured home or mobilehome or accessory thereto. The downpayment, or whole or partial payment, shall include an amount designated as a deposit, which may be less than, or equal to, the total amount placed in escrow, and shall be subject to the provisions of subdivision (f). The parties shall provide for escrow instructions that identify the fixed amounts of the deposit, downpayment, and balance due prior to closing consistent with the amounts set forth in the purchase documents and receipt for deposit if one is required by Section 18035.1. The deposits shall be made by the dealer within three working days of receipt, one of which shall be the day of receipt. For purposes of this section, "cash equivalent" means any property, other than cash. If an item of cash equivalent is, due to its size, incapable

shall not become operative, and Section 18035 of the Health and Safety Code, as amended by Section 2 of this bill, shall remain operative only until the operative date of AB 2109 and AB 2481, at which time Section 2.7 of this bill shall become operative.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to avoid the adverse impact of school facilities fees currently being imposed on manufactured homes and mobilehomes, an affordable source of housing for persons of low and moderate income, it is necessary that this act take effect immediately.

CHAPTER 29

An act to amend Section 17718.5 of the Education Code, and to amend Sections 53080 and 65995 of, to add Section 65995.1 to, and to repeal and add Section 65997 of, the Government Code, relating to school facilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor March 14, 1988. Filed with Secretary of State March 14, 1988.]

The people of the State of California do enact as follows:

SECTION 1. Section 17718.5 of the Education Code is amended to read:

17718.5. (a) The Legislature intends for the board to encourage school districts to utilize alternative methods to fund school facilities.

(b) The board shall approve applications pursuant to the requirements of this section that request the board to share a portion of the cost of projects constructed pursuant to the Mello-Roos Community Facilities Act of 1982, as set forth by Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code. The board shall disregard the fact that structures have been constructed in accordance with that act, and neither consider nor approve any application for cost sharing until the time that the applicant school district would have become eligible for approval of its application during the normal process established for considering and approving applications.

(c) The board shall approve applications for cost sharing based on both of the following factors:

(1) Estimates of average daily attendance at the time the application is considered.

(2) The amount of cost sharing requested.

(d) The costs shared by the board shall be an amount equal to the cost that would have been allowed for the project had it been originally approved pursuant to this chapter less 5 percent per year depreciation, exclusive of land, for each year that the project was constructed in advance of the application approval, but no more than the lesser of an amount equal to 75 percent of the allowable cost of

the project or the principal amount of any outstanding callable bonds and other debts incurred to finance the project under the Mello-Roos Community Facilities Act of 1982.

(e) If the board utilizes a point system to prioritize applications for funding, the computation of priorities for an application pursuant to this section shall be increased by 4 percent for each year from the date of construction of the project to the date of approval of the cost sharing application.

SEC. 2. Section 53080 of the Government Code, as amended by Chapter 888 of the Statutes of 1986, is amended to read:

53080. (a) The governing board of any school district is authorized to levy a fee, charge, dedication, or other form of requirement against any development project, as defined in Section 65928, within the boundaries of the district, for the purpose of funding the construction or reconstruction of school facilities, subject to any limitations set forth in Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7. This fee, charge, dedication, or other form of requirement may be applied only to new commercial and industrial construction, to new residential construction, and, to the extent of the resulting increase in habitable space, as defined in Section 65995, to other residential construction as to any development project having a value in excess of twenty thousand dollars ($20,000).

(b) No city or county, whether general law or chartered, may issue a building permit for any development absent certification by the appropriate school district of compliance by that development project with any fee, charge, dedication, or other form of requirement levied by the governing board of that school district pursuant to subdivision (a).

(c) In the case of the sale of a manufactured home or mobilehome, the payment of fees to either the school district or other entity shall occur at the time of occupancy pursuant to the sale or lease of the manufactured home or mobilehome pursuant to Section 18080.5 of the Health and Safety Code.

SEC. 3. Section 65995 of the Government Code is amended to read:

65995. (a) Except for a dedication or fee, or both, required under Section 53080, or pursuant to Chapter 4.7 (commencing with Section 65970), no fee, charge, dedication, or other form of requirement shall be levied by the legislative body of a local agency against a development project, as defined by Section 65928, for the construction or reconstruction of school facilities.

(b) In no event shall the amount of any fee, charge, dedication, or other form of requirement, as described in subdivision (a), including the amount of fees to be paid or the value of land to be dedicated, or both, under Chapter 4.7 (commencing with Section 65970), exceed the following:

(1) One dollar and fifty cents ($1.50) per square foot of habitable space, in the case of any residential development. "Habitable space,"

for this purpose, means the space determined by the building department of the city or county issuing the building permit, in accordance with the building standards of that city or county, to be within the perimeter of a residential structure, not including any carport, walkway, garage, overhang, patio, detached accessory structure, or similar area.

(2) Twenty-five cents ($0.25) per square foot of covered or enclosed space, in the case of any commercial or industrial development. No fee, charge, dedication, or other form of the requirement may be levied by any school district governing board upon any commercial or industrial development unless and until the governing board has first made the finding that the location and amount of land to be dedicated or the amount of fees to be paid, or both, shall bear a reasonable relationship and be limited to the needs of the community for elementary or high school facilities and shall be reasonably related and limited to the need for schools caused by the development.

(3) The amount of the limits set forth in paragraphs (1) and (2) shall be annually increased according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the State Allocation Board at its January meeting.

(c) Subdivision (a) does not apply during the term of any contract entered into between a subdivider or builder and a school district, city, county, or city and county, whether general law or chartered, on or before the effective date of this chapter that requires the payment of a fee, charge, or dedication for the construction of school facilities as a condition to the approval of residential development. In addition, any development project for which a final map was approved and construction had commenced on or before September 1, 1986, is subject to only the fee, charge, dedication, or other form of requirement prescribed in any local ordinance in existence on that date and applicable to the project.

(d) The Legislature finds and declares that the subject of the financing of school facilities with development fees is a matter of statewide concern. For this reason the Legislature hereby occupies the subject matter of mandatory development fees and other development requirements for school facilities finance to the exclusion of all local measures on the subject.

(e) Nothing in this section shall be interpreted to limit or prohibit the use of Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 to finance the construction or reconstruction of school facilities.

SEC. 4. Section 65995.1 is added to the Government Code, to read:

65995.1. (a) Notwithstanding any other provision of law, as to any development project used exclusively for the housing of senior citizens, as described in Section 51.3 of the Civil Code, any fee, charge, dedication, or other form of requirement that is levied under Section 53080 may be applied only to new construction, and is subject

to the limits and conditions applicable under subdivision (b) of Section 65995 in the case of commercial or industrial development.

"(b) Any development project against which school facilities fees or other requirements have been levied in accordance with the limit set forth in subdivision (a) may be converted to any use other than the housing of senior citizens only with the approval of the city or county that issued the building permit for the project. That approval shall not be granted absent certification by the appropriate school district that payment has been made on the part of the development project at the rate of the school facilities fee, charge, dedication, or other form of requirement applied by the district under Section 53080 to residential development as of the date of conversion, less the amount of any school facilities fees or other requirements paid on the part of the project in accordance with the limits set forth in subdivision (a).

SEC. 5. Section 65997 of the Government Code is repealed.

SEC. 6. Section 65997 is added to the Government Code, to read:

65997. (a) This chapter shall remain in effect only until such date as any state general obligation bond measure submitted to the voters of this state for their ratification, which measure includes within its purposes the funding of school facilities construction, fails to receive that ratification, and as of that date is repealed.

(b) This section shall become operative December 31, 1990.

SEC. 7. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make certain changes in existing law that will be affected by the decision of the voters on a state general obligation bond measure to be voted on at the election of June 7, 1988, it is necessary that this act take effect immediately.

CHAPTER 160

An act to amend Sections 6736.1, 7085.5, 10177, 17577.2, 19022, and 22444 of, to amend and renumber Sections 6032, 19549.9, and 24045.10 of, to amend and renumber the heading of Chapter 8 (commencing with Section 18600) of Division 8 of, and to repeal Section 22454 of, the Business and Professions Code, to amend Sections 1799.99 and 3294 of, and to amend the headings of Division First (commencing with Section 25), Division Second (commencing with Section 654), Division Third (commencing with Section 1427), and Division Fourth (commencing with Section 3274) of, the Civil Code, to amend Sections 1013a, 2017, and 2025 of the Code of Civil Procedure, to amend Section 42923 of, to amend and renumber Sections 51770, 54965, and 67175 of, to amend and renumber the headings of Article 7.3 (commencing with Section 51775) of Chapter 5 of Part 28 of, Article 2.5 (commencing with Section 52130) of Chapter 7 of Part 28 of, and Article 5 (commencing with Section 92650) of Chapter 6 of Part 57 of, to add Article 4 (commencing with Section 39180) to Chapter 2 of Part 23 of, to repeal Article 4 (commencing with Section 39170) of Chapter 2 of Part 23 of, to repeal the heading of Article 2 (commencing with Section 56430) of Chapter 4.4 of Part 30 of, and to repeal Chapter 2 (commencing with Section 99100) of Part 65 of, the Education Code, to amend Sections 3520, 3795, 5025, 5215, 5330, 10228.1, and 14821 of the Elections Code, to amend Section 18357 of the Financial Code, to amend Section 3950 of, to amend and renumber the heading of Article 3 (commencing with Section 7360) of Chapter 2 of Part 2 of Division 6 of, and to add Section 3950 to, the Fish and Game Code, to amend Sections 221, 33519, 77059, and 77194 of, to amend the heading of Chapter 1 (commencing with Section 24501) of Part 1 of Division 12 of, to add Article 40 (commencing with Section 38891) to Chapter 5 of Part 3 of Division 15 of, and to repeal Article 40 (commencing with Section 39991) of Chapter 5 of Part 3 of Division 15 of, the Food and Agricultural Code, to amend Sections 811.6, 3540, 3541.3, 3544.1, 3544.7, 3548.2, 4216, 6103.2, 12805, 15364.74, 16366.9, 17004.6, 20017.98, 26256, 26261, 31726, 65996, 73360, 74131, and 77002 of, to amend and renumber Sections 53080, 54994.2, 61765.12, and 82048.5 of, to amend and renumber the heading of Title 7.8 (commencing with Section 68055) of, to repeal Section 15819.20 of, to repeal Chapter 12 (commencing with Section 76000) of Title 8 of, and to repeal the heading of Chapter 2 (commencing with Section 68055) of Title 7.8 of, the Government Code, to amend Section 654.5 of the Harbors and Navigation Code, to amend Sections 1268.5, 1336.2, 1343, 1437, 1502, 1575.3, 1575.4, 1599.84, 1728.2, 1728.3, 25158, 25534, 26594.3, 44031, and 50748.1 of, to amend and renumber Sections 199.27, 1170, 1171, 1172, 1173, 1367.4, 1596.889, 1596.891, 1597.11, 11811.5, 25122.55, and 40715 of, to amend and renumber the headings of Chapter 3.3 (commencing with Section 1568.10), Chapter 3.3 (commencing with Section 1569), and Chapter 3.2 (commencing with Section 1570) of Division 2 of, and the heading

chapter in another county shall receive a disability retirement allowance which shall be the greater of the following:

(a) The sum to which he or she would be entitled as service retirement.

(b) A sum which shall consist of any of the following:

(1) An annuity which is the actuarial equivalent of his or her accumulated contributions at the time of his or her retirement.

(2) If, in the opinion of the board, his or her disability is not due to intemperate use of alcoholic liquor or drugs, willful misconduct, or violation of law on his or her part, a disability retirement pension purchased by contributions of the county or district.

(3) If, in the opinion of the board, his or her disability is not due to conviction of a felony or criminal activity which caused or resulted in the member's disability, a disability retirement pension purchased by contributions of the county or district. This paragraph shall only apply to a person who becomes a member of the system on or after January 1, 1988.

SEC. 67. Section 53080 of the Government Code, as added by Chapter 606 of the Statutes of 1986, is amended and renumbered to read:

53080.5. (a) No city or county may require an applicant for a building or encroachment permit to file a certificate of insurance evidencing coverage for bodily injury or property damage liability as a condition to the issuance of either, or both, of those permits, unless the city or county imposes that requirement by ordinance.

(b) This section does not apply to contracts for public works of improvement entered into by a city or county.

SEC. 68. The second Section 54994.2 of the Government Code, as added by Chapter 696 of the Statutes of 1987, is amended and renumbered to read:

54994.3. As used in this chapter:

(a) "Fees" do not include rates or charges for water, sewer, or electrical service.

(b) "Local agency" has the same meaning as provided in Section 54994.

SEC. 69. Section 61765.12 of the Government Code, as amended and renumbered by Chapter 56 of the Statutes of 1987, is amended and renumbered to read:

61765.20. Notwithstanding Section 61765, in the Descanso Community Water District, the water standby or availability charge shall not exceed forty dollars ($40) per year for each acre of land on which the charge is levied or forty dollars ($40) per year for a parcel less than one acre.

This section, applicable only to the Descanso Community Water District, is necessary because of the unique and special water management and financing problems in the area included within the district.

SEC. 70. Section 65996 of the Government Code is amended to read:

65996. The following provisions shall be the exclusive methods of mitigating environmental effects related to the adequacy of school facilities when considering the approval or the establishment of conditions for the approval of a development project, as defined by Section 65928 of the Government Code pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code:

(a) Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code.

(b) Chapter 25 (commencing with Section 17785) of Part 10 of the Education Code.

(c) Chapter 28 (commencing with Section 17870) of Part 10 of the Education Code.

(d) Article 2.5 (commencing with Section 39327) of Chapter 3 of Part 23 of the Education Code.

(e) Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 of the Government Code.

(f) Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 of the Government Code.

No public agency shall, pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code or Division 2 (commencing with Section 66410) of this code, deny approval of a project on the basis of the adequacy of school facilities.

SEC. 71. The heading of Title 7.8 (commencing with Section 68055) of the Government Code is amended and renumbered to read:

TITLE 7.9. RECYCLING, RESOURCE RECOVERY, AND LITTER PREVENTION

SEC. 72. The heading of Chapter 2 (commencing with Section 68055) of Title 7.8 of the Government Code is repealed.

SEC. 73. Section 73360 of the Government Code is amended to read:

73360. In a municipal court district having three judges, the following positions are authorized:

(a) One clerk-administrator of the court (Schedule B).

(b) One chief deputy clerk.

(c) Three deputy clerk-division supervisors.

(d) Four deputy clerk-courtroom clerks.

(e) Fifteen deputy clerks III.

(f) Eight deputy clerks-criminal process.

(g) Six deputy clerks-data entry operator II or I, not to exceed a combined total of six positions at any one time.

(h) Twenty-two deputy clerks II or deputy clerks I, not to exceed a combined total of 22 positions at any one time.

(i) One executive secretary.

(j) Four supervising deputy clerks.

(k) One deputy clerk-senior data entry operator.

in that article, chapter, part, title, or division.

CHAPTER 418

An act to amend Sections 66000, 66001, and 66003 of, to amend and renumber Sections 50076.5, 53077, 53077.5, 65913.5, 65958, and 65959 of, and to add Section 66004 to, the Government Code, relating to local agencies.

[Approved by Governor August 12, 1988. Filed with Secretary of State August 15, 1988.]

The people of the State of California do enact as follows:

SECTION 1. Section 50076.5 of the Government Code is amended and renumbered to read:

66017. (a) In any judicial action or proceeding to validate, attack, review, set aside, void, or annul any ordinance or resolution providing for the imposition of a development fee by any city, county, or district in which there is at issue whether the development fee is a special tax within the meaning of Section 50076, the city, county, or district has the burden of producing evidence to establish that the development fee does not exceed the cost of the service, facility, or regulatory activity for which it is imposed.

(b) No party may initiate any action or proceeding pursuant to

subdivision (a) unless both of the following requirements are met:

(1) The development fee was directly imposed on the party as a condition of project approval.

(2) At least 30 days prior to initiating the action or proceeding, the party requests the city, county, or district to provide a copy of the documents which establish that the development fee does not exceed the cost of the service, facility, or regulatory activity for which it is imposed. In accordance with Section 6257, the city, county, or district may charge a fee for copying the documents requested pursuant to this paragraph.

(c) For purposes of this section, costs shall be determined in accordance with fundamental fairness and consistency of method as to the allocation of costs, expenses, revenues, and other items included in the calculation.

SEC. 2. Section 53077 of the Government Code is amended and renumbered to read:

66006. (a) If a local agency requires the payment of a fee, the local agency receiving the fee shall deposit it with the other fees for the improvement in a separate capital facilities account or fund in a manner to avoid any commingling of the fees with other revenues and funds of the local agency, except for temporary investments, and expend those fees solely for the purpose for which the fee was collected. Any interest income earned by moneys in the capital facilities account or fund shall also be deposited in that account or fund and shall be expended only for the purpose for which the fee was originally collected.

(b) Any person may request an audit of any local agency fee or charge that is subject to Section 54997, including fees or charges of school districts, in accordance with that section.

(c) The Legislature finds and declares that untimely or improper allocation of development fees hinders economic growth and is, therefore, a matter of statewide interest and concern. It is, therefore, the intent of the Legislature that subdivision (a) shall supersede all conflicting local laws and shall apply in charter cities.

SEC. 3. Section 53077.5 of the Government Code is amended and renumbered to read:

66007. (a) Except as otherwise provided in subdivision (b), any local agency which imposes any fees or charges on a residential development for the construction of public improvements or facilities shall not require the payment of those fees or charges, notwithstanding any other provision of law, until the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs first. However, utility service fees may be collected at the time an application for utility service is received. If the residential development contains more than one dwelling, the local agency may determine whether the fees or charges shall be paid on a pro rata basis for each dwelling when it receives its final inspection or certificate of occupancy, whichever occurs first; on a pro rata basis when a certain percentage of the dwellings have

received their final inspection or certificate of occupancy, whichever occurs first; or on a lump-sum basis when the first dwelling in the development receives its final inspection or certificate of occupancy, whichever occurs first.

(b) Notwithstanding subdivision (a), the local agency may require the payment of those fees or charges at an earlier time if (1) the local agency determines that the fees or charges will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency has adopted a proposed construction schedule or plan prior to final inspection or issuance of the certificate of occupancy or (2) the fees or charges are to reimburse the local agency for expenditures previously made. "Appropriated," as used in this subdivision, means authorization by the governing body of the local agency for which the fee is collected to make expenditures and incur obligations for specific purposes.

(c) This section applies only to fees collected by a local agency to fund the construction of public improvements or facilities. It does not apply to fees collected to cover the cost of code enforcement or inspection services, or to other fees collected to pay for the cost of enforcement of local ordinances or state law.

(d) "Final inspection" or "certificate of occupancy," as used in this section, have the same meaning as described in Sections 305 and 307 of the Uniform Building Code, International Conference of Building Officials, 1985 Edition.

(e) The Legislative Analyst shall submit a report to the Legislature by January 1, 1992, which evaluates the implementation of this section. In preparing the report, the Legislative Analyst shall consult with individuals and associations who, in the opinion of the Legislative Analyst, are knowledgeable about the impact of this section. Those individuals and associations shall include, but not be limited to, representatives of builders, landowners, planners, civil engineers, land surveyors, counties, cities, school districts, special districts, and public utilities.

(f) This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1993, deletes or extends that date.

SEC. 3.5. Section 53077.5 of the Government Code is amended and renumbered to read:

66007. (a) Except as otherwise provided in subdivision (b), any local agency which imposes any fees or charges on a residential development for the construction of public improvements or facilities shall not require the payment of those fees or charges, notwithstanding any other provision of law, until the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs first. However, utility service fees may be collected at the time an application for utility service is received. If the residential development contains more than one dwelling, the local agency may determine whether the fees or charges shall be

paid on a pro rata basis for each dwelling when it receives its final inspection or certificate of occupancy, whichever occurs first; on a pro rata basis when a certain percentage of the dwellings have received their final inspection or certificate of occupancy, whichever occurs first; or on a lump-sum basis when the first dwelling in the development receives its final inspection or certificate of occupancy, whichever occurs first.

(b) Notwithstanding subdivision (a), the local agency may require the payment of those fees or charges at an earlier time if (1) the local agency determines that the fees or charges will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency has adopted a proposed construction schedule or plan prior to final inspection or issuance of the certificate of occupancy or (2) the fees or charges are to reimburse the local agency for expenditures previously made. "Appropriated," as used in this subdivision, means authorization by the governing body of the local agency for which the fee is collected to make expenditures and incur obligations for specific purposes.

(c) (1) If any fee or charge specified in subdivision (a) is not fully paid prior to issuance of a building permit for construction of any portion of the residential development encumbered thereby, the local agency issuing the building permit may require the applicant, as a condition of issuance of the building permit, to execute a contract to pay the fee or charge, or applicable portion thereof, within the time specified in subdivision (a). If the fee or charge is prorated pursuant to subdivision (a), the obligation under the contract shall be similarly prorated.

(2) The obligation to pay the fee or charge shall inure to the benefit of, and be enforceable by, the local agency that imposed the fee or charge, regardless of whether it is a party to the contract. The contract shall be recorded in the office of the county recorder of the county and, from the date of recordation, shall constitute a lien for the payment of the fee or charge, which shall be enforceable against successors in interest to the initial holder of the building permit. The contract shall be recorded in the grantor-grantee index in the name of the public agency issuing the building permit as grantee and in the name of the building permitholder as grantor.

(3) The contract may require the building permitholder to provide appropriate notification of the opening of any escrow for the sale of the property for which the building permit as issued and to provide in the escrow instructions that the fee or charge be paid to the local agency imposing the same from the sale proceeds in escrow prior to disbursing proceeds to the seller.

(d) This section applies only to fees collected by a local agency to fund the construction of public improvements or facilities. It does not apply to fees collected to cover the cost of code enforcement or inspection services, or to other fees collected to pay for the cost of enforcement of local ordinances or state law.

(e) "Final inspection" or "certificate of occupancy," as used in this section, have the same meaning as described in Sections 305 and 307 of the Uniform Building Code, International Conference of Building Officials, 1985 Edition.

SEC. 4. Section 65913.5 of the Government Code is amended and renumbered to read:

66008. (a) Any party may protest the imposition of any fees, dedications, reservations, or other exactions imposed on a residential housing development by a local agency by meeting both of the following requirements:

(1) Tendering any required payment in full or providing satisfactory evidence of arrangements to ensure performance of the conditions necessary to meet the requirements of the imposition.

(2) Serving written notice on the governing body of the entity which notice shall contain all of the following information:

(A) A statement that the required payment is tendered, or that any conditions which have been imposed are provided for or satisfied, under protest.

(B) A statement informing the governing body of the factual elements of the dispute and the legal theory forming the basis for the protest.

(b) Compliance by any party with subdivision (a) shall not be the basis for a local agency to withhold approval of any map, plan, permit, zone change, license, or other form of permission, or concurrence, whether discretionary, ministerial, or otherwise, incident to, or necessary for, the development of the residential housing development. This section does not limit the ability of a local agency to ensure compliance with all applicable provisions of law in determining whether or not to approve or disapprove a development project.

(c) Where a reviewing local agency makes proper and valid findings that the construction of certain public improvements or facilities, the need for which is directly attributable to the proposed residential housing development, is required for reasons related to the public health, safety, and welfare, and elects to impose a requirement for construction of those improvements or facilities as a condition of approval of the proposed development, then in the event a protest is lodged pursuant to this section, that approval shall be suspended pending withdrawal of the protest, the expiration of the limitation period of subdivision (d) without the filing of an action, or resolution of any action filed. This subdivision confers no new or independent authority for imposing fees, dedications, reservations, or other exactions not presently governed by other law.

(d) A protest filed pursuant to subdivision (a) shall be filed at the time of approval or conditional approval of the development or within 90 days after the date of the imposition of the fees, dedications, reservations, or other exactions to be imposed on a residential housing development. Any party who files a protest pursuant to subdivision (a) may file an action to attack, review, set

aside, void, or annul the imposition of the fees, dedications, reservations, or other exactions imposed on a residential housing development by a local agency within 180 days after the date of the imposition. Thereafter, notwithstanding any other law to the contrary, all persons are barred from any action or proceeding or any defense of invalidity or unreasonableness of the imposition. Any proceeding brought pursuant to this subdivision shall take precedence over all matters of the calendar of the court except criminal, probate, eminent domain, forcible entry, and unlawful detainer proceedings.

(e) If the court finds in favor of the plaintiff in any action or proceeding brought pursuant to subdivision (d), the court shall direct the local agency to refund the unlawful portion of the payment, with interest at the rate of 8 percent per annum, or return the unlawful portion of the exaction imposed.

(f) Approval or conditional approval of a development occurs, for the purposes of this section, when the tentative map, tentative parcel map, or parcel map is approved or conditionally approved or when the parcel map is recorded if a tentative map or tentative parcel map is not required.

(g) The imposition of fees, dedications, reservations, or other exactions occurs, for the purposes of this section, when they are imposed or levied on a specific development.

SEC. 5. Section 65958 of the Government Code is amended and renumbered to read:

66009. Any party on whom a fee, tax, assessment, dedication, reservation, or other exaction has been directly imposed, as a condition of approval of a development, as defined by Section 65927, or development project may protest, as provided in Sections 66008 and 66475.4, the establishment or imposition of the fee, tax, assessment, dedication, reservation, or other exaction. If a party files a protest under both Sections 66008 and 66475.4, Section 66475.4 shall prevail over Section 66008 to the extent of any conflict between those two sections.

SEC. 5.5. Section 65958 of the Government Code is amended and renumbered to read:

66009. (a) Any party on whom a fee, tax, assessment, dedication, reservation, or other exaction has been imposed, the payment or performance of which is required to obtain governmental approval of a development, as defined by Section 65927, or development project may protest, as provided in Sections 66008 and 66475.4, the establishment or imposition of the fee, tax, assessment, dedication, reservation, or other exaction. If a party files a protest under both Sections 66008 and 66475.4, Section 66475.4 shall prevail over Section 66008 to the extent of any conflict between those two sections.

(b) The protest procedures of subdivision (a) do not apply to the protest of any tax or assessment (1) levied pursuant to a principal act which contains protest procedures or (2) that is pledged to secure payment of the principal of, or interest on, bonds or other public

indebtedness.

SEC. 6. Section 65959 of the Government Code is amended and renumbered to read:

66005. (a) When a local agency imposes any fee or exaction as a condition of approval of a proposed development, as defined by Section 65927, or development project, those fees or exactions shall not exceed the estimated reasonable cost of providing the service or facility for which the fee or exaction is imposed.

(b) This section does not apply to fees or monetary exactions expressly authorized to be imposed under Sections 66475.1 and 66477.

(c) It is the intent of the Legislature in adding this section to codify existing constitutional and decisional law with respect to the imposition of development fees and monetary exactions on developments by local agencies. This section is declaratory of existing law and shall not be construed or interpreted as creating new law or as modifying or changing existing law.

SEC. 7. Section 66000 of the Government Code is amended to read:

66000. As used in this chapter:

(a) "Development project" means any project undertaken for the purpose of development. "Development project" includes a project involving the issuance of a permit for construction or reconstruction, but not a permit to operate.

(b) "Fee" means a monetary exaction, other than a tax or special assessment, which is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, but does not include fees specified in Section 66477, fees for processing applications for governmental regulatory actions or approvals, or fees collected under development agreements adopted pursuant to Article 2.5 (commencing with Section 65864) of Chapter 4.

(c) "Local agency" means a county, city, whether general law or chartered, city and county, school district, special district, or any other municipal public corporation or district.

(d) "Public facilities" includes public improvements, public services, and community amenities.

SEC. 8. Section 66001 of the Government Code is amended to read:

66001. (a) In any action establishing, increasing, or imposing a fee as a condition of approval of a development project by a local agency on or after January 1, 1989, the local agency shall do all of the following:

(1) Identify the purpose of the fee.

(2) Identify the use to which the fee is to be put. If the use is financing public facilities, the facilities shall be identified. That identification may, but need not, be made by reference to a capital improvement plan as specified in Section 65403 or 66002, may be made in applicable general or specific plan requirements, or may be

made in other public documents that identify the public facilities for which the fee is charged.

(3) Determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed.

(4) Determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.

(b) In any action imposing a fee as a condition of approval of a development project by a local agency on or after January 1, 1989, the local agency shall determine how there is a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed.

(c) Upon receipt of a fee subject to this section, the local agency shall deposit, invest, account for, and expend the fees pursuant to Section 66006.

(d) The local agency shall make findings once each fiscal year with respect to any portion of the fee remaining unexpended or uncommitted in its account five or more years after deposit of the fee to identify the purpose to which the fee is to be put and to demonstrate a reasonable relationship between the fee and the purpose for which it was charged. The findings required by this subdivision need only be made for moneys in the possession of the local agency and need not be made with respect to letters of credit, bonds, or other instruments taken to secure payment of the fee at a future date.

(e) Except as provided in subdivision (f), the local agency shall refund to the then current record owner or owners of lots or units of the development project or projects on a prorated basis the unexpended or uncommitted portion of the fee, and any interest accrued thereon, for which need cannot be demonstrated pursuant to subdivision (d). A local agency may refund the unexpended or uncommitted revenues by direct payment, by providing a temporary suspension of fees, or by any other means consistent with the intent of this section. The determination by the governing body of the local agency of the means by which those revenues are to be refunded is a legislative act.

(f) If the administrative costs of refunding unexpended or uncommitted revenues pursuant to subdivision (e) exceed the amount to be refunded, the local agency, after a public hearing, notice of which has been published pursuant to Section 6061 and posted in three prominent places within the area of the development project, may determine that the revenues shall be allocated for some other purpose for which fees are collected subject to this chapter and which serves the project on which the fee was originally imposed.

SEC. 9. Section 66003 of the Government Code is amended to read:

66003. Sections 66001 and 66002 do not apply to a fee imposed

pursuant to a reimbursement agreement by and between a city or county and a property owner or developer for that portion of the cost of a public facility paid by the property owner or developer which exceeds the need for the public facility attributable to and reasonably related to the development. This chapter shall become operative on January 1, 1989.

SEC. 10. Section 66004 is added to the Government Code, to read:

66004. The establishment or increase of any fee pursuant to this chapter shall be subject to the requirements of Chapter 13.1 (commencing with Section 54994.1) of Part 1 of Division 2 of Title 5.

SEC. 11. Section 3.5 of this bill incorporates amendments to Section 53077.5 of the Government Code proposed by both this bill and AB 3143. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1989, (2) each bill amends, or amends and renumbers, Section 53077.5 of the Government Code, and (3) this bill is enacted after AB 3143, in which case Section 3 of this bill shall not become operative.

SEC. 12. Section 5.5 of this bill incorporates amendments to Section 65958 of the Government Code proposed by both this bill and SB 1407. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1989, (2) each bill amends, or amends and renumbers, Section 65958 of the Government Code, and (3) this bill is enacted after SB 1407, in which case Section 5 of this bill shall not become operative.

CHAPTER 912

An act to amend, and amend and renumber, Section 53077.5 of the Government Code, relating to development fees.

[Approved by Governor September 15, 1988. Filed with Secretary of State September 15, 1988.]

The people of the State of California do enact as follows:

SECTION 1. Section 53077.5 of the Government Code is amended to read:

53077.5. (a) Except as otherwise provided in subdivision (b), any local agency which imposes any fees or charges on a residential development for the construction of public improvements or facilities shall not require the payment of those fees or charges, notwithstanding any other provision of law, until the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs first, provided, that utility service fees may be collected at the time an application for utility service is received. If the residential development contains more than one dwelling, the local agency may determine whether the fees or charges shall be paid on a pro rata basis for each dwelling when it receives its final inspection or certificate of occupancy, whichever occurs first; on a pro rata basis when a certain percentage of the dwellings have received their final inspection or certificate of occupancy, whichever occurs first; or on a lump-sum basis when the first dwelling in the development receives its final inspection or certificate of occupancy, whichever occurs first.

(b) Notwithstanding subdivision (a), the local agency may require the payment of those fees or charges at an earlier time if (1) the local agency determines that the fees or charges will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency has adopted a proposed construction schedule or plan prior to final inspection or issuance of the certificate of occupancy or (2) the fees or charges are to reimburse the local agency for expenditures previously made. "Appropriated," as used in this subdivision, means authorization by the governing body of the local agency for which the fee is collected to make expenditures and incur obligations for specific purposes.

(c) (1) If any fee or charge specified in subdivision (a) is not fully paid prior to issuance of a building permit for construction of any portion of the residential development encumbered thereby, the

local agency issuing the building permit may require the applicant, as a condition of issuance of the building permit, to execute a contract to pay the fee or charge, or applicable portion thereof, within the time specified in subdivision (a). If the fee or charge is prorated pursuant to subdivision (a), the obligation under the contract shall be similarly prorated.

(2) The obligation to pay the fee or charge shall inure to the benefit of, and be enforceable by, the local agency that imposed the fee or charge, regardless of whether it is a party to the contract. The contract shall be recorded in the office of the county recorder of the county and, from the date of recordation, shall constitute a lien for the payment of the fee or charge, which shall be enforceable against successors in interest to the initial holder of the building permit. The contract shall be recorded in the grantor-grantee index in the name of the public agency issuing the building permit as grantee and in the name of the building permit holder as grantor.

(3) The contract may require the building permitholder to provide appropriate notification of the opening of any escrow for the sale of the property for which the building permit was issued and to provide in the escrow instructions that the fee or charge be paid to the local agency imposing the same from the sale proceeds in escrow prior to disbursing proceeds to the seller.

(d) "Local agency," as used in this section, means a county, city, or city and county, whether general law or chartered, or district. "District" means an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

(e) This section applies only to fees collected by a local agency to fund the construction of public improvements or facilities. It does not apply to fees collected to cover the cost of code enforcement or inspection services, or to other fees collected to pay for the cost of enforcement of local ordinances or state law.

(f) "Final inspection" or "certificate of occupancy," as used in this section, have the same meaning as described in Sections 305 and 307 of the Uniform Building Code, International Conference of Building Officials, 1985 Edition.

(g) This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1993, deletes or extends that date.

SEC. 2. Section 53077.5 of the Government Code is amended and renumbered to read:

66007. (a) Except as otherwise provided in subdivision (b), any local agency which imposes any fees or charges on a residential development for the construction of public improvements or facilities shall not require the payment of those fees or charges, notwithstanding any other provision of law, until the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs first. However, utility service fees may be collected at the time an application for utility service is received. If

the residential development contains more than one dwelling, the local agency may determine whether the fees or charges shall be paid on a pro rata basis for each dwelling when it receives its final inspection or certificate of occupancy, whichever occurs first; on a pro rata basis when a certain percentage of the dwellings have received their final inspection or certificate of occupancy, whichever occurs first; or on a lump-sum basis when the first dwelling in the development receives its final inspection or certificate of occupancy, whichever occurs first.

(b) Notwithstanding subdivision (a), the local agency may require the payment of those fees or charges at an earlier time if (1) the local agency determines that the fees or charges will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency has adopted a proposed construction schedule or plan prior to final inspection or issuance of the certificate of occupancy or (2) the fees or charges are to reimburse the local agency for expenditures previously made. "Appropriated," as used in this subdivision, means authorization by the governing body of the local agency for which the fee is collected to make expenditures and incur obligations for specific purposes.

(c) (1) If any fee or charge specified in subdivision (a) is not fully paid prior to issuance of a building permit for construction of any portion of the residential development encumbered thereby, the local agency issuing the building permit may require the applicant, as a condition of issuance of the building permit, to execute a contract to pay the fee or charge, or applicable portion thereof, within the time specified in subdivision (a). If the fee or charge is prorated pursuant to subdivision (a), the obligation under the contract shall be similarly prorated.

(2) The obligation to pay the fee or charge shall inure to the benefit of, and be enforceable by, the local agency that imposed the fee or charge, regardless of whether it is a party to the contract. The contract shall be recorded in the office of the county recorder of the county and, from the date of recordation, shall constitute a lien for the payment of the fee or charge, which shall be enforceable against successors in interest to the initial holder of the building permit. The contract shall be recorded in the grantor-grantee index in the name of the public agency issuing the building permit as grantee and in the name of the building permit holder as grantor.

(3) The contract may require the building permitholder to provide appropriate notification of the opening of any escrow for the sale of the property for which the building permit was issued and to provide in the escrow instructions that the fee or charge be paid to the local agency imposing the same from the sale proceeds in escrow prior to disbursing proceeds to the seller.

(d) This section applies only to fees collected by a local agency to fund the construction of public improvements or facilities. It does not apply to fees collected to cover the cost of code enforcement or

inspection services, or to other fees collected to pay for the cost of enforcement of local ordinances or state law.

(e) "Final inspection" or "certificate of occupancy," as used in this section, have the same meaning as described in Sections 305 and 307 of the Uniform Building Code, International Conference of Building Officials, 1985 Edition.

(f) This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1993, deletes or extends that date.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution, because this act does not mandate a new program or higher level of service on local government. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 4 (commencing with Section 17550) of Part 7 of Division 2 of the Government Code.

SEC. 4. Section 2 of this bill incorporates amendments to Section 53077.5 of the Government Code proposed by both this bill and AB 3980. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1989, (2) each bill amends, or amends and renumbers, Section 53077.5 of the Government Code, and (3) this bill is enacted after AB 3980, in which case Section 1 of this bill shall not become operative.

CHAPTER 926

An act to amend Section 54995 of, and to amend and renumber Section 53077 of, the Government Code, and to amend Section 31053 of the Water Code, relating to local agencies.

[Approved by Governor September 15, 1988. Filed with Secretary of State September 16, 1988.]

The people of the State of California do enact as follows:

SECTION 1. Section 53077 of the Government Code is amended and renumbered to read:

66006. (a) If a local agency requires the payment of a fee specified in subdivision (b) in connection with the approval of a development project, the local agency receiving the fee shall deposit it with the other fees for the improvement in a separate capital facilities account or fund in a manner to avoid any commingling of

the fees with other revenues and funds of the local agency, except for temporary investments, and expend those fees solely for the purpose for which the fee was collected. Any interest income earned by moneys in the capital facilities account or fund shall also be deposited in that account or fund and shall be expended only for the purpose for which the fee was originally collected.

(b) For purposes of this section, "fee" means any fee imposed to provide for an improvement to be constructed to serve a development project, or which is a fee within the meaning of subdivision (b) of Section 66000, and that is imposed by the local agency as a condition of approving the development project.

(c) Any person may request an audit of any local agency fee or charge that is subject to Section 54997, including fees or charges of school districts, in accordance with that section.

(d) The Legislature finds and declares that untimely or improper allocation of development fees hinders economic growth and is, therefore, a matter of statewide interest and concern. It is, therefore, the intent of the Legislature that subdivision (a) shall supersede all conflicting local laws and shall apply in charter cities.

SEC. 2. Section 54995 of the Government Code is amended to read:

54995. Any judicial action or proceeding to attack, review, set aside, void, or annul an ordinance, resolution, or motion levying a new fee or service charge, or modifying or amending an existing fee or service charge, duly enacted by a local agency, as defined in Section 54994, shall be commenced within 120 days of the effective date of the ordinance, resolution, or motion.

If an ordinance, resolution, or motion provides for an automatic adjustment in a fee or service charge, and the automatic adjustment results in an increase in the amount of a fee or service charge, any action or proceeding to attack, review, set aside, void, or annul the increase shall be commenced within 120 days of the effective date of the increase.

SEC. 3. Section 31053 of the Water Code is amended to read:

31053. No publicly owned utility shall commence to provide any service for, on, or to any land within a county water district which is subject to the lien of a general obligation bonded indebtedness or which was the subject of a lease-purchase, revenue, or other type of debt incurred for capital improvements by or on behalf of the district incurred by the district for the purpose of providing a service similar to that which the utility proposes to provide.

However, a publicly owned utility may commence to provide service, otherwise prohibited, upon either of the following conditions:

(a) If the board of directors of the county water district, by resolution permits the service.

(b) In any portion of such a county water district proposed to be served by the publicly owned utility in which the total number of registered voters residing therein exceeds 200, if at least two-thirds

of the voters voted at a special county water district election to permit the service. The election shall be called and held as an initiative measure pursuant to Section 30830.

SEC. 4. It is the intent of the Legislature that the amendment and renumbering of Section 53077 of the Government Code purposed by Section 1 of this bill shall prevail over the amendment and renumbering of Section 53077 by Section 2 of Assembly Bill No. 3980 of the 1987–88 Regular Session of the Legislature.

CHAPTER 170

An act to amend Sections 54999.1, 66003, and 66006 of the Government Code, relating to developer fees.

[Approved by Governor July 19, 1989. Filed with Secretary of State July 20, 1989.]

The people of the State of California do enact as follows:

SECTION 1. Section 54999.1 of the Government Code is amended to read:

54999.1. For purposes of this chapter:

(a) "Actual construction costs" includes the cost of all activities necessary or incidental to the construction of a public utility facility, such as financing, planning, designing, acquisition of property or interests in property, construction, reconstruction, and rehabilitation.

(b) "Capital facilities fee" or "capacity charge" means any nondiscriminatory charge to pay the capital cost of a public utility facility.

(c) "Public agency" means the United States or any of its agencies, the state or any of its agencies, the Regents of the University of California, a county, a city, a district, a public authority, or any other political subdivision or public corporation of this state.

(d) "Public utility facility" means a facility for the provision of water, light, heat, communications, power, or garbage service, for flood control, drainage or sanitary purposes, or for sewage collection, treatment, or disposal.

(e) "Public utility service" means service provided from a public utilities facility.

(f) "Nondiscriminatory" means that the capital facilities fee does not exceed an amount determined on the basis of the same objective criteria and methodology applicable to comparable nonpublic users, and is not in excess of the proportionate share of the cost of the public utility facilities of benefit to the person or property being charged, based upon the proportionate share of use of those facilities.

(g) "State agency" or "state" means any state office, department, division, bureau, board, or commission.

(h) A capital facilities fee is imposed on the date on which the statement of charges for a public utility service is mailed or otherwise transmitted to the public agency that is receiving or will receive the

public utility's service.

SEC. 2. Section 66003 of the Government Code is amended to read:

66003. Sections 66001 and 66002 do not apply to a fee imposed pursuant to a reimbursement agreement by and between a local agency and a property owner or developer for that portion of the cost of a public facility paid by the property owner or developer which exceeds the need for the public facility attributable to and reasonably related to the development. This chapter shall become operative on January 1, 1989.

SEC. 3. Section 66006 of the Government Code is amended to read:

66006. (a) If a local agency requires the payment of a fee specified in subdivision (c) in connection with the approval of a development project, the local agency receiving the fee shall deposit it with the other fees for the improvement in a separate capital facilities account or fund in a manner to avoid any commingling of the fees with other revenues and funds of the local agency, except for temporary investments, and expend those fees solely for the purpose for which the fee was collected. Any interest income earned by moneys in the capital facilities account or fund shall also be deposited in that account or fund and shall be expended only for the purpose for which the fee was originally collected.

(b) For each separate account or fund established pursuant to subdivision (a), the local agency 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 and the fee, interest, and other income and the amount of expenditure by public facility and the amount of refunds made pursuant to subdivision (e) of Section 66001 during the fiscal year. The local agency shall review this information at the next regularly scheduled public meeting not less than 15 days after the availability of the information required by this subdivision.

(c) For purposes of this section, "fee" means any fee imposed to provide for an improvement to be constructed to serve a development project, or which is a fee within the meaning of subdivision (b) of Section 66000, and that is imposed by the local agency as a condition of approving the development project.

(d) Any person may request an audit of any local agency fee or charge that is subject to Section 54997, including fees or charges of school districts, in accordance with that section.

(e) The Legislature finds and declares that untimely or improper allocation of development fees hinders economic growth and is, therefore, a matter of statewide interest and concern. It is, therefore, the intent of the Legislature that subdivision (a) shall supersede all conflicting local laws and shall apply in charter cities.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level

of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1209

An act to amend Section 11010 of the Business and Professions Code, to amend Sections 17702.1, 17705.5, 17714, 17718.5, 17719.5, 17732, 17742, 17742.7, 17746.7, 17749, 39140, and 39304.5 of, and to add Sections 16080.5 and 17740.2 to, the Education Code, to amend Sections 53080, 65995, 65995.1, 65996, and 66007 of, and to add Sections 15492, 53080.1, 53080.2, 53080.3, 53080.6, 65974.5, 65995.2, and 66413.7 to, the Government Code, and to amend Sections 18035 and 18035.2 of the Health and Safety Code, relating to school facilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 1, 1989. Filed with Secretary of State October 1, 1989.]

The people of the State of California do enact as follows:

SECTION 1. Section 11010 of the Business and Professions Code is amended to read:

11010. (a) Except as otherwise provided pursuant to subdivision (c) or elsewhere in this chapter, any person who intends to offer subdivided lands within this state for sale or lease shall file with the Department of Real Estate an application for a public report consisting of a notice of intention and a completed questionnaire on a form prepared by the department.

(b) The notice of intention shall contain the following information about the subdivided lands and the proposed offering:

(1) The name and address of the owner.

(2) The name and address of the subdivider.

(3) The legal description and area of lands.

(4) A true statement of the condition of the title to the land, particularly including all encumbrances thereon.

(5) A true statement of the terms and conditions on which it is intended to dispose of the land, together with copies of any contracts

school district pursuant to a lease or a permit.

"Relocatable structure" is any structure that is designed to be relocated.

SEC. 18. Section 15492 is added to the Government Code, to read:

15492. (a) The Department of General Services shall assign one full-time position within the Office of Local Assistance to the performance of the following functions:

(1) Providing advisory assistance to school districts regarding the process of site acquisition for projects for which the State Allocation Board has approved funding under Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code.

(2) Formulating recommendations for administrative or statutory revision to the manner in which school sites are acquired under Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code, and submitting those recommendations to the State Allocation Board.

(b) The Department of General Services shall establish a screening unit or other mechanism within the Office of Local Assistance to ensure that the office responds in a timely manner to any inquiry regarding the status of an application for project funding under Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code.

(c) The requirements set forth in this section shall not increase the staffing level of the Office of Local Assistance, as that staffing level existed on the operative date of this section.

SEC. 19. Section 53080 of the Government Code is amended to read:

53080. (a) (1) The governing board of any school district is authorized to levy a fee, charge, dedication, or other requirement against any development project within the boundaries of the district, for the purpose of funding the construction or reconstruction of school facilities, subject to any limitations set forth in Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7. This fee, charge, dedication, or other requirement may be applied to construction only as follows:

(A) To new commercial and industrial construction. The chargeable covered and enclosed space of a commercial or industrial development project, as defined in Section 65995, shall not be deemed to include the square footage of any structure existing on the site of that development project as of the date the first building permit is issued for any portion of that development project.

(B) To new residential construction.

(C) To other residential construction, only if the resulting increase in assessable space, as defined in Section 65995, exceeds 500 square feet. The calculation of the "resulting increase in assessable space" for this purpose shall reflect any decrease in assessable space in the same residential structure that also results from that construction. Where authorized under this paragraph, the fee, charge, dedication, or other requirement is applicable to the total

resulting increase in assessable space.

(2) For purposes of this section, "development project" means any project undertaken for the purpose of development, and includes a project involving the issuance of a permit for construction or reconstruction, but not a permit to operate.

(3) For purposes of this section, "construction or reconstruction of school facilities" does not include any item of expenditure for any of the following:

(A) The regular maintenance or routine repair of school buildings and facilities.

(B) The inspection, sampling, analysis, encapsulation, or removal of asbestos-containing materials, except where incidental to school facilities construction or reconstruction for which the expenditure of fees or other consideration collected pursuant to this section is not prohibited.

(C) The purposes of deferred maintenance described in Section 39618 of the Education Code.

(4) The appropriate city or county may be authorized, pursuant to contractual agreement with the governing board, to collect and otherwise administer, on behalf of the school district, any fee, charge, dedication, or other requirement levied under this subdivision. In the event of any agreement authorizing a city or county to collect that fee, charge, dedication, or other requirement in any area within the school district, the certification requirement set forth in subdivision (b) or (c), as appropriate, is deemed to be complied with as to any residential development project within that area upon receipt by that city or county of payment of the fee, charge, dedication, or other requirement imposed on that project.

(5) Fees or other consideration collected pursuant to this section may be expended by a school district for the costs of performing any study or otherwise making the findings and determinations required under subdivisions (a), (b), and (d) of Section 66001. In addition, an amount not to exceed, in any fiscal year, 3 percent of the fees collected in that fiscal year pursuant to this section may be retained by the school district, city, or county, as appropriate, for reimbursement of the administrative costs incurred by that entity in collecting the fees. When any city or county is entitled, under an agreement as described in paragraph (4), to compensation in excess of that amount, the payment of that excess compensation shall be made from other revenue sources available to the school district.

(b) No city or county, whether general law or chartered, may issue a building permit for any development absent certification by the appropriate school district of compliance by that development project with any fee, charge, dedication, or other requirement levied by the governing board of that school district pursuant to subdivision (a), or of the district's determination that the fee, charge, dedication, or other requirement does not apply to the development project.

(c) If, pursuant to subdivision (c) of Section 53080.1, the governing board specifies that the fee, charge, dedication, or other

requirement levied under subdivision (a) is subject to the restriction set forth in subdivision (a) of Section 66007, the restriction set forth in subdivision (b) of this section does not apply. In that event, however, no city or county, whether general law or chartered, may conduct a final inspection or issue a certificate of occupancy, whichever is later, for any residential development project absent certification by the appropriate school district of compliance by that development project with any fee, charge, dedication, or other requirement levied by the governing board of that school district pursuant to subdivision (a).

(d) Neither subdivision (b) nor (c) shall apply to a city or county as to any fee, charge, dedication, or other requirement as described in subdivision (a), or as to any increase in that fee, charge, dedication, or other requirement, except upon the receipt by that city or county of notification of the adoption of, or increase in, the fee or other requirement in accordance with subdivision (c) of Section 53080.1.

SEC. 20. Section 53080.1 is added to the Government Code, to read:

53080.1. (a) Any resolution adopting or increasing a fee, charge, dedication, or other requirement pursuant to Section 53080, for application to residential, commercial, or industrial development, shall be enacted in accordance with Chapter 5 (commencing with Section 66000) of Division 1 of Title 7, with Section 54994.1, and with the procedures for mailed notice set forth in Section 54992. The adoption, increase, or imposition of any fee, charge, dedication, or other requirement pursuant to Section 53080 shall not be subject to Division 13 (commencing with Section 21000) of the Public Resources Code. The adoption of, or increase in, the fee, charge, dedication, or other requirement shall be effective no sooner than 60 days following the final action on that adoption or increase, except as specified in subdivision (b).

(b) Without following the procedure otherwise required for adopting or increasing a fee, charge, dedication, or other requirement, the governing board of a school district may adopt an urgency measure as an interim authorization for a fee, charge, dedication, or other requirement, or increase in a fee, charge, dedication, or other requirement, where necessary to respond to a current and immediate threat to the public health, welfare, or safety. The interim authorization shall require a four-fifths vote of the governing board for adoption, and shall contain findings describing the current and immediate threat to the public health, welfare, or safety. The interim authorization shall have no force or effect on and after a date 30 days after its adoption. After notice and hearing in accordance with subdivision (a), the governing board, upon a four-fifths vote of the board, may extend the interim authority for an additional 30 days. Not more than two extensions may be granted.

(c) Upon adopting or increasing a fee, charge, dedication, or other requirement pursuant to subdivision (a) or (b), the school district

shall transmit a copy of the resolution to each city and each county in which the district is situated, accompanied by all relevant supporting documentation and a map clearly indicating the boundaries of the area subject to the fee, charge, dedication, or other requirement. The school district governing board shall specify, pursuant to that notification, whether or not the collection of the fee or other charge is subject to the restriction set forth in subdivision (a) of Section 66007.

(d) Any party on whom a fee, charge, dedication, or other requirement has been directly imposed pursuant to Section 53080 may protest the establishment or imposition of that fee, charge, dedication, or other requirement in accordance with Section 66009, except that the procedures set forth in Section 66008 are deemed to apply, for this purpose, to commercial and industrial development, as well as to residential development.

(e) In the case of any commercial or industrial development, the following procedures shall also apply:

(1) The school district governing board shall, in the course of making the findings required under subdivisions (a) and (b) of Section 66001, do all of the following:

(A) Make the findings on either an individual project basis or on the basis of categories of commercial or industrial development. Those categories may include, but are not limited to, the following uses: office, retail, transportation, communications and utilities, light industrial, heavy industrial, research and development, and warehouse.

(B) Conduct a study to determine the impact of the increased number of employees anticipated to result from the commercial or industrial development upon the cost of providing school facilities within the district. For the purpose of making that determination, the study shall utilize employee generation estimates that are based on commercial and industrial factors within the district, as calculated on either an individual project or categorical basis, in accordance with subparagraph (A). The governing board shall take into account the results of that study in making the findings described in this subdivision.

(2) In addition to any other requirement imposed by law, in the case of any development project against which a fee, charge, dedication, or other requirement is to be imposed pursuant to Section 53080 on the basis of a category of commercial or industrial development, as described in paragraph (1), the governing board shall provide a process that permits the party against whom the fee, charge, dedication, or other requirement is to be imposed the opportunity for a hearing to appeal that imposition. The grounds for that appeal include, but are not limited to, the inaccuracy of including the project within the category pursuant to which the fee, charge, dedication, or other requirement is to be imposed, or that the employee generation or pupil generation factors utilized under the applicable category are inaccurate as applied to the project. The

party appealing the imposition of the fee, charge, dedication, or other requirement shall bear the burden of establishing that the fee, charge, dedication, or other requirement is improper.

SEC. 21. Section 53080.2 is added to the Government Code, to read:

53080.2. (a) In the event the fee authorized pursuant to Section 53080 is levied by two nonunified school districts having common territorial jurisdiction, in a total amount that exceeds the maximum fee authorized under Section 65995, the fee revenue for the area of common jurisdiction shall be distributed in the following manner:

(1) The governing boards of the affected school districts shall enter into an agreement specifying the allocation of fee revenue and the duration of the agreement. A copy of that agreement shall be transmitted by each district to the State Allocation Board.

(2) In the event the affected school districts are unable to reach an agreement pursuant to paragraph (1), the districts shall jointly submit the dispute to a three-member arbitration panel composed of one representative chosen by each of the districts and one representative chosen jointly by both of the districts. The decision of the arbitration panel shall be final and binding upon both districts for a period of three years.

(b) For purposes of the calculation of the district matching share under Section 17705.5 of the Education Code, the fee revenue allocated to the applicant district pursuant to subdivision (a) is deemed to be, as to that district, the maximum fee authorized under Section 53080, or Chapter 4.7 (commencing with Section 65970) of Division 2 of Title 7, or both.

SEC. 22. Section 53080.3 is added to the Government Code, to read:

53080.3. (a) Any school district that has imposed or, subsequent to the operative date of this section, imposes, any fee, charge, dedication, or other requirement under Section 53080 against any development project that subsequently meets the description set forth in subdivision (b), shall repay or reconvey, as appropriate, that fee, charge, dedication, or other requirement to the person or persons from whom that fee, charge, dedication, or other requirement was collected, less the amount of the administrative costs incurred in collecting and repaying the fee, charge, dedication, or other requirement.

(b) This section applies to any development project for which the building permit, including any extensions, expires on or after January 1, 1990, without the commencement of construction, as defined in subdivision (c) of Section 65995.

(c) Where the amount of a local matching share required of any school district pursuant to Section 17705.5 of the Education Code includes the amount of a fee or other consideration imposed against a development project that is entitled to reimbursement under this section, the local matching share shall be reduced by the amount of that fee or other consideration.

SEC. 23. Section 53080.6 is added to the Government Code, to read:

53080.6. (a) A fee, charge, dedication, or other requirement authorized under Section 53080, whether or not allowable under Chapter 6 (commencing with Section 66010) of Division 1 of Title 7, may not be applied to the reconstruction of any residential, commercial, or industrial structure that is damaged or destroyed as a result of a disaster, except to the extent the square footage of the reconstructed structure exceeds the square footage of the structure that was damaged or destroyed. That square footage comparison shall be made, in the case of a commercial or industrial structure, on the basis of chargeable covered and enclosed space, as defined in Section 65995, or, in the case of a residential structure, on the basis of assessable space, as defined in Section 65995.

(b) The following definitions apply for the purposes of this section:

(1) "Disaster" means a fire, earthquake, landslide, mudslide, flood, tidal wave, or other unforeseen event that produces material damage or loss.

(2) "Reconstruction" means the construction of property that replaces, and is equivalent in kind to, the damaged or destroyed property.

SEC. 24. Section 65974.5 is added to the Government Code, to read:

65974.5. Notwithstanding any other provision of this chapter, the governing board of any school district that receives funds that are collected pursuant to this chapter under a local ordinance, resolution, or other regulation in existence on September 1, 1986, may expend those funds for any of the construction or reconstruction purposes authorized under Section 53080, where the governing board has first held a public hearing on the subject of the proposed expenditure.

SEC. 25. Section 65995 of the Government Code is amended to read:

65995. (a) Except for a fee, charge, dedication, or other requirement authorized under Section 53080, or pursuant to Chapter 4.7 (commencing with Section 65970), no fee, charge, dedication, or other requirement shall be levied by the legislative body of a local agency against a development project, as defined in Section 53080, for the construction or reconstruction of school facilities.

(b) In no event shall the amount of any fees, charges, dedications, or other requirements authorized under Section 53080, or pursuant to Chapter 4.7 (commencing with Section 65970), or both, exceed the following:

(1) One dollar and fifty cents ($1.50) per square foot of assessable space, in the case of any residential development. "Assessable space," for this purpose, means all of the square footage within the perimeter of a residential structure, not including any carport, walkway, garage, overhang, patio, enclosed patio, detached accessory

structure, or similar area. The amount of the square footage within the perimeter of a residential structure shall be calculated by the building department of the city or county issuing the building permit, in accordance with the standard practice of that city or county in calculating structural perimeters.

(2) In the case of any commercial or industrial development, twenty-five cents ($0.25) per square foot of chargeable covered and enclosed space. "Chargeable covered and enclosed space," for this purpose, means the covered and enclosed space determined to be within the perimeter of a commercial or industrial structure, not including any storage areas incidental to the principal use of the development, garage, parking structure, unenclosed walkway, or utility or disposal area. The determination of the chargeable covered and enclosed space within the perimeter of a commercial or industrial structure shall be made by the building department of the city or county issuing the building permit, in accordance with the building standards of that city or county.

(3) The amount of the limits set forth in paragraphs (1) and (2) shall be increased in 1990, and every two years thereafter, according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the State Allocation Board at its January meeting, which increase shall be effective as of the date of that meeting. The State Allocation Board shall not raise the amount of the district matching share calculated under Section 17705.5 of the Education Code, as a result of the increase under this paragraph, until at least 90 days after the date of that increase.

(c) (1) Notwithstanding any other provision of law, during the term of any contract entered into between a subdivider or builder and a school district, city, county, or city and county, whether general law or chartered, on or before January 1, 1987, that requires the payment of a fee, charge, or dedication for the construction of school facilities as a condition to the approval of residential development, neither Section 53080 nor this chapter applies to that residential development.

(2) Any development project for which a final map was approved and construction had commenced on or before September 1, 1986, is subject to only the fee, charge, dedication, or other requirement prescribed in any local ordinance in existence on that date and applicable to the project.

(d) For purposes of Section 53080 and this chapter, "residential, commercial, or industrial development" does not include any facility used exclusively for religious purposes that is thereby exempt from property taxation under the laws of this state, any facility used exclusively as a private full-time day school as described in Section 48222 of the Education Code, or any facility that is owned and occupied by one or more agencies of federal, state, or local government. In addition, "commercial or industrial development" includes, but is not limited to, any hotel, inn, motel, tourist home, or other lodging for which the maximum term of occupancy for guests

does not exceed 30 days, but does not include any residential hotel, as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code.

(e) The Legislature finds and declares that the subject of the financing of school facilities with development fees is a matter of statewide concern. For this reason the Legislature hereby occupies the subject matter of mandatory development fees and other development requirements for school facilities finance to the exclusion of all local measures on the subject.

(f) Nothing in this section shall be interpreted to limit or prohibit the use of Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 to finance the construction or reconstruction of school facilities.

SEC. 26. Section 65995.1 of the Government Code is amended to read:

65995.1. (a) Notwithstanding any other provision of law, as to any development project for the construction of senior citizen housing, as described in Section 51.3 of the Civil Code, a residential care facility for the elderly as described in subdivision (j) of Section 1569.2 of the Health and Safety Code, or a multilevel facility for the elderly as described in paragraph (9) of subdivision (d) of Section 15432, any fee, charge, dedication, or other form of requirement that is levied under Section 53080 may be applied only to new construction, and is subject to the limits and conditions applicable under subdivision (b) of Section 65995 in the case of commercial or industrial development.

(b) Any development project against which school facilities fees or other requirements have been levied in accordance with the limit set forth in subdivision (a) may be converted to any use other than those uses described in the statutes cited in that subdivision only with the approval of the city or county that issued the building permit for the project. That approval shall not be granted absent certification by the appropriate school district that payment has been made on the part of the development project at the rate of the school facilities fee, charge, dedication, or other form of requirement applied by the district under Section 53080 to residential development as of the date of conversion, less the amount of any school facilities fees or other requirements paid on the part of the project in accordance with the limits set forth in subdivision (a).

SEC. 27. Section 65995.2 is added to the Government Code, to read:

65995.2. (a) Notwithstanding any other provision of law, the imposition of any fee, charge, dedication, or other requirement authorized under Section 53080, or Chapter 4.7 (commencing with Section 65970), or both, against any manufactured home or mobilehome that is located within a mobilehome park, or subdivision, cooperative, or condominium for mobilehomes, in which residence is limited to older persons, as defined pursuant to the federal Fair Housing Amendments Act of 1988, is subject to the

limits and conditions that are applicable under subdivision (b) of Section 65995 in the case of commercial and industrial development.

(b) Any mobilehome park, or subdivision, cooperative, or condominium for mobilehomes, in which school facilities fees, charges, dedications, or other requirements have been imposed against one or more manufactured homes or mobilehomes in accordance with the limit set forth in subdivision (a) may subsequently choose to permit the residence of persons other than older persons, in which event it shall so notify the appropriate school district and city or county. As a condition of the first sale, subsequent to that notification, of each manufactured home or mobilehome in the mobilehome park, or subdivision, cooperative, or condominium for mobilehomes, payment shall be made to the school district in the amount of the school facilities fee or other requirement applied by the district under Section 53080, or Chapter 4.7 (commencing with Section 65970), or both, to residential development as of the date of that sale, less the amount of any school facilities fees, charges, dedications, or other requirements imposed against that manufactured home or mobilehome in accordance with the limits described in subdivision (a). Any prospective purchaser of a manufactured home or mobilehome that is subject to the requirement set forth in this subdivision shall be given written notice of the existence of that requirement by the seller prior to entering into any contract for that purchase.

(c) Compliance on the part of any manufactured home or mobilehome with any additional fee or other requirement applied by the school district pursuant to subdivision (b), and certification by the appropriate school district of that compliance, shall be required as a condition of the following, as applicable:

(1) The close of escrow of the first sale of the manufactured home or mobilehome following the notice required by subdivision (b), where the manufactured home or mobilehome is to be located, installed, or occupied in a mobilehome park that has chosen to permit the residence of persons other than older persons pursuant to subdivision (b) and the sale or transfer of the manufactured home or mobilehome is subject to escrow as provided in Section 18035 or 18035.2 of the Health and Safety Code.

(2) The approval of the manufactured home or mobilehomes for initial occupancy pursuant to Section 18551 or 18613 of the Health and Safety Code following the notice required by subdivision (b), where the manufactured home or mobilehome is to be located, installed, or occupied in a mobilehome park that has chosen to permit the residence of persons other than older persons pursuant to subdivision (b), in the event that paragraph (1) does not apply.

SEC. 27.5. Section 65996 of the Government Code is amended to read:

65996. The following provisions shall be the exclusive methods of mitigating environmental effects related to the adequacy of school facilities when considering the approval or the establishment of

conditions for the approval of a development project, as defined in Section 53080, pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code:

(a) Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code.

(b) Chapter 25 (commencing with Section 17785) of Part 10 of the Education Code.

(c) Chapter 28 (commencing with Section 17870) of Part 10 of the Education Code.

(d) Article 2.5 (commencing with Section 39327) of Chapter 3 of Part 23 of the Education Code.

(e) Section 53080 of the Government Code.

(f) Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 of the Government Code.

(g) Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 of the Government Code.

No public agency shall, pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code or Division 2 (commencing with Section 66410) of this code, deny approval of a project on the basis of the adequacy of school facilities.

SEC. 28. Section 66007 of the Government Code is amended to read:

66007. (a) Except as otherwise provided in subdivision (b), any local agency that imposes any fees or charges on a residential development for the construction of public improvements or facilities shall not require the payment of those fees or charges, notwithstanding any other provision of law, until the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs first. However, utility service fees may be collected at the time an application for utility service is received. If the residential development contains more than one dwelling, the local agency may determine whether the fees or charges shall be paid on a pro rata basis for each dwelling when it receives its final inspection or certificate of occupancy, whichever occurs first; on a pro rata basis when a certain percentage of the dwellings have received their final inspection or certificate of occupancy, whichever occurs first; or on a lump-sum basis when the first dwelling in the development receives its final inspection or certificate of occupancy, whichever occurs first.

(b) Notwithstanding subdivision (a), the local agency may require the payment of those fees or charges at an earlier time if (1) the local agency determines that the fees or charges will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency has adopted a proposed construction schedule or plan prior to final inspection or issuance of the certificate of occupancy or (2) the fees or charges are to reimburse the local agency for expenditures previously made. "Appropriated," as used in this subdivision, means authorization by the governing body of the local agency for which

the fee is collected to make expenditures and incur obligations for specific purposes.

(c) (1) If any fee or charge specified in subdivision (a) is not fully paid prior to issuance of a building permit for construction of any portion of the residential development encumbered thereby, the local agency issuing the building permit may require the property owner, or lessee if the lessee's interest appears of record, as a condition of issuance of the building permit, to execute a contract to pay the fee or charge, or applicable portion thereof, within the time specified in subdivision (a). If the fee or charge is prorated pursuant to subdivision (a), the obligation under the contract shall be similarly prorated.

(2) The obligation to pay the fee or charge shall inure to the benefit of, and be enforceable by, the local agency that imposed the fee or charge, regardless of whether it is a party to the contract. The contract shall contain a legal description of the property affected, shall be recorded in the office of the county recorder of the county and, from the date of recordation, shall constitute a lien for the payment of the fee or charge, which shall be enforceable against successors in interest to the initial holder of the building permit. The contract shall be recorded in the grantor-grantee index in the name of the public agency issuing the building permit as grantee and in the name of the building permit holder as grantor.

(3) The contract may require the building permit holder to provide appropriate notification of the opening of any escrow for the sale of the property for which the building permit was issued and to provide in the escrow instructions that the fee or charge be paid to the local agency imposing the same from the sale proceeds in escrow prior to disbursing proceeds to the seller.

(d) This section applies only to fees collected by a local agency to fund the construction of public improvements or facilities. It does not apply to fees collected to cover the cost of code enforcement or inspection services, or to other fees collected to pay for the cost of enforcement of local ordinances or state law.

(e) "Final inspection" or "certificate of occupancy," as used in this section, has the same meaning as described in Sections 305 and 307 of the Uniform Building Code, International Conference of Building Officials, 1985 Edition.

(f) Methods of complying with the requirement in subdivision (b) that a "proposed construction schedule or plan" be adopted include, but are not limited to, (1) the adoption of the capital improvement plan described in Section 66002, or (2) the submittal of a five-year plan for construction and rehabilitation of school facilities pursuant to subdivision (c) of Section 17717.5 of the Education Code.

(g) This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1993, deletes or extends that date.

SEC. 29. Section 66413.7 is added to the Government Code, to read:

66413.7. Whenever there is consideration of an area within a development for a public school site, the advisory agency shall give the State Department of Education written notice of the proposed site. If the site is within the distance of an airport runway as described in Section 39005 of the Education Code, the department shall notify the State Department of Transportation as required by the section. The State Department of Education shall investigate the proposed site and, within 35 days after receipt of the notice, shall submit to the advisory agency and school district a written report and its recommendations concerning the site.

The governing board of the school district shall not acquire title to the property until the report of the State Department of Education has been received. If the report does not favor the acquisition of the property for a schoolsite, the governing board shall not acquire title to the property until 30 days after the department's report has been read at a public hearing duly called after 10 days' notice published once in a newspaper of general circulation within the school district or, if there is no newspaper of this type, in a newspaper of general circulation within the county in which the property is located.

SEC. 30. Section 18035 of the Health and Safety Code is amended to read:

18035. (a) For every sale by a dealer of a new or used manufactured home or mobilehome subject to registration under this part, the dealer shall execute in writing and obtain the buyer's signature on a purchase order, conditional sale contract, or other document evidencing the purchase contemporaneous with, or prior to, the receipt of any cash or cash equivalent from the buyer, shall establish an escrow account with an escrow agent, and shall cause to be deposited into that escrow account any cash or cash equivalent received at any time prior to the close of escrow as a deposit, downpayment, or whole or partial payment for the manufactured home or mobilehome or accessory thereto. The downpayment, or whole or partial payment, shall include an amount designated as a deposit, which may be less than, or equal to, the total amount placed in escrow, and shall be subject to the provisions of subdivision (f). The parties shall provide for escrow instructions that identify the fixed amounts of the deposit, downpayment, and balance due prior to closing consistent with the amounts set forth in the purchase documents and receipt for deposit if one is required by Section 18035.1. The deposits shall be made by the dealer within three working days of receipt, one of which shall be the day of receipt. For purposes of this section, "cash equivalent" means any property, other than cash. If an item of cash equivalent is, due to its size, incapable of physical delivery to the escrow holder, the property may be held by the dealer for the purchaser until close of escrow and, if the property has been registered with the department or the Department of Motor Vehicles, its registration certificate and, if available, its certificate of title shall be delivered to the escrowholder.

section.

SEC. 34. The Legislature finds and declares that paragraph (2) of subdivision (a) of Section 53080 of the Government Code and paragraph (1) of subdivision (b) of Section 65995 of the Government Code, as set forth in this act, are declaratory of existing law.

SEC. 35. The Legislature finds and declares that the system of school facilities funding addressed by this act is in vital need of additional sources of revenue. Accordingly, it is the intent of the Legislature in the 1989–90 Regular Session to approve a state general obligation bond measure in the amount of one billion dollars ($1,000,000,000) to fund the construction and reconstruction of public school facilities, and to submit that bond measure to the voters of this state for their approval at the primary election to be held June 5, 1990.

SEC. 36. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide costs of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 37. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make necessary clarifying and other revisions to the provisions of law authorizing the collection of developer fees by school districts, which provisions are currently in effect, it is necessary that this act take effect immediately.

CHAPTER 1217

An act to amend Sections 53341.5 and 66007 of, and to amend and renumber Section 53340.1 of, the Government Code, to amend Section 987.8 of the Penal Code, to amend Section 16472.1 of the Public Utilities Code, and to amend Section 3114.5 of the Streets and Highways Code, relating to liens.

[Approved by Governor October 1, 1989. Filed with Secretary of State October 1, 1989.]

The people of the State of California do enact as follows:

SECTION 1. Section 53340.1, as added to the Government Code by Chapter 1365 of the Statutes of 1988, is amended and renumbered to read:

53340.2. The legislative body levying the special tax shall designate an office, department, or bureau of the local agency which shall be responsible for annually preparing the current roll of special tax levy obligations by assessor's parcel number on nonexempt property within the district and which will be responsible for estimating future special tax levies. The designated office, department, or bureau shall establish procedures to promptly respond to inquiries concerning current and future estimated tax liability. Neither the designated office, department, or bureau, nor the legislative body, shall be liable if any estimate of future tax liability is inaccurate.

SEC. 2. Section 53341.5 of the Government Code is amended to read:

53341.5. (a) If a lot, parcel, or unit of a subdivision is subject to a special tax levied pursuant to this chapter for which a public report is not required pursuant to Article 2 (commencing with Section 11010) of Chapter 1 of Part 2 of Division 4 of the Business and Professions Code, the subdivider, his or her agent, or representative, shall not sell, or lease for a term exceeding five years, the lot, parcel, or unit, or cause it to be sold or leased for a term exceeding five years, until the prospective purchaser or lessee of the lot, parcel, or unit has been furnished with and has signed a written notice as provided in this section. The notice shall contain the heading "NOTICE OF SPECIAL TAX" in type no smaller than 8-point type, and shall state the following in clear and simple language:

(1) That the property being purchased is or will be subject to a special tax.

(2) The maximum annual amount of the special tax, and the number of years for which it will be levied.

(3) The types of facilities or services to be paid for with the proceeds of the special tax.

(b) "Subdivision," as used in subdivision (a), means improved or unimproved land that is divided or proposed to be divided for the

purpose of sale, lease, or financing, whether immediate or future, into two or more lots, parcels, or units and includes a condominium project, as defined by Section 1350, a community apartment project, a stock cooperative, and a limited-equity housing cooperative, as defined in Sections 11004, 11003.2, and 11003.4, respectively, of the Business and Professions Code.

(c) If any disclosure required to be made by this section is delivered after the execution of an agreement to purchase, the buyer shall have three days after delivery in person or five days after delivery by deposit in the mail, to terminate his or her agreement by delivery of written notice of that termination to the owner, subdivider, or agent. Any disclosure delivered after the execution of an agreement to purchase shall contain a statement describing the buyer's right, method and time to rescind as prescribed by this subdivision.

(d) The failure to furnish the notice to the buyer or lessee, and failure of the buyer or lessee to sign the notice of a special tax, shall not invalidate any grant, conveyance, lease, or encumbrance.

(e) Any person or entity who willfully violates the provisions of this section shall be liable to the purchaser of a lot or unit which is subject to the provisions of this section, for actual damages, and in addition thereto, shall be guilty of a public offense punishable by a fine in an amount not to exceed five hundred dollars ($500). In an action to enforce such liability or fine, the prevailing party shall be awarded reasonable attorney's fees.

SEC. 3. Section 66007 of the Government Code is amended to read:

66007. (a) Except as otherwise provided in subdivision (b), any local agency which imposes any fees or charges on a residential development for the construction of public improvements or facilities shall not require the payment of those fees or charges, notwithstanding any other provision of law, until the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs first. However, utility service fees may be collected at the time an application for utility service is received. If the residential development contains more than one dwelling, the local agency may determine whether the fees or charges shall be paid on a pro rata basis for each dwelling when it receives its final inspection or certificate of occupancy, whichever occurs first; on a pro rata basis when a certain percentage of the dwellings have received their final inspection or certificate of occupancy, whichever occurs first; or on a lump-sum basis when the first dwelling in the development receives its final inspection or certificate of occupancy, whichever occurs first.

(b) Notwithstanding subdivision (a), the local agency may require the payment of those fees or charges at an earlier time if (1) the local agency determines that the fees or charges will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency

has adopted a proposed construction schedule or plan prior to final inspection or issuance of the certificate of occupancy or (2) the fees or charges are to reimburse the local agency for expenditures previously made. "Appropriated," as used in this subdivision, means authorization by the governing body of the local agency for which the fee is collected to make expenditures and incur obligations for specific purposes.

(c) (1) If any fee or charge specified in subdivision (a) is not fully paid prior to issuance of a building permit for construction of any portion of the residential development encumbered thereby, the local agency issuing the building permit may require the property owner, or lessee if the lessee's interest appears of record, as a condition of issuance of the building permit, to execute a contract to pay the fee or charge, or applicable portion thereof, within the time specified in subdivision (a). If the fee or charge is prorated pursuant to subdivision (a), the obligation under the contract shall be similarly prorated.

(2) The obligation to pay the fee or charge shall inure to the benefit of, and be enforceable by, the local agency that imposed the fee or charge, regardless of whether it is a party to the contract. The contract shall contain a legal description of the property affected, shall be recorded in the office of the county recorder of the county and, from the date of recordation, shall constitute a lien for the payment of the fee or charge, which shall be enforceable against successors in interest to the property owner or lessee at the time of issuance of the building permit. The contract shall be recorded in the grantor-grantee index in the name of the public agency issuing the building permit as grantee and in the name of the property owner or lessee as grantor. The local agency shall record a release of the obligation, containing a legal description of the property, in the event the obligation is paid in full, or a partial release in the event the fee or charge is prorated pursuant to subdivision (a).

(3) The contract may require the property owner or lessee to provide appropriate notification of the opening of any escrow for the sale of the property for which the building permit was issued and to provide in the escrow instructions that the fee or charge be paid to the local agency imposing the same from the sale proceeds in escrow prior to disbursing proceeds to the seller.

(d) This section applies only to fees collected by a local agency to fund the construction of public improvements or facilities. It does not apply to fees collected to cover the cost of code enforcement or inspection services, or to other fees collected to pay for the cost of enforcement of local ordinances or state law.

(e) "Final inspection" or "certificate of occupancy," as used in this section, have the same meaning as described in Sections 305 and 307 of the Uniform Building Code, International Conference of Building Officials, 1985 Edition.

(f) Methods of complying with the requirement in subdivision (b) that a proposed construction schedule or plan be adopted,

include, but are not limited to, (1) the adoption of the capital improvement plan described in Section 66002, or (2) the submittal of a five-year plan for construction and rehabilitation of school facilities pursuant to subdivision (c) of Section 17717.5 of the Education Code.

(g) This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1993, deletes or extends that date.

SEC. 4. Section 987.8 of the Penal Code is amended to read:

987.8. (a) Upon a finding by the court that a defendant is entitled to counsel but is unable to employ counsel, the court may hold a hearing or, in its discretion, order the defendant to appear before a county officer designated by the court, to determine whether the defendant owns or has an interest in any real property or other assets subject to attachment and not otherwise exempt by law. The court may impose a lien on any real property owned by the defendant, or in which the defendant has an interest to the extent permitted by law. The lien shall contain a legal description of the property, shall be recorded with the county recorder in the county or counties in which the property is located, and shall have priority over subsequently recorded liens or encumbrances. The county shall have the right to enforce its lien for the payment of providing legal assistance to an indigent defendant in the same manner as other lienholders by way of attachment, except that a county shall not enforce its lien on a defendant's principal place of residence pursuant to a writ of execution. No lien shall be effective as against a bona fide purchaser without notice of the lien.

(b) In any case in which a defendant is provided legal assistance, either through the public defender or private counsel appointed by the court, upon conclusion of the criminal proceedings in the trial court, or upon the withdrawal of the public defender or appointed private counsel, the court may, after notice and a hearing, make a determination of the present ability of the defendant to pay all or a portion of the cost thereof. The court may, in its discretion, hold one such additional hearing within six months of the conclusion of the criminal proceedings. The court may, in its discretion, order the defendant to appear before a county officer designated by the court to make an inquiry into the ability of the defendant to pay all or a portion of the legal assistance provided.

(c) In any case in which the defendant hires counsel replacing a publicly provided attorney; in which the public defender or appointed counsel was required by the court to proceed with the case after a determination by the public defender that the defendant is not indigent; or, in which the defendant, at the conclusion of the case, appears to have sufficient assets to repay, without undue hardship, all or a portion of the cost of the legal assistance provided to him or her, by monthly installments or otherwise; the court shall make a determination of the defendant's ability to pay as provided in subdivision (b), and may, in its discretion, make other orders as

provided in that subdivision.

This subdivision shall be operative in a county only upon the adoption of a resolution by the board of supervisors to that effect.

(d) If the defendant, after having been ordered to appear before a county officer, has been given proper notice and fails to appear before a county officer within 20 working days, the county officer shall recommend to the court that the full cost of the legal assistance shall be ordered to be paid by the defendant. The notice to the defendant shall contain all of the following:

(1) A statement of the cost of the legal assistance provided to the defendant as determined by the court.

(2) The defendant's procedural rights under this section.

(3) The time limit within which the defendant's response is required.

(4) A warning that if the defendant fails to appear before the designated officer, the officer will recommend that the court order the defendant to pay the full cost of the legal assistance provided to him or her.

(e) At a hearing, the defendant shall be entitled to, but shall not be limited to, all of the following rights:

(1) The right to be heard in person.

(2) The right to present witnesses and other documentary evidence.

(3) The right to confront and cross-examine adverse witnesses.

(4) The right to have the evidence against him or her disclosed to him or her.

(5) The right to a written statement of the findings of the court.

If the court determines that the defendant has the present ability to pay all or a part of the cost, the court shall set the amount to be reimbursed and order the defendant to pay the sum to the county in the manner in which the court believes reasonable and compatible with the defendant's financial ability. Failure of a defendant who is not in custody to appear after due notice is a sufficient basis for an order directing the defendant to pay the full cost of the legal assistance determined by the court. The order to pay all or a part of the costs may be enforced in the manner provided for enforcement of money judgments generally but may not be enforced by contempt.

Any order entered under this subdivision is subject to relief under Section 473 of the Code of Civil Procedure.

(f) Prior to the furnishing of counsel or legal assistance by the court, the court shall give notice to the defendant that the court may, after a hearing, make a determination of the present ability of the defendant to pay all or a portion of the cost of counsel. The court shall also give notice that, if the court determines that the defendant has the present ability, the court shall order him or her to pay all or a part of the cost. The notice shall inform the defendant that the order shall have the same force and effect as a judgment in a civil action and shall be subject to enforcement against the property of the defendant

in the same manner as any other money judgment.

(g) As used in this section:

(1) "Legal assistance" means legal counsel and supportive services including, but not limited to, medical and psychiatric examinations, investigative services, expert testimony, or any other form of services provided to assist the defendant in the preparation and presentation of the defendant's case.

(2) "Ability to pay" means the overall capability of the defendant to reimburse the costs, or a portion of the costs, of the legal assistance provided to him or her, and shall include, but not be limited to, all of the following:

(A) The defendant's present financial position.

(B) The defendant's reasonably discernible future financial position. In no event shall the court consider a period of more than six months from the date of the hearing for purposes of determining the defendant's reasonably discernible future financial position. Unless the court finds unusual circumstances, a defendant sentenced to state prison shall be determined not to have a reasonably discernible future financial ability to reimburse the costs of his or her defense.

(C) The likelihood that the defendant shall be able to obtain employment within a six-month period from the date of the hearing.

(D) Any other factor or factors which may bear upon the defendant's financial capability to reimburse the county for the costs of the legal assistance provided to the defendant.

(h) At any time during the pendency of the judgment rendered according to the terms of this section, a defendant against whom a judgment has been rendered may petition the rendering court to modify or vacate its previous judgment on the grounds of a change in circumstances with regard to the defendant's ability to pay the judgment. The court shall advise the defendant of this right at the time it renders the judgment.

(i) This section shall apply to all proceedings, including contempt proceedings, in which the party is represented by a public defender or appointed counsel.

SEC. 5. Section 16472.1 of the Public Utilities Code is amended to read:

16472.1. (a) Notwithstanding Sections 16469 to 16472, inclusive, and as an alternative to the procedures specified in those sections, a district may provide by resolution or ordinance that delinquent water charges and interest and penalties thereon constitute a lien on the real property served to the extent that the property is owned by the person or entity receiving the service, when a certificate is recorded pursuant to this section, which shall continue in effect until the amount of charges, interest, and penalties are paid or the property is sold to satisfy the charges, interest, and penalties. No lien may be created under this section on any publicly owned property.

(b) A lien pursuant to this section attaches when the district files for record in the office of the county recorder a certificate specifying

the amount of charges, interest, and penalties due; the name of the owner of record of the property who received the water service; the legal description of the property served; and the fact that the district has complied with all provisions of this part in the determination of the charges, interest, and penalties due. From the time of recordation of the certificate, the charges, interest, and penalties constitute a lien on the property. Within 30 days of receipt of payment of all costs specified in subdivision (a), or within 30 days of a demand by an escrow agent in the event of a voluntary sale, the district shall record in the office of the county recorder a release of the lien created by this section.

(c) The county recorder shall charge the district the fees specified in Sections 27361 and 27361.4 of the Government Code for recording any certificate pursuant to subdivision (b), which certificate shall be indexed to the name of the property owner as grantor and the district as grantee.

(d) This section is in addition to any other remedies available to a district.

SEC. 6. Section 3114.5 of the Streets and Highways Code is amended to read:

3114.5. (a) This section applies only to community facilities districts.

(b) Within 15 days after determination pursuant to Section 53328 of the Government Code that the requisite number of voters are in favor of the levy of a special tax, the clerk of the legislative body shall execute and record a notice of special tax lien in the office of the county recorder of each county in which all or any part of the community facilities district is located, and the county recorder shall accept that notice. The county recorder shall index the notice of special tax liens to the names of the property owners within the community facilities district and shown in the notice, as grantors. The notice of special tax lien shall contain the information required by Section 27288.1 of the Government Code and shall be in substantially the following form:

NOTICE OF SPECIAL TAX LIEN

Pursuant to the requirements of Section 3114.5 of the Streets and Highways Code and Section 53328.3 of the Government Code, the undersigned clerk of the legislative body of _____, State of California, hereby gives notice that a lien to secure payment of a special tax which the (here insert name of legislative body) of (here insert city and name of county thereafter), State of California is authorized to levy is hereby imposed. The special tax secured by this lien is authorized to be levied for the purpose of: (as applicable) (1) paying principal and interest on bonds, the proceeds of which are being used to finance (briefly describe facilities financed); (2) providing (briefly described facilities financed without bonds); (3) providing (briefly described services being financed).

The special tax is authorized to be levied within Community Facilities District No. _____ which has now been officially formed and the lien of the special tax is a continuing lien which shall secure each annual levy of the special tax and which shall continue in force and effect until the special tax obligation is prepaid, permanently satisfied, and canceled in accordance with law or until the special tax ceases to be levied and a notice of cessation of special tax is recorded in accordance with Section 53330.5 of the Government Code.

The rate, method of apportionment, and manner of collection of the authorized special tax is as follows: (here insert verbatim the description of the rate, method of apportionment, and manner of collection from the resolution of formation of the community facilities district). Conditions under which the obligation to pay the special tax may be prepaid and permanently satisfied and the lien of the special tax canceled are as follows: (here insert such conditions as are set forth in the resolution of formation or, if no provision has been made for prepayment of the special tax obligation, so state).

Notice is further given that upon the recording of this notice in the office of the county recorder, the obligation to pay the special tax levy shall become a lien upon all nonexempt real property within Community Facilities District No. _____ in accordance with Section 3115.5 of the Streets and Highways Code.

The name(s) of the owner(s) of the real property included within this community facilities district as they appear on the latest secured assessment roll as of the date of recording of this notice are as follows: (insert names of owners shown on assessment roll).

Reference is made to the boundary map (or the amended boundary map) of the community facilities district recorded at Book _____ of Maps of Assessment and Community Facilities Districts at Page _____, in the office of the County Recorder for the County of _____, State of California which map is now the final boundary map of the community facilities district.

The assessor's tax parcel(s) numbers of all parcels or any portion thereof which are included within this community facilities district are as follows: (insert tax parcel number(s)).

For further information concerning the current and estimated future tax liability of owners or purchasers of real property subject to this special tax lien, interested persons should contact (here provide name, address, and telephone number of the appropriate office, department, or bureau of the public entity designated pursuant to Section 53340.1 of the Government Code).

(c) The county recorder shall endorse upon the notice the time and date of filing, and shall cross index the notice by reference to the page of the book of maps of assessment and community facilities districts in which the boundary map of the district was filed.

SEC. 7. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant

to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 633

An act to amend Section 17705.5 of the Education Code, and to amend Sections 53080.1 and 65995.1 of the Government Code, relating to school facilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 8, 1990. Filed with Secretary of State September 11, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 17705.5 of the Education Code is amended to read:

17705.5. (a) The total building cost portion of any state funding for any project approved under this chapter for the construction of one or more school facilities shall be reduced by the amount of the local matching share requirement computed under subdivision (b).

(b) Each school district to which funds are allocated pursuant to this chapter for the construction or reconstruction of one or more school facilities shall provide, as its share of the cost of the project, an amount equal to the product of the applicable maximum fee authorized under Section 53080 of the Government Code, or Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 of the Government Code, or both, times the number of square feet of new residential, commercial, and industrial construction, as appropriate, for which building permits are issued within the boundaries of the school district from the date on which the board approves the district's application for project funding under this chapter to the date upon which the notice of completion for the project is issued. Notwithstanding any other provision of this paragraph, as to any construction for which the payment of a fee, charge, or dedication is required under a contract as described in paragraph (1) of subdivision (c) of Section 65995 of the Government Code, the matching share required under this subdivision shall be deemed to be the maximum payment that may be required under that contract as a condition of the approval of that construction. The amount calculated in this subdivision is reduced by the sum of the following:

(1) Any amounts expended by the district during the described period of time for the acquisition of interim classroom facilities pursuant to Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 of the Government Code from the proceeds of the fee levied by the district during that period. This amount is limited to the acquisition of interim classroom facilities necessary to temporarily house that number of pupils calculated, under state pupil loading standards, by subtracting the average daily attendance of the district based on a three-year enrollment projection from the average daily attendance of the district based on a five-year

enrollment projection. Notwithstanding that limit, the board may authorize the acquisition of additional interim classroom facilities for the purposes of this paragraph to the extent it determines that acquisition to be necessary to alleviate severe classroom overcrowding. Enrollment projections for this purpose shall be made in accordance with this chapter.

(2) Any amounts expended by the district during the described period of time for the local matching share of any project funded under this chapter from the proceeds of the fee levied by the district during that period.

(3) An amount reflecting the extent to which the district is precluded from collecting those fees by reason of the levy and collection of developer fees by another school district having common territorial jurisdiction.

(4) An amount reflecting the reasonable administrative expenses incurred by the school district in calculating and collecting the fees or other requirements levied by the school district during that period. If the school district has entered into an agreement pursuant to subdivision (a) of Section 53080 of the Government Code whereby the fees or other requirements imposed are collected in whole or in part by a city or county, the amount of administrative expenses calculated under this paragraph shall include any amount paid by the school district to the city or county as reimbursement for that service. In no event shall the total amount of the administrative expenses calculated under this paragraph exceed 3 percent of the fees collected during that period.

(c) Where part or all of the local matching share is funded from the proceeds of a special tax or other charge, rather than from the imposition of a school facilities fee or other requirement, the applicant district shall not be required to pay that amount of the local matching share until those proceeds become available to the district.

(d) For purposes of establishing an estimate of the state project costs pursuant to subdivision (a), the board may estimate the local matching share by using the product of the annual average of the amount that would have resulted from the application of the maximum fee to the square footage of all new construction within the district over the three calendar years preceding the district's project application times the number of years over which the board estimates the fee will be collected by the district pursuant to the project to be funded.

(e) Only those project applications for which, prior to January 1, 1987, the board had made the apportionment for site acquisition and working drawings or the final apportionment for construction of the project shall be subject to the provisions of this chapter in effect prior to that date.

(f) The board may provide a loan to any applicant district in an amount equal to all or a part of the district's obligation under subdivision (b), subject to the requirement that the district pay each month to the board, as reimbursement, an amount equal to the

proceeds that would be received by the district from the imposition of the fee described under subdivision (b) until the total amount of the loan has been repaid, together with interest computed pursuant to Section 16065.

(g) The board may make the loan specified in subdivision (f) from any funds available from any source, including, but not limited to, those amounts made available pursuant to Section 16065.

(h) All loan and interest amounts paid to the state pursuant to this section shall be available for the use of the board in the funding of projects as otherwise provided under this chapter, including, but not limited to, additional loans.

(i) The board is authorized to accept from applicant school districts, as a method of compliance with all or part of the local matching share requirement calculated under this section, land that will be part of the project for which the matching share is to be paid, in which event title to the land shall be conveyed to the state. The board shall determine the value of the land to be used for this purpose, and shall adopt rules and regulations as necessary to otherwise implement this subdivision.

(j) This section shall remain in effect only until such date as any state general obligation bond measure submitted to the voters of this state for their ratification, which measure includes within its purposes the funding of school facilities construction, fails to receive that ratification, and as of that date is repealed.

SEC. 2. Section 53080.1 of the Government Code is amended to read:

53080.1. (a) Any resolution adopting or increasing a fee, charge, dedication, or other requirement pursuant to Section 53080, for application to residential, commercial, or industrial development, shall be enacted in accordance with Chapter 5 (commencing with Section 66000) of Division 1 of Title 7, with Section 54994.1, and with the procedures for mailed notice set forth in Section 54992. The adoption, increase, or imposition of any fee, charge, dedication, or other requirement pursuant to Section 53080 shall not be subject to Division 13 (commencing with Section 21000) of the Public Resources Code. The adoption of, or increase in, the fee, charge, dedication, or other requirement shall be effective no sooner than 60 days following the final action on that adoption or increase, except as specified in subdivision (b).

(b) Without following the procedure otherwise required for adopting or increasing a fee, charge, dedication, or other requirement, the governing board of a school district may adopt an urgency measure as an interim authorization for a fee, charge, dedication, or other requirement, or increase in a fee, charge, dedication, or other requirement, where necessary to respond to a current and immediate threat to the public health, welfare, or safety. The interim authorization shall require a four-fifths vote of the governing board for adoption, and shall contain findings describing the current and immediate threat to the public health, welfare, or

safety. The interim authorization shall have no force or effect on and after a date 30 days after its adoption. After notice and hearing in accordance with subdivision (a), the governing board, upon a four-fifths vote of the board, may extend the interim authority for an additional 30 days. Not more than two extensions may be granted.

(c) Upon adopting or increasing a fee, charge, dedication, or other requirement pursuant to subdivision (a) or (b), the school district shall transmit a copy of the resolution to each city and each county in which the district is situated, accompanied by all relevant supporting documentation and a map clearly indicating the boundaries of the area subject to the fee, charge, dedication, or other requirement. The school district governing board shall specify, pursuant to that notification, whether or not the collection of the fee or other charge is subject to the restriction set forth in subdivision (a) of Section 66007.

(d) Any party on whom a fee, charge, dedication, or other requirement has been directly imposed pursuant to Section 53080 may protest the establishment or imposition of that fee, charge, dedication, or other requirement in accordance with Section 66009, except that the procedures set forth in Section 66008 are deemed to apply, for this purpose, to commercial and industrial development, as well as to residential development.

(e) In the case of any commercial or industrial development, the following procedures shall also apply:

(1) The school district governing board shall, in the course of making the findings required under subdivisions (a) and (b) of Section 66001, do all of the following:

(A) Make the findings on either an individual project basis or on the basis of categories of commercial or industrial development. Those categories may include, but are not limited to, the following uses: office, retail, transportation, communications and utilities, light industrial, heavy industrial, research and development, and warehouse.

(B) Conduct a study to determine the impact of the increased number of employees anticipated to result from the commercial or industrial development upon the cost of providing school facilities within the district. For the purpose of making that determination, the study shall utilize employee generation estimates that are calculated on either an individual project or categorical basis, in accordance with subparagraph (A). Those employee generation estimates shall be based upon commercial and industrial factors within the district or upon, in whole or in part, the applicable employee generation estimates set forth in the January 1990 edition of "San Diego Traffic Generators," a report of the San Diego Association of Governments.

(C) The governing board shall take into account the results of that study in making the findings described in this subdivision.

(2) In addition to any other requirement imposed by law, in the case of any development project against which a fee, charge,

dedication, or other requirement is to be imposed pursuant to Section 53080 on the basis of a category of commercial or industrial development, as described in paragraph (1), the governing board shall provide a process that permits the party against whom the fee, charge, dedication, or other requirement is to be imposed the opportunity for a hearing to appeal that imposition. The grounds for that appeal include, but are not limited to, the inaccuracy of including the project within the category pursuant to which the fee, charge, dedication, or other requirement is to be imposed, or that the employee generation or pupil generation factors utilized under the applicable category are inaccurate as applied to the project. The party appealing the imposition of the fee, charge, dedication, or other requirement shall bear the burden of establishing that the fee, charge, dedication, or other requirement is improper.

SEC. 3. Section 65995.1 of the Government Code is amended to read:

65995.1. (a) Notwithstanding any other provision of law, as to any development project for the construction of senior citizen housing, as described in Section 51.3 of the Civil Code, a residential care facility for the elderly as described in subdivision (k) of Section 1569.2 of the Health and Safety Code, or a multilevel facility for the elderly as described in paragraph (9) of subdivision (d) of Section 15432, any fee, charge, dedication, or other form of requirement that is levied under Section 53080 may be applied only to new construction, and is subject to the limits and conditions applicable under subdivision (b) of Section 65995 in the case of commercial or industrial development.

(b) Any development project against which school facilities fees or other requirements have been levied in accordance with the limit set forth in subdivision (a) may be converted to any use other than those uses described in the statutes cited in that subdivision only with the approval of the city or county that issued the building permit for the project. That approval shall not be granted absent certification by the appropriate school district that payment has been made on the part of the development project at the rate of the school facilities fee, charge, dedication, or other form of requirement applied by the district under Section 53080 to residential development as of the date of conversion, less the amount of any school facilities fees or other requirements paid on the part of the project in accordance with the limits set forth in subdivision (a).

SEC. 4. Section 1 of this act shall not become operative if Assembly Bill 3185, Senate Bill 79, or Senate Bill 2780 of the 1989–90 Regular Session (1) is enacted and becomes effective on or before January 1, 1991, but prior to the effective date of this bill, and (2) amends Section 17705.5 of the Education Code.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of theConstitution and shall go into immediate effect. The facts constituting the necessity are:

In order to mitigate the expense being incurred by school districts in order to comply with existing provisions of law requiring that designated findings be made prior to the imposition of certain school facilities fees or other requirements, it is necessary that this act take effect immediately.

CHAPTER 1572

An act to amend Sections 56383, 65104, 65354.5, 65358, 65456, 65863.7, 65909.5, 66000, 66004, and 66010 of, to add Chapter 7 (commencing with Section 66012), Chapter 8 (commencing with Section 66016), and Chapter 9 (commencing with Section 66020) to Division 1 of Title 7 of, and to repeal Sections 65962, 66008, 66009, and 66017 of, and Chapter 12.6 (commencing with Section 54989), Chapter 13 (commencing with Section 54990), Chapter 13.1 (commencing with Section 54994.1), Chapter 13.5 (commencing with Section 54995), and Chapter 14 (commencing with Section 54997) of Part 1 of Division 2 of Title 5 of, the Government Code, to amend Sections 4746.5, 17951, 19132.3, and 19852 of the Health and Safety Code, to amend Section 21671.5 of the Public Utilities Code, and to amend Section 77.1 of the Antelope Valley-East Kern Water Agency Law (Chapter 2146 of the Statutes of 1959), relating to local government fees.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Chapter 12.6 (commencing with Section 54989) of Part 1 of Division 2 of Title 5 of the Government Code is repealed.

SEC. 2. Chapter 13 (commencing with Section 54990) of Part 1 of Division 2 of Title 5 of the Government Code is repealed.

SEC. 3. Chapter 13.1 (commencing with Section 54994.1) of Part 1 of Division 2 of Title 5 of the Government Code is repealed.

SEC. 4. Chapter 13.5 (commencing with Section 54995) of Part 1 of Division 2 of Title 5 of the Government Code is repealed.

SEC. 5. Chapter 14 (commencing with Section 54997) of Part 1 of Division 2 of Title 5 of the Government Code is repealed.

SEC. 6. Section 56383 of the Government Code is amended to read:

56383. (a) The commission may establish a schedule of fees for the costs of proceedings taken pursuant to this division, including, but not limited to, all of the following:

(1) Checking the sufficiency of any petition filed with the executive officer.

(2) Filing and processing applications filed with the commission.

(3) Proceedings undertaken by the commission and any reorganization committee.

(4) Amending a sphere of influence.

(5) Reconsidering a resolution making determinations.

(b) The schedule of fees shall not exceed the estimated reasonable cost of providing the service for which the fee is charged and shall be imposed pursuant to Section 66016.

(c) The commission may require that a fee be deposited with the

including removal, transportation, and reinstallation of the mobilehome and accessories at the new site, indemnification for any damage to personal property of the resident caused by the relocation, reasonable living expenses of displaced park residents from the date of actual displacement until the date of occupancy at the new site, payment of any security deposit required at the new site and the difference between the rent paid in the existing park and any higher rent at the new site for the first 12 months of the relocated tenancy.

(2) The cost of purchasing a mobilehome of a displaced mobilehome owner at a value to be determined. Where the mobilehome cannot be relocated due to age or condition, as determined by the local legislative body or advisory agency, this paragraph may apply.

(f) If the closure or cessation of use of a mobilehome park results from an adjudication of bankruptcy, the provisions of this section shall not be applicable.

(g) The legislative body may establish reasonable fees pursuant to Section 66016 to cover any costs incurred by the local agency in implementing this section and Section 65863.8. Those fees shall be paid by the person or entity proposing the change in use.

(h) This section is applicable to charter cities.

(i) This section is applicable when the closure, cessation, or change of use is the result of a decision by a local governmental entity or planning agency not to renew a conditional use permit or zoning variance under which the mobilehome park has operated, or as a result of any other zoning or planning decision, action, or inaction. In this case, the local governmental agency is the person proposing the change in use for the purposes of preparing the impact report required by this section and is required to take steps to mitigate the adverse impact of the change as may be required in subdivision (e).

SEC. 12. Section 65909.5 of the Government Code is amended to read:

65909.5. The legislative body of any county or city, including a charter city, may establish reasonable fees for the processing of use permits, zone variances, or zone changes pursuant to the procedures required or authorized by this chapter or local ordinance, but the fees shall not exceed the amount reasonably required to administer the processing of such permits or zone variances. The fees shall be imposed pursuant to Sections 66014 and 66016.

SEC. 13. Section 65962 of the Government Code is repealed.

SEC. 14. Section 66000 of the Government Code is amended to read:

66000. As used in this chapter:

(a) "Development project" means any project undertaken for the purpose of development. "Development project" includes a project involving the issuance of a permit for construction or reconstruction, but not a permit to operate.

(b) "Fee" means a monetary exaction, other than a tax or special

assessment, which is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, but does not include fees specified in Section 66477, fees for processing applications for governmental regulatory actions or approvals, fees collected under development agreements adopted pursuant to Article 2.5 (commencing with Section 65864) of Chapter 4, or fees collected pursuant to agreements with redevelopment agencies which provide for the redevelopment of property in furtherance or for the benefit of a redevelopment project for which a redevelopment plan has been adopted pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code.

(c) "Local agency" means a county, city, whether general law or chartered, city and county, school district, special district, authority, agency, any other municipal public corporation or district, or other political subdivision of the state.

(d) "Public facilities" includes public improvements, public services, and community amenities.

SEC. 15. Section 66004 of the Government Code is amended to read:

66004. The establishment or increase of any fee pursuant to this chapter shall be subject to the requirements of Section 66018.

SEC. 16. Section 66008 of the Government Code is repealed.

SEC. 17. Section 66009 of the Government Code is repealed.

SEC. 18. Section 66010 of the Government Code is amended to read:

66010. As used in this chapter:

(a) "Development project" means a development project as defined in Section 66000.

(b) "Fee" means a monetary exaction or a dedication, other than a tax or special assessment, which is required by a local agency of the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, but does not include fees for processing applications for governmental regulatory actions or approvals.

(c) "Local agency" means a local agency, as defined in Section 66000.

(d) "Public facilities" means public facilities, as defined in Section 66000.

(e) "Reconstruction" means the reconstruction of the real property, or portion thereof, where the property after reconstruction is substantially equivalent to the property prior to damage or destruction.

SEC. 19. Chapter 7 (commencing with Section 66012) is added to Division 1 of Title 7 of the Government Code, to read:

65100) of Division 1 of Title 7 or under any other authority; those fees shall not exceed the estimated reasonable cost of providing the service for which the fee is charged, unless a question regarding the amount of the fee charged in excess of the estimated reasonable cost of providing the services or materials is submitted to, and approved by, a popular vote of two-thirds of those electors voting on the issue.

(b) Any judicial action or proceeding to attack, review, set aside, void, or annul the ordinance, resolution, or motion authorizing the charge of a fee subject to this section shall be brought pursuant to Section 66022.

SEC. 20. Chapter 8 (commencing with Section 66016) is added to Division 1 of Title 7 of the Government Code, to read:

CHAPTER 8. PROCEDURES FOR ADOPTING VARIOUS FEES

66016. (a) Prior to levying a new fee or service charge, or prior to approving an increase in an existing fee or service charge, a local agency shall hold at least one public meeting, at which oral or written presentations can be made, as part of a regularly scheduled meeting. Notice of the time and place of the meeting, including a general explanation of the matter to be considered, and a statement that the data required by this section is available, shall be mailed at least 14 days prior to the meeting to any interested party who files a written request with the local agency for mailed notice of the meeting on new or increased fees or service charges. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service. At least 10 days prior to the meeting, the local agency shall make available to the public data indicating the amount of cost, or estimated cost, required to provide the service for which the fee or service charge is levied and the revenue sources anticipated to provide the service, including General Fund revenues. Unless there has been voter approval, as prescribed by Section 66013 or 66014, no local agency shall levy a new fee or service charge or increase an existing fee or service charge to an amount which exceeds the estimated amount required to provide the service for which the fee or service charge is levied. If, however, the fees or service charges create revenues in excess of actual cost, those revenues shall be used to reduce the fee or service charge creating the excess.

(b) Any action by a local agency to levy a new fee or service charge or to approve an increase in an existing fee or service charge shall be taken only by ordinance or resolution.

(c) Any costs incurred by a local agency in conducting the meeting or meetings required pursuant to subdivision (a) may be recovered from fees charged for the services which were the subject of the meeting.

(d) This section shall apply only to fees and charges as described in Sections 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of this code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, and Section 21671.5 of the Public Utilities Code.

(e) Any judicial action or proceeding to attack, review, set aside, void, or annul the ordinance, resolution, or motion levying a fee or service charge subject to this section shall be brought pursuant to Section 66022.

66017. (a) Any action adopting a fee or charge, or increasing a fee or charge adopted, upon a development project, as defined in Section 66000, which applies to the filing, accepting, reviewing, approving, or issuing of an application, permit, or entitlement to use shall be enacted in accordance with the notice and public hearing procedures specified in Section 54986 or 66016 and shall be effective no sooner that 60 days following the final action on the adoption of the fee or charge or increase in the fee or charge.

(b) Without following the procedure otherwise required for the adoption of a fee or charge, or increasing a fee or charge, the legislative body of a local agency may adopt an urgency measure as an interim authorization for a fee or charge, or increase in a fee or charge, to protect the public health, welfare and safety. The interim authorization shall require four-fifths vote of the legislative body for adoption. The interim authorization shall have no force or effect 30 days after its adoption. The interim authority shall contain findings describing the current and immediate threat to the public health, welfare and safety. After notice and public hearing pursuant to Section 54986 or 66016, the legislative body may extend the interim authority for an additional 30 days. Not more than two extensions may be granted. Any extension shall also require a four-fifths vote of the legislative body.

66018. (a) Prior to adopting an ordinance, resolution, or other legislative enactment adopting a new fee or approving an increase in an existing fee to which this section applies, a local agency shall hold a public hearing, at which oral or written presentations can be made, as part of a regularly scheduled meeting. Notice of the time and place of the meeting, including a general explanation of the matter to be considered, shall be published in accordance with Section 6062a.

(b) Any costs incurred by a local agency in conducting the hearing required pursuant to subdivision (a) may be recovered as part of the fees which were the subject of the hearing.

(c) This section applies only to the adopting or increasing of fees to which a specific statutory notice requirement, other than Section 54954.2, does not apply.

(d) As used in this section, "fees" do not include rates or charges for water, sewer, or electrical service.

66018.5. "Local agency," as used in this chapter, has the same meaning as provided in Section 66000.

SEC. 21. Section 66017 of the Government Code is repealed.

SEC. 22. Chapter 9 (commencing with Section 66020) is added to Division 1 of Title 7 of the Government Code, to read:

CHAPTER 9. PROTESTS, LEGAL ACTIONS, AND AUDITS

66020. (a) Any party may protest the imposition of any fees, dedications, reservations, or other exactions imposed on a residential housing development by a local agency by meeting both of the following requirements:

(1) Tendering any required payment in full or providing satisfactory evidence of arrangements to ensure performance of the conditions necessary to meet the requirements of the imposition.

(2) Serving written notice on the governing body of the entity, which notice shall contain all of the following information:

(A) A statement that the required payment is tendered, or that any conditions which have been imposed are provided for or satisfied, under protest.

(B) A statement informing the governing body of the factual elements of the dispute and the legal theory forming the basis for the protest.

(b) Compliance by any party with subdivision (a) shall not be the basis for a local agency to withhold approval of any map, plan, permit, zone change, license, or other form of permission, or concurrence, whether discretionary, ministerial, or otherwise, incident to, or necessary for, the development of the residential housing development. This section does not limit the ability of a local agency to ensure compliance with all applicable provisions of law in determining whether or not to approve or disapprove a development project.

(c) Where a reviewing local agency makes proper and valid findings that the construction of certain public improvements or facilities, the need for which is directly attributable to the proposed residential housing development, is required for reasons related to the public health, safety, and welfare, and elects to impose a requirement for construction of those improvements or facilities as a condition of approval of the proposed development, then in the event a protest is lodged pursuant to this section, that approval shall be suspended pending withdrawal of the protest, the expiration of the limitation period of subdivision (d) without the filing of an action, or resolution of any action filed. This subdivision confers no new or independent authority for imposing fees, dedications, reservations, or other exactions not presently governed by other law.

(d) A protest filed pursuant to subdivision (a) shall be filed at the time of approval or conditional approval of the development or within 90 days after the date of the imposition of the fees, dedications, reservations, or other exactions to be imposed on a residential housing development. Any party who files a protest pursuant to subdivision (a) may file an action to attack, review, set

aside, void, or annul the imposition of the fees, dedications, reservations, or other exactions imposed on a residential housing development by a local agency within 180 days after the date of the imposition. Thereafter, notwithstanding any other law to the contrary, all persons are barred from any action or proceeding or any defense of invalidity or unreasonableness of the imposition. Any proceeding brought pursuant to this subdivision shall take precedence over all matters of the calendar of the court except criminal, probate, eminent domain, forcible entry, and unlawful detainer proceedings.

(e) If the court finds in favor of the plaintiff in any action or proceeding brought pursuant to subdivision (d), the court shall direct the local agency to refund the unlawful portion of the payment, with interest at the rate of 8 percent per annum, or return the unlawful portion of the exaction imposed.

(f) Approval or conditional approval of a development occurs, for the purposes of this section, when the tentative map, tentative parcel map, or parcel map is approved or conditionally approved or when the parcel map is recorded if a tentative map or tentative parcel map is not required.

(g) The imposition of fees, dedications, reservations, or other exactions occurs, for the purposes of this section, when they are imposed or levied on a specific development.

66021. (a) Any party on whom a fee, tax, assessment, dedication, reservation, or other exaction has been imposed, the payment or performance of which is required to obtain governmental approval of a development, as defined by Section 65927, or development project, may protest, as provided in Sections 66020 and 66475.4, the establishment or imposition of the fee, tax, assessment, dedication, reservation, or other exaction. If a party files a protest under both Sections 66020 and 66475.4, Section 66475.4 shall prevail over Section 66020 to the extent of any conflict between those two sections.

(b) The protest procedures of subdivision (a) do not apply to the protest of any tax or assessment (1) levied pursuant to a principal act which contains protest procedures, or (2) that is pledged to secure payment of the principal of, or interest on, bonds or other public indebtedness.

66022. (a) Any judicial action or proceeding to attack, review, set aside, void, or annul an ordinance, resolution, or motion adopting a new fee or service charge, or modifying or amending an existing fee or service charge, adopted by a local agency, as defined in Section 66000, shall be commenced within 120 days of the effective date of the ordinance, resolution, or motion.

If an ordinance, resolution, or motion provides for an automatic adjustment in a fee or service charge, and the automatic adjustment results in an increase in the amount of a fee or service charge, any action or proceeding to attack, review, set aside, void, or annul the increase shall be commenced within 120 days of the effective date of

the increase.

(b) Any action by a local agency or interested person under this section shall be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

(c) This section shall apply only to fees, capacity charges, and service charges described in and subject to Sections 66013 and 66014.

66023. (a) Any person may request an audit in order to determine whether any fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of any product or service provided by the local agency. If a person makes that request, the legislative body of the local agency may retain an independent auditor to conduct an audit to determine whether the fee or charge is reasonable.

(b) Any costs incurred by a local agency in having an audit conducted by an independent auditor pursuant to subdivision (a) may be recovered from the person who requests the audit.

(c) Any audit conducted by an independent auditor to determine whether a fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of providing the product or service shall conform to generally accepted auditing standards.

(d) The procedures specified in this section shall be alternative and in addition to those specified in Section 54985.

(e) The Legislature finds and declares that oversight of local agency fees is a matter of statewide interest and concern. It is, therefore, the intent of the Legislature that this chapter shall supersede all conflicting local laws and shall apply in charter cities.

(f) This section shall not be construed as granting any additional authority to any local agency to levy any fee or charge which is not otherwise authorized by another provision of law, nor shall its provisions be construed as granting authority to any local agency to levy a new fee or charge when other provisions of law specifically prohibit the levy of a fee or charge.

66024. (a) In any judicial action or proceeding to validate, attack, review, set aside, void, or annul any ordinance or resolution providing for the imposition of a development fee by any city, county, or district in which there is at issue whether the development fee is a special tax within the meaning of Section 50076, the city, county, or district has the burden of producing evidence to establish that the development fee does not exceed the cost of the service, facility, or regulatory activity for which it is imposed.

(b) No party may initiate any action or proceeding pursuant to subdivision (a) unless both of the following requirements are met:

(1) The development fee was directly imposed on the party as a condition of project approval.

(2) At least 30 days prior to initiating the action or proceeding, the party requests the city, county, or district to provide a copy of the documents which establish that the development fee does not exceed the cost of the service, facility, or regulatory activity for which it is imposed. In accordance with Section 6257, the city,

county, or district may charge a fee for copying the documents requested pursuant to this paragraph.

(c) For purposes of this section, costs shall be determined in accordance with fundamental fairness and consistency of method as to the allocation of costs, expenses, revenues, and other items included in the calculation.

66025. "Local agency," as used in this chapter, means a local agency as defined in Section 66000.

SEC. 23. Section 4746.5 of the Health and Safety Code is amended to read:

4746.5. Notwithstanding any other provision of law, the Triunfo County Sanitation District may do all of the following:

(a) The district may, within or without the district:

(1) Take real and personal property of every kind, for any district purpose, by grant, purchase, gift, devise, or lease.

(2) Hold, use, enjoy, lease, or dispose of real and personal property of every kind.

(b) The district may lease from any person, or public corporation or agency, with the privilege of purchasing or otherwise, all or any part of any facilities necessary or convenient to any district purpose, either existing or constructed by the lessor for district use.

(c) If funds are needed to meet current expenses of maintenance and operation, the district may incur indebtedness by the issuance of negotiable promissory notes pursuant to this section, without an election. The notes shall be general obligations of the district payable in the same manner as bonds of the district, shall mature not later than two years from the date thereof, and shall bear interest at a rate not to exceed the rate prescribed by Article 7 (commencing with Section 53530) of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code, payable as provided therein. The aggregate amount of the notes outstanding at any one time shall not exceed an amount equal to seven cents ($0.07) on each one hundred dollars ($100) of the assessed valuation of the taxable real property within the district as shown on the last equalized assessment roll of the county. If the assessed valuation is not obtainable, the county auditor's estimate of the assessed valuation of the taxable real property within the district for the fiscal year in which the indebtedness is to be incurred shall be used.

All the notes shall be issued after the adoption of a resolution by a four-fifths vote of the district board setting forth the following:

(a) The necessity for the borrowing.

(b) The assessed valuation of the taxable real property within the district, or the auditor's estimate thereof.

(c) The amount of funds to be borrowed.

(d) The date, maturity, denomination, and form of such notes.

The notes shall be signed by the chairperson of the district board and countersigned by the county treasurer and the seal of the district board shall be affixed.

The district board shall cause the board of supervisors to levy and

SEC. 30. Section 11.5 of this bill incorporates amendments to Section 65863.7 of the Government Code proposed by both this bill and SB 399. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1991, (2) each bill amends Section 65863.7 of the Government Code, and (3) this bill is enacted after SB 399, in which case Section 11 of this bill shall not become operative.

SEC. 31. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 536

An act to amend Section 65995.1 of the Government Code, relating to migrant worker housing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 5, 1991. Filed with Secretary of State October 7, 1991.]

The people of the State of California do enact as follows:

SECTION 1. Section 65995.1 of the Government Code is amended to read:

65995.1. (a) Notwithstanding any other provision of law, as to any development project for the construction of senior citizen housing, as described in Section 51.3 of the Civil Code, a residential care facility for the elderly as described in subdivision (k) of Section 1569.2 of the Health and Safety Code, or a multilevel facility for the elderly as described in paragraph (9) of subdivision (d) of Section 15432, any fee, charge, dedication, or other form of requirement that is levied under Section 53080 may be applied only to new construction, and is subject to the limits and conditions applicable under subdivision (b) of Section 65995 in the case of commercial or industrial development.

(b) Notwithstanding any other provision of law, as to any development project for the construction of agricultural migrant worker housing financed in whole or part pursuant to Chapter 8.5 (commencing with Section 50710) of Part 2 of Division 31 of the Health and Safety Code, no fees, charges, dedications, or other forms of requirements that are levied under Section 53080 shall be applied to new construction, reconstruction, or rehabilitation of this housing. The exemption provided by this subdivision shall be applicable only to that agricultural migrant worker housing which is owned by the state and which is subject to a contract ensuring compliance with the requirements of Chapter 8.5 (commencing with Section 50710) of Part 2 of Division 31 of the Health and Safety Code.

(c) Any development project against which school facilities fees or other requirements have been levied or waived in accordance with the limit or exemption set forth in subdivision (a) or (b) may be converted to any use other than those uses described in the statutes cited in that subdivision only with the approval of the city or county that issued the building permit for the project. That approval shall not be granted absent certification by the appropriate school district that payment has been made on the part of the development project at the rate of the school facilities fee, charge, dedication, or other form of requirement applied by the district under Section 53080 to residential development as of the date of conversion, less the amount of any school facilities fees or other requirements paid on the part of the project in accordance with the

limits set forth in subdivision (a) or (b).

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to address serious problems regarding the provision and funding of migrant agricultural worker housing, it is necessary that this act take effect immediate effect.

CHAPTER 169

An act to amend Section 66006 of the Government Code, relating to development.

[Approved by Governor July 11, 1992. Filed with Secretary of State July 13, 1992.]

The people of the State of California do enact as follows:

SECTION 1. Section 66006 of the Government Code is amended to read:

66006. (a) If a local agency requires the payment of a fee specified in subdivision (c) in connection with the approval of a development project, the local agency receiving the fee shall deposit it with the other fees for the improvement in a separate capital facilities account or fund in a manner to avoid any commingling of the fees with other revenues and funds of the local agency, except for temporary investments, and expend those fees solely for the purpose for which the fee was collected. Any interest income earned by moneys in the capital facilities account or fund shall also be deposited in that account or fund and shall be expended only for the purpose for which the fee was originally collected.

(b) (1) For each separate account or fund established pursuant to subdivision (a), the local agency 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 and the fee, interest, and other income and the amount of expenditure by public facility and the amount of refunds made pursuant to subdivision (e) of Section 66001 and any allocations pursuant to subdivision (f) of Section 66001 during the fiscal year.

(2) The local agency shall review the information made available to the public pursuant to paragraph (1) at the next regularly scheduled public meeting not less than 15 days after this information is made available to the public, as required by this subdivision. Notice of the time and place of the meeting, including the address where this information may be reviewed, shall be mailed, at least 15 days prior to the meeting, to any interested party who files a written request with the local agency for mailed notice of the meeting. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service.

(c) For purposes of this section, "fee" means any fee imposed to provide for an improvement to be constructed to serve a development project, or which is a fee within the meaning of subdivision (b) of Section 66000, and that is imposed by the local

agency as a condition of approving the development project.

(d) Any person may request an audit of any local agency fee or charge that is subject to Section 66023, including fees or charges of school districts, in accordance with that section.

(e) The Legislature finds and declares that untimely or improper allocation of development fees hinders economic growth and is, therefore, a matter of statewide interest and concern. It is, therefore, the intent of the Legislature that subdivision (a) shall supersede all conflicting local laws and shall apply in charter cities.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 231

An act to amend Sections 65858 and 66007 of the Government Code, relating to land use.

[Approved by Governor July 18, 1992. Filed with Secretary of State July 20, 1992.]

The people of the State of California do enact as follows:

SECTION 1. Section 65858 of the Government Code is amended to read:

65858. (a) Without following the procedures otherwise required prior to the adoption of a zoning ordinance, the legislative body, to protect the public safety, health and welfare, may adopt as an urgency measure an interim ordinance prohibiting any uses which may be in conflict with a contemplated general plan, specific plan, or zoning proposal which the legislative body, planning commission or the planning department is considering or studying or intends to

study within a reasonable time. That urgency measure shall require a four-fifths vote of the legislative body for adoption. The interim ordinance shall be of no further force and effect 45 days from its date of adoption. After notice pursuant to Section 65090 and public hearing, the legislative body may extend the interim ordinance for 10 months and 15 days and subsequently extend the interim ordinance for one year. Any extension shall also require a four-fifths vote for adoption. Not more than two extensions may be adopted.

(b) Alternatively, an interim ordinance may be adopted by a four-fifths vote following notice pursuant to Section 65090 and public hearing, in which case it shall be of no further force and effect 45 days from its date of adoption. After notice pursuant to Section 65090 and public hearing, the legislative body may by a four-fifths vote extend the interim ordinance for 22 months and 15 days.

(c) The legislative body shall not adopt or extend any interim ordinance pursuant to this section unless the ordinance contains a finding that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use which is required in order to comply with a zoning ordinance would result in that threat to public health, safety, or welfare.

(d) Ten days prior to the expiration of an interim ordinance or any extension, the legislative body shall issue a written report describing the measures taken to alleviate the condition which led to the adoption of the ordinance.

(e) When an interim ordinance has been adopted, every subsequent ordinance adopted pursuant to this section, covering the whole or a part of the same property, shall automatically terminate and be of no further force or effect upon the termination of the first interim ordinance or any extension of the ordinance as provided in this section.

SEC. 2. Section 66007 of the Government Code is amended to read:

66007. (a) Except as otherwise provided in subdivision (b), any local agency which imposes any fees or charges on a residential development for the construction of public improvements or facilities shall not require the payment of those fees or charges, notwithstanding any other provision of law, until the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs first. However, utility service fees may be collected at the time an application for utility service is received. If the residential development contains more than one dwelling, the local agency may determine whether the fees or charges shall be paid on a pro rata basis for each dwelling when it receives its final inspection or certificate of occupancy, whichever occurs first; on a pro rata basis when a certain percentage of the dwellings have received their final inspection or certificate of occupancy, whichever occurs first; or on a lump-sum basis when the first dwelling in the

development receives its final inspection or certificate of occupancy, whichever occurs first.

(b) Notwithstanding subdivision (a), the local agency may require the payment of those fees or charges at an earlier time if (1) the local agency determines that the fees or charges will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency has adopted a proposed construction schedule or plan prior to final inspection or issuance of the certificate of occupancy or (2) the fees or charges are to reimburse the local agency for expenditures previously made. "Appropriated," as used in this subdivision, means authorization by the governing body of the local agency for which the fee is collected to make expenditures and incur obligations for specific purposes.

(c) (1) If any fee or charge specified in subdivision (a) is not fully paid prior to issuance of a building permit for construction of any portion of the residential development encumbered thereby, the local agency issuing the building permit may require the property owner, or lessee if the lessee's interest appears of record, as a condition of issuance of the building permit, to execute a contract to pay the fee or charge, or applicable portion thereof, within the time specified in subdivision (a). If the fee or charge is prorated pursuant to subdivision (a), the obligation under the contract shall be similarly prorated.

(2) The obligation to pay the fee or charge shall inure to the benefit of, and be enforceable by, the local agency that imposed the fee or charge, regardless of whether it is a party to the contract. The contract shall contain a legal description of the property affected, shall be recorded in the office of the county recorder of the county and, from the date of recordation, shall constitute a lien for the payment of the fee or charge, which shall be enforceable against successors in interest to the property owner or lessee at the time of issuance of the building permit. The contract shall be recorded in the grantor-grantee index in the name of the public agency issuing the building permit as grantee and in the name of the property owner or lessee as grantor. The local agency shall record a release of the obligation, containing a legal description of the property, in the event the obligation is paid in full, or a partial release in the event the fee or charge is prorated pursuant to subdivision (a).

(3) The contract may require the property owner or lessee to provide appropriate notification of the opening of any escrow for the sale of the property for which the building permit was issued and to provide in the escrow instructions that the fee or charge be paid to the local agency imposing the same from the sale proceeds in escrow prior to disbursing proceeds to the seller.

(d) This section applies only to fees collected by a local agency to fund the construction of public improvements or facilities. It does not apply to fees collected to cover the cost of code enforcement or inspection services, or to other fees collected to pay for the cost of

enforcement of local ordinances or state law.

(e) "Final inspection" or "certificate of occupancy," as used in this section, have the same meaning as described in Sections 305 and 307 of the Uniform Building Code, International Conference of Building Officials, 1985 Edition.

(f) Methods of complying with the requirement in subdivision (b) that a proposed construction schedule or plan be adopted, include, but are not limited to, (1) the adoption of the capital improvement plan described in Section 66002, or (2) the submittal of a five-year plan for construction and rehabilitation of school facilities pursuant to subdivision (c) of Section 17717.5 of the Education Code.

CHAPTER 487

An act to amend Section 66016 of the Government Code, and to amend Section 41901 of the Public Resources Code, relating to solid waste.

[Approved by Governor August 16, 1992. Filed with Secretary of State August 17, 1992.]

The people of the State of California do enact as follows:

SECTION 1. Section 66016 of the Government Code is amended to read:

66016. (a) Prior to levying a new fee or service charge, or prior to approving an increase in an existing fee or service charge, a local agency shall hold at least one public meeting, at which oral or written presentations can be made, as part of a regularly scheduled meeting. Notice of the time and place of the meeting, including a general explanation of the matter to be considered, and a statement that the data required by this section is available, shall be mailed at least 14 days prior to the meeting to any interested party who files a written request with the local agency for mailed notice of the meeting on new or increased fees or service charges. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed

notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service. At least 10 days prior to the meeting, the local agency shall make available to the public data indicating the amount of cost, or estimated cost, required to provide the service for which the fee or service charge is levied and the revenue sources anticipated to provide the service, including General Fund revenues. Unless there has been voter approval, as prescribed by Section 66013 or 66014, no local agency shall levy a new fee or service charge or increase an existing fee or service charge to an amount which exceeds the estimated amount required to provide the service for which the fee or service charge is levied. If, however, the fees or service charges create revenues in excess of actual cost, those revenues shall be used to reduce the fee or service charge creating the excess.

(b) Any action by a local agency to levy a new fee or service charge or to approve an increase in an existing fee or service charge shall be taken only by ordinance or resolution.

(c) Any costs incurred by a local agency in conducting the meeting or meetings required pursuant to subdivision (a) may be recovered from fees charged for the services which were the subject of the meeting.

(d) This section shall apply only to fees and charges as described in Sections 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of this code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code.

(e) Any judicial action or proceeding to attack, review, set aside, void, or annul the ordinance, resolution, or motion levying a fee or service charge subject to this section shall be brought pursuant to Section 66022.

SEC. 2. Section 41901 of the Public Resources Code is amended to read:

41901. A city, county, or city and county may impose fees in amounts sufficient to pay the costs of preparing, adopting, and implementing a countywide integrated waste management plan prepared pursuant to this division. The fees shall be based on the types or amounts of the solid waste, and shall be used to pay the actual costs incurred by the city or county in preparing, adopting, and implementing the plan, as well as in setting and collecting the local fees. In determining the amounts of the fees, a city or county shall include only those costs directly related to the preparation, adoption, and implementation of the plan and the setting and collection of the local fees. A city, county, or city and county shall impose the fees pursuant to Section 66016 of the Government Code.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level

of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 605

An act to amend Section 66020 of the Government Code, relating to fees.

[Approved by Governor September 8, 1992. Filed with Secretary of State September 9, 1992.]

The people of the State of California do enact as follows:

SECTION 1. Section 66020 of the Government Code is amended to read:

66020. (a) Any party may protest the imposition of any fees, dedications, reservations, or other exactions imposed on a residential housing development by a local agency by meeting both of the following requirements:

(1) Tendering any required payment in full or providing satisfactory evidence of arrangements to ensure performance of the conditions necessary to meet the requirements of the imposition.

(2) Serving written notice on the governing body of the entity, which notice shall contain all of the following information:

(A) A statement that the required payment is tendered, or that any conditions which have been imposed are provided for or satisfied, under protest.

(B) A statement informing the governing body of the factual elements of the dispute and the legal theory forming the basis for the protest.

(b) Compliance by any party with subdivision (a) shall not be the basis for a local agency to withhold approval of any map, plan, permit, zone change, license, or other form of permission, or concurrence, whether discretionary, ministerial, or otherwise, incident to, or necessary for, the development of the residential housing development. This section does not limit the ability of a local agency to ensure compliance with all applicable provisions of law in determining whether or not to approve or disapprove a development project.

(c) Where a reviewing local agency makes proper and valid findings that the construction of certain public improvements or facilities, the need for which is directly attributable to the proposed residential housing development, is required for reasons related to the public health, safety, and welfare, and elects to impose a requirement for construction of those improvements or facilities as a condition of approval of the proposed development, then in the event a protest is lodged pursuant to this section, that approval shall be suspended pending withdrawal of the protest, the expiration of the limitation period of subdivision (d) without the filing of an action, or resolution of any action filed. This subdivision confers no new or independent authority for imposing fees, dedications, reservations, or other exactions not presently governed by other law.

(d) A protest filed pursuant to subdivision (a) shall be filed at the time of approval or conditional approval of the development or within 90 days after the date of the imposition of the fees, dedications, reservations, or other exactions to be imposed on a residential housing development. Any party who files a protest pursuant to subdivision (a) may file an action to attack, review, set aside, void, or annul the imposition of the fees, dedications, reservations, or other exactions imposed on a residential housing development by a local agency within 180 days after the date of the imposition. Thereafter, notwithstanding any other law to the contrary, all persons are barred from any action or proceeding or any defense of invalidity or unreasonableness of the imposition. Any proceeding brought pursuant to this subdivision shall take precedence over all matters of the calendar of the court except criminal, probate, eminent domain, forcible entry, and unlawful detainer proceedings.

(e) If the court finds in favor of the plaintiff in any action or proceeding brought pursuant to subdivision (d), the court shall direct the local agency to refund the unlawful portion of the payment, with interest at the rate of 8 percent per annum, or return the unlawful portion of the exaction imposed.

(f) (1) If the court grants a judgment to a plaintiff invalidating, as enacted, all or a portion of an ordinance or resolution enacting a fee, dedication, reservation, or other exaction, the court shall direct the local agency to refund the unlawful portion of the payment, plus interest at an annual rate equal to the average rate accrued by the Pooled Money Investment Account during the time elapsed since the payment occurred, or to return the unlawful portion of the exaction imposed.

(2) If an action is filed within 120 days of the date at which an ordinance or resolution to establish or modify a fee, dedication, reservation, or other exactions to be imposed on a residential housing takes effect, the portion of the payment or exaction invalidated shall also be returned to any other person who, under protest pursuant to this section and under that invalid portion of that same ordinance or resolution as enacted, tendered the payment or provided for or satisfied the exaction during the period from 90 days prior to the date of the filing of the action which invalidates the payment or exaction to the date of the entry of the judgment referenced in paragraph (1).

(g) Approval or conditional approval of a development occurs, for the purposes of this section, when the tentative map, tentative parcel map, or parcel map is approved or conditionally approved or when the parcel map is recorded if a tentative map or tentative parcel map is not required.

(h) The imposition of fees, dedications, reservations, or other exactions occurs, for the purposes of this section, when they are imposed or levied on a specific development.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act

contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1354

An act to add and repeal Article 5 (commencing with Section 17760) of Chapter 22 of Part 10 of the Education Code, to amend Sections 65995 and 65996 of, and to add and repeal Sections 65995, 65995.3, and 65996 of, the Government Code, and to repeal Section 34 of Chapter 1209 of the Statutes of 1989, relating to school facilities.

[Approved by Governor September 30, 1992. Filed with Secretary of State September 30, 1992.]

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature to enact a new program for the financing of school facilities in accordance with the following principles:

(a) Primary financial responsibility for school facilities should rest with school districts.

(b) School districts should be authorized to raise a sufficient amount of revenue locally to finance a majority of their school facility needs.

(c) The role of the state should be limited to:

(1) Using state funds to supplement the local revenues of those school districts having low assessed valuation.

(2) Using state funds to finance needed school facilities for those school districts that have met or exceeded their debt capacity.

(3) Using state funds to provide interim school facilities for those school districts that are unable to supply the expected level of local revenues.

SEC. 2. Article 5 (commencing with Section 17760) is added to Chapter 22 of Part 10 of the Education Code, to read:

Article 5. Repeal of Chapter

17760. This chapter shall remain in effect only until January 1, 1996, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1996, deletes or extends that date.

SEC. 3. Section 65995 of the Government Code is amended to read:

65995. (a) Except for a fee, charge, dedication, or other requirement authorized under Section 53080, or pursuant to Chapter 4.7 (commencing with Section 65970), no fee, charge, dedication, or other requirement shall be levied by the legislative body of a local agency against a development project, as defined in Section 53080, for the construction or reconstruction of school facilities.

(b) In no event shall the amount of any fees, charges, dedications, or other requirements authorized under Section 53080, or pursuant to Chapter 4.7 (commencing with Section 65970), or both, exceed the following:

(1) One dollar and fifty cents ($1.50) per square foot of assessable space, in the case of any residential development. "Assessable space," for this purpose, means all of the square footage within the perimeter of a residential structure, not including any carport, walkway, garage, overhang, patio, enclosed patio, detached accessory structure, or similar area. The amount of the square footage within the perimeter of a residential structure shall be calculated by the building department of the city or county issuing the building permit, in accordance with the standard practice of that city or county in calculating structural perimeters.

(2) In the case of any commercial or industrial development, twenty-five cents ($0.25) per square foot of chargeable covered and enclosed space. "Chargeable covered and enclosed space," for this purpose, means the covered and enclosed space determined to be within the perimeter of a commercial or industrial structure, not including any storage areas incidental to the principal use of the development, garage, parking structure, unenclosed walkway, or utility or disposal area. The determination of the chargeable covered and enclosed space within the perimeter of a commercial or industrial structure shall be made by the building department of the city or county issuing the building permit, in accordance with the building standards of that city or county.

(3) The amount of the limits set forth in paragraphs (1) and (2) shall be increased in 1990, and every two years thereafter, according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the State Allocation Board at its January meeting, which increase shall be effective as of the date of that meeting. The State Allocation Board shall not raise the amount of the district matching share calculated under Section 17705.5 of the Education Code, as a result of the increase under this paragraph, until at least 90 days after the date of that increase.

(c) (1) Notwithstanding any other provision of law, during the term of any contract entered into between a subdivider or builder and a school district, city, county, or city and county, whether general law or chartered, on or before January 1, 1987, that requires the payment of a fee, charge, or dedication for the construction of school facilities as a condition to the approval of residential development, neither Section 53080 nor this chapter applies to that residential development.

(2) Any development project for which a final map was approved and construction had commenced on or before September 1, 1986, is subject to only the fee, charge, dedication, or other requirement prescribed in any local ordinance in existence on that date and applicable to the project.

(d) For purposes of Section 53080 and this chapter, "residential, commercial, or industrial development" does not include any facility used exclusively for religious purposes that is thereby exempt from property taxation under the laws of this state, any facility used exclusively as a private full-time day school as described in Section

48222 of the Education Code, or any facility that is owned and occupied by one or more agencies of federal, state, or local government. In addition, "commercial or industrial development" includes, but is not limited to, any hotel, inn, motel, tourist home, or other lodging for which the maximum term of occupancy for guests does not exceed 30 days, but does not include any residential hotel, as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code.

(e) The Legislature finds and declares that the subject of the financing of school facilities with development fees is a matter of statewide concern. For this reason the Legislature hereby occupies the subject matter of mandatory development fees and other development requirements for school facilities finance to the exclusion of all local measures on the subject.

(f) Nothing in this section shall be interpreted to limit or prohibit the use of Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 to finance the construction or reconstruction of school facilities.

(g) This section shall become inoperative on January 1, 1993, and shall remain inoperative until the date that Assembly Constitutional Amendment 6 of the 1991–92 Regular Session fails to receive the approval of a majority of the voters voting on the measure, and as of that date this section shall become operative.

SEC. 4. Section 65995 is added to the Government Code, to read:

65995. (a) Except for a fee, charge, dedication, or other requirement authorized under Section 53080, or pursuant to Chapter 4.7 (commencing with Section 65970), no fee, charge, dedication, or other requirement shall be levied by the legislative body of a local agency against a development project, as defined in Section 53080, whether by administrative or legislative action, for the construction or reconstruction of school facilities.

(b) In no event shall the amount of any fees, charges, dedications, or other requirements authorized under Section 53080, or pursuant to Chapter 4.7 (commencing with Section 65970), or both, exceed the following:

(1) One dollar and fifty cents ($1.50) per square foot of assessable space, in the case of any residential development. "Assessable space," for this purpose, means all of the square footage within the perimeter of a residential structure, not including any carport, walkway, garage, overhang, patio, enclosed patio, detached accessory structure, or similar area. The amount of the square footage within the perimeter of a residential structure shall be calculated by the building department of the city or county issuing the building permit, in accordance with the standard practice of that city or county in calculating structural perimeters.

(2) In the case of any commercial or industrial development, twenty-five cents ($0.25) per square foot of chargeable covered and enclosed space. "Chargeable covered and enclosed space," for this purpose, means the covered and enclosed space determined to be

(f) Nothing in this section shall be interpreted to limit or prohibit the use of Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 to finance the construction or reconstruction of school facilities.

(g) This section shall remain in effect only until the date that Assembly Constitutional Amendment 6 of the 1991–92 Regular Session fails to receive the approval of a majority of the voters voting on the measure, and as of that date this section is repealed.

SEC. 5. Section 65995.3 is added to the Government Code, to read:

65995.3. (a) In addition to the fee, charge, dedication, or other requirement specified in subdivision (b) of Section 65995, an additional fee, charge, dedication, or other requirement of one dollar ($1) per square foot of assessable space may be levied by the governing board of a school district against that residential construction described in subparagraphs (B) and (C) of paragraph (1) of subdivision (a) of Section 53080 for the construction or reconstruction of school facilities.

(b) This section shall remain in effect only until the date that Assembly Constitutional Amendment 6 of the 1991–92 Regular Session fails to receive the approval of a majority of the voters voting on the measure, and as of that date this section is repealed.

SEC. 6. Section 65996 of the Government Code is amended to read:

65996. (a) The following provisions shall be the exclusive methods of mitigating environmental effects related to the adequacy of school facilities when considering the approval or the establishment of conditions for the approval of a development project, as defined in Section 53080, pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code:

(1) Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code.

(2) Chapter 25 (commencing with Section 17785) of Part 10 of the Education Code.

(3) Chapter 28 (commencing with Section 17870) of Part 10 of the Education Code.

(4) Article 2.5 (commencing with Section 39327) of Chapter 3 of Part 23 of the Education Code.

(5) Section 53080 of the Government Code.

(6) Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 of the Government Code.

(7) Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 of the Government Code.

(b) No public agency shall, pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code or Division 2 (commencing with Section 66410) of this code, deny approval of a project on the basis of the adequacy of school facilities.

(c) This section shall become inoperative on January 1, 1993, and shall remain inoperative until the date that Assembly Constitutional

Amendment 6 of the 1991–92 Regular Session fails to receive the approval of a majority of the voters voting on the measure, and as of that date this section shall become operative.

SEC. 7. Section 65996 is added to the Government Code, to read:

65996. (a) The following provisions shall be the exclusive methods of mitigating environmental effects related to the adequacy of school facilities when considering the approval or the establishment of conditions for the approval of a development project by administrative or legislative action pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code:

(1) Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code.

(2) Chapter 25 (commencing with Section 17785) of Part 10 of the Education Code.

(3) Chapter 28 (commencing with Section 17870) of Part 10 of the Education Code.

(4) Article 2.5 (commencing with Section 39327) of Chapter 3 of Part 23 of the Education Code.

(5) Section 53080 of the Government Code.

(6) Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 of the Government Code.

(7) Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 of the Government Code.

(b) No public agency shall, pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code or Title 7 (commencing with Section 65000), deny approval of a project on the basis of the adequacy of school facilities, or impose conditions on the approval of a project for the purpose of providing school facilities that exceed the amounts authorized pursuant to this chapter.

(c) This section shall have prospective application only, and shall not affect any action taken by a local agency prior to the effective date of this section.

(d) This section shall remain in effect only until the date that Assembly Constitutional Amendment 6 of the 1991–92 Regular Session fails to receive the approval of a majority of the voters voting on the measure, and as of that date this section is repealed.

SEC. 8. Section 34 of Chapter 1209 of the Statutes of 1989 is repealed.

SEC. 9. (a) The Legislature finds and declares that paragraph (2) of subdivision (a) of Section 53080 of the Government Code and paragraph (1) of subdivision (b) of Section 65995 of the Government Code, as amended by Chapter 1209 of the Statutes of 1989, are declaratory of existing law.

(b) This section shall become operative on the date that Assembly Constitutional Amendment 6 of the 1991-92 Regular Session fails to receive the approval of a majority of the voters voting on the measure.

SEC. 10. Sections 1 and 2 of this act shall become operative only upon the approval of Assembly Constitutional Amendment 6 of the

1991–92 Regular Session by a majority of voters voting on the measure.

BILL NUMBER: AB 2211 CHAPTERED 10/01/93

CHAPTER 589
FILED WITH SECRETARY OF STATE OCTOBER 1, 1993
APPROVED BY GOVERNOR SEPTEMBER 28, 1993
PASSED THE ASSEMBLY AUGUST 26, 1993
PASSED THE SENATE AUGUST 19, 1993
AMENDED IN SENATE JUNE 24, 1993

INTRODUCED BY Committee on Judiciary as presented by Assembly Member Goldsmith on behalf of the committee (Archie-Hudson, Caldera, Collins, Connolly, Epple, Terry Friedman, Horcher, Isenberg, Snyder, Speier, Statham, and Weggeland)

MARCH 5, 1993

An act to amend Sections 1680, 1696, 2353, 2612, 2664, 2770.10, 2878, 3750, 4869, 7028.1, 7045, 7159, 7163, 9793, 10236.2, and 19617.7 of, to amend and renumber Section 17510.8 of, and to repeal Section 10161.75 of, the Business and Professions Code, to amend Sections 43.93, 712, 1363.2, 1689.7, and 1942.4 of the Civil Code, to amend Sections 116.232, 473.1, 483.010, 483.015, and 1174.2 of the Code of Civil Procedure, to amend Section 4406 of the Commercial Code, to amend Sections 8804, 14504.2, 17878, 32241, 32242, 32243, 32244, 32245, 41320.1, 42238.15, 44010, 44253.6, 47602, 47605, 48204, 51220, 52772, 56345, 60004, 66301, 69274, 88116, 88127, 89701, and 94367 of, and to amend and renumber Sections 1597.95 and 67358 of, the Education Code, to amend Section 3567 of, and to repeal Section 23512.2, as added by Chapter 219 of the Statutes of 1992, of, the Elections Code, to amend Section 1107 of the Evidence Code, to amend Section 13080 of the Financial Code, to amend Section 3203 of the Fish and Game Code, to amend Sections 14611, 15071.5, 58110, and 74734.5 of, and to amend the heading of Article 4 (commencing with Section 58591) of Chapter 6 of Part 1 of Division 21 of, the Food and Agricultural Code, to amend Sections 3549.1, 13923, 15436, 20024.002, 25830.1, 51021, 53312.7, 53313.5, 53340.2, 53830.5, 65250, 65583.1, 66020, and 68560.5 of the Government Code, to amend and renumber Section 6832 of the Harbors and Navigation Code, to amend Sections 372, 1250, 1428, 1569.692, 1569.73, 11100, 11370.9, 11650, 11837, 11838.4, 15076, 17033, 17060, 18420, 18421, 19870, 25163, 25179.13, 25244.19, 25698, 25817.1, 32126, and 36005 of the Health and Safety Code, to amend Sections 1776 and 3852 of the Labor Code, to amend Sections 290, 290.3, 374.8, 422.75, 457.1, 549, 602, 653m, 853.6, 999t, 1000.6, 1001.65, 1048.1, 1203.1g, 1463.007, 1465.5, 4532, 6242, 12022.9, and 12288.5 of, the Penal Code, to amend Sections 8572 and 8574 of the Probate Code, to amend Section 10332 of the Public Contract Code, to amend Sections 30301, 30340, and 42774 of the Public Resources Code, to amend Sections 1802 and 99243 of the Public Utilities Code, to amend Sections 53, 75.11, 214.02, 6201.3, 8272, 8273, 9272, 9273, 9276, 17207, 19405, 23801, 24347.5, 25962, 30459.2, 30459.3, 32472, 32473, 40096, 40212, 40213, 41172, 41173, 43523, 43524, 45862, 45868, 45869, 45870, 45871, 46153, 50156.2, 50156.10, 50156.12, 50156.13, 50156.15, and 50156.16 of, and to repeal Sections 17208, 17208.1, 17208.2, 17208.3, 24347.6,

SEC. 80. Section 66020 of the Government Code is amended to read:

66020. (a) Any party may protest the imposition of any fees, dedications, reservations, or other exactions imposed on a residential housing development by a local agency by meeting both of the following requirements:

(1) Tendering any required payment in full or providing satisfactory evidence of arrangements to ensure performance of the conditions necessary to meet the requirements of the imposition.

(2) Serving written notice on the governing body of the entity, which notice shall contain all of the following information:

(A) A statement that the required payment is tendered, or that any conditions which have been imposed are provided for or satisfied, under protest.

(B) A statement informing the governing body of the factual elements of the dispute and the legal theory forming the basis for the protest.

(b) Compliance by any party with subdivision (a) shall not be the basis for a local agency to withhold approval of any map, plan, permit, zone change, license, or other form of permission, or concurrence, whether discretionary, ministerial, or otherwise, incident to, or necessary for, the development of the residential housing development. This section does not limit the ability of a local agency to ensure compliance with all applicable provisions of law in determining whether or not to approve or disapprove a development project.

(c) Where a reviewing local agency makes proper and valid findings that the construction of certain public improvements or facilities, the need for which is directly attributable to the proposed residential housing development, is required for reasons related to the public health, safety, and welfare, and elects to impose a requirement for construction of those improvements or facilities as a condition of approval of the proposed development, then in the event a protest is lodged pursuant to this section, that approval shall be suspended pending withdrawal of the protest, the expiration of the limitation period of subdivision (d) without the filing of an action, or resolution of any action filed. This subdivision confers no new or independent authority for imposing fees, dedications, reservations, or other exactions not presently governed by other law.

(d) A protest filed pursuant to subdivision (a) shall be filed at the time of approval or conditional approval of the development or within 90 days after the date of the imposition of the fees, dedications, reservations, or other exactions to be imposed on a residential housing development. Any party who files a protest pursuant to subdivision (a) may file an action to attack, review, set aside, void, or annul the imposition of the fees, dedications, reservations, or other exactions imposed on a residential housing development by a local agency within 180 days after the date of the imposition. Thereafter, notwithstanding any other law to the contrary, all persons are barred from any action or proceeding or any defense of invalidity or unreasonableness of the imposition. Any proceeding brought pursuant to this subdivision shall take

precedence over all matters of the calendar of the court except criminal, probate, eminent domain, forcible entry, and unlawful detainer proceedings.

(e) If the court finds in favor of the plaintiff in any action or proceeding brought pursuant to subdivision (d), the court shall direct the local agency to refund the unlawful portion of the payment, with interest at the rate of 8 percent per annum, or return the unlawful portion of the exaction imposed.

(f) (1) If the court grants a judgment to a plaintiff invalidating, as enacted, all or a portion of an ordinance or resolution enacting a fee, dedication, reservation, or other exaction, the court shall direct the local agency to refund the unlawful portion of the payment, plus interest at an annual rate equal to the average rate accrued by the Pooled Money Investment Account during the time elapsed since the payment occurred, or to return the unlawful portion of the exaction imposed.

(2) If an action is filed within 120 days of the date at which an ordinance or resolution to establish or modify a fee, dedication, reservation, or other exactions to be imposed on a residential housing development takes effect, the portion of the payment or exaction invalidated shall also be returned to any other person who, under protest pursuant to this section and under that invalid portion of that same ordinance or resolution as enacted, tendered the payment or provided for or satisfied the exaction during the period from 90 days prior to the date of the filing of the action which invalidates the payment or exaction to the date of the entry of the judgment referenced in paragraph (1).

(g) Approval or conditional approval of a development occurs, for the purposes of this section, when the tentative map, tentative parcel map, or parcel map is approved or conditionally approved or when the parcel map is recorded if a tentative map or tentative parcel map is not required.

(h) The imposition of fees, dedications, reservations, or other exactions occurs, for the purposes of this section, when they are imposed or levied on a specific development.

SEC. 81. Section 68560.5 of the Government Code is amended to read:

68560.5. As used in this article:

(a) "Court proceeding" means a civil, criminal, or juvenile proceeding, excluding a small claims proceeding, and a deposition.

(b) "Interpreter" does not include (1) an interpreter qualified under Section 754 of the Evidence Code to interpret for deaf or hard-of-hearing persons, or (2) an interpreter qualified for administrative hearings or noncourt settings under Section 11513.

SEC. 82. Section 6832 of the Harbors and Navigation Code, as added by Chapter 680 of the Statutes of 1991, is amended and renumbered to read:

6832.5. Notwithstanding any other provision of law, the creation of any indebtedness by the Sacramento-Yolo Port District pursuant to this chapter shall require the prior authorization of a five-sevenths majority vote of the members of the port commission.

and housing sponsors of housing developments pursuant to this chapter from that fund for a period of four years as follows:

(1) Twenty-eight million dollars ($28,000,000) shall be available for the program set forth in paragraph (1) of subdivision (a) of Section 51451, except that any funds not expended within 18 months shall be available for programs set forth in paragraphs (2) and (3) of subdivision (a) of Section 51451.

(2) Twenty-eight million dollars ($28,000,000) shall be available for the program set forth in paragraph (2) of subdivision (a) of Section 51451.

(3) Fifty-two million dollars ($52,000,000) shall be available for the program set forth in paragraph (3) of subdivision (a) of Section 51451.

(4) Fifty-two million dollars ($52,000,000) shall be available for the program set forth in subdivision (b) of Section 51451.

51453. Twenty-five percent of the funds available in each of the programs pursuant to Section 51452 shall be allocated in each of the four fiscal years, commencing with the **1998**-99 fiscal year.

51454. The Legislative Analyst's Office shall submit a report to the Legislature and the Governor no later than January 1, 2001, regarding the effectiveness of the programs established pursuant to this chapter.

51455. This chapter shall remain in effect only until January 1, 2002, and as of that date is repealed.

BILL NUMBER: SB 405 CHAPTERED 10/11/93

CHAPTER 1195
FILED WITH SECRETARY OF STATE OCTOBER 11, 1993
APPROVED BY GOVERNOR OCTOBER 11, 1993
PASSED THE SENATE SEPTEMBER 9, 1993
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AMENDED IN ASSEMBLY SEPTEMBER 2, 1993
AMENDED IN ASSEMBLY JULY 2, 1993
AMENDED IN ASSEMBLY JUNE 28, 1993
AMENDED IN SENATE MAY 19, 1993
AMENDED IN SENATE MAY 4, 1993

INTRODUCED BY Committee on Local Government (Senators Bergeson (Chairman), Ayala, Calderon, Craven, Hughes, Kopp, Presley, and Thompson)

FEBRUARY 23, 1993

An act to amend Sections 4201, 6159, 8162.9, 8180, 23101, 23119, 23130, 23133, 24000, 24250, 24256, 24304, 25332, 25845, 27008, 29088, 36934, 37110, 53080.1, 53534, 53901, 56844, 57025, and 68096.1 of, to add Sections 25521.5, 26990, 57330, and 65352.5 to, to repeal Section 40101 of, and to repeal Article 5.5 (commencing with Section 65958) of Chapter 4.5 of Division 1 of Title 7 of, the Government Code, to amend Sections 6937 and 6944 of, and to repeal Section 6832 of the Harbors and Navigation Code, to amend Sections 6487, 13800, and 13893 of, and to add Sections 4730.8 and 6480.7 to, the Health and Safety Code, to amend Sections 20206.9 and 22300 of, to add Section 20131 to, and to repeal Sections 9202, 20206.7, and 20206.8 of, the Public Contract Code, to add Sections 5541.2 and 5552.1 to the Public Resources Code, to add Section 97.05 to the Revenue and Taxation Code, to amend Section 1806 of the Streets and Highways Code, to amend Sections 21102, 21375, 21560, 22980, 74661, and 74466 of, and to add Section 75601 to, the Water Code, to amend Section 11 of Chapter 129 of the Statutes of 1868, to amend Sections 26.6 and 26.9 of Chapter 1405 of the Statutes of 1951, to amend Section 7.1 of Chapter 2137 of the Statutes of 1959, and to amend Section 700 of Chapter 1399 of the Statutes of 1987, relating to local agencies.

LEGISLATIVE COUNSEL'S DIGEST

SB 405, Bergeson. Local agencies.

Existing law authorizes local agencies to utilize "native spoil" for utility excavation backfills.

This bill would authorize local agencies to specify that usage in their contracts.

Existing law permits, in general, a city, county, city and county, or other public agency to authorize the acceptance of a credit card for various payments. Existing law permits the acceptance of a credit card rendered by any city, county, or city and county but not by any other public agency.

introduction or passage. When ordinances, other than urgency ordinances, are altered after introduction, they shall be passed only at a regular or at an adjourned regular meeting held at least five days after alteration. Corrections of typographical or clerical errors are not alterations within the meaning of this section.

SEC. 12.3. Section 37110 of the Government Code is amended to read:

37110. The legislative body may spend money from the general fund for music and promotion, including promotion of sister city and town affiliation programs.

SEC. 12.5. Section 40101 of the Government Code is repealed.

SEC. 12.7. Section 53080.1 of the Government Code is amended to read:

53080.1. (a) Any resolution adopting or increasing a fee, charge, dedication, or other requirement pursuant to Section 53080, for application to residential, commercial, or industrial development, shall be enacted in accordance with Chapter 5 (commencing with Section 66000) of Division 1 of Title 7, with Section 54994.1, and with the procedures for mailed notice set forth in Section 54992. The adoption, increase, or imposition of any fee, charge, dedication, or other requirement pursuant to Section 53080 shall not be subject to Division 13 (commencing with Section 21000) of the Public Resources Code. The adoption of, or increase in, the fee, charge, dedication, or other requirement shall be effective no sooner than 60 days following the final action on that adoption or increase, except as specified in subdivision (b).

(b) Without following the procedure otherwise required for adopting or increasing a fee, charge, dedication, or other requirement, the governing board of a school district may adopt an urgency measure as an interim authorization for a fee, charge, dedication, or other requirement, or increase in a fee, charge, dedication, or other requirement, where necessary to respond to a current and immediate threat to the public health, welfare, or safety. The interim authorization shall require a four-fifths vote of the governing board for adoption, and shall contain findings describing the current and immediate threat to the public health, welfare, or safety. The interim authorization shall have no force or effect on and after a date 30 days after its adoption. After notice and hearing in accordance with subdivision (a), the governing board, upon a four-fifths vote of the board, may extend the interim authority for an additional 30 days. Not more than two extensions may be granted.

(c) Upon adopting or increasing a fee, charge, dedication, or other requirement pursuant to subdivision (a) or (b), the school district shall transmit a copy of the resolution to each city and each county in which the district is situated, accompanied by all relevant supporting documentation and a map clearly indicating the boundaries of the area subject to the fee, charge, dedication, or other requirement. The school district governing board shall specify, pursuant to that notification, whether or not the collection of the fee or other charge is subject to the restriction set forth in subdivision (a) of Section 66007.

(d) Any party on whom a fee, charge, dedication, or other requirement has been directly imposed pursuant to Section 53080 may protest the establishment or imposition of that fee, charge, dedication, or other requirement in accordance with Section 66020, except that the procedures set forth in Section 66021 are deemed to apply, for this purpose, to commercial and industrial development, as well as to residential development.

(e) In the case of any commercial or industrial development, the following procedures shall also apply:

(1) The school district governing board shall, in the course of making the findings required under subdivisions (a) and (b) of Section 66001, do all of the following:

(A) Make the findings on either an individual project basis or on the basis of categories of commercial or industrial development. Those categories may include, but are not limited to, the following uses: office, retail, transportation, communications and utilities, light industrial, heavy industrial, research and development, and warehouse.

(B) Conduct a study to determine the impact of the increased number of employees anticipated to result from the commercial or industrial development upon the cost of providing school facilities within the district. For the purpose of making that determination, the study shall utilize employee generation estimates that are calculated on either an individual project or categorical basis, in accordance with subparagraph (A). Those employee generation estimates shall be based upon commercial and industrial factors within the district or upon, in whole or in part, the applicable employee generation estimates set forth in the January 1990 edition of "San Diego Traffic Generators," a report of the San Diego Association of Governments.

(C) The governing board shall take into account the results of that study in making the findings described in this subdivision.

(2) In addition to any other requirement imposed by law, in the case of any development project against which a fee, charge, dedication, or other requirement is to be imposed pursuant to Section 53080 on the basis of a category of commercial or industrial development, as described in paragraph (1), the governing board shall provide a process that permits the party against whom the fee, charge, dedication, or other requirement is to be imposed the opportunity for a hearing to appeal that imposition. The grounds for that appeal include, but are not limited to, the inaccuracy of including the project within the category pursuant to which the fee, charge, dedication, or other requirement is to be imposed, or that the employee generation or pupil generation factors utilized under the applicable category are inaccurate as applied to the project. The party appealing the imposition of the fee, charge, dedication, or other requirement shall bear the burden of establishing that the fee, charge, dedication, or other requirement is improper.

SEC. 13. Section 53534 of the Government Code is amended to read:

53534. Any provision of law to the contrary notwithstanding, a city, county, or city and county may enter into contracts commonly known as "interest rate swap agreements" or "forward payment conversion agreements" with any person providing for the exchange of payments between the person and the city, county,

sufficient to cover administrative costs of collection, size of water-producing facility discharge opening, area served by the water-producing facility, number of persons served by the water-producing facility, use of land served by the water-producing facility, crops grown on land served by the water-producing facility, or any other criteria or criteria which may be used to determine with reasonable accuracy the amount of water produced from that water-producing facility. The district may levy an annual charge upon a water-producing facility for which no production has been recorded but which has not been permanently abandoned if that charge does not exceed the annual cost to the district of maintaining and administering the registration of that facility.

SEC. 31.7. Section 700 of the Colusa Basin Drainage District Act, Chapter 1399 of the Statutes of 1987, is amended to read:

Sec. 700. The district may levy benefit assessments on a districtwide basis or within any zone, upon land only, as follows:

(a) An initial assessment for district expenses may be levied on the basis of an equal amount per acre as shown on the assessment rolls, but not to exceed ten cents ($0.10) per acre. It is hereby declared for that purpose that the benefit of district activities is received equally by all land. This initial assessment may be levied annually in lieu of the assessment specified in subdivision (b) until a plan has been approved pursuant to Section 610.

(b) Annual assessments pursuant to Sections 703 to 708, inclusive.

SEC. 32. With respect to Sections 9 and 19 of this act, the Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitutions because of the unique circumstances of the Counties of Butte, Merced, Orange, Riverside, and Ventura and the Riverside County Regional Park and Open-Space District, Capistrano Beach Sanitary District and the Dana Point Sanitary District.

SEC. 33. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California Constitution because this act is in accordance with the request of a local agency or school district which desired legislative authority to carry out the program specified in this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

BILL NUMBER: SB 517 CHAPTERED 07/21/94

CHAPTER 300
FILED WITH SECRETARY OF STATE JULY 21, 1994
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AMENDED IN SENATE JUNE 23, 1993
AMENDED IN SENATE MAY 17, 1993
AMENDED IN SENATE MAY 10, 1993
AMENDED IN SENATE APRIL 12, 1993

INTRODUCED BY Senator Bergeson
(Coauthor: Senator Russell)
(Coauthor: Assembly Member Napolitano)

MARCH 1, 1993

An act to add Chapter 9.3 (commencing with Section 66030) to Division 1 of Title 7 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

SB 517, Bergeson. Land use: mediation and resolution of land use disputes.

Existing law contains numerous provisions relating to the use of land, including provisions authorizing the bringing of actions in the superior court relating to land use disputes.

This bill would express specified findings and declarations of the Legislature relating to litigation arising out of land use disputes, and would also express legislative intent in this regard, including a statement that it is not the intent of the Legislature to interfere with litigants' ability to pursue court remedies. The bill would provide that specified land use actions brought in superior court may be subject to a mediation proceeding, as specified, conducted by the council of governments having jurisdiction in the county where the dispute arose, the Office of Permit Assistance within the Trade and Commerce Agency, or other specified persons or entities. The bill would establish procedures for initiating the mediation process, and for selecting a mediator. The bill would prescribe the reports and statements to be filed by the mediator, as specified, and would provide that specified Evidence Code sections apply to mediations conducted pursuant to the bill's provisions. It would also authorize the Judicial Council or courts to adopt rules, forms, and standards as necessary to implement the chapter.

This bill would require the Office of Permit Assistance, in cooperation with the Judicial Council, to report to the Legislature regarding implementation of the mediation program.

The bill would provide that no action filed on or after January 1, 2002, shall be subject to its provisions, unless a

later enacted statute, enacted before January 1, 2002, extends that date or deletes the section.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Chapter 9.3 (commencing with Section 66030) is added to Division 1 of Title 7 of the Government Code, to read:

CHAPTER 9.3. MEDIATION AND RESOLUTION OF LAND USE DISPUTES

66030. (a) The Legislature finds and declares all of the following:

(1) Current law provides that aggrieved agencies, project proponents, and affected residents may bring suit against the land use decisions of state and local governmental agencies. In practical terms, nearly anyone can sue once a project has been approved.

(2) Contention often arises over projects involving local general plans and zoning, redevelopment plans, the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), development impact fees, annexations and incorporations, and the Permit Streamlining Act (Chapter 4.5 (commencing with Section 65920)).

(3) When a public agency approves a development project that is not in accordance with the law, or when the prerogative to bring suit is abused, lawsuits can delay development, add uncertainty and cost to the development process, make housing more expensive, and damage California's competitiveness. This litigation begins in the superior court, and often progresses on appeal to the Court of Appeal and the Supreme Court, adding to the workload of the state's already overburdened judicial system.

(b) It is, therefore, the intent of the Legislature to help litigants resolve their differences by establishing formal mediation processes for land use disputes. In establishing these mediation processes, it is not the intent of the Legislature to interfere with the ability of litigants to pursue remedies through the courts.

66031. (a) Notwithstanding any other provision of law, any action brought in the superior court relating to any of the following subjects may be subject to a mediation proceeding conducted pursuant to this chapter:

(1) The approval or denial by a public agency of any development project.

(2) Any act or decision of a public agency made pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(3) The failure of a public agency to meet the time limits specified in Chapter 4.5 (commencing with Section 65920), commonly known as the Permit Streamlining Act, or in the Subdivision Map Act (Division 2 (commencing with Section 66410)).

(4) Fees determined pursuant to Sections 53080 to 53082, inclusive, or Chapter 4.9 (commencing with Section 65995).

(5) Fees determined pursuant to Chapter 5 (commencing with Section 66000).

(6) The adequacy of a general plan or specific plan adopted pursuant to Chapter 3 (commencing with Section 65100).

(7) The validity of any sphere of influence, urban service area, change of organization or reorganization, or any other decision made pursuant to the Cortese-Knox Local Government Reorganization Act (Division 3 (commencing with Section 56000) of Title 5).

(8) The adoption or amendment of a redevelopment plan pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code).

(b) Within five days after the deadline for the respondent or defendant to file its reply to an action, the court may invite the parties to consider resolving their dispute by selecting a mutually acceptable person to serve as a mediator, or an organization or agency to provide a mediator.

(c) In selecting a person to serve as a mediator, or an organization or agency to provide a mediator, the parties shall consider the following:

(1) The council of governments having jurisdiction in the county where the dispute arose.

(2) Any subregional or countywide council of governments in the county where the dispute arose.

(3) The Office of Permit Assistance within the Trade and Commerce Agency, pursuant to its authority in Article 1 (commencing with Section 15399.50) of Chapter 11 of Part 6.7 of Division 3 of Title 2.

(4) Any other person with experience or training in mediation including those with experience in land use issues, or any other organization or agency which can provide a person with experience or training in mediation, including those with experience in land use issues.

(d) If the court invites the parties to consider mediation, the parties shall notify the court within 30 days if they have selected a mutually acceptable person to serve as a mediator. If the parties have not selected a mediator within 30 days, the action shall proceed. The court shall not draw any implication, favorable or otherwise, from the refusal by a party to accept the invitation by the court to consider mediation. Nothing in this section shall preclude the parties from using mediation at any other time while the action is pending.

66032. (a) Notwithstanding any provision of law to the contrary, all time limits with respect to an action shall be tolled while the mediator conducts the mediation, pursuant to this chapter.

(b) Mediations conducted by a mediator pursuant to this chapter that involve less than a quorum of a legislative body or a state body shall not be considered meetings of a legislative body pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), nor shall they be considered meetings of a state body pursuant to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2).

(c) Any action taken regarding mediation conducted pursuant to this chapter shall be taken in accordance with the provisions of current law.

(d) Ninety days after the commencement of the mediation, and every 90 days thereafter, the action shall be reactivated unless the parties to the action do either of the following:

(1) Arrive at a settlement and implement it in accordance with the provisions of current law.

(2) Agree by written stipulation to extend the mediation for an another 90-day period.

(e) A mediator shall not file, and a court shall not consider, any declaration or finding of any kind by the mediator, other than a required statement of agreement or nonagreement, unless all parties in the mediation expressly agree otherwise, in writing.

(f) Sections 703.5 and 1152.5 of the Evidence Code shall apply to any mediation conducted pursuant to this chapter.

66033. (a) At the end of the mediation, the mediator shall file a report with the Office of Permit Assistance, consistent with Section 1152.5 of the Evidence Code, containing each of the following:

(1) The title of the action.

(2) The names of the parties to the action.

(3) An estimate of the costs avoided, if any, because the parties used mediation instead of litigation to resolve their dispute.

(b) The sole purpose of the report required by this section is the collection of information needed by the office to prepare its report to the Legislature pursuant to Section 66036.

66034. If the mediation does not resolve the action, the court may, in its discretion, schedule a settlement conference before a judge of the superior court. If the action is later heard on its merits, the judge hearing the action shall not be the same judge who conducted the settlement conference, except in counties with only one judge of the superior court.

66035. The Judicial Council may adopt rules, forms, and standards necessary to implement this chapter.

66036. By January 1, 2001, the Office of Permit Assistance within the Trade and Commerce Agency, in cooperation with the Judicial Council, shall report to the Legislature regarding the implementation of this chapter. The office shall consult with persons and interest groups with knowledge of the mediation process, and affected public agencies, including, but not limited to, councils of governments. The report may recommend the extension of the chapter, changes to the chapter, or the repeal of the chapter.

66037. No action filed on or after January 1, 2002, shall be subject to this chapter unless a later enacted statute which is chaptered before January 1, 2002, extends this date or deletes this section.

BILL NUMBER: SB 1461 CHAPTERED 09/29/94

CHAPTER 983
FILED WITH SECRETARY OF STATE SEPTEMBER 29, 1994
APPROVED BY GOVERNOR SEPTEMBER 28, 1994
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AMENDED IN ASSEMBLY AUGUST 8, 1994
AMENDED IN ASSEMBLY JUNE 22, 1994
AMENDED IN SENATE MAY 18, 1994
AMENDED IN SENATE APRIL 5, 1994

INTRODUCED BY Senator Craven
(Coauthor: Senator Ayala)

FEBRUARY 10, 1994

An act to add Sections 798.82 and 799.8 to the Civil Code, and to amend Section 53080.4 of the Government Code, relating to mobilehomes.

LEGISLATIVE COUNSEL'S DIGEST

SB 1461, Craven. Mobilehomes: school district fees.

(1) Existing law authorizes a school district to levy a fee, charge, dedication, or other form of requirement against a development project, as defined, for purposes of funding the construction or reconstruction of school facilities. Existing law applies these provisions to manufactured homes and mobilehomes, under specified conditions.

This bill would provide that when a manufactured home or a mobilehome owned by a person 55 years of age or older who is also a member of a lower income household, as defined, is moved from a mobilehome park space where the mobilehome owner has resided in one school district, to a mobilehome park space in another school district, and is subject to these school facilities construction fees, the school district may waive the fee, as specified; otherwise, the district to which the manufactured home or mobilehome has been moved is required to grant the homeowner the necessary approval for occupancy, and permission to pay the fee in installments, as indicated, over a specified minimum time period. It would also authorize the school district to secure the fee as a lien perfected against the mobilehome or manufactured home. The imposition of new requirements on school districts with respect to the collection of these fees would create a state-mandated local program.

(2) The existing Mobilehome Residency Law generally regulates the conditions of residency in mobilehome parks, and subdivisions, cooperatives, and condominiums for mobilehomes.

This bill would require the management to disclose in writing to any person who proposes to purchase or install a manufactured home or mobilehome as indicated, on which the construction of the pad or foundation system commenced after September 1, 1986, and no other manufactured home or mobilehome was previously located, installed, or occupied, that the manufactured home or mobilehome may be subject to a school

facilities fee, as specified.

(3) This bill would also make technical nonsubstantive changes to existing law.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed $1,000,000, shall be made from the State Mandates Claims Fund.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 798.82 is added to the Civil Code, to read:

798.82. The management, at the time of an application for residency, shall disclose in writing to any person who proposes to purchase or install a manufactured home or mobilehome on a space, on which the construction of the pad or foundation system commenced after September 1, 1986, and no other manufactured home or mobilehome was previously located, installed, or occupied, that the manufactured home or mobilehome may be subject to a school facilities fee under Sections 53080 and 53080.4 of, and Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7 of, the Government Code.

SEC. 2. Section 799.8 is added to the Civil Code, to read:

799.8. The management, at the time of an application for residency, shall disclose in writing to any person who proposes to purchase or install a manufactured home or mobilehome on a space or lot, on which the construction of the pad or foundation system commenced after September 1, 1986, and no other manufactured home or mobilehome was previously located, installed, or occupied, that the manufactured home or mobilehome may be subject to a school facilities fee under Sections 53080 and 53080.4 of, and Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7 of, the Government Code.

SEC. 3. Section 53080.4 of the Government Code is amended to read:

53080.4. (a) Notwithstanding any other provision of law, any fee, charge, dedication, or other form of requirement levied by the governing board of a school district under Section 53080 may apply, as to any manufactured home or mobilehome, only pursuant to compliance with all of the following conditions:

(1) The fee, charge, dedication, or other form of requirement is applied to the initial location, installation, or occupancy of the manufactured home or mobilehome within the school district.

(2) The manufactured home or mobilehome is to be located, installed, or occupied on a space or site on which no other manufactured home or mobilehome was previously located, installed, or occupied.

(3) The manufactured home or mobilehome is to be located,

installed, or occupied on a space in a mobilehome park, or on any site or in any development outside a mobilehome park, on which the construction of the pad or foundation system commenced after September 1, 1986.

(b) Compliance on the part of any manufactured home or mobilehome with any fee, charge, dedication, or other form of requirement, as described in subdivision (a), or certification by the appropriate school district of that compliance, shall be required as a condition of the following, as applicable:

(1) The close of escrow, where the manufactured home or mobilehome is to be located, installed, or occupied on a mobilehome park space, or on any site or in any development outside a mobilehome park, as described in subdivision (a), and the sale or transfer of the manufactured home or mobilehome is subject to escrow as provided in Section 18035 or 18035.2 of the Health and Safety Code.

(2) The approval of the manufactured home or mobilehome for occupancy pursuant to Section 18551 or 18613 of the Health and Safety Code, in the event that paragraph (1) does not apply.

(c) No fee or other requirement levied under Section 53080 shall be applied to any of the following:

(1) Any manufactured home or mobilehome located, installed, or occupied on a space in a mobilehome park on or before September 1, 1986, or on any date thereafter, if construction on that space, pursuant to a building permit, commenced on or before September 1, 1986.

(2) Any manufactured home or mobilehome located, installed, or occupied on any site outside of a mobilehome park on or before September 1, 1986, or on any date thereafter if construction on that site pursuant to a building permit commenced on or before September 1, 1986.

(3) The replacement of or addition to a manufactured home or mobilehome located, installed, or occupied on a space in a mobilehome park, subsequent to the original location, installation, or occupancy of any manufactured home or mobilehome on that space.

(4) The replacement of a manufactured home or mobilehome that was destroyed or damaged by fire or any form of natural disaster.

(5) A manufactured home or mobilehome accessory structure, as defined in Section 18008.5 or 18213 of the Health and Safety Code.

(6) The conversion of a rental mobilehome park to a subdivision, cooperative, or condominium for mobilehomes, or its conversion to any other form of resident ownership of the park, as described in Section 50561 of the Health and Safety Code.

(d) Where any fee or other requirement levied under Section 53080 is required as to any manufactured home or mobilehome that is subsequently replaced by a permanent residential structure constructed on the same lot, the amount of that fee or other requirement shall apply toward the payment of any fee or other requirement under Section 53080 applied to that permanent residential structure.

(e) Notwithstanding any other provision of law, any school district that, on or after January 1, 1987, collected any fee, charge, dedication, or other form of requirement from any manufactured home, mobilehome, mobilehome park, or other development, shall immediately repay the fee, charge, dedication, or other form of requirement to the person or persons who made the payment to the extent the fee, charge,

dedication, or other form of requirement collected would not have been authorized under subdivision (a). This subdivision shall not apply, however, to the extent that, pursuant to Section 16 of Article I of the California Constitution, it would impair the obligation of any contract entered into by any school district, on or before the effective date of this section.

(f) For purposes of this section, "manufactured home," "mobilehome," and "mobilehome park" have the meanings set forth in Sections 18007, 18008, and 18214, respectively, of the Health and Safety Code.

(g) (1) Whenever a manufactured home or a mobilehome owned by a person 55 years of age or older who is also a member of a lower income household as defined by Section 50079.5 of the Health and Safety Code, and which has been moved from a mobilehome park space located in one school district, where the mobilehome owner has resided, to a space or lot located in a mobilehome park or a subdivision, cooperative, or condominium for mobilehomes or manufactured homes located in another school district, is subject to any fee or other requirement under Section 53080, this section, and Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7, the district in which the manufactured home or mobilehome has been newly located may waive the fee or other requirement under Section 53080, this section, and Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7, or otherwise shall be required to grant the homeowner the necessary approval for occupancy of the home, and permission to pay the amount of the fee or other requirement thereafter, in installments, over a period totaling no less than 36 months. A school district may require that the installments be paid monthly, quarterly, or every six months during the 36-month period, and that the fee be secured as a lien perfected against the mobilehome or manufactured home pursuant to Section 18080.7 of the Health and Safety Code.

(2) Costs of filing the lien and reasonable late charges or interest may be added to the amount of the lien. This subdivision does not apply where a school facilities fee, charge, or other requirement is imposed pursuant to Section 65995.2.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

BILL NUMBER: SB 1735 CHAPTERED 09/30/94

CHAPTER 1228
FILED WITH SECRETARY OF STATE SEPTEMBER 30, 1994
APPROVED BY GOVERNOR SEPTEMBER 30, 1994
PASSED THE ASSEMBLY AUGUST 24, 1994
PASSED THE SENATE MAY 12, 1994
AMENDED IN SENATE APRIL 14, 1994

INTRODUCED BY Senator Greene

FEBRUARY 24, 1994

An act to amend Sections 17705, 17710, and 17785 of the Education Code, to amend Sections 14620, 15492, 65971, and 65974 of the Government Code, and to amend Section 24275 of the Health and Safety Code, relating to school facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1735, Greene. School facilities.

Existing law establishes the Leroy F. Greene School Building Lease-Purchase Law of 1976 (Greene Act) for the purpose of providing funding to school districts for school facilities construction under certain conditions. Existing law confers various responsibilities and powers on the State Allocation Board relating to the administration of the Greene Act, including, among other things, the power to fix specified changes for any project, as specified.

This bill would make technical changes to certain provisions relating to the State Allocation Board's responsibilities and powers under the Greene Act. The bill would include, within the board's power to fix specified changes for any project, the power to fix those changes for rehabilitation of the project.

Existing law establishes the Emergency Classroom Law of 1979 for the purpose of providing school districts with funding for the lease of portable classrooms under certain conditions.

This bill would change the name of that law to the "State Relocatable Classroom Law of 1979."

Under existing law, there is within the Department of General Services the Office of Local Assistance and a local assistance officer. Under existing law, the Office of Local Assistance performs specified functions with respect to the construction of public schools.

This bill would refer to the Office of Public School Construction rather than the Office of Local Assistance. The bill would also change the name of the local assistance officer within the Department of General Services to the Executive Officer of the Office of Public School Construction.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

regarding the process of site acquisition for projects for which the State Allocation Board has approved funding under Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code.

(2) Formulating recommendations for administrative or statutory revision to the manner in which school sites are acquired under Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code, and submitting those recommendations to the State Allocation Board.

(b) The Department of General Services shall establish a screening unit or other mechanism within the Office of Public School Construction to ensure that the office responds in a timely manner to any inquiry regarding the status of an application for project funding under Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code.

(c) The requirements set forth in this section shall not increase the staffing level of the Office of Public School Construction, as that staffing level existed on the operative date of this section.

SEC. 6. Section 65971 of the Government Code is amended to read:

65971. (a) The governing body of a school district which operates an elementary or high school shall notify the city council or board of supervisors of the city or county within which the school district is located if the governing body makes both of the following findings supported by clear and convincing evidence:

(1) That conditions of overcrowding exist in one or more attendance areas within the district which will impair the normal functioning of educational programs including the reason for the existence of those conditions.

(2) That all reasonable methods of mitigating conditions of overcrowding have been evaluated and no feasible method for reducing those conditions exist.

(b) The notice of findings sent to the city or county pursuant to subdivision (a) shall specify the mitigation measures considered by the school district. The notice of findings shall include a completed application to the Office of Public School Construction for preliminary determination of eligibility under the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code). The city council or board of supervisors shall take no action on the notice of findings sent to the city or county pursuant to subdivision (a) until the findings have been made available to the public for 60 days after the date of receipt by the city or county. The city council or board of supervisors shall either concur or not concur in the notice of findings within 61 days to 150 days after the date of receipt of the findings. The city council or board of supervisors may extend the period to concur or not to concur for one 30-day period. The failure of the city council or board of supervisors to either concur or not concur within the time period prescribed in this subdivision shall not be deemed as an act of concurrence in the notice of findings by the council or board.

The date of receipt of the notice of findings is the date when all of the materials required by this section are completed

and filed by the school district with the city council or board of supervisors.

If the city council or board of supervisors concurs in those findings, Section 65972 shall be applicable to actions taken on residential development by the city council or board of supervisors.

SEC. 7. Section 65974 of the Government Code is amended to read:

65974. (a) For the purpose of establishing an interim method of providing classroom facilities where overcrowded conditions exist, as determined necessary pursuant to Section 65971, and notwithstanding Section 66478, a city, county, or city and county may, by ordinance, require the dedication of land, the payment of fees in lieu thereof, or a combination of both, for classroom and related facilities for elementary or high schools as a condition to the approval of a residential development, if all of the following occur:

(1) The general plan provides for the location of public schools.

(2) The ordinance has been in effect for a period of 30 days prior to the implementation of the dedication or fee requirement.

(3) The land or fees, or both, transferred to a school district shall be used only for the purpose of providing interim elementary or high school classroom and related facilities. If fees are paid in lieu of the dedication of land and those fees are utilized to purchase land, no more land shall be purchased than is necessary for the placement thereon of interim facilities.

(4) The location and amount of land to be dedicated or the amount of fees to be paid, or both, shall bear a reasonable relationship and be limited to the needs of the community for interim elementary or high school facilities and shall be reasonably related and limited to the need for schools caused by the development. However, the value of the land to be dedicated or the amount of fees to be paid, or both, shall not exceed the amount necessary to pay five annual lease payments for the interim facilities. In lieu of the dedication of land or the payment of fees, or both, the builder of a residential development may, at his or her option and at his or her expense, provide interim facilities, owned or controlled by the builder, at the place designated by the school district, and at the conclusion of the fifth school year the builder shall, at the builder's expense, remove the interim facilities from that place.

(5) A finding is made by the city council or board of supervisors that the facilities to be constructed from the fees or the land to be dedicated, or both, is consistent with the general plan.

(b) The ordinance may specify the methods for mitigating the conditions of overcrowding which the school district shall consider when making the finding required by paragraph (2) of subdivision (a) of Section 65971.

(c) If the payment of fees is required, the payment shall be made at the time the building permit is issued or at a later time as may be specified in the ordinance.

(d) Only the payment of fees may be required in subdivisions

containing 50 parcels or less.

(e) Notwithstanding any other provision of this chapter, contracts entered into or contracts to be entered into pursuant to a school facilities master plan administered by a joint powers authority created under Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code for a designated community plan area adopted by a city, county, or city and county, whether general law or chartered, on or before September 1, 1986, that requires the payment of a fee, charge, or dedication for the construction of school facilities as a condition to the approval of residential development shall not be subject to the provisions of subdivision (b) of Section 65995. However, in determining developer fees under that school facilities master plan, the cost and maximum building area standards for school buildings prescribed by Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code shall apply, and the school district or districts involved are required to have on file with the Office of Public School Construction, and actively pursue in good faith, an application for preliminary determination of eligibility for project funding under that chapter, and shall actively pursue in good faith the establishment of a community capital facilities district or other permanent financing mechanisms to reduce or eliminate developer fees.

Any fees collected or land dedicated after September 1, 1986, pursuant to this section, and not used to avoid overcrowding of the facilities to be built pursuant to the school facilities master plan, shall be subject to disposition in accordance with subdivision (b) of Section 65979.

Fees collected in excess of the limitations set forth in subdivision (b) of Section 65995 for schools constructed under that school facilities master plan shall neither advantage nor disadvantage a school district's application for project funding under Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code.

SEC. 8. Section 24275 of the Health and Safety Code is amended to read:

24275. (a) The State Department of Health Services, in conjunction with the study required pursuant to Chapter 116 of the Statutes of 1986, shall report to the Legislature by January 1, 1987, and periodically thereafter, on the most effective air monitoring standard for the airborne concentration of asbestos in any public school building that is both economically and technologically feasible. If the department believes that the air monitoring standard for asbestos in public school buildings as specified in Section 49410.7 of the Education Code should be revised, it shall promulgate a regulation to that effect.

(b) The department shall provide the Office of Public School Construction with appropriate sampling methodology for use in taking air samples in public school buildings.

BILL NUMBER: SB 660 CHAPTERED 10/10/95

CHAPTER 686
FILED WITH SECRETARY OF STATE OCTOBER 10, 1995
APPROVED BY GOVERNOR OCTOBER 9, 1995
PASSED THE SENATE SEPTEMBER 13, 1995
PASSED THE ASSEMBLY SEPTEMBER 5, 1995
AMENDED IN ASSEMBLY AUGUST 31, 1995
AMENDED IN ASSEMBLY JULY 17, 1995
AMENDED IN ASSEMBLY JUNE 29, 1995
AMENDED IN ASSEMBLY JUNE 7, 1995
AMENDED IN SENATE MAY 2, 1995
AMENDED IN SENATE APRIL 24, 1995
AMENDED IN SENATE MARCH 28, 1995

INTRODUCED BY Committee on Housing and Land Use (Senators Campbell (Chairman), Costa, Kopp, Marks, Mello, Monteith, and Watson)

FEBRUARY 22, 1995

An act to amend Sections 51231, 51287, 65040, 65040.2, 65861, 66016, and 66031 of, and to repeal Sections 65036.5 and 65040.7 of, the Government Code, and to amend Sections 33216 and 50459 of the Health and Safety Code, relating to the Housing and Land Use Omnibus Act of 1995, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 660, Committee on Housing and Land Use. Housing and Land Use Omnibus Act of 1995.

(1) Existing law, known as the Williamson Act, authorizes any city or county to contract with a landowner for the purpose of preserving land as an agricultural preserve, as specified. Existing law also authorizes cancellations of these contracts, under certain conditions, and further authorizes the city or county to charge a fee designed to cover the reasonable cost of services provided by the county incident to the cancellation, pursuant to specified provisions of existing law.

This bill would delete an obsolete statutory reference to those provisions of existing law that authorize the city or county to charge a fee for its services incident to the cancellation, and would replace it with an updated reference.

Existing law also requires rules related to compatible uses of lands covered by the Williamson Act to conform to specified statutory principles; however, the statute referred to in this regard is not drafted in terms of specified principles.

This bill would delete the reference to statutory principles, and would instead require the rules related to compatible uses to conform to the provisions of the specified statute.

(2) Under existing law, the Governor's Office of Planning and Research exists to further state policy to insure the preservation and use of land, so as to improve the quality of life in California, as specified. In connection with this policy, existing law requires

the fee or service charge is levied and the revenue sources anticipated to provide the service, including General Fund revenues. Unless there has been voter approval, as prescribed by Section 66013 or 66014, no local agency shall levy a new fee or service charge or increase an existing fee or service charge to an amount which exceeds the estimated amount required to provide the service for which the fee or service charge is levied. If, however, the fees or service charges create revenues in excess of actual cost, those revenues shall be used to reduce the fee or service charge creating the excess.

(b) Any action by a local agency to levy a new fee or service charge or to approve an increase in an existing fee or service charge shall be taken only by ordinance or resolution.

(c) Any costs incurred by a local agency in conducting the meeting or meetings required pursuant to subdivision (a) may be recovered from fees charged for the services which were the subject of the meeting.

(d) This section shall apply only to fees and charges as described in Sections 51287, 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of this code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code.

(e) Any judicial action or proceeding to attack, review, set aside, void, or annul the ordinance, resolution, or motion levying a fee or service charge subject to this section shall be brought pursuant to Section 66022.

SEC. 6.5. Section 66016 of the Government Code is amended to read:

66016. (a) Prior to levying a new fee or service charge, or prior to approving an increase in an existing fee or service charge, a local agency shall hold at least one open and public meeting, at which oral or written presentations can be made, as part of a regularly scheduled meeting. Notice of the time and place of the meeting, including a general explanation of the matter to be considered, and a statement that the data required by this section is available, shall be mailed at least 14 days prior to the meeting to any interested party who files a written request with the local agency for mailed notice of the meeting on new or increased fees or service charges. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service. At least 10 days prior to the meeting, the local agency shall make available to the public data indicating the amount of cost, or estimated cost, required to provide the service for which the fee or service charge is levied and the revenue sources anticipated to provide the service, including General Fund revenues. Unless there has been voter approval, as prescribed by Section 66013 or 66014, no local agency shall levy a new fee or service charge or increase an existing fee or service charge to an amount which exceeds the estimated amount required to provide the service for which the fee or service charge is levied. If, however, the fees or service charges create revenues in excess of actual cost, those revenues shall be used to reduce the fee or service charge creating the excess.

(b) Any action by a local agency to levy a new fee or service

charge or to approve an increase in an existing fee or service charge shall be taken only by ordinance or resolution. The legislative body of a local agency shall not delegate the authority to adopt a new fee or service charge, or to increase a fee or service charge.

(c) Any costs incurred by a local agency in conducting the meeting or meetings required pursuant to subdivision (a) may be recovered from fees charged for the services which were the subject of the meeting.

(d) This section shall apply only to fees and charges as described in Sections 51287, 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of this code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code.

(e) Any judicial action or proceeding to attack, review, set aside, void, or annul the ordinance, resolution, or motion levying a fee or service charge subject to this section shall be brought pursuant to Section 66022.

SEC. 7. Section 66031 of the Government Code is amended to read:

66031. (a) Notwithstanding any other provision of law, any action brought in the superior court relating to any of the following subjects may be subject to a mediation proceeding conducted pursuant to this chapter:

(1) The approval or denial by a public agency of any development project.

(2) Any act or decision of a public agency made pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(3) The failure of a public agency to meet the time limits specified in Chapter 4.5 (commencing with Section 65920), commonly known as the Permit Streamlining Act, or in the Subdivision Map Act (Division 2 (commencing with Section 66410)).

(4) Fees determined pursuant to Sections 53080 to 53082, inclusive, or Chapter 4.9 (commencing with Section 65995).

(5) Fees determined pursuant to Chapter 5 (commencing with Section 66000).

(6) The adequacy of a general plan or specific plan adopted pursuant to Chapter 3 (commencing with Section 65100).

(7) The validity of any sphere of influence, urban service area, change of organization or reorganization, or any other decision made pursuant to the Cortese-Knox Local Government Reorganization Act (Division 3 (commencing with Section 56000) of Title 5).

(8) The adoption or amendment of a redevelopment plan pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code).

(9) The validity of any zoning decision made pursuant to Chapter 4 (commencing with Section 65800).

(b) Within five days after the deadline for the respondent or defendant to file its reply to an action, the court may invite the parties to consider resolving their dispute by selecting a mutually acceptable person to serve as a mediator, or an organization or agency to provide a mediator.

(c) In selecting a person to serve as a mediator, or an organization or agency to provide a mediator, the parties shall consider the following:

(1) The council of governments having jurisdiction in the county where the dispute arose.

(2) Any subregional or countywide council of governments in the

county where the dispute arose.

(3) The Office of Permit Assistance within the Trade and Commerce Agency, pursuant to its authority in Article 1 (commencing with Section 15399.50) of Chapter 11 of Part 6.7 of Division 3 of Title 2.

(4) Any other person with experience or training in mediation including those with experience in land use issues, or any other organization or agency which can provide a person with experience or training in mediation, including those with experience in land use issues.

(d) If the court invites the parties to consider mediation, the parties shall notify the court within 30 days if they have selected a mutually acceptable person to serve as a mediator. If the parties have not selected a mediator within 30 days, the action shall proceed. The court shall not draw any implication, favorable or otherwise, from the refusal by a party to accept the invitation by the court to consider mediation. Nothing in this section shall preclude the parties from using mediation at any other time while the action is pending.

SEC. 7.5. Section 33216 of the Health and Safety Code is amended to read:

33216. (a) If all, or a substantial portion, of the territory included within a project area selected pursuant to Section 33322 is subsequently annexed to a city or included within the boundaries of a new city, the territorial jurisdiction of the agency of the county over all, or a substantial portion, of the territory in that project area may be transferred from the agency of the county to the agency of the city pursuant to this section. If all, or a substantial portion, of the noncontiguous territory of a project area of an agency of a county is subsequently annexed to a city or included within the boundaries of a new city, the jurisdiction of the agency of the county over all, or a substantial portion, of the noncontiguous territory may be transferred to the agency of the city pursuant to this section.

(b) The transfer of territorial jurisdiction described in subdivision (a) is not effective unless all of the following occur:

(1) The agency of the county and the agency of the city enter into the agreement described in subdivision (c), and the city council and the board of supervisors both adopt a resolution approving that agreement.

(2) The city council adopts, or has adopted, both of the following ordinances:

(A) An ordinance pursuant to Section 33101 declaring the need for an agency to function in the city.

(B) An ordinance adopting the same redevelopment plan for the project area that was previously adopted by the board of supervisors.

(c) The agreement required to be entered into between the agency of the county and the agency of the city pursuant to paragraph (1) of subdivision (b) shall contain all of the provisions described in paragraphs (1), (2), (3), and (4), and may contain the provisions described in paragraphs (5) and (6):

(1) A provision specifying that all of the territory included within the project area is transferred from the agency of the county to the agency of the city, or a provision specifying the portions of the project area over which each agency will have territorial jurisdiction.

assistance plan adopted pursuant to the Housing and Community Development Act of 1974 (Public Law 93-383).

SEC. 8.5. Section 6.5 of this bill incorporates amendments to Section 66016 of the Government Code proposed by this bill and SB 647. It shall only become operative if (1) both bills are enacted and become effective on or

before January 1, 1996, (2) each bill amends Section 66016 of the Government Code, and (3) this bill is enacted after SB 647, in which case Section 6 of this bill shall not become operative.

SEC. 9. All provisions of this act except Section 7.5 shall become operative on January 1, 1996.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure a timely, efficient, and progressive implementation of the changes authorized by this act by the appropriate local officials, it is necessary that this act take effect immediately.

BILL NUMBER: SB 1562 CHAPTERED 07/25/96

CHAPTER 277
FILED WITH SECRETARY OF STATE JULY 25, 1996
APPROVED BY GOVERNOR JULY 24, 1996
PASSED THE ASSEMBLY JULY 11, 1996
PASSED THE SENATE APRIL 25, 1996
AMENDED IN SENATE APRIL 18, 1996

INTRODUCED BY Senator Greene

FEBRUARY 15, 1996

An act to add Part 10.5 (commencing with Section 17211) and Part 23 (commencing with Section 38000) to, to repeal and add Part 10 (commencing with Section 15100) of, and to repeal Part 10.5 (commencing with Section 17900) and Part 23 (commencing with Section 39001) of, the Education Code, and to repeal Sections 53080, 53080.1, 53080.15, 53080.2, 53080.3, 53080.4, 53080.6, and 53081 of the Government Code, relating to school facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1562, Greene. School facilities.

(1) Existing law includes various state general obligation bond acts, as approved by the voters, that provide for the issuance of bonds to raise revenues for, among other purposes, elementary and secondary school facility construction.

This bill would repeal and reenact the provisions governing state school bonds including the State School Building Aid Law of 1949, the State School Building Aid Law of 1952, the State School Construction Law of 1957, and the Urban School Construction Aid Law of 1968.

(2) Existing law, the Leroy F. Greene State School Building Lease-Purchase Law of 1976, provides bond funding for the construction, reconstruction, modernization, and replacement of school facilities and the performance of deferred maintenance activities on school facilities.

This bill would repeal and reenact this law and would make technical, nonsubstantive changes in those provisions.

(3) Existing law also provides for the Emergency School Classroom Law of 1979, school district revenue bonds, the Archie-Hudson and Cunneen School Technology Revenue Bond Act, and the California School Finance Authority.

This bill would repeal and reenact those bodies of law and would make technical, nonsubstantive changes in those provisions.

(4) Existing law sets forth specific requirements for the location and construction of school buildings including, among other provisions, the Field Act.

This bill would repeal and reenact those provisions and would make technical, nonsubstantive changes in those provisions.

(5) Under existing law, the governing board of any school district is authorized to levy a fee, charge, dedication, or other requirement against any development project within the boundaries of the school district for the purpose of funding the construction or

of any of the matters permitted by this section or any other provision of this chapter. Notwithstanding any other provision of law, the agent shall have the powers granted by the resolution for purposes of this chapter. The resolution shall be deemed to bind the school district or community college district, as the case may be, to any contract, agreement, instrument, or other document executed by the agent on behalf of the school district or community college district, and all duties, obligations, or responsibilities contained therein on the part of the school district or community college district, to the same extent as if duly authorized, executed, and delivered by the school district or community college district.

(d) This section shall be deemed to provide a complete, additional, and alternative method for accomplishing the acts authorized by this section, and the issuance of bonds to, borrowing of money from, or sale or purchase or lease of educational facilities from or to, the authority. Any agreement entered into in connection with the issuance of bonds, the borrowing of money or the sale, purchase, or lease of educational facilities, including, without limitation, any agreement for liquidity or credit enhancement under this section, need not comply with the requirements of any other law applicable to issuance of bonds, borrowing, selling, purchasing, leasing, pledge, encumbrance, or credit, as the case may be, by a school district or community college district, or by a county or city board of education or superintendent of schools or the Board of Governors of the California Community Colleges or Chancellor of the California Community Colleges.

17199.2. An action may be commenced under Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure to determine the validity of any issuance or proposed issuance of revenue bonds, the loan of the proceeds thereof, the sale, purchase, or lease of facilities under this chapter, or the legality and validity of any proceedings previously taken or proposed in a resolution of the authority to be taken for the authorization, issuance, sale, and delivery of the bonds, for the use of the proceeds thereof, or for the payment of the principal and interest thereon.

17199.3. (a) The total amount of revenue bonds which may be issued and outstanding at any time under this chapter shall not exceed four hundred million dollars ($400,000,000).

(b) For purposes of subdivision (a), bonds which meet any of the following conditions shall not be deemed to be outstanding:

(1) Bonds which have been refunded pursuant to Section 17188.

(2) Bonds for which money or securities in amounts necessary to pay or redeem the principal, interest, or any redemption premium on the bonds have been deposited in trust.

(3) Bonds which have been issued to provide working capital.

SEC. 3. Part 10.5 (commencing with Section 17211) is added to the Education Code, to read:

PART 10.5. SCHOOL FACILITIES
CHAPTER 1. SCHOOLSITES
Article 1. General Provisions

17211. Prior to commencing the acquisition of real property for a new schoolsite or an addition to an existing schoolsite, the governing board of a school district shall evaluate the property at a public hearing using the site selection standards established by the State Department of Education pursuant to subdivision (b) of Section 17251. The governing board may direct the district's advisory committee established pursuant to Section 17388 to evaluate the

may designate, to expend up to one hundred dollars ($100) per transaction for work done, compensation for employees or consultants, and purchases of equipment, supplies, or materials. Ratification by the governing board shall not be required with respect to transactions entered into pursuant to this section. In the event of malfeasance in office, the school district official invested by the governing board with authority to act under this section shall be personally liable for any and all moneys of the district paid out as a result of the malfeasance.

CHAPTER 6. DEVELOPMENT FEES, CHARGES, AND DEDICATIONS

17620. (a) (1) The governing board of any school district is authorized to levy a fee, charge, dedication, or other requirement against any development project within the boundaries of the district, for the purpose of funding the construction or reconstruction of school facilities, subject to any limitations set forth in Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7 of the Government Code. This fee, charge, dedication, or other requirement may be applied to construction only as follows:

(A) To new commercial and industrial construction. The chargeable covered and enclosed space of a commercial or industrial development project, as defined in Section 65995 of the Government Code, shall not be deemed to include the square footage of any structure existing on the site of that development project as of the date the first building permit is issued for any portion of that development project.

(B) To new residential construction.

(C) To other residential construction, only if the resulting increase in assessable space, as defined in Section 65995 of the Government Code, exceeds 500 square feet. The calculation of the "resulting increase in assessable space" for this purpose shall reflect any decrease in assessable space in the same residential structure that also results from that construction. Where authorized under this paragraph, the fee, charge, dedication, or other requirement is applicable to the total resulting increase in assessable space.

(2) For purposes of this section, "development project" means any project undertaken for the purpose of development, and includes a project involving the issuance of a permit for construction or reconstruction, but not a permit to operate.

(3) For purposes of this section, "construction or reconstruction of school facilities" does not include any item of expenditure for any of the following:

(A) The regular maintenance or routine repair of school buildings and facilities.

(B) The inspection, sampling, analysis, encapsulation, or removal of asbestos-containing materials, except where incidental to school facilities construction or reconstruction for which the expenditure of fees or other consideration collected pursuant to this section is not prohibited.

(C) The purposes of deferred maintenance described in Section 17582.

(4) The appropriate city or county may be authorized, pursuant to contractual agreement with the governing board, to collect and otherwise administer, on behalf of the school district, any fee, charge, dedication, or other requirement levied under this subdivision. In the event of any agreement authorizing a city or county to collect that fee, charge, dedication, or other requirement in any area within the school district, the certification requirement

set forth in subdivision (b) or (c), as appropriate, is deemed to be complied with as to any residential development project within that area upon receipt by that city or county of payment of the fee, charge, dedication, or other requirement imposed on that project.

(5) Fees or other consideration collected pursuant to this section may be expended by a school district for the costs of performing any study or otherwise making the findings and determinations required under subdivisions (a), (b), and (d) of Section 66001 of the Government Code. In addition, an amount not to exceed, in any fiscal year, 3 percent of the fees collected in that fiscal year pursuant to this section may be retained by the school district, city, or county, as appropriate, for reimbursement of the administrative costs incurred by that entity in collecting the fees. When any city or county is entitled, under an agreement as described in paragraph (4), to compensation in excess of that amount, the payment of that excess compensation shall be made from other revenue sources available to the school district.

(b) No city or county, whether general law or chartered, may issue a building permit for any development absent certification by the appropriate school district of compliance by that development project with any fee, charge, dedication, or other requirement levied by the governing board of that school district pursuant to subdivision (a), or of the district's determination that the fee, charge, dedication, or other requirement does not apply to the development project.

(c) If, pursuant to subdivision (c) of Section 17621, the governing board specifies that the fee, charge, dedication, or other requirement levied under subdivision (a) is subject to the restriction set forth in subdivision (a) of Section 66007 of the Government Code, the restriction set forth in subdivision (b) of this section does not apply. In that event, however, no city or county, whether general law or chartered, may conduct a final inspection or issue a certificate of occupancy, whichever is later, for any residential development project absent certification by the appropriate school district of compliance by that development project with any fee, charge, dedication, or other requirement levied by the governing board of that school district pursuant to subdivision (a).

(d) Neither subdivision (b) nor (c) shall apply to a city or county as to any fee, charge, dedication, or other requirement as described in subdivision (a), or as to any increase in that fee, charge, dedication, or other requirement, except upon the receipt by that city or county of notification of the adoption of, or increase in, the fee or other requirement in accordance with subdivision (c) of Section 17621.

17621. (a) Any resolution adopting or increasing a fee, charge, dedication, or other requirement pursuant to Section 17620, for application to residential, commercial, or industrial development, shall be enacted in accordance with Chapter 5 (commencing with Section 66000) of Division 1 of Title 7 of the Government Code, with Section 54994.1 of the Government Code, and with the procedures for mailed notice set forth in Section 54992 of the Government Code. The adoption, increase, or imposition of any fee, charge, dedication, or other requirement pursuant to Section 17620 shall not be subject to Division 13 (commencing with Section 21000) of the Public Resources Code. The adoption of, or increase in, the fee, charge, dedication, or other requirement shall be effective no sooner than 60 days following the final action on that adoption or increase, except as specified in subdivision (b).

(b) Without following the procedure otherwise required for

adopting or increasing a fee, charge, dedication, or other requirement, the governing board of a school district may adopt an urgency measure as an interim authorization for a fee, charge, dedication, or other requirement, or increase in a fee, charge, dedication, or other requirement, where necessary to respond to a current and immediate threat to the public health, welfare, or safety. The interim authorization shall require a four-fifths vote of the governing board for adoption, and shall contain findings describing the current and immediate threat to the public health, welfare, or safety. The interim authorization shall have no force or effect on and after a date 30 days after its adoption. After notice and hearing in accordance with subdivision (a), the governing board, upon a four-fifths vote of the board, may extend the interim authority for an additional 30 days. Not more than two extensions may be granted.

(c) Upon adopting or increasing a fee, charge, dedication, or other requirement pursuant to subdivision (a) or (b), the school district shall transmit a copy of the resolution to each city and each county in which the district is situated, accompanied by all relevant supporting documentation and a map clearly indicating the boundaries of the area subject to the fee, charge, dedication, or other requirement. The school district governing board shall specify, pursuant to that notification, whether or not the collection of the fee or other charge is subject to the restriction set forth in subdivision (a) of Section 66007 of the Government Code.

(d) Any party on whom a fee, charge, dedication, or other requirement has been directly imposed pursuant to Section 17620 may protest the establishment or imposition of that fee, charge, dedication, or other requirement in accordance with Section 66020 of the Government Code, except that the procedures set forth in Section 66021 of the Government Code are deemed to apply, for this purpose, to commercial and industrial development, as well as to residential development.

(e) In the case of any commercial or industrial development, the following procedures shall also apply:

(1) The school district governing board shall, in the course of making the findings required under subdivisions (a) and (b) of Section 66001 of the Government Code, do all of the following:

(A) Make the findings on either an individual project basis or on the basis of categories of commercial or industrial development. Those categories may include, but are not limited to, the following uses: office, retail, transportation, communications and utilities, light industrial, heavy industrial, research and development, and warehouse.

(B) Conduct a study to determine the impact of the increased number of employees anticipated to result from the commercial or industrial development upon the cost of providing school facilities within the district. For the purpose of making that determination, the study shall utilize employee generation estimates that are calculated on either an individual project or categorical basis, in accordance with subparagraph (A). Those employee generation estimates shall be based upon commercial and industrial factors within the district or upon, in whole or in part, the applicable employee generation estimates set forth in the January 1990 edition of "San Diego Traffic Generators," a report of the San Diego Association of Governments.

(C) The governing board shall take into account the results of that study in making the findings described in this subdivision.

(2) In addition to any other requirement imposed by law, in the case of any development project against which a fee, charge,

dedication, or other requirement is to be imposed pursuant to Section 53080 on the basis of a category of commercial or industrial development, as described in paragraph (1), the governing board shall provide a process that permits the party against whom the fee, charge, dedication, or other requirement is to be imposed the opportunity for a hearing to appeal that imposition. The grounds for that appeal include, but are not limited to, the inaccuracy of including the project within the category pursuant to which the fee, charge, dedication, or other requirement is to be imposed, or that the employee generation or pupil generation factors utilized under the applicable category are inaccurate as applied to the project. The party appealing the imposition of the fee, charge, dedication, or other requirement shall bear the burden of establishing that the fee, charge, dedication, or other requirement is improper.

17622. (a) No fee, charge, dedication, or other requirement may be levied by any school district pursuant to Section 17620 upon any greenhouse or other space that is covered or enclosed for agricultural purposes, unless and until the district first complies with subdivisions (b) and (c).

(b) The school district governing board shall make a finding, supported by substantial evidence, of both of the following:

(1) The amount of the proposed fees or other requirements and the location of the land, if any, to be dedicated, bear a reasonable relationship and are limited to the needs of the community for elementary or high school facilities caused by the development.

(2) The amount of the proposed fees or other requirements does not exceed the estimated reasonable cost of providing for the construction or reconstruction of the school facilities necessitated by the development projects from which the fees or other requirements are to be collected.

(c) In determining the amount of the fees or other requirements, if any, to be levied on the development of any structure as described in subdivision (a), the school district governing board shall consider the relationship between the proposed increase in the number of employees, if any, the size and specific use of the structure, and the cost of the construction. No fee, charge, dedication, or other form of requirement, as authorized under Section 17620, shall be applied to the development of any structure described in subdivision (a) where the governing board finds either that the number of employees is not increased as a result of that development, or that housing has been provided for those employees, to the extent of any increase, by their employer, against which housing a fee, charge, or dedication, or other form of requirement has been applied under Section 17620. In developing the finding described in this section, the governing board shall consult with the county agricultural commissioner or the county director of the cooperative extension service.

17623. In the event the fee authorized pursuant to Section 17620 is levied by two nonunified school districts having common territorial jurisdiction, in a total amount that exceeds the maximum fee authorized under Section 65995 of the Government Code, the fee revenue for the area of common jurisdiction shall be distributed in the following manner:

(a) The governing boards of the affected school districts shall enter into an agreement specifying the allocation of fee revenue and the duration of the agreement. A copy of that agreement shall be transmitted by each district to the State Allocation Board.

(b) In the event the affected school districts are unable to reach an agreement pursuant to subdivision (a), the districts shall jointly submit the dispute to a three-member arbitration panel

composed of one representative chosen by each of the districts and one representative chosen jointly by both of the districts. The decision of the arbitration panel shall be final and binding upon both districts for a period of three years.

17624. (a) Any school district that has imposed or, subsequent to the operative date of this section, imposes, any fee, charge, dedication, or other requirement under Section 17620 against any development project that subsequently meets the description set forth in subdivision (b), shall repay or reconvey, as appropriate, that fee, charge, dedication, or other requirement to the person or persons from whom that fee, charge, dedication, or other requirement was collected, less the amount of the administrative costs incurred in collecting and repaying the fee, charge, dedication, or other requirement.

(b) This section applies to any development project for which the building permit, including any extensions, expires on or after January 1, 1990, without the commencement of construction, as defined in subdivision (c) of Section 65995 of the Government Code.

17625. Notwithstanding any other law, any fee, charge, dedication, or other form of requirement levied by the governing board of a school district under Section 17620 may apply, as to any manufactured home or mobilehome, only pursuant to compliance with all of the following conditions:

(1) The fee, charge, dedication, or other form of requirement is applied to the initial location, installation, or occupancy of the manufactured home or mobilehome within the school district.

(2) The manufactured home or mobilehome is to be located, installed, or occupied on a space or site on which no other manufactured home or mobilehome was previously located, installed, or occupied.

(3) The manufactured home or mobilehome is to be located, installed, or occupied on a space in a mobilehome park, or on any site or in any development outside a mobilehome park, on which the construction of the pad or foundation system commenced after September 1, 1986.

(b) Compliance on the part of any manufactured home or mobilehome with any fee, charge, dedication, or other form of requirement, as described in subdivision (a), or certification by the appropriate school district of that compliance, shall be required as a condition of the following, as applicable:

(1) The close of escrow, where the manufactured home or mobilehome is to be located, installed, or occupied on a mobilehome park space, or on any site or in any development outside a mobilehome park, as described in subdivision (a), and the sale or transfer of the manufactured home or mobilehome is subject to escrow as provided in Section 18035 or 18035.2 of the Health and Safety Code.

(2) The approval of the manufactured home or mobilehome for occupancy pursuant to Section 18551 or 18613 of the Health and Safety Code, in the event that paragraph (1) does not apply.

(c) No fee or other requirement levied under Section 17620 shall be applied to any of the following:

(1) Any manufactured home or mobilehome located, installed, or occupied on a space in a mobilehome park on or before September 1, 1986, or on any date thereafter, if construction on that space, pursuant to a building permit, commenced on or before September 1, 1986.

(2) Any manufactured home or mobilehome located, installed, or occupied on any site outside of a mobilehome park on or before September 1, 1986, or on any date thereafter if construction on that site pursuant to a building permit commenced on or before September

1, 1986.

(3) The replacement of or addition to a manufactured home or mobilehome located, installed, or occupied on a space in a mobilehome park, subsequent to the original location, installation, or occupancy of any manufactured home or mobilehome on that space.

(4) The replacement of a manufactured home or mobilehome that was destroyed or damaged by fire or any form of natural disaster.

(5) A manufactured home or mobilehome accessory structure, as defined in Section 18008.5 or 18213 of the Health and Safety Code.

(6) The conversion of a rental mobilehome park to a subdivision, cooperative, or condominium for mobilehomes, or its conversion to any other form of resident ownership of the park, as described in Section 50561 of the Health and Safety Code.

(d) Where any fee or other requirement levied under Section 17620 is required as to any manufactured home or mobilehome that is subsequently replaced by a permanent residential structure constructed on the same lot, the amount of that fee or other requirement shall apply toward the payment of any fee or other requirement under Section 17620 applied to that permanent residential structure.

(e) Notwithstanding any other provision of law, any school district that, on or after January 1, 1987, collected any fee, charge, dedication, or other form of requirement from any manufactured home, mobilehome, mobilehome park, or other development, shall immediately repay the fee, charge, dedication, or other form of requirement to the person or persons who made the payment to the extent the fee, charge, dedication, or other form of requirement collected would not have been authorized under subdivision (a). This subdivision shall not apply, however, to the extent that, pursuant to Section 16 of Article I of the California Constitution, it would impair the obligation of any contract entered into by any school district, on or before the effective date of this section.

(f) For purposes of this section, "manufactured home," "mobilehome," and "mobilehome park" have the meanings set forth in Sections 18007, 18008, and 18214, respectively, of the Health and Safety Code.

(g) (1) Whenever a manufactured home or a mobilehome owned by a person 55 years of age or older who is also a member of a lower income household as defined by Section 50079.5 of the Health and Safety Code, and which has been moved from a mobilehome park space located in one school district, where the mobilehome owner has resided, to a space or lot located in a mobilehome park or a subdivision, cooperative, or condominium for mobilehomes or manufactured homes located in another school district, is subject to any fee or other requirement under Section 17620, this section, and Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7 of the Government Code, the district in which the manufactured home or mobilehome has been newly located may waive the fee or other requirement under Section 53080, this section, and Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7 of the Government Code, or otherwise shall be required to grant the homeowner the necessary approval for occupancy of the home, and permission to pay the amount of the fee or other requirement thereafter, in installments, over a period totaling no less than 36 months. A school district may require that the installments be paid monthly, quarterly, or every six months during the 36-month period, and that the fee be secured as a lien perfected against the mobilehome or manufactured home pursuant to Section 18080.7 of the Health and Safety Code.

(2) Costs of filing the lien and reasonable late charges or

interest may be added to the amount of the lien. This subdivision does not apply where a school facilities fee, charge, or other requirement is imposed pursuant to Section 65995.2 of the Government Code.

17626. (a) A fee, charge, dedication, or other requirement authorized under Section 17620, whether or not allowable under Chapter 6 (commencing with Section 66010) of Division 1 of Title 7 of the Government Code, may not be applied to the reconstruction of any residential, commercial, or industrial structure that is damaged or destroyed as a result of a disaster, except to the extent the square footage of the reconstructed structure exceeds the square footage of the structure that was damaged or destroyed. That square footage comparison shall be made, in the case of a commercial or industrial structure, on the basis of chargeable covered and enclosed space, as defined in Section 65995 of the Government Code, or, in the case of a residential structure, on the basis of assessable space, as defined in Section 65995 of the Government Code.

(b) The following definitions apply for the purposes of this section:

(1) "Disaster" means a fire, earthquake, landslide, mudslide, flood, tidal wave, or other unforeseen event that produces material damage or loss.

(2) "Reconstruction" means the construction of property that replaces, and is equivalent in kind to, the damaged or destroyed property.

CHAPTER 7. ENERGY EFFICIENCY

17650. The Legislature finds and declares that it is in the interest of the state and of the people thereof for the state to aid school districts in finding cost-effective methods of conserving energy in school buildings maintained by the districts. The Legislature also finds that while many districts may desire to participate in energy conservation programs designed to reduce the steadily rising costs of meeting the energy needs of school buildings, that the costs involved in improving existing school facilities to become more energy efficient are often prohibitive.

It is the intent of the Legislature in enacting this chapter to encourage school districts to retrofit school buildings so as to conserve energy and reduce the costs of supplying energy.

17651. (a) School districts may borrow funds from federal or state regulated financial institutions for the purposes of design and construction costs associated with retrofitting school buildings to become more energy efficient. School districts shall only be authorized to borrow an amount which does not exceed that which can be repaid from energy cost avoidance savings accumulated from the improvement of school facilities.

(b) Any savings and loan association may make loans or advances of credit pursuant to subdivision (a) in an amount not in excess of 5 percent of its total assets. This investment may be in addition to any other investment savings and loan associations are permitted to undertake under Section 6705.7 of the Financial Code.

17652. To the extent that these services are available, school districts shall arrange for the preaudit and postaudit of school buildings by investor-owned or municipal utility companies or by independent energy audit companies or organizations which are recognized by federal or state regulated financial institutions. The preaudit shall identify the type and amount of work necessary to retrofit the buildings and shall include an estimate of projected energy savings. The postaudit shall be conducted upon completion of

the retrofitting of the school buildings to ensure that the project satisfies the recommendations of the preaudit.

17653. School districts taking action under this chapter shall contract with qualified businesses capable of retrofitting school buildings. To the extent that lists of qualified businesses are made available to school districts by investor-owned or municipal utility companies or federal or state regulated financial institutions, school districts may utilize the services of these businesses.

SEC. 4. Part 10.5 (commencing with Section 17900) of the Education Code is repealed.

SEC. 5. Part 23 (commencing with Section 38000) is added to the Education Code, to read:

PART 23. SUPPLEMENTAL SERVICES

CHAPTER 1. SECURITY DEPARTMENTS

38000. (a) The governing board of any school district may establish a security department under the supervision of a chief of security or a police department under the supervision of a chief of police, as designated by, and under the direction of, the superintendent of the school district. In accordance with Chapter 5 (commencing with Section 45100) of Part 25, the governing board may employ personnel to ensure the safety of school district personnel and pupils and the security of the real and personal property of the school district. In addition, a school district may assign a school police reserve officer who is deputized pursuant to Section 35021.5 to a schoolsite to supplement the duties of school police personnel pursuant to this section. It is the intention of the Legislature in enacting this section that a school district police or security department is supplementary to city and county law enforcement agencies and is not vested with general police powers.

(b) The governing board of a school district that establishes a security department or a police department shall set minimum qualifications of employment for the chief of security or chief of police, respectively, including, but not limited to, prior employment as a peace officer or completion of any peace officer training course approved by the Commission on Peace Officer Standards and Training. A chief of security or chief of police shall comply with the prior employment or training requirement set forth in this subdivision as of January 1, 1993, or a date one year subsequent to the initial employment of the chief of security or chief of police by the school district, whichever occurs later. This subdivision shall not be construed to require the employment by a school district of any additional personnel.

38001. Persons employed and compensated as members of a police department of a school district, when appointed and duly sworn, are peace officers, for the purposes of carrying out their duties of employment pursuant to Section 830.32 of the Penal Code.

38002. Moneys transferred into the general fund of any school district pursuant to Section 1463.12 of the Penal Code may be made available for the following purposes:

(a) The training of persons employed and compensated as members of a police department of a school district, pursuant to the requirements or approval of the Commission on Peace Officer Standards and Training.

(b) The training of persons employed and compensated as members of a police department of a school district in other public safety skills, including, but not limited to, all of the following:

(1) First aid.

(2) Rescue.

instructor certified pursuant to Section 38156 if either of those departments finds that the instructor's certificate would have been suspended, revoked, or canceled for any of the reasons designated in subdivision (e), (f), or (g).

38166. (a) A school pupil activity bus (SPAB), transit bus, schoolbus, or farm labor vehicle driver instructor with no instructional limitations shall conduct at least 20 hours of instruction each 12 months that includes at least 10 hours of behind-the-wheel and 10 hours of classroom training, which need not be given in a single session. A school pupil activity bus (SPAB), transit bus, schoolbus, or farm labor vehicle driver instructor limited to either classroom or behind-the-wheel training only shall conduct at least 10 hours of instruction each 12 months that includes at least 10 hours of behind-the-wheel or classroom training depending on the limitation. The training need not be given in a single session. A school pupil activity bus (SPAB), transit bus, schoolbus, or farm labor vehicle driver instructor limited to in-service training only shall conduct at least 10 hours of in-service training each 12 months. All school pupil activity bus (SPAB), transit bus, schoolbus, and farm labor vehicle driver instructor training conducted by department staff may be accepted in lieu of the requirements of this subdivision.

(b) A school pupil activity bus (SPAB), transit bus, schoolbus, or farm labor vehicle driver instructor may be limited to classroom instruction, behind-the-wheel training or in-service training only, and prohibited from recording, documenting, or signing for any training required by this article, as determined by the department.

(c) A school pupil activity bus (SPAB), transit bus, schoolbus, or farm labor vehicle driver instructor shall be limited to behind-the-wheel instruction in vehicles that the instructor is qualified to drive.

(d) All school pupil activity bus (SPAB), transit bus, schoolbus, or farm labor vehicle driver instructor training required by subdivision (a) shall be properly documented on a State Department of Education Training Certificate T-01, and signed by the state-certified instructor at the end of each 12-month training period. The signature certifies that the required instruction was conducted during the 12-month training period. Upon renewal of the instructor driver's license, endorsement, or certificate, the completed instructor training record, recorded on the State Department of Education Training Certificate, shall be submitted to the department in Sacramento.

38167. The department may assess fees to any instructor applicant who will be training drivers of any vehicle as defined in Section 642 of the Vehicle Code. The fee shall not be more than necessary to offset the department's reasonable costs.

38168. Employers shall take all action necessary to make available to every transit busdriver required to be trained pursuant to Section 38158 or 38162 the opportunity to be trained without the loss of wages or benefits.

SEC. 6. Part 23 (commencing with Section 39001) of the Education Code is repealed.

SEC. 7. Section 53080 of the Government Code is repealed.

SEC. 8. Section 53080.1 of the Government Code is repealed.

SEC. 9. Section 53080.15 of the Government Code is repealed.

SEC. 10. Section 53080.2 of the Government Code is repealed.

SEC. 11. Section 53080.3 of the Government Code is repealed.

SEC. 12. Section 53080.4 of the Government Code is repealed.

SEC. 13. Section 53080.6 of the Government Code is repealed.

SEC. 14. Section 53081 of the Government Code is repealed.

SEC. 15. To the extent that the provisions of this act are substantially the same as existing statutory provisions relating to the same subject matter, the provisions shall be construed as restatements and continuations of existing statutory provisions and not as a new enactment.

SEC. 16. The Legislature finds and declares that the enactment of this act, in view of the nonsubstantive statutory changes made, will not result in new or additional costs to local agencies charged with any duties or responsibilities in connection therewith.

SEC. 17. Any section of any act enacted by the Legislature during the **1996** calendar year prior to the enactment of this act, that amends, amends and renumbers, adds, repeals and adds, or repeals a section, article, chapter, or part, that is amended, amended and renumbered, added, repealed and added, or repealed by this act, shall prevail over this act until January 1, 1998, at which time Sections 1 to 16 of this act shall become operative.

SEC. 18. The provisions of this act are severable. If any provisions of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

BILL NUMBER: AB 3081 CHAPTERED 09/16/96

CHAPTER 549
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AMENDED IN SENATE JUNE 12, 1996
AMENDED IN ASSEMBLY MAY 16, 1996
AMENDED IN ASSEMBLY APRIL 18, 1996

INTRODUCED BY Assembly Member Olberg

FEBRUARY 23, 1996

An act to amend Sections 66000 and 66020 of the Government Code, relating to real property.

LEGISLATIVE COUNSEL'S DIGEST

AB 3081, Olberg. Real property: fees for development.

Existing law imposes various requirements with respect to fees exacted in connection with land development approvals by public agencies. Existing law defines the term "fee" as a monetary exaction, other than a tax or special assessment, which is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project.

This bill would revise that definition to state that a fee means a monetary exaction, other than a tax or special assessment, whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project.

Existing law permits any party to protest the imposition of any fees, dedications, reservations, or other exactions imposed on a residential housing development by a local agency by (a) making payment in full or ensuring performance of the necessary conditions, and (b) serving a notice containing specified information, including a statement that the required payment is tendered under protest.

This bill, instead, would require the party protesting the imposition of an exaction to make payment in full or provide satisfactory evidence of arrangements to pay the fee when due. The bill would require the statement to be revised to indicate that the required payment will be tendered under protest when due.

Under existing law, a protest filed against the imposition of any fees, dedications, reservations, or other exactions imposed on a residential housing development is required to be filed at the time of approval or conditional approval of the development or within 90 days after the date of the imposition thereof. Existing law also

provides that any party who files a protest pursuant to these provisions may file an action to attack, review, set aside, void, or annul the imposition of the fees, dedications, reservations, or other exactions imposed on a residential housing development by a local agency within 180 days after the date of the imposition.

This bill, instead, would require each local agency, with respect to a project for which the agency has elected to impose a fee, dedication, reservation, or other exaction, to provide to the project applicant a notice in writing at the time of the approval of the project, or at the time of the imposition of the fees, dedications, reservations, or other exactions, a statement of the amount of the fees or a description of the dedications, reservations, or other exactions, and a notification that the 90-day approval period in which the applicant may protest has begun. The bill also would provide that the 180-day period to file an action to attack, review, set aside, void, or annul fees, dedications, reservations, or other exactions imposed on a development by a local agency shall be filed within 180 days after the delivery of the notice required by these provisions.

This bill also would expand these protest provisions to apply not only to residential housing developments but to any project undertaken for the purpose of development, as defined under existing provisions of law.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 66000 of the Government Code is amended to read:

66000. As used in this chapter:

(a) "Development project" means any project undertaken for the purpose of development. "Development project" includes a project involving the issuance of a permit for construction or reconstruction, but not a permit to operate.

(b) "Fee" means a monetary exaction other than a tax or special assessment, whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, but does not include fees specified in Section 66477, fees for processing applications for governmental regulatory actions or approvals, fees collected under development agreements adopted pursuant to Article 2.5 (commencing with Section 65864) of Chapter 4, or fees collected pursuant to agreements with redevelopment agencies which provide for the redevelopment of property in furtherance or for the benefit of a redevelopment project for which a redevelopment plan has been adopted pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code.

(c) "Local agency" means a county, city, whether general law or chartered, city and county, school district, special district, authority, agency, any other municipal public corporation or district, or other political subdivision of the state.

(d) "Public facilities" includes public improvements, public services and community amenities.

SEC. 2. Section 66020 of the Government Code is amended to read:

66020. (a) Any party may protest the imposition of any fees, dedications, reservations, or other exactions imposed on a development project, as defined in Section 66000, by a local agency by meeting both of the following requirements:

(1) Tendering any required payment in full or providing satisfactory evidence of arrangements to pay the fee when due or ensure performance of the conditions necessary to meet the requirements of the imposition.

(2) Serving written notice on the governing body of the entity, which notice shall contain all of the following information:

(A) A statement that the required payment is tendered or will be tendered when due, or that any conditions which have been imposed are provided for or satisfied, under protest.

(B) A statement informing the governing body of the factual elements of the dispute and the legal theory forming the basis for the protest.

(b) Compliance by any party with subdivision (a) shall not be the basis for a local agency to withhold approval of any map, plan, permit, zone change, license, or other form of permission, or concurrence, whether discretionary, ministerial, or otherwise, incident to, or necessary for, the development project. This section does not limit the ability of a local agency to ensure compliance with all applicable provisions of law in determining whether or not to approve or disapprove a development project.

(c) Where a reviewing local agency makes proper and valid findings that the construction of certain public improvements or facilities, the need for which is directly attributable to the proposed development, is required for reasons related to the public health, safety, and welfare, and elects to impose a requirement for construction of those improvements or facilities as a condition of approval of the proposed development, then in the event a protest is lodged pursuant to this section, that approval shall be suspended pending withdrawal of the protest, the expiration of the limitation period of subdivision (d) without the filing of an action, or resolution of any action filed. This subdivision confers no new or independent authority for imposing fees, dedications, reservations, or other exactions not presently governed by other law.

(d) (1) A protest filed pursuant to subdivision (a) shall be filed at the time of approval or conditional approval of the development or within 90 days after the date of the imposition of the fees, dedications, reservations, or other exactions to be imposed on a development project. Each local agency shall provide to the project applicant a notice in writing at the time of the approval of the project or at the time of the imposition of the fees, dedications, reservations, or other exactions, a statement of the amount of the fees or a description of the dedications, reservations, or other exactions, and notification that the 90-day approval period in which the applicant may protest has begun.

(2) Any party who files a protest pursuant to subdivision (a) may file an action to attack, review, set aside, void, or annul the imposition of the fees, dedications, reservations, or other exactions imposed on a development project by a local agency within 180 days after the delivery of the notice. Thereafter, notwithstanding any other law to the contrary, all persons are barred from any action or proceeding or any defense of invalidity or unreasonableness of the imposition. Any proceeding brought pursuant to this subdivision

shall take precedence over all matters of the calendar of the court except criminal, probate, eminent domain, forcible entry, and unlawful detainer proceedings.

(e) If the court finds in favor of the plaintiff in any action or proceeding brought pursuant to subdivision (d), the court shall direct the local agency to refund the unlawful portion of the payment, with interest at the rate of 8 percent per annum, or return the unlawful portion of the exaction imposed.

(f) (1) If the court grants a judgment to a plaintiff invalidating, as enacted, all or a portion of an ordinance or resolution enacting a fee, dedication, reservation, or other exaction, the court shall direct the local agency to refund the unlawful portion of the payment, plus interest at an annual rate equal to the average rate accrued by the Pooled Money Investment Account during the time elapsed since the payment occurred, or to return the unlawful portion of the exaction imposed.

(2) If an action is filed within 120 days of the date at which an ordinance or resolution to establish or modify a fee, dedication, reservation, or other exactions to be imposed on a development project takes effect, the portion of the payment or exaction invalidated shall also be returned to any other person who, under protest pursuant to this section and under that invalid portion of that same ordinance or resolution as enacted, tendered the payment or provided for or satisfied the exaction during the period from 90 days prior to the date of the filing of the action which invalidates the payment or exaction to the date of the entry of the judgment referenced in paragraph (1).

(g) Approval or conditional approval of a development occurs, for the purposes of this section, when the tentative map, tentative parcel map, or parcel map is approved or conditionally approved or when the parcel map is recorded if a tentative map or tentative parcel map is not required.

(h) The imposition of fees, dedications, reservations, or other exactions occurs, for the purposes of this section, when they are imposed or levied on a specific development.

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CHAPTER 569
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AMENDED IN SENATE APRIL 23, 1996
AMENDED IN SENATE APRIL 9, 1996

INTRODUCED BY Senator Monteith

FEBRUARY 21, 1996

An act to amend Sections 66001 and 66006 of, and to add Section 66008 to, the Government Code, relating to development.

LEGISLATIVE COUNSEL'S DIGEST

SB 1693, Monteith. Development: fees.

Existing law authorizes a local agency to charge a variety of fees in connection with the approval of a development project, as defined. Existing law prescribes the responsibilities of the local agency with respect to the fees collected, including requiring the local agency to make certain findings with respect to any portion of a fee that remains unexpended or uncommitted for 5 or more years after the deposit of the fee, and to refund unexpended or uncommitted fees under certain circumstances.

This bill would restrict the above responsibilities of the local agency to unexpended, rather than uncommitted fees. The bill would revise the local agency's duties with respect to these unexpended fees, including requiring the local agency, for the 5th fiscal year following the first deposit into an account or fund, and every 5 years thereafter, to include specified information in findings relating to the funding of a project. The bill would further provide that in the event that sufficient funds have been collected to complete financing on an incomplete public facility, the local agency either identify an approximate date by which the public facility will be commenced or refund, as specified, the unexpended portion of the fee to the then current record owner or owners of lots or units of the development project or projects on a prorated basis.

This bill would also specifically require a local agency to expend a fee for public improvements, as defined, solely and exclusively for the purpose or purposes for which the fee was collected, as specified. The bill would further provide that no fee shall be levied, collected, or imposed for general revenue purposes.

By revising the duties of a local agency with respect to the refund and expenditure of development fees, this bill would impose a state-mandated local program.

Existing law requires that, when fees charged against a development project are collected, a local agency deposit them in a

separate fund or account in a manner that will avoid the commingling of those fees with other funds. Existing law also requires that these fees be expended only for the purposes for which they were collected. Existing law further requires that, for each separate account or fund established under these provisions, the local agency make available to the public specified information relating to the fee, interest, other income, expenditures, and refunds occurring during the fiscal year within 60 days of the close of each fiscal year.

This bill would instead require the local agency, within 180 days after the last day of each fiscal year, to make available to the public specified information relating to fees deposited in the account or fund. The bill also would require the local agency to identify the public facility, or facilities, that the fee would be used to finance at the time the fee is imposed. These additional duties required of local agencies would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 66001 of the Government Code is amended to read:

66001. (a) In any action establishing, increasing, or imposing a fee as a condition of approval of a development project by a local agency on or after January 1, 1989, the local agency shall do all of the following:

(1) Identify the purpose of the fee.

(2) Identify the use to which the fee is to be put. If the use is financing public facilities, the facilities shall be identified. That identification may, but need not, be made by reference to a capital improvement plan as specified in Section 65403 or 66002, may be made in applicable general or specific plan requirements, or may be made in other public documents that identify the public facilities for which the fee is charged.

(3) Determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed.

(4) Determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.

(b) In any action imposing a fee as a condition of approval of a development project by a local agency on or after January 1, 1989, the local agency shall determine how there is a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed.

(c) Upon receipt of a fee subject to this section, the local agency shall deposit, invest, account for, and expend the fees pursuant to Section 66006.

(d) For the fifth fiscal year following the first deposit into the account or fund, and every five years thereafter, the local agency shall make all of the following findings with respect to that portion of the account or fund remaining unexpended, whether committed or uncommitted:

(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 identified in paragraph (2) of subdivision (a).

(4) Designate the approximate dates on which the funding referred to in paragraph (3) is expected to be deposited into the appropriate account or fund.

When findings are required by this subdivision, they shall be made in connection with the public information required by subdivision (b) of Section 66006. The findings required by this subdivision need only be made for moneys in possession of the local agency, and need not be made with respect to letters of credit, bonds, or other instruments taken to secure payment of the fee at a future date. If the findings are not made as required by this subdivision, the local agency shall refund the moneys in the account or fund as provided in subdivision (e).

(e) Except as provided in subdivision (f), when sufficient funds have been collected, as determined pursuant to subparagraph (F) of paragraph (1) of subdivision (b) of Section 66006, to complete financing on incomplete public improvements identified in paragraph (2) of subdivision (a), and the public improvements remain incomplete, the local agency shall identify, within 180 days of the determination that sufficient funds have been collected, an approximate date by which the construction of the public improvement will be commenced, or shall refund to the then current record owner or owners of the lots or units, as identified on the last equalized assessment roll, of the development project or projects on a prorated basis, the unexpended portion of the fee, and any interest accrued thereon. By means consistent with the intent of this section, a local agency may refund the unexpended revenues by direct payment, by providing a temporary suspension of fees, or by any other reasonable means. The determination by the governing body of the local agency of the means by which those revenues are to be refunded is a legislative act.

(f) If the administrative costs of refunding unexpended revenues pursuant to subdivision (e) exceed the amount to be refunded, the local agency, after a public hearing, notice of which has been published pursuant to Section 6061 and posted in three prominent places within the area of the development project, may determine that the revenues shall be allocated for some other purpose for which fees are collected subject to this chapter and which serves the project on which the fee was originally imposed.

SEC. 2. Section 66006 of the Government Code is amended to read:

66006. (a) If a local agency requires the payment of a fee specified in subdivision (c) in connection with the approval of a development project, the local agency receiving the fee shall deposit it with the other fees for the improvement in a separate capital facilities account or fund in a manner to avoid any commingling of the fees with other revenues and funds of the local agency, except for temporary investments, and expend those fees solely for the

purpose for which the fee was collected. Any interest income earned by moneys in the capital facilities account or fund shall also be deposited in that account or fund and shall be expended only for the purpose for which the fee was originally collected.

(b) (1) For each separate account or fund established pursuant to subdivision (a), the local agency shall, within 180 days after the last day of each fiscal year, make available to the public the following information for the fiscal year:

(A) A brief description of the type of fee in the account or fund.

(B) The amount of the fee.

(C) The beginning and ending balance of the account or fund.

(D) The amount of the fees collected and the interest earned.

(E) 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.

(F) An identification of an approximate date by which the construction of the public improvement will commence if the local agency determines that sufficient funds have been collected to complete financing on an incomplete public improvement, as identified in paragraph (2) of subdivision (a) of Section 66001, and the public improvement remains incomplete.

(G) 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.

(H) The amount of refunds made pursuant to subdivision (e) of Section 66001 and any allocations pursuant to subdivision (f) of Section 66001.

(2) The local agency shall review the information made available to the public pursuant to paragraph (1) at the next regularly scheduled public meeting not less than 15 days after this information is made available to the public, as required by this subdivision. Notice of the time and place of the meeting, including the address where this information may be reviewed, shall be mailed, at least 15 days prior to the meeting, to any interested party who files a written request with the local agency for mailed notice of the meeting. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service.

(c) For purposes of this section, "fee" means any fee imposed to provide for an improvement to be constructed to serve a development project, or which is a fee for public improvements within the meaning of subdivision (b) of Section 66000, and that is imposed by the local agency as a condition of approving the development project.

(d) Any person may request an audit of any local agency fee or charge that is subject to Section 66023, including fees or charges of school districts, in accordance with that section.

(e) The Legislature finds and declares that untimely or improper allocation of development fees hinders economic growth and is, therefore, a matter of statewide interest and concern. It is, therefore, the intent of the Legislature that this section shall supersede all conflicting local laws and shall apply in charter

cities.

(f) At the time the local agency imposes a fee for public improvements on a specific development project, it shall identify the public improvement that the fee will be used to finance.

SEC. 3. Section 66008 is added to the Government Code, to read:

66008. A local agency shall expend a fee for public improvements, as accounted for pursuant to Section 66006, solely and exclusively for the purpose or purposes, as identified in subdivision (f) of Section 66006, for which the fee was collected. The fee shall not be levied, collected, or imposed for general revenue purposes.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

WAIS Document Retrieval

BILL NUMBER: SB 1748 CHAPTERED 09/24/96

CHAPTER 799
FILED WITH SECRETARY OF STATE SEPTEMBER 24, 1996
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AMENDED IN ASSEMBLY JUNE 10, 1996
AMENDED IN ASSEMBLY MAY 6, 1996
AMENDED IN SENATE APRIL 11, 1996

INTRODUCED BY Committee on Housing and Land Use (Senators Sher (Chairman), Costa, Kopp, Marks, Monteith, and Watson)

FEBRUARY 22, 1996

An act to amend Section 42238 of the Education Code, to amend Sections 65009, 65040.3, 65352, 65920, and 66031 of, to amend and renumber Section 65302.9 of, to add Section 66000.5 to, and to repeal Sections 65035.1 and 65907 of, the Government Code, to amend Sections 18025.5, 18035.1, 18075.5, 18117, 18304, 19825, 33021, 33320.2, 33324, 33367, 33676, and 51622 of, to repeal Section 33030.5 of, and to repeal Article 4 (commencing with Section 33250) of Chapter 3 of Part 1 of Division 24 of, the Health and Safety Code, relating to the Housing and Land Use Omnibus Act of 1996.

LEGISLATIVE COUNSEL'S DIGEST

SB 1748, Committee on Housing and Land Use. Housing and Land Use Omnibus Act of 1996.

Existing law generally regulates, pursuant to separate bodies of law, the areas of land use, housing and redevelopment.

This bill would enact the Housing and Land Use Omnibus Act of 1996 and would state legislative intent to combine several minor statutory changes relating to housing, land use and related topics into a single measure, and would make related findings and declarations.

This bill would designate specified provisions of existing law relating to imposition, adoption, and protest of various fees related to development as the Fee Mitigation Act. The bill would also designate a specific body of existing law as the Permit Streamlining Act.

Existing law relating to local planning provides that any city or county may adopt an ordinance or other regulation governing the issuance of permits for the use of property for occasional commercial filming, as specified.

This bill would specify that the legislative body of the city or county may perform the above function. In addition, the bill would relocate these provisions, to include them among the provisions of existing law relating to zoning.

Under existing law, any action brought in superior court relating to one of several land use related subjects may be subject to a mediation proceeding, as specified.

This bill would add to the potential mediation subjects specified actions relating to the Airport Land Use Commission.

Existing law relating to redevelopment provides that an unblighted

date the referring agency mails it or delivers it in which to comment unless a longer period is specified by the planning agency.

(c) (1) This section is directory, not mandatory, and the failure to refer a proposed action to the other entities specified in this section does not affect the validity of the action, if adopted.

(2) To the extent that the requirements of this section conflict with the requirements of Chapter 4.4 (commencing with Section 65919), the requirements of Chapter 4.4 shall prevail.

SEC. 6. Section 65907 of the Government Code is repealed.

SEC. 6.5. Section 65920 of the Government Code is amended to read:

65920. (a) This chapter shall be known and may be cited as the Permit Streamlining Act.

(b) Notwithstanding any other provision of law, the provisions of this chapter shall apply to all public agencies to the extent specified in this chapter, except that the time limits specified in Division 2 (commencing with Section 66410) of Title 7 shall not be extended by operation of this chapter.

SEC. 6.7. Section 66000.5 is added to the Government Code, to read:

66000.5. This chapter, Chapter 6 (commencing with Section 66010), Chapter 7 (commencing with Section 66012), Chapter 8 (commencing with Section 66016), and Chapter 9 (commencing with Section 66020) shall be known and may be cited as the Mitigation Fee Act.

SEC. 7. Section 66031 of the Government Code is amended to read:

66031. (a) Notwithstanding any other provision of law, any action brought in the superior court relating to any of the following subjects may be subject to a mediation proceeding conducted pursuant to this chapter:

(1) The approval or denial by a public agency of any development project.

(2) Any act or decision of a public agency made pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(3) The failure of a public agency to meet the time limits specified in Chapter 4.5 (commencing with Section 65920), commonly known as the Permit Streamlining Act, or in the Subdivision Map Act (Division 2 (commencing with Section 66410)).

(4) Fees determined pursuant to Sections 53080 to 53082, inclusive, or Chapter 4.9 (commencing with Section 65995).

(5) Fees determined pursuant to Chapter 5 (commencing with Section 66000).

(6) The adequacy of a general plan or specific plan adopted pursuant to Chapter 3 (commencing with Section 65100).

(7) The validity of any sphere of influence, urban service area, change of organization or reorganization, or any other decision made pursuant to the Cortese-Knox Local Government Reorganization Act (Division 3 (commencing with Section 56000) of Title 5).

(8) The adoption or amendment of a redevelopment plan pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code).

(9) The validity of any zoning decision made pursuant to Chapter 4 (commencing with Section 65800).

(10) The validity of any decision made pursuant to Article 3.5 (commencing with Section 21670) of Chapter 4 of Part 1 of Division 9 of the Public Utilities Code.

(b) Within five days after the deadline for the respondent or defendant to file its reply to an action, the court may invite the parties to consider resolving their dispute by selecting a mutually acceptable person to serve as a mediator, or an organization or

agency to provide a mediator.

(c) In selecting a person to serve as a mediator, or an organization or agency to provide a mediator, the parties shall consider the following:

(1) The council of governments having jurisdiction in the county where the dispute arose.

(2) Any subregional or countywide council of governments in the county where the dispute arose.

(3) The Office of Permit Assistance within the Trade and Commerce Agency, pursuant to its authority in Article 1 (commencing with Section 15399.50) of Chapter 11 of Part 6.7 of Division 3 of Title 2.

(4) Any other person with experience or training in mediation including those with experience in land use issues, or any other organization or agency which can provide a person with experience or training in mediation, including those with experience in land use issues.

(d) If the court invites the parties to consider mediation, the parties shall notify the court within 30 days if they have selected a mutually acceptable person to serve as a mediator. If the parties have not selected a mediator within 30 days, the action shall proceed. The court shall not draw any implication, favorable or otherwise, from the refusal by a party to accept the invitation by the court to consider mediation. Nothing in this section shall preclude the parties from using mediation at any other time while the action is pending.

SEC. 8. Section 18025.5 of the Health and Safety Code is amended to read:

18025.5. (a) Pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Sec. 5401 et seq.), the department is authorized to assume responsibility for enforcement of manufactured home and mobilehome construction and safety standards relating to any issue with respect to which a federal standard has been established. The department may adopt regulations to ensure acceptance by the Secretary of Housing and Urban Development of California's plan for administration and enforcement of federal manufactured home and mobilehome safety and construction standards.

(b) The department is authorized to conduct inspections and investigations which it determines may be necessary to secure enforcement of this part and regulations adopted pursuant thereto. For the purposes of enforcement of this part and the related regulations, persons duly designated by the director of the department, upon presenting appropriate credentials to the owner, operator, or agent in charge, may:

(1) Enter, at any reasonable times and without advance notice, any factory, warehouse, sales lot, or establishment in which manufactured homes, mobilehomes, recreational vehicles, commercial coaches, or special purpose commercial coaches are manufactured, stored, held for sale, sold, or offered for sale, rent, or lease.

(2) Inspect, at reasonable times and within reasonable limits and in a reasonable manner, any factory, warehouse, sales lot, or establishment, and inspect the books, papers, records, and documents to ensure compliance with this part.

SEC. 9. Section 18035.1 of the Health and Safety Code is amended to read:

18035.1. (a) As a part of the documents executed for every transaction by or through a dealer to sell or lease with the option to buy a new or used manufactured home or mobilehome, the dealer and purchaser shall sign a receipt for deposit, a copy of which shall be

allocated to the agency.

(e) As used in this section, "affected taxing agency" means and includes every public agency for the benefit of which a tax is levied upon property in the project area, whether levied by the public agency or on its behalf by another public agency.

(f) This section shall apply only to redevelopment projects for which a final redevelopment plan is adopted pursuant to Article 5 (commencing with Section 33360) of Chapter 4 on or after January 1, 1977.

SEC. 20. Section 51622 of the Health and Safety Code is amended to read:

51622. (a) The agency may contract with any private person or public agency for review of the administration of this part and for assistance in implementing this part.

(b) The agency shall prepare a biennial report on the condition of the program of loan and bond insurance authorized by this part. The report of the evaluation shall include an evaluation of program effectiveness in relation to cost and shall include recommendations and suggested legislation for the improvement of the program, if any.

The agency shall obtain an annual audit of the insurance fund's books and accounts with respect to its activities under this part to be made at least once for each calendar year by an independent certified public accountant. A copy of the annual audit and biennial report shall be transmitted to the Governor, to the chairperson and vice-chairperson of the Senate and Assembly housing policy committees, the Senate and Assembly budget committees, and the Joint Legislative Budget Committee, and made available for review by interested parties no later than November 1 of each year for the annual audit, and November 1 biennially for the program evaluation report.

SEC. 21. No reimbursement is required by Section 12.5 of this act pursuant to Section 6 of Article XIIIB of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by Section 12 of this act.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

BILL NUMBER: AB 939 CHAPTERED 10/08/97

CHAPTER 772
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AMENDED IN ASSEMBLY APRIL 9, 1997

INTRODUCED BY Assembly Member Ortiz
(Principal coauthor: Assembly Member Ackerman)

FEBRUARY 27, 1997

An act to amend Section 467.5 of the Business and Professions Code, to amend Section 1775.10 of the Code of Civil Procedure, to amend and renumber the heading of Chapter 2 (commencing with Section 1150) of Division 9 of, to add Chapter 2 (commencing with Section 1115) to Division 9 of, and to repeal Sections 1152.5 and 1152.6 of, the Evidence Code, to amend Sections 66032 and 66033 of the Government Code, to amend Sections 10089.80 and 10089.82 of the Insurance Code, to amend Section 65 of the Labor Code, and to amend Section 350 of the Welfare and Institutions Code, relating to mediation.

LEGISLATIVE COUNSEL'S DIGEST

AB 939, Ortiz. Mediation.

(1) Under existing law, when a person consults a mediator or mediation service for the purpose of retaining mediation services, or when persons agree to conduct and participate in a mediation for the purpose of compromising, settling, or resolving a civil dispute, anything said in the course of a consultation for mediation services or in the course of the mediation is not admissible in evidence nor subject to discovery, and all communications, negotiations, and settlement discussions by and between participants or mediators are confidential, except as specified. If the testimony of a mediator is sought to be compelled in any civil action or proceeding regarding anything said in the course of a mediation, the court is required to award reasonable attorney's fees and costs to the mediator against the person seeking the testimony. Existing law provides that a mediator may not file, and a court may not consider, any declaration or finding of any kind by the mediator, except as specified.

This bill would, among other things, revise and recast these provisions, as specified, define the terms "mediation," "mediator," and "mediation consultation," specify when a mediation ends, and make corresponding changes.

(2) Existing law provides that if an insured party and an insurer reach an agreement proposed during mediation, the insured will have 3 business days to rescind the agreement.

accordance with this section.

(5) For 10 calendar days, there is no communication between the mediator and any of the parties to the mediation relating to the dispute. The mediator and the parties may shorten or extend this time by agreement.

(b) For purposes of confidentiality under this chapter, if a mediation partially resolves a dispute, mediation ends when either of the following conditions is satisfied:

(1) The parties execute a written settlement agreement that partially resolves the dispute.

(2) An oral agreement that partially resolves the dispute is reached in accordance with Section 1118.

(c) This section does not preclude a party from ending a mediation without reaching an agreement. This section does not otherwise affect the extent to which a party may terminate a mediation.

1126. Anything said, any admission made, or any writing that is inadmissible, protected from disclosure, and confidential under this chapter before a mediation ends, shall remain inadmissible, protected from disclosure, and confidential to the same extent after the mediation ends.

1127. If a person subpoenas or otherwise seeks to compel a mediator to testify or produce a writing, as defined in Section 250, and the court or other adjudicative body determines that the testimony or writing is inadmissible under this chapter, or protected from disclosure under this chapter, the court or adjudicative body making the determination shall award reasonable attorney's fees and costs to the mediator against the person seeking the testimony or writing.

1128. Any reference to a mediation during any subsequent trial is an irregularity in the proceedings of the trial for the purposes of Section 657 of the Code of Civil Procedure. Any reference to a mediation during any other subsequent noncriminal proceeding is grounds for vacating or modifying the decision in that proceeding, in whole or in part, and granting a new or further hearing on all or part of the issues, if the reference materially affected the substantial rights of the party requesting relief.

SEC. 4. The heading of Chapter 2 (commencing with Section 1150) of Division 9 of the Evidence Code is amended and renumbered to read:

CHAPTER 3. OTHER EVIDENCE AFFECTED OR EXCLUDED BY EXTRINSIC POLICIES

SEC. 5. Section 1152.5 of the Evidence Code is repealed.

SEC. 6. Section 1152.6 of the Evidence Code is repealed.

SEC. 7. Section 66032 of the Government Code is amended to read:

66032. (a) Notwithstanding any provision of law to the contrary, all time limits with respect to an action shall be tolled while the mediator conducts the mediation, pursuant to this chapter.

(b) Mediations conducted by a mediator pursuant to this chapter that involve less than a quorum of a legislative body or a state body shall not be considered meetings of a legislative body pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), nor shall they be considered meetings of a state body pursuant to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2).

(c) Any action taken regarding mediation conducted pursuant to

this chapter shall be taken in accordance with the provisions of current law.

(d) Ninety days after the commencement of the mediation, and every 90 days thereafter, the action shall be reactivated unless the parties to the action do either of the following:

(1) Arrive at a settlement and implement it in accordance with the provisions of current law.

(2) Agree by written stipulation to extend the mediation for another 90-day period.

(e) Section 703.5 and Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code apply to any mediation conducted pursuant to this chapter.

SEC. 8. Section 66033 of the Government Code is amended to read:

66033. (a) At the end of the mediation, the mediator shall file a report with the Office of Permit Assistance, consistent with Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code, containing each of the following:

(1) The title of the action.

(2) The names of the parties to the action.

(3) An estimate of the costs avoided, if any, because the parties used mediation instead of litigation to resolve their dispute.

(b) The sole purpose of the report required by this section is the collection of information needed by the office to prepare its report to the Legislature pursuant to Section 66036.

SEC. 9. Section 10089.80 of the Insurance Code is amended to read:

10089.80. (a) The representatives of the insurer shall know the facts of the case and be familiar with the allegations of the complainant. The insurer or the insurer's representative shall produce at the settlement conference a copy of the policy and all documents from the claims file relevant to the degree of loss, value of the claim, and the fact or extent of damage.

The insured shall produce, to the extent available, all documents relevant to the degree of loss, value of the claim, and the fact or extent of damage.

The mediator may also order production of other documents that the mediator determines to be relevant to the issues under mediation. If a party declines to comply with that order, the mediator may appeal to the commissioner for a determination of whether the documents requested should be produced. The commissioner shall make a determination within 21 days. However, the party ordered to produce the documents shall not be required to produce while the issue is before the commissioner in this 21-day period. If the ruling is in favor of production, any insurer that is subject to an order to participate in mediation issued under subdivision (a) of Section 10089.75 shall comply with the order to produce. Insureds, and those insurers that are not subject to an order to participate in mediation, shall produce the documents or decline to participate further in the mediation after a ruling by the commissioner requiring the production of those other documents. Declination of mediation by the insurer under this section may be considered by the commissioner in exercising authority under subdivision (a) of Section 10089.75.

The mediator shall have the authority to protect from disclosure information that the mediator determines to be privileged, including, but not limited to, information protected by the attorney-client or work-product privileges, or to be otherwise confidential.

(1) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(2) The minor is likely to be intimidated by a formal courtroom setting.

(3) The minor is afraid to testify in front of his or her parent or parents.

After testimony in chambers, the parent or parents of the minor may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

The testimony of a minor also may be taken in chambers and outside the presence of the guardian or guardians of a minor under the circumstances specified in this subdivision.

(c) At any hearing in which the probation department bears the burden of proof, after the presentation of evidence on behalf of the probation department and the minor has been closed, the court, on motion of the minor, parent, or guardian, or on its own motion, shall order whatever action the law requires of it if the court, upon weighing all of the evidence then before it, finds that the burden of proof has not been met. That action includes, but is not limited to, the dismissal of the petition and release of the minor at a jurisdictional hearing, the return of the minor at an out-of-home review held prior to the permanency planning hearing, or the termination of jurisdiction at an in-home review. If the motion is not granted, the parent or guardian may offer evidence without first having reserved that right.

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CHAPTER 407
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AMENDED IN SENATE FEBRUARY 25, 1997

INTRODUCED BY Senator Greene and Assembly Members Villaraigosa and Olberg

(Principal coauthors: Senators Alpert, Johnston, Karnette, and Polanco)

(Principal coauthors: Assembly Members Aguiar, Baca, Bustamante, Cardenas, Cardoza, Cedillo, Cunneen, Ducheny, Escutia, Frusetta, Gallegos, Havice, Hertzberg, Keeley, Kuehl, Kuykendall, Leonard, Mazzoni, Migden, Miller, Napolitano, Oller, Prenter, Richter, Scott, Shelley, Takasugi, Torlakson, Washington, Wayne, Wildman, and Woods)

(Coauthors: Assembly Members Figueroa, Knox, Perata, Strom-Martin, Vincent, and Wright)

DECEMBER 2, 1996

An act to amend Sections 17260, 17262, 17303, 17305, 17306, and 17620 of, to add Sections 17009.3, 17009.5, 81134, 81135, and 81136 to, to add Chapter 12.5 (commencing with Section 17070.10) to Part 10 of, to add Part 68 (commencing with Section 100400) to, to repeal Section 15101 of, and to repeal and add Section 17261 of, the Education Code, to amend Section 1003 of the Elections Code, to amend Sections 65995 and 65996 of, and to add Sections 4420.5, 65995.5, 65995.6, 65995.7, 65997, and 65998 to, the Government Code, and to add and repeal Chapter 9 (commencing with Section 51450) to Division 31 of the Health and Safety Code, relating to education facilities, making an appropriation therefor, and by providing the funds necessary therefor through an election for, and the issuance and sale of, bonds of the State of California and by providing for the handling and disposition of those funds, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 50, Greene. Education: Leroy F. Greene School Facilities Act of 1998: Class Size Reduction Kindergarten-University Public Education Facilities Bond Act of 1998: school facilities construction: developers fees.

SEC. 10. Section 17305 of the Education Code is amended to read:

17305. (a) Notwithstanding Section 14952 of the Government Code, the Department of General Services shall contract with a sufficient number of qualified plan review firms for assistance in performing the plan review required under this article or Article 5 (commencing with Section 17350).

(b) For purposes of this article, "qualified plan review firm" means an individual, firm, or the building official of a city, a county, or a city and county, as defined in Section 18949.27 of the Health and Safety Code or the authorized representative of the building official that is identified by the Department of General Services as having appropriate expertise and knowledge of the requirements that apply to school buildings under this article. The department shall establish and maintain a list of the individuals and firms, and building officials or the authorized representatives of building officials so identified, and shall make that list available, upon request, to school districts and other interested parties.

SEC. 11. Section 17306 of the Education Code is amended to read:

17306. (a) Upon submitting a complete application for review under this article, the applicant may request that the Department of General Services refer the documents necessary for the review of that application to a qualified plan review firm operating under contract with the department pursuant to Section 17305. The department immediately shall grant the request and refer the necessary documents to a qualified plan review firm if the applicant so requests.

Upon completing the review, the qualified plan review firm shall submit the documents referred to it for the review of the application, together with the results of its review, to the Department of General Services.

(b) The Department of General Services shall establish a procedure governing the use by applicants of the review process alternative described in this section, including, but not limited to, provisions restricting the use of qualified plan review firms on the basis of conflict of interest.

SEC. 12. Section 17620 of the Education Code is amended to read:

17620. (a) (1) The governing board of any school district is authorized to levy a fee, charge, dedication, or other requirement against any construction within the boundaries of the district, for the purpose of funding the construction or reconstruction of school facilities, subject to any limitations set forth in Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7 of the Government Code. This fee, charge, dedication, or other requirement may be applied to construction only as follows:

(A) To new commercial and industrial construction. The chargeable covered and enclosed space of commercial or industrial construction shall not be deemed to include the square footage of any structure existing on the site of that construction as of the date the first building permit is issued for any portion of that construction.

(B) To new residential construction.

(C) To other residential construction, only if the resulting increase in assessable space exceeds 500 square feet. The calculation of the "resulting increase in assessable space" for this purpose shall reflect any decrease in assessable space in the same residential structure that also results from that construction. Where authorized under this paragraph, the fee, charge, dedication, or other requirement is applicable to the total resulting increase in

assessable space.

(D) To location, installation, or occupancy of manufactured homes and mobilehomes, as defined in Section 17625.

(2) For purposes of this section, "construction" and "assessable space" have the same meaning as defined in Section 65995 of the Government Code.

(3) For purposes of this section and Section 65995, "construction or reconstruction of school facilities" does not include any item of expenditure for any of the following:

(A) The regular maintenance or routine repair of school buildings and facilities.

(B) The inspection, sampling, analysis, encapsulation, or removal of asbestos-containing materials, except where incidental to school facilities construction or reconstruction for which the expenditure of fees or other consideration collected pursuant to this section is not prohibited.

(C) The purposes of deferred maintenance described in Section 17582.

(4) The appropriate city or county may be authorized, pursuant to contractual agreement with the governing board, to collect and otherwise administer, on behalf of the school district, any fee, charge, dedication, or other requirement levied under this subdivision. In the event of any agreement authorizing a city or county to collect that
fee, charge, dedication, or other requirement in any area within the school district, the certification requirement set forth in subdivision (b) or (c), as appropriate, is deemed to be complied with as to any residential construction within that area upon receipt by that city or county of payment of the fee, charge, dedication, or other requirement imposed on that residential construction.

(5) Fees or other consideration collected pursuant to this section may be expended by a school district for the costs of performing any study or otherwise making the findings and determinations required under subdivisions (a), (b), and (d) of Section 66001 of the Government Code, or in preparing the school facilities needs analysis described in Section 65995.6 of the Government Code. In addition, an amount not to exceed, in any fiscal year, 3 percent of the fees collected in that fiscal year pursuant to this section may be retained by the school district, city, or county, as appropriate, for reimbursement of the administrative costs incurred by that entity in collecting the fees. When any city or county is entitled, under an agreement as described in paragraph (4), to compensation in excess of that amount, the payment of that excess compensation shall be made from other revenue sources available to the school district. For purposes of this paragraph, "fees collected in that fiscal year pursuant to this section" does not include any amount in addition to the amounts specified in paragraphs (1) and (2) of subdivision (b) of Section 65995 of the Government Code.

(b) A city or county, whether general law or chartered, may not issue a building permit for any construction absent certification by the appropriate school district that any fee, charge, dedication, or other requirement levied by the governing board of that school district has been complied with, or of the district's determination that the fee, charge, dedication, or other requirement does not apply to the construction. The school district shall issue the certification immediately upon compliance with the fee, charge, dedication, or other requirement.

SEC. 19. Section 65995 of the Government Code is amended to read:

65995. (a) Except for a fee, charge, dedication, or other requirement authorized under Section 17620 of the Education Code, or pursuant to Chapter 4.7 (commencing with Section 65970), a fee, charge, dedication, or other requirement for the construction or reconstruction of school facilities may not be levied or imposed in connection with, or made a condition of, any legislative or adjudicative act, or both, by any state or local agency involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization, as defined in Section 56021 or 56073.

(b) Except as provided in Sections 65995.5 and 65995.7, the amount of any fees, charges, dedications, or other requirements authorized under Section 17620 of the Education Code, or pursuant to Chapter 4.7 (commencing with Section 65970), or both, may not exceed the following:

(1) In the case of residential construction, including the location, installation, or occupancy of manufactured homes and mobilehomes, one dollar and ninety-three cents ($1.93) per square foot of assessable space. "Assessable space," for this purpose, means all of the square footage within the perimeter of a residential structure, not including any carport, walkway, garage, overhang, patio, enclosed patio, detached accessory structure, or similar area. The amount of the square footage within the perimeter of a residential structure shall be calculated by the building department of the city or county issuing the building permit, in accordance with the standard practice of that city or county in calculating structural perimeters. "Manufactured home" and "mobilehome" have the meanings set forth in subdivision (f) of Section 17625 of the Education Code. The application of any fee, charge, dedication, or other form of requirement to the location, installation, or occupancy of manufactured homes and mobilehomes is subject to Section 17625 of the Education Code.

(2) In the case of any commercial or industrial construction, thirty-one cents ($0.31) per square foot of chargeable covered and enclosed space. "Chargeable covered and enclosed space," for this purpose, means the covered and enclosed space determined to be within the perimeter of a commercial or industrial structure, not including any storage areas incidental to the principal use of the construction, garage, parking structure, unenclosed walkway, or utility or disposal area. The determination of the chargeable covered and enclosed space within the perimeter of a commercial or industrial structure shall be made by the building department of the city or county issuing the building permit, in accordance with the building standards of that city or county.

(3) The amount of the limits set forth in paragraphs (1) and (2) shall be increased in 2000, and every two years thereafter, according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the State Allocation Board at its January meeting, which increase shall be effective as of the date of that meeting.

(c) (1) Notwithstanding any other provision of law, during the term of a contract entered into between a subdivider or builder and a school district, city, county, or city and county, whether general law or chartered, on or before January 1, 1987, that requires the payment of a fee, charge, or dedication for the construction of

school facilities as a condition to the approval of residential construction, neither Section 17620 of the Education Code nor this chapter applies to that residential construction.

(2) Notwithstanding any other provision of state or local law, construction that is subject to a contract entered into between a person and a school district, city, county, or city and county, whether general law or chartered, after January 1, 1987, and before the operative date of the act that adds paragraph (3) that requires the payment of a fee, charge, or dedication for the construction of school facilities as a condition to the approval of construction, may not be affected by the act that adds paragraph (3).

(3) Notwithstanding any other provision of state or local law, until January 1, 2000, any construction not subject to a contract as described in paragraph (2) that is carried out on real property for which residential development was made subject to a condition relating to school facilities imposed by a state or local agency in connection with a legislative act approving or authorizing the residential development of that property after January 1, 1987, and before the operative date of the act adding this paragraph, shall be required to comply with that condition.

Notwithstanding any other provision of state or local law, on and after January 1, 2000, any construction not subject to a contract as described in paragraph (2) that is carried out on real property for which residential development was made subject to a condition relating to school facilities imposed by a state or local agency in connection with a legislative act approving or authorizing the residential development of that property after January 1, 1987, and before the operative date of the act adding this paragraph, may not be subject to a fee, charge, dedication, or other requirement exceeding the amount specified in paragraphs (1) and (2) of subdivision (b), or, if a district has increased the limit specified in paragraph (1) of subdivision (b) pursuant to either Section 65995.5 or 65995.7, that increased amount.

(4) Any construction that is not subject to a contract as described in paragraph (2), or to paragraph (3), and that satisfies both of the requirements of this paragraph, may not be subject to any increased fee, charge, dedication, or other requirement authorized by the act that adds this paragraph beyond the amount specified in paragraphs (1) and (2) of subdivision (b).

(A) A tentative map, development permit, or conditional use permit was approved before the operative date of the act that amends this subdivision.

(B) A building permit is issued before January 1, 2000.

(d) For purposes of this chapter, "construction" means new construction and reconstruction of existing building for residential, commercial, or industrial. "Residential, commercial, or industrial construction" does not include any facility used exclusively for religious purposes that is thereby exempt from property taxation under the laws of this state, any facility used exclusively as a private full-time day school as described in Section 48222 of the Education Code, or any facility that is owned and occupied by one or more agencies of federal, state, or local government. In addition, "commercial or industrial construction" includes, but is not limited to, any hotel, inn, motel, tourist home, or other lodging for which the maximum term of occupancy for guests does not exceed 30 days, but does not include any residential hotel, as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code.

(e) The Legislature finds and declares that the financing of school facilities and the mitigation of the impacts of land use approvals, whether legislative or adjudicative, or both, on the need for school facilities are matters of statewide concern. For this reason, the Legislature hereby occupies the subject matter of requirements related to school facilities levied or imposed in connection with, or made a condition of, any land use approval, whether legislative or adjudicative act, or both, and the mitigation of the impacts of land use approvals, whether legislative or adjudicative, or both, on the need for school facilities, to the exclusion of all other measures, financial or nonfinancial, on the subjects. For purposes of this subdivision, "school facilities" means any school-related consideration relating to a school district' s ability to accommodate enrollment.

(f) Nothing in this section shall be interpreted to limit or prohibit the use of Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 to finance the construction or reconstruction of school facilities. However, the use of Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 may not be required as a condition of approval of any legislative or adjudicative act, or both, if the purpose of the community facilities district is to finance school facilities.

(g) (1) The refusal of a person to agree to undertake or cause to be undertaken an act relating to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5, including formation of, or annexation to, a community facilities district, voting to levy a special tax, or authorizing another to vote to levy a special tax, may not be a factor when considering the approval of a legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization, as defined in Section 56021 or 56073, if the purpose of the community facilities district is to finance school facilities.

(2) If a person voluntarily elects to establish, or annex into, a community facilities district and levy a special tax approved by landowner vote to finance school facilities, the present value of the special tax specified in the resolution of formation shall be calculated as an amount per square foot of assessable space and that amount shall be a credit against any applicable fee, charge, dedication, or other requirement for the construction or reconstruction of school facilities. For purposes of this paragraph, the calculation of present value shall use the interest rate paid on the United States Treasury's 30-year bond on the date of the formation of, or annexation to, the community facilities district, as the capitalization rate.

(3) For purposes of subdivisions (f), (h), and (i), and this subdivision, "school facilities" means any school-related consideration relating to a school district's ability to accommodate enrollment.

(h) The payment or satisfaction of a fee, charge, or other requirement levied or imposed pursuant to Section 17620 of the Education Code in the amount specified in Section 65995 and, if applicable, any amounts specified in Section 65995.5 or 65995.7 are hereby deemed to be full and complete mitigation of the impacts of any legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property, or any change in

governmental organization or reorganization as defined in Section 56021 or 56073, on the provision of adequate school facilities.

(i) A state or local agency may not deny or refuse to approve a legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization as defined in Section 56021 or 56073 on the basis of a person's refusal to provide school facilities mitigation that exceeds the amounts authorized pursuant to this section or pursuant to Section 65995.5 or 65995.7, as applicable.

SEC. 20. Section 65995.5 is added to the Government Code, to read:

65995.5. (a) The governing board of a school district may impose the amount calculated pursuant to this section as an alternative to the amount that may be imposed on residential construction calculated pursuant to subdivision (b) of Section 65995.

(b) To be eligible to impose the fee, charge, dedication, or other requirement up to the amount calculated pursuant to this section, a governing board shall do all of the following:

(1) Make a timely application to the State Allocation Board for new construction funding for which it is eligible and be determined by the board to meet the eligibility requirements for new construction funding set forth in Article 2 (commencing with Section 17071.10) and Article 3 (commencing with Section 17071.75) of Chapter 12.5 of Part 10 of the Education Code. A governing board that submits an application to determine the district's eligibility for new construction funding shall be deemed eligible if the State Allocation Board fails to notify the district of the district's eligibility within 120 days of receipt of the application.

(2) Conduct and adopt a school facility needs analysis pursuant to Section 65995.6.

(3) Until January 1, 2000, satisfy at least one of the requirements set forth in subparagraphs (A) to (D), inclusive, and, on and after January 1, 2000, satisfy at least two of the requirements set forth in subparagraphs (A) to (D), inclusive:

(A) The district is a unified or elementary school district that has a substantial enrollment of its elementary school pupils on a multitrack year-round schedule. "Substantial enrollment" for purposes of this paragraph means at least 30 percent of district pupils in kindergarten and grades 1 to 6, inclusive, in the high school attendance area in which all or some of the new residential units identified in the needs analysis are planned for construction. A high school district shall be deemed to have met the requirements of this paragraph if either of the following apply:

(i) At least 30 percent of the high school district's pupils are on a multitrack year-round schedule.

(ii) At least 40 percent of the pupils enrolled in public schools in kindergarten and grades 1 to 12, inclusive, within the boundaries of the high school attendance area for which the school district is applying for new facilities are enrolled in multitrack year-round schools.

(B) The district has placed on the ballot in the previous four years a local general obligation bond to finance school facilities and the measure received at least 50 percent plus one of the votes cast.

(C) The district meets one of the following:

(i) The district has issued debt or incurred obligations for

capital outlay in an amount equivalent to 15 percent of the district's local bonding capacity, including indebtedness that is repaid from property taxes, parcel taxes, the district's general fund, special taxes levied pursuant to Section 4 of Article XIIIA of the California Constitution, special taxes levied pursuant to Chapter 2.5 (commencing with Section 52211) of Division 2 of Title 5 that are approved by a vote of registered voters, special taxes levied pursuant to Chapter 2.5 (commencing with Section 52211) of Division 2 of Title 5 that are approved by a vote of landowners prior to November 4, **1998**, and revenues received pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code). Indebtedness or other obligation to finance school facilities to be owned, leased, or used by the district, that is incurred by another public agency, shall be counted for the purpose of calculating whether the district has met the debt percentage requirement contained herein.

(ii) The district has issued debt or incurred obligations for capital outlay in an amount equivalent to 30 percent of the district's local bonding capacity, including indebtedness that is repaid from property taxes, parcel taxes, the district's general fund, special taxes levied pursuant to Section 4 of Article XIIIA of the California Constitution, special taxes levied pursuant to Chapter 2.5 (commencing with Section 52211) of Division 2 of Title 5 that are approved by a vote of registered voters, special taxes levied pursuant to Chapter 2.5 (commencing with Section 52211) of Division 2 of Title 5 that are approved by a vote of landowners after November 4, **1998**, and revenues received pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code). Indebtedness or other obligation to finance school facilities to be owned, leased, or used by the district, that is incurred by another public agency, shall be counted for the purpose of calculating whether the district has met the debt percentage requirement contained herein.

(D) At least 20 percent of the teaching stations within the district are relocatable classrooms.

(c) The maximum square foot fee, charge, dedication, or other requirement authorized by this section that may be collected in accordance with Chapter 6 (commencing with Section 17620) of Part 10.5 of the Education Code shall be calculated by a governing board of a school district, as follows:

(1) The number of unhoused pupils identified in the school facilities needs analysis shall be multiplied by the appropriate amounts provided in subdivision (a) of Section 17072.10. This sum shall be added to the site acquisition and development cost determined pursuant to subdivision (h).

(2) The full amount of local funds the governing board has dedicated to facilities necessitated by new construction shall be subtracted from the amount determined pursuant to paragraph (1). Local funds include fees, charges, dedications, or other requirements imposed on commercial or industrial construction.

(3) The resulting amount determined pursuant to paragraph (2) shall be divided by the projected total square footage of assessable space of residential units anticipated to be constructed during the next five-year period in the school district or the city and county in which the school district is located. The estimate of the projected total square footage shall be based on information available from the city or county within which the residential units

are anticipated to be constructed or a market report prepared by an independent third party.

(d) A school district that has a common territorial jurisdiction with a district that imposes the fee, charge, dedication, or other requirement up to the amount calculated pursuant to this section or Section 65995.7, may not impose a fee, charge, dedication, or other requirement on residential construction that exceeds the limit set forth in subdivision (b) of Section 65995 less the portion of that amount it would be required to share pursuant to Section 17623 of the Education Code, unless that district is eligible to impose the fee, charge, dedication, or other requirement up to the amount calculated pursuant to this section or Section 65995.7.

(e) Nothing in this section is intended to limit or discourage the joint use of school facilities or to limit the ability of a school district to construct school facilities that exceed the amount of funds authorized by Section 17620 of the Education Code and provided by the state grant program, if the additional costs are funded solely by local revenue sources other than fees, charges, dedications, or other requirements imposed on new construction.

(f) A fee, charge, dedication, or other requirement authorized under Section 17620 of the Education Code or pursuant to Chapter 4.7 (commencing with Section 65970) shall be expended solely on the school facilities identified in the needs analysis as being attributable to projected enrollment growth from the construction of new residential units.

(g) "Residential units" and "residences" as used in this section and in Sections 65995.6 and 65995.7 means the development of single-family detached housing units, single-family attached housing units, manufactured homes and mobile homes, as defined in subdivision (f) of Section 17625 of the Education Code, condominiums, and multifamily housing units, including apartments, residential hotels, as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code, and stock cooperatives, as defined in Section 1351 of the Civil Code.

(h) Site acquisition costs shall not exceed half the amount determined by multiplying the land acreage determined to be necessary under the guidelines of the State Department of Education, as published in the "School Site Analysis and Development Handbook," as that handbook read as of January 1, **1998**, by the estimated cost determined pursuant to Section 17072.12 of the Education Code. Site development costs shall not exceed two times the amount funded by the State Allocation Board.

SEC. 21. Section 65995.6 is added to the Government Code, to read:

65995.6. (a) The school facilities needs analysis required by paragraph (2) of subdivision (b) of Section 65995.5 shall be conducted by the governing board of a school district to determine the need for new school facilities for unhoused pupils that are attributable to projected enrollment growth from the development of new residential units over the next five years. The school facilities needs analysis shall project the number of unhoused elementary, middle, and high school pupils generated by new residential units, in each category of pupils enrolled in the district. This projection of unhoused pupils shall be based on the historical student generation rates of new residential units constructed during the previous five years that are of a similar type of unit to those anticipated to be constructed either in the school

district or the city or county in which the school district is located, and relevant planning agency information, such as multiphased development projects, that may modify the historical figures. For purposes of this paragraph, "type" means a single family detached, single family attached, or multifamily unit. The existing school building capacity shall be calculated pursuant to Article 2 (commencing with Section 17071.10) of Chapter 12.5 of Part 10 of the Education Code. If a district meets the requirements of paragraph (3) of subdivision (b) of Section 65995.5 by having a substantial enrollment on a multitrack year-round schedule, the determination of whether the district has school building capacity area shall reflect the additional capacity created by the multitrack year-round schedule.

(b) When determining the funds necessary to meet its facility needs, the governing board shall do each of the following:

(1) Identify and consider any surplus property owned by the district that can be used as a schoolsite or that is available for sale to finance school facilities.

(2) Identify and consider the extent to which projected enrollment growth may be accommodated by excess capacity in existing facilities.

(3) Identify and consider local sources other than fees, charges, dedications, or other requirements imposed on residential construction available to finance the construction or reconstruction of school facilities needed to accommodate any growth in enrollment attributable to the construction of new residential units.

(c) The governing board shall adopt the school facility needs analysis by resolution at a public hearing. The school facilities needs analysis may not be adopted until the school facilities needs analysis in its final form has been made available to the public for a period of not less than 30 days during which time the school facilities needs analysis shall be provided to the local agency responsible for land use planning for its review and comment. Prior to the adoption of the school facilities needs analysis, the public shall have the opportunity to review and comment on the school facilities needs analysis and the governing board shall respond to written comments it receives regarding the school facilities needs analysis.

(d) Notice of the time and place of the hearing, including the location and procedure for viewing or requesting a copy of the proposed school facilities needs analysis and any proposed revision of the school facilities needs analysis, shall be published in at least one newspaper of general circulation within the jurisdiction of the school district that is conducting the hearing no less than 30 days prior to the hearing. If there is no paper of general circulation, the notice shall be posted in at least three conspicuous public places within the jurisdiction of the school district not less than 30 days prior to the hearing. In addition to these notice requirements, the governing board shall mail a copy of the school facilities needs analysis and any proposed revision to the school facilities needs analysis not less than 30 days prior to the hearing to any person who has made a written request if the written request was made 45 days prior to the hearing. The governing board may charge a fee reasonably related to the cost of providing these materials to those persons who request the school facilities needs analysis or revision.

(e) The school facilities needs analysis may be revised at any

time in the same manner, and the revision is subject to the same conditions and requirements, applicable to the adoption of the school facilities needs analysis.

(f) A fee, charge, dedication, or other requirement in an amount authorized by this section or Section 65995.7, shall be adopted by a resolution of the governing board as part of the adoption or revision of the school facilities needs analysis and may not be effective for more than one year. Notwithstanding subdivision (a) of Section 17621 of the Education Code, or any other provision of law, the fee, charge, dedication, or other requirement authorized by the resolution shall take effect immediately after the adoption of the resolution.

(g) Division 13 (commencing with Section 21000) of the Public Resources Code may not apply to the preparation, adoption, or update of the school facilities needs analysis, or adoption of the resolution specified in this section.

(h) Notice and hearing requirements other than those provided in this section may not be applicable to the adoption or revision of a school facilities needs analysis or the resolutions adopted pursuant to this section.

SEC. 22. Section 65995.7 is added to the Government Code, to read:

65995.7. (a) If state funds for new school facility construction are not available, the governing board of a school district that complies with Section 65995.5 may increase the alternative fee, charge, dedication, or other requirement calculated pursuant to subdivision (c) of Section 65995.5 by an amount that may not exceed the amount calculated pursuant to subdivision (c) of Section 65995.5, except that for the purposes of calculating this additional amount, the amount identified in paragraph (2) of subdivision (c) of Section 65995.5 may not be subtracted from the amount determined pursuant to paragraph (1) of subdivision (c) of Section 65995.5. For purposes of this section, state funds are not available if the State Allocation Board is no longer approving apportionments for new construction pursuant to Article 5 (commencing with Section 17072.20) of Chapter 12.5 of Part 10 of the Education Code due to a lack of funds available for new construction. Upon making a determination that state funds are no longer available, the State Allocation Board shall notify the Secretary of the Senate and the Chief Clerk of the Assembly, in writing, of that determination and the date when state funds are no longer available for publication in the respective journal of each house.

(b) A governing board may offer a reimbursement election to the person subject to the fee, charge, dedication, or other requirement that provides the person with the right to monetary reimbursement of the supplemental amount authorized by this section, to the extent that the district receives funds from state sources for construction of the facilities for which that amount was required, less any amount expended by the district for interim housing. At the option of the person subject to the fee, charge, dedication, or other requirement the reimbursement election may be made on a tract or lot basis. Reimbursement of available funds shall be made within 30 days as they are received by the district.

(c) A governing board may offer the person subject to the fee, charge, dedication, or other requirement an opportunity to negotiate an alternative reimbursement agreement if the terms of the agreement are mutually agreed upon.

(d) A governing board may provide that the rights granted by the reimbursement election or the alternative reimbursement agreement are assignable.

SEC. 23. Section 65996 of the Government Code is amended to read:

65996. (a) Notwithstanding Section 65858, or Division 13 (commencing with Section 21000) of the Public Resources Code, or any other provision of state or local law, the following provisions shall be the exclusive methods of considering and mitigating impacts on school facilities that occur or might occur as a result of any legislative or adjudicative act, or both, by any state or local agency involving, but not limited to, the planning, use, or development of real property or any change of governmental organization or reorganization, as defined in Section 56021 or 56073:

(1) Section 17620 of the Education Code.

(2) Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7.

(b) The provisions of this chapter are hereby deemed to provide full and complete school facilities mitigation and, notwithstanding Section 65858, or Division 13 (commencing with Section 21000) of the Public Resources Code, or any other provision of state or local law, a state or local agency may not deny or refuse to approve a legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property or any change in governmental organization or reorganization, as defined in Section 56021 or 56073, on the basis that school facilities are inadequate.

(c) For purposes of this section, "school facilities" means any school-related consideration relating to a school district's ability to accommodate enrollment.

(d) Nothing in this chapter shall be interpreted to limit or prohibit the ability of a local agency to utilize other methods to provide school facilities if these methods are not levied or imposed in connection with, or made a condition of, a legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property or a change in governmental organization or reorganization, as defined in Section 56021 or 56073. Nothing in this chapter shall be interpreted to limit or prohibit the assessment or reassessment of property in conjunction with ad valorum taxes, or the placement of a parcel on the secured roll in conjunction with qualified special taxes as that term is used in Section 50079.

(e) Nothing in this section shall be interpreted to limit or prohibit the ability of a local agency to mitigate the impacts of land use approvals other than on the need for school facilities, as defined in this section.

(f) This section shall become inoperative during any time that Section 65997 is operative and this section shall become operative at any time that Section 65997 is inoperative.

SEC. 24. Section 65997 is added to the Government Code, to read:

65997. (a) The following provisions shall be the exclusive methods of mitigating environmental effects related to the adequacy of school facilities when considering the approval or the establishment of conditions for the approval of a development project, as defined in Section 17620, pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code:

(1) Chapter 12 (commencing with Section 17000) of Part 10 of the Education Code or Chapter 12.5 (commencing with Section 17070.10).

(2) Chapter 14 (commencing with Section 17085) of Part 10 of the Education Code.

(3) Chapter 18 (commencing with Section 17170) of Part 10 of the Education Code.

(4) Article 2.5 (commencing with Section 17430) of Chapter 4 of Part 10.5 of the Education Code.

(5) Section 17620 of the Education Code.

(6) Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 of the Government Code.

(7) Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 of the Government Code.

(b) A public agency may not, pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code or Division 2 (commencing with Section 66410) of this code, deny approval of a project on the basis of the adequacy of school facilities.

(c) (1) This section shall become operative on or after any statewide election in 2006, if a statewide general obligation bond measure submitted for voter approval in 2006 or thereafter that includes bond issuance authority to fund construction of kindergarten and grades 1 to 12, inclusive, public school facilities is submitted to the voters and fails to be approved.

(2) (A) This section shall become inoperative if subsequent to the failure of a general obligation bond measure described in paragraph (1) a statewide general bond measure as described in paragraph (1) is approved by the voters.

(B) Thereafter, this section shall become operative if a statewide general obligation bond measure submitted for voter approval that includes bond issuance authority to fund construction of kindergarten and grades 1 to 12, inclusive, public school facilities is submitted to the voters and fails to be approved and shall become inoperative if subsequent to the failure of the general obligation bond measure a statewide bond measure as described in this subparagraph is approved by the voters.

(d) Notwithstanding any other provision of law, a public agency may deny or refuse to approve a legislative act involving, but not limited to, the planning, use, or development of real property, on the basis that school facilities are inadequate, except that a public agency may not require the payment or satisfaction of a fee, charge, dedication, or other financial requirement in excess of that levied or imposed pursuant to Section 65995 and, if applicable, any amounts specified in Sections 65995.5 or 65995.7.

SEC. 25. Section 65998 is added to the Government Code, to read:

65998. (a) Nothing in this chapter or in Section 17620 of the Education Code shall be interpreted to limit or prohibit the authority of a local agency to reserve or designate real property for a schoolsite.

(b) Nothing in this chapter or in Section 17620 of the Education Code shall be interpreted to limit or prohibit the ability of a local agency to mitigate the impacts of a land use approval involving, but not limited to, the planning, use, or development of real property other than on the need for school facilities.

SEC. 26. Chapter 9 (commencing with Section 51450) is added to Division 31 of the Health and Safety Code, to read:

CHAPTER 9. SCHOOL FACILITY FEE AFFORDABLE HOUSING ASSISTANCE

SEC. 31. Section 3, Section 12, and Section 18 to 28, inclusive, of this act shall not become operative before November 4, **1998**, and on that date shall become operative only if the Class Size Reduction Kindergarten-University Public Education Facilities Bond Act of **1998** is approved by the voters at the November 3, **1998**, statewide general election.

SEC. 32. If the Class Size Reduction Kindergarten-University Public Education Facilities Bond Act of **1998** is not approved by the voters at the November 3, **1998**, statewide general election, Section 17009.3 of the Education Code, as added by Section 2 of, and Chapter 12.5 (commencing with Section 17070.10) of Part 10 of the Education Code, as added by Section 4 of, this act shall become inoperative on November 4, **1998**.

SEC. 33. Notwithstanding the requirements of Sections 9040, 9043, 9044, 9061, and 9082 of the Elections Code or any other provision of law, the Secretary of State shall submit Section 16 of this act to the voters at the November 3, **1998**, statewide general election.

SEC. 34. Notwithstanding Section 13115 of the Elections Code, Section 16 of this act shall be placed first on the ballot for the November 3, **1998**, statewide general election, and shall be designated as Proposition 1A.

SEC. 35. Notwithstanding Section 13282 of the Elections Code, the public shall be permitted to examine the condensed statement of the ballot title regarding the measure set forth in Section 16 of this act for not more than eight days, and the financial impact statement from the time it is received by the Secretary of State until the end of the eight days. Any voter may seek a writ of mandate for the purpose of requiring any statement of the ballot title, or portion thereof, to be amended or deleted only within that eight-day period.

SEC. 36. The Secretary of State shall include, in the ballot pamphlets mailed pursuant to Section 9094 of the Elections Code, the information specified in Section 9084 of the Elections Code regarding the bond act contained in Section 16 of this act. If that inclusion is not possible, the Secretary of State shall publish a supplemental ballot pamphlet regarding this act to be mailed with the ballot pamphlet. If the supplemental ballot pamphlet cannot be mailed with the ballot pamphlet, the supplemental ballot pamphlet shall be mailed separately.

SEC. 37. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide adequate school facilities to house the growing pupil population attending the California schools, to facilitate class size reduction, to renovate existing facilities, to provide for joint-use facilities, and to provide adequate higher education facilities to accommodate the growing number of students, it is necessary that this act take effect immediately.

HOUSING AND LAND USE OMNIBUS ACT

CHAPTER 689

S.B. No. 1362

AN ACT to amend Section 17621 of the Education Code, to amend Sections 7260, 65039, 65850, 65860, 65915, 66007, 66021, 66452.6, 66477, and 66498.5 of, to add Sections 65850.3 and 66413.5 to, and to repeal Section 65587.1 of, the Government Code, to amend Sections 18035.3, 18062.2, and 18070.5 of, to amend and repeal Section 17959.3 of, to add and repeal Section 50710.2 of, and to repeal Section 18202 of, the Health and Safety Code, and to amend Section 423.3 of the Revenue and Taxation Code, relating to housing and land use.

[Approved by Governor September 21, 1998.]

[Filed with Secretary of State September 22, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1362, Committee on Housing and Land Use. Housing and Land Use Omnibus Act of 1998.

(1) Existing law generally regulates land use, housing, and redevelopment.

This bill would enact the Housing and Land Use Omnibus Act of 1998 and would state legislative intent to combine several minor statutory changes relating to housing, land use, and related topics into a single measure, and would make related findings and declarations.

(2) Existing law, known as the Relocation Assistance Act, requires a public entity to provide compensation and advisory services to any person, business, or farm operation that is displaced because of the acquisition of real property for public use. Existing law governs the provision of relocation assistance, including benefits for displaced persons, as defined. For purposes of that definition and for purposes of the act, a tenant in a multifamily rental project of 4 or more units who is temporarily displaced for not more than 180 days as part of a rehabilitation of that project is not deemed a "displaced person" if, among other conditions, other financial benefits and services are provided, including relocation to a comparable replacement unit, and the resident is offered the right to return to his or her original unit, with prescribed rent for the first 12 months subsequent to that return.

This bill would, if SB 1156 is chaptered and becomes effective on or before January 1, 1999, delete those provisions from that definition of "displaced person."

(3) Existing law authorizes the Governor to appoint the Director of Planning and Research at a salary not to exceed $27,500 annually, and authorizes the Governor to appoint and fix the salaries of necessary assistants and other personnel at annual amounts that generally may not exceed $85,402.

This bill would require the salary of the director to be fixed pursuant to those provisions authorizing the Governor to appoint and fix the salaries of necessary assistants and other personnel.

(4) Existing law provides that certain mortgage revenue bond programs or local approval of a housing-related project prior to May 1, 1983, shall not be invalidated because a city and county failed to comply with specified requirements.

This bill would repeal that provision.

(5) Existing law requires that an action or proceeding to enforce compliance with a requirement that a zoning ordinance be consistent with a general plan be taken within 90 days of the enactment or amendment of the ordinance.

This bill would require the action or proceeding to be commenced and service made on the legislative body within 90 days.

own operating costs by reducing the number of separate bills affecting housing, land use, and related topics. Therefore, it is the intent of the Legislature in enacting this act to combine several minor, noncontroversial statutory changes relating to housing, land use, and related topics into a single measure.

SEC. 1.3. Section 17621 of the Education Code is amended to read:

17621. (a) Any resolution adopting or increasing a fee, charge, dedication, or other requirement pursuant to Section 17620, for application to residential, commercial, or industrial development, shall be enacted in accordance with Chapter 5 (commencing with Section 66000) of Division 1 of Title 7 of the Government Code * * *. The adoption, increase, or imposition of any fee, charge, dedication, or other requirement pursuant to Section 17620 shall not be subject to the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code. The adoption of, or increase in, the fee, charge, dedication, or other requirement shall be effective no sooner than 60 days following the final action on that adoption or increase, except as specified in subdivision (b).

(b) Without following the procedure otherwise required for adopting or increasing a fee, charge, dedication, or other requirement, the governing board of a school district may adopt an urgency measure as an interim authorization for a fee, charge, dedication, or other requirement, or increase in a fee, charge, dedication, or other requirement, where necessary to respond to a current and immediate threat to the public health, welfare, or safety. The interim authorization shall require a four-fifths vote of the governing board for adoption, and shall contain findings describing the current and immediate threat to the public health, welfare, or safety. The interim authorization shall have no force or effect on and after a date 30 days after its adoption. After notice and hearing in accordance with subdivision (a), the governing board, upon a four-fifths vote of the board, may extend the interim authority for an additional 30 days. Not more than two extensions may be granted.

(c) Upon adopting or increasing a fee, charge, dedication, or other requirement pursuant to subdivision (a) or (b), the school district shall transmit a copy of the resolution to each city and each county in which the district is situated, accompanied by all relevant supporting documentation and a map clearly indicating the boundaries of the area subject to the fee, charge, dedication, or other requirement. The school district governing board shall specify, pursuant to that notification, whether or not the collection of the fee or other charge is subject to the restriction set forth in subdivision (a) of Section 66007 of the Government Code.

(d) Any party on whom a fee, charge, dedication, or other requirement has been directly imposed pursuant to Section 17620 may protest the establishment or imposition of that fee, charge, dedication, or other requirement in accordance with Section 66020 of the Government Code, except that the procedures set forth in Section 66021 of the Government Code are deemed to apply, for this purpose, to commercial and industrial development, as well as to residential development.

(e) In the case of any commercial or industrial development, the following procedures shall also apply:

(1) The school district governing board shall, in the course of making the findings required under subdivisions (a) and (b) of Section 66001 of the Government Code, do all of the following:

(A) Make the findings on either an individual project basis or on the basis of categories of commercial or industrial development. Those categories may include, but are not limited to, the following uses: office, retail, transportation, communications and utilities, light industrial, heavy industrial, research and development, and warehouse.

(B) Conduct a study to determine the impact of the increased number of employees anticipated to result from the commercial or industrial development upon the cost of providing school facilities within the district. For the purpose of making that determination, the study shall utilize employee generation estimates that are calculated on either an individual project or categorical basis, in accordance with subparagraph (A). Those employee generation estimates shall be based upon commercial and industrial factors within the district or upon, in whole or in part, the applicable employee generation estimates set forth in the January 1990 edition of "San Diego Traffic Generators," a report of the San Diego Association of Governments.

(C) The governing board shall take into account the results of that study in making the findings described in this subdivision.

(2) In addition to any other requirement imposed by law, in the case of any development project against which a fee, charge, dedication, or other requirement is to be imposed pursuant to Section 53080 on the basis of a category of commercial or industrial development, as described in paragraph (1), the governing board shall provide a process that permits the party against whom the fee, charge, dedication, or other requirement is to be imposed the opportunity for a hearing to appeal that imposition. The grounds for that appeal include, but are not limited to, the inaccuracy of including the project within the category pursuant to which the fee, charge, dedication, or other requirement is to be imposed, or that the employee generation or pupil generation factors utilized under the applicable category are inaccurate as applied to the project. The party appealing the imposition of the fee, charge, dedication, or other requirement shall bear the burden of establishing that the fee, charge, dedication, or other requirement is improper.

SEC. 1.4. Section 7260 of the Government Code is amended to read:

7260. As used in this chapter:

(a) "Public entity" includes the state, the Regents of the University of California, a county, city, city and county, district, public authority, public agency, and any other political subdivision or public corporation in the state or any entity acting on behalf of these agencies when acquiring real property, or any interest therein, in any city or county for public use and any person who has the authority to acquire property by eminent domain under state law.

(b) "Person" means any individual, partnership, corporation, limited liability company, or association.

(c)(1) "Displaced person" means both of the following:

(A) Any person who moves from real property, or who moves his or her personal property from real property, either:

(i) As a direct result of a written notice of intent to acquire or the acquisition of the real property, in whole or in part, for a program or project undertaken by a public entity or by any person having an agreement with or acting on behalf of a public entity.

(ii) As a direct result of the rehabilitation, demolition, or other displacing activity as the public entity may prescribe under a program or project undertaken by a public entity, of real property on which the person is a residential tenant or conducts a business or farm operation, in any case in which the public entity determines that the displacement is permanent. For purposes of this subparagraph, "residential tenant" includes any occupant of a residential hotel unit, as defined in subdivision (b) of Section 50669 of the Health and Safety Code, and any occupant of employee housing, as defined in Section 17008 of the Health and Safety Code, but does not include any person who has been determined to be in unlawful occupancy of the displacement dwelling.

(B) Solely for the purposes of Sections 7261 and 7262, any person who moves from real property, or moves his or her personal property from real property, either:

(i) As a direct result of a written notice of intent to acquire or the acquisition of other real property, in whole or in part, on which the person conducts a business or farm operation, for a program or project undertaken by a public entity.

(ii) As a direct result of the rehabilitation, demolition, or other displacing activity as the public entity may prescribe under a program or project undertaken by a public entity, of other real property on which the person conducts a business or farm operation, in any case in which the public entity determines that the displacement is permanent.

(2) The definition contained in this subdivision shall be construed so that persons displaced as a result of public action receive relocation benefits in cases where they are displaced as a result of an owner participation agreement or an acquisition carried out by a private person for or in connection with a public use where the public entity is otherwise empowered to acquire the property to carry out the public use. Except persons or families of low and moderate income, as defined in Section 50093 of the Health and Safety Code, who are occupants of housing that was made available to them on a permanent basis by a public

(g) "Housing development," as used in this section, means one or more groups of projects for residential units constructed in the planned development of a city, county, or city and county. For purposes of calculating a density bonus, the residential units do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

(h) For purposes of this chapter, concession or incentive means any of the following:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements which exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required.

(2) Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county which result in identifiable cost reductions.

This subdivision does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

(i) If a developer agrees to construct both 20 percent of the total units for lower income households and 10 percent of the total units for very low income households, the developer is entitled to only one density bonus and at least one additional concession or incentive identified in Section 65913.4 under this section although the city, city and county, or county may, at its discretion, grant more than one density bonus.

SEC. 6.5. Section 66007 of the Government Code is amended to read:

66007. (a) Except as otherwise provided in subdivision (b), any local agency that imposes any fees or charges on a residential development for the construction of public improvements or facilities shall not require the payment of those fees or charges, notwithstanding any other provision of law, until the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs first. However, utility service fees may be collected at the time an application for utility service is received. If the residential development contains more than one dwelling, the local agency may determine whether the fees or charges shall be paid on a pro rata basis for each dwelling when it receives its final inspection or certificate of occupancy, whichever occurs first; on a pro rata basis when a certain percentage of the dwellings have received their final inspection or certificate of occupancy, whichever occurs first; or on a lump-sum basis when the first dwelling in the development receives its final inspection or certificate of occupancy, whichever occurs first.

(b) Notwithstanding subdivision (a), the local agency may require the payment of those fees or charges at an earlier time if (1) the local agency determines that the fees or charges will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency has adopted a proposed construction schedule or plan prior to final inspection or issuance of the certificate of occupancy or (2) the fees or charges are to reimburse the local agency for expenditures previously made. "Appropriated," as used in this subdivision, means authorization by the governing body of the local agency for which the fee is collected to make expenditures and incur obligations for specific purposes.

(c)(1) If any fee or charge specified in subdivision (a) is not fully paid prior to issuance of a building permit for construction of any portion of the residential development encumbered thereby, the local agency issuing the building permit may require the property owner, or lessee if the lessee's interest appears of record, as a condition of issuance of the building permit, to execute a contract to pay the fee or charge, or applicable portion thereof, within

the time specified in subdivision (a). If the fee or charge is prorated pursuant to subdivision (a), the obligation under the contract shall be similarly prorated.

(2) The obligation to pay the fee or charge shall inure to the benefit of, and be enforceable by, the local agency that imposed the fee or charge, regardless of whether it is a party to the contract. The contract shall contain a legal description of the property affected, shall be recorded in the office of the county recorder of the county and, from the date of recordation, shall constitute a lien for the payment of the fee or charge, which shall be enforceable against successors in interest to the property owner or lessee at the time of issuance of the building permit. The contract shall be recorded in the grantor-grantee index in the name of the public agency issuing the building permit as grantee and in the name of the property owner or lessee as grantor. The local agency shall record a release of the obligation, containing a legal description of the property, in the event the obligation is paid in full, or a partial release in the event the fee or charge is prorated pursuant to subdivision (a).

(3) The contract may require the property owner or lessee to provide appropriate notification of the opening of any escrow for the sale of the property for which the building permit was issued and to provide in the escrow instructions that the fee or charge be paid to the local agency imposing the same from the sale proceeds in escrow prior to disbursing proceeds to the seller.

(d) This section applies only to fees collected by a local agency to fund the construction of public improvements or facilities. It does not apply to fees collected to cover the cost of code enforcement or inspection services, or to other fees collected to pay for the cost of enforcement of local ordinances or state law.

(e) "Final inspection" or "certificate of occupancy," as used in this section, have the same meaning as described in Sections 305 and 307 of the Uniform Building Code, International Conference of Building Officials, 1985 edition.

(f) Methods of complying with the requirement in subdivision (b) that a proposed construction schedule or plan be adopted, include, but are not limited to, (1) the adoption of the capital improvement plan described in Section 66002, or (2) the submittal of a five-year plan for construction and rehabilitation of school facilities pursuant to subdivision (c) of Section 17017.5 of the Education Code.

SEC. 7. Section 66021 of the Government Code is amended to read:

66021. (a) Any party on whom a fee, tax, assessment, dedication, reservation, or other exaction has been imposed, the payment or performance of which is required to obtain governmental approval of a development, as defined by Section 65927, or development project, may protest * * * the establishment or imposition of the fee, tax, assessment, dedication, reservation, or other exaction * * * as provided in Section * * * 66020.

(b) The protest procedures of subdivision (a) do not apply to the protest of any tax or assessment (1) levied pursuant to a principal act that contains protest procedures, or (2) that is pledged to secure payment of the principal of, or interest on, bonds or other public indebtedness.

SEC. 7.5. Section 66413.5 is added to the Government Code, to read:

66413.5. (a) When any area in a subdivision or proposed subdivision as to which a tentative map meeting the criteria of this section has been approved by a board of supervisors is incorporated into a newly incorporated city, the newly incorporated city shall approve the final map if it meets all of the conditions of the tentative map and meets the requirements and conditions for approval of final maps as provided in Article 4 (commencing with Section 66456), and other requirements of this division.

(b) When any area in a subdivision or proposed subdivision as to which a vesting tentative map meeting the criteria of this section has been approved by a board of supervisors is incorporated into a newly incorporated city, the newly incorporated city shall approve the final map and give effect to the vesting tentative map as provided in Chapter 4.5 (commencing with Section 66498.1), if the final map meets all of the conditions of the vesting tentative map and meets the requirements and conditions for approval of final maps as provided in Article 4 (commencing with Section 66456), Chapter 4.5 (commencing with Section 66498.1), and other requirements of this division.

(c) Land specified in subdivision (b) of Section 16142 of the Government Code shall be assessed at the value determined as provided in Section 423, but not to exceed a uniformly applied percentage of its base year value pursuant to Section 110.1, adjusted to reflect the percentage change in the cost of living not to exceed 2 percent per year. In no event shall that percentage be less than 90 percent.

(d) Waterfowl habitat shall be assessed at the value determined as provided in Section 423.7 but not to exceed a uniformly applied percentage of its base year value pursuant to Section 110.1, adjusted to reflect the percentage change in the cost of living not to exceed 2 percent per year. In no event shall that percentage be less than 90 percent.

SEC. 17. Section 1.4 of this act shall become operative only if Senate Bill 1156 is chaptered and becomes effective on or before January 1, 1999.

SEC. 18. If Assembly Bill 2055 is chaptered and becomes effective on or before January 1, 1999, Sections 3 and 4 of this act shall not become operative.

3660

SCHOOLS AND SCHOOL DISTRICTS—CONSTRUCTION FEES WITHIN DISTRICT—EXCLUSION FOR ACCESSIBILITY MODIFICATIONS

CHAPTER 300

A.B. No. 847

AN ACT to amend Section 17620 of the Education Code, relating to schools.

[Filed with Secretary of State September 2, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 847, Campbell. School impact fees: exemption: disabled persons.

Existing law generally authorizes the governing board of a school district to levy a fee, charge, dedication, or other requirement upon construction undertaken within the boundaries of the district for the purpose of funding the construction or reconstruction of school facilities. Existing law subjects to this authority residential construction, other than new residential construction, if the resulting increase in assessable space exceeds 500 square feet.

This bill would establish an exemption from this application of authority for new construction that qualifies for a specified exclusion from property tax reappraisal for construction, or an installation or modification, that makes a dwelling more accessible to a severely and permanently disabled person.

The people of the State of California do enact as follows:

SECTION 1. Section 17620 of the Education Code is amended to read:

17620. (a)(1) The governing board of any school district is authorized to levy a fee, charge, dedication, or other requirement against any construction within the boundaries of

the district, for the purpose of funding the construction or reconstruction of school facilities, subject to any limitations set forth in Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7 of the Government Code. This fee, charge, dedication, or other requirement may be applied to construction only as follows:

(A) To new commercial and industrial construction. The chargeable covered and enclosed space of commercial or industrial construction shall not be deemed to include the square footage of any structure existing on the site of that construction as of the date the first building permit is issued for any portion of that construction.

(B) To new residential construction.

(C)(i) Except at otherwise provided in clause (ii), to other residential construction, only if the resulting increase in assessable space exceeds 500 square feet. The calculation of the "resulting increase in assessable space" for this purpose shall reflect any decrease in assessable space in the same residential structure that also results from that construction. Where authorized under this paragraph, the fee, charge, dedication, or other requirement is applicable to the total resulting increase in assessable space.

(ii) This subparagraph does not authorize the imposition of a levy, charge, dedication, or other requirement against residential construction, regardless of the resulting increase in assessable space, if that construction qualifies for the exclusion set forth in subdivision (a) of Section 74.3 of the Revenue and Taxation Code.

(D) To location, installation, or occupancy of manufactured homes and mobilehomes, as defined in Section 17625.

(2) For purposes of this section, "construction" and "assessable space" have the same meaning as defined in Section 65995 of the Government Code.

(3) For purposes of this section and Section 65995, "construction or reconstruction of school facilities" does not include any item of expenditure for any of the following:

(A) The regular maintenance or routine repair of school buildings and facilities.

(B) The inspection, sampling, analysis, encapsulation, or removal of asbestos-containing materials, except where incidental to school facilities construction or reconstruction for which the expenditure of fees or other consideration collected pursuant to this section is not prohibited.

(C) The purposes of deferred maintenance described in Section 17582.

(4) The appropriate city or county may be authorized, pursuant to contractual agreement with the governing board, to collect and otherwise administer, on behalf of the school district, any fee, charge, dedication, or other requirement levied under this subdivision. In the event of any agreement authorizing a city or county to collect that fee, charge, dedication, or other requirement in any area within the school district, the certification requirement set forth in subdivision (b) or (c), as appropriate, is deemed to be complied with as to any residential construction within that area upon receipt by that city or county of payment of the fee, charge, dedication, or other requirement imposed on that residential construction.

(5) Fees or other consideration collected pursuant to this section may be expended by a school district for the costs of performing any study or otherwise making the findings and determinations required under subdivisions (a), (b), and (d) of Section 66001 of the Government Code, or in preparing the school facilities needs analysis described in Section 65995.6 of the Government Code. In addition, an amount not to exceed, in any fiscal year, 3 percent of the fees collected in that fiscal year pursuant to this section may be retained by the school district, city, or county, as appropriate, for reimbursement of the administrative costs incurred by that entity in collecting the fees. When any city or county is entitled, under an agreement as described in paragraph (4), to compensation in excess of that amount, the payment of that excess compensation shall be made from other revenue sources available to the school district. For purposes of this paragraph, "fees collected in that fiscal year pursuant to this section" does not include any amount in addition to the amounts specified in paragraphs (1) and (2) of subdivision (b) of Section 65995 of the Government Code.

(b) A city or county, whether general law or chartered, may not issue a building permit for any construction absent certification by the appropriate school district that any fee, charge, dedication, or other requirement levied by the governing board of that school district has

been complied with, or of the district's determination that the fee, charge, dedication, or other requirement does not apply to the construction. The school district shall issue the certification immediately upon compliance with the fee, charge, dedication, or other requirement.

(c) If, pursuant to subdivision (c) of Section 17621, the governing board specifies that the fee, charge, dedication, or other requirement levied under subdivision (a) is subject to the restriction set forth in subdivision (a) of Section 66007 of the Government Code, the restriction set forth in subdivision (b) of this section does not apply. In that event, however, a city or county, whether general law or chartered, may not conduct a final inspection or issue a certificate of occupancy, whichever is later, for any residential construction absent certification by the appropriate school district of compliance by that residential construction with any fee, charge, dedication, or other requirement levied by the governing board of that school district pursuant to subdivision (a).

(d) Neither subdivision (b) nor (c) shall apply to a city or county as to any fee, charge, dedication, or other requirement as described in subdivision (a), or as to any increase in that fee, charge, dedication, or other requirement, except upon the receipt by that city or county of notification of the adoption of, or increase in, the fee or other requirement in accordance with subdivision (c) of Section 17621.

SCHOOLS AND SCHOOL DISTRICTS—FACILITIES—CONSTRUCTION

CHAPTER 858

A.B. No. 695

AN ACT to amend Sections 15340, 17009.5, 17070.15, 17070.75, 17071.10, 17071.25, 17071.75, 17072.10, 17072.20, 17074.10, 17076.10, and 100420 of, to add Section 17072.17 to, and to repeal Section 15341 of, the Education Code, to amend Section 1003 of the Elections Code, and to amend Sections 65995.5 and 65995.6 of the Government Code, relating to school facilities.

[Filed with Secretary of State October 10, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 695, Mazzoni. School facilities: construction and modernization.

Existing law, the Leroy F. Greene School Facilities Act of 1998, (the Greene Act of 1998) establishes a program in which the State Allocation Board is required to provide state per-pupil funding, including hardship funding, for new school facilities construction and school facilities modernization to applicant school districts, as defined, and requires applicants to provide local matching funds.

This bill would authorize the board to adopt or amend regulations on or after January 1, 2000, to adjust the assumed capacity for each teaching station used for nonsevere or severe special day class purposes after considering the recommendations of the Legislative Analyst required pursuant to existing law, which would be implemented upon approval of the Director of Finance.

This bill would authorize the board to adopt, on or after January 1, 2001, regulations establishing assumed capacity standards, after consideration of recommendations developed by the Director of Finance, for continuation high school, community day school, county

(c) Districts may use funds allocated pursuant to paragraph (2) of subdivision (a) and paragraph (2) of subdivision (b) for one or more of the following purposes in accordance with Chapter 12.5:

(1) The purchase and installation of air-conditioning equipment and insulation materials, and related costs.

(2) Construction projects or the purchase of furniture or equipment designed to increase school security or playground safety.

(3) The identification, assessment, or abatement in school facilities of hazardous asbestos.

(4) Project funding for high priority roof replacement projects.

(5) Any other renovation or modernization of facilities pursuant to Chapter 12.5.

(d) Funds allocated pursuant to paragraph (1) of subdivision (a) and paragraph (1) of subdivision (b) may be utilized to provide new construction grants, without regard to funding priorities, for applicant county boards of education under Chapter 12.5 that are eligible for that funding or classrooms for severely handicapped pupils and funding for classrooms for county community school pupils.

(e)(1) The Legislature may amend this section to adjust the minimum funding amounts specified in paragraphs (1) and (2) of subdivision (a) and the maximum funding amounts specified in paragraphs (3) and (4) of subdivision (a), and to adjust the minimum funding amounts specified in paragraphs (1) and (2) of subdivision (b) and the maximum funding amount specified in paragraph (3) of subdivision (b), by either of the following methods:

(A) By a statute, passed in each house of the Legislature by rollcall vote entered in the respective journals, by not less than two-thirds of the membership in each house concurring, if the statute is consistent with, and furthers the purposes of, this chapter.

(B) By a statute that becomes effective only when approved by the voters.

(2) Amendments pursuant to this subdivision may adjust the amounts to be expended pursuant to paragraphs (1) to (4), inclusive, of subdivision (a) or paragraphs (1) to (3), inclusive, of subdivision (b) or both, but may not increase or decrease the total amount to be expended pursuant to either subdivision.

SEC. 15. Section 1003 of the Elections Code is amended to read:

1003. This chapter shall not apply to the following:

(a) Any special election called by the Governor.

(b) Elections held in chartered cities or chartered counties in which the charter provisions are inconsistent with this chapter.

(c) School governing board elections consolidated pursuant to Section 5006 of the Education Code or initiated by petition pursuant to Section 5091 of the Education Code.

(d) Elections of any kind required or permitted to be held by a school district located in a chartered city or county when the election is consolidated with a regular city or county election held in a jurisdiction that includes 95 percent or more of the school district's population.

(e) County, municipal, district, and school district initiative, referendum, or recall elections.

(f) Any election conducted solely by mailed ballot pursuant to Division 4 (commencing with Section 4000).

(g) Elections held pursuant to Article 1 (commencing with Section 15100) of Chapter 1, or pursuant to Article 4 (commencing with Section 15340) of Chapter 2 of, Part 10 of the Education Code.

SEC. 16. Section 65995.5 of the Government Code is amended to read:

65995.5. (a) The governing board of a school district may impose the amount calculated pursuant to this section as an alternative to the amount that may be imposed on residential construction calculated pursuant to subdivision (b) of Section 65995.

(b) To be eligible to impose the fee, charge, dedication, or other requirement up to the amount calculated pursuant to this section, a governing board shall do all of the following:

(1) Make a timely application to the State Allocation Board for new construction funding for which it is eligible and be determined by the board to meet the eligibility requirements for new construction funding set forth in Article 2 (commencing with Section 17071.10) and Article 3 (commencing with Section 17071.75) of Chapter 12.5 of Part 10 of the Education Code. A governing board that submits an application to determine the district's eligibility for new construction funding shall be deemed eligible if the State Allocation Board fails to notify the district of the district's eligibility within 120 days of receipt of the application.

(2) Conduct and adopt a school facility needs analysis pursuant to Section 65995.6.

(3) Until January 1, 2000, satisfy at least one of the requirements set forth in subparagraphs (A) to (D), inclusive, and, on and after January 1, 2000, satisfy at least two of the requirements set forth in subparagraphs (A) to (D), inclusive:

(A) The district is a unified or elementary school district that has a substantial enrollment of its elementary school pupils on a multitrack year-round schedule. "Substantial enrollment" for purposes of this paragraph means at least 30 percent of district pupils in kindergarten and grades 1 to 6, inclusive, in the high school attendance area in which all or some of the new residential units identified in the needs analysis are planned for construction. A high school district shall be deemed to have met the requirements of this paragraph if either of the following apply:

(i) At least 30 percent of the high school district's pupils are on a multitrack year-round schedule.

(ii) At least 40 percent of the pupils enrolled in public schools in kindergarten and grades 1 to 12, inclusive, within the boundaries of the high school attendance area for which the school district is applying for new facilities are enrolled in multitrack year-round schools.

(B) The district has placed on the ballot in the previous four years a local general obligation bond to finance school facilities and the measure received at least 50 percent plus one of the votes cast.

(C) The district meets one of the following:

(i) The district has issued debt or incurred obligations for capital outlay in an amount equivalent to 15 percent of the district's local bonding capacity, including indebtedness that is repaid from property taxes, parcel taxes, the district's general fund, special taxes levied pursuant to Section 4 of Article XIII A of the California Constitution, special taxes levied pursuant to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 that are approved by a vote of registered voters, special taxes levied pursuant to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 that are approved by a vote of landowners prior to November 4, 1998, and revenues received pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code). Indebtedness or other obligation to finance school facilities to be owned, leased, or used by the district, that is incurred by another public agency, shall be counted for the purpose of calculating whether the district has met the debt percentage requirement contained herein.

(ii) The district has issued debt or incurred obligations for capital outlay in an amount equivalent to 30 percent of the district's local bonding capacity, including indebtedness that is repaid from property taxes, parcel taxes, the district's general fund, special taxes levied pursuant to Section 4 of Article XIII A of the California Constitution, special taxes levied pursuant to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 that are approved by a vote of registered voters, special taxes levied pursuant to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 that are approved by a vote of landowners after November 4, 1998, and revenues received pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code). Indebtedness or other obligation to finance school facilities to be owned, leased, or used by the district, that is incurred by another public agency, shall be counted for the purpose of calculating whether the district has met the debt percentage requirement contained herein.

(D) At least 20 percent of the teaching stations within the district are relocatable classrooms.

(c) The maximum square foot fee, charge, dedication, or other requirement authorized by this section that may be collected in accordance with Chapter 6 (commencing with Section 17620) of Part 10.5 of the Education Code shall be calculated by a governing board of a school district, as follows:

(1) The number of unhoused pupils identified in the school facilities needs analysis shall be multiplied by the appropriate amounts provided in subdivision (a) of Section 17072.10. This sum shall be added to the site acquisition and development cost determined pursuant to subdivision (h).

(2) The full amount of local funds the governing board has dedicated to facilities necessitated by new construction shall be subtracted from the amount determined pursuant to paragraph (1). Local funds include fees, charges, dedications, or other requirements imposed on commercial or industrial construction.

(3) The resulting amount determined pursuant to paragraph (2) shall be divided by the projected total square footage of assessable space of residential units anticipated to be constructed during the next five-year period in the school district or the city and county in which the school district is located. The estimate of the projected total square footage shall be based on information available from the city or county within which the residential units are anticipated to be constructed or a market report prepared by an independent third party.

(d) A school district that has a common territorial jurisdiction with a district that imposes the fee, charge, dedication, or other requirement up to the amount calculated pursuant to this section or Section 65995.7, may not impose a fee, charge, dedication, or other requirement on residential construction that exceeds the limit set forth in subdivision (b) of Section 65995 less the portion of that amount it would be required to share pursuant to Section 17623 of the Education Code, unless that district is eligible to impose the fee, charge, dedication, or other requirement up to the amount calculated pursuant to this section or Section 65995.7.

(e) Nothing in this section is intended to limit or discourage the joint use of school facilities or to limit the ability of a school district to construct school facilities that exceed the amount of funds authorized by Section 17620 of the Education Code and provided by the state grant program, if the additional costs are funded solely by local revenue sources other than fees, charges, dedications, or other requirements imposed on new construction.

(f) * * * Except as provided in paragraph (5) of subdivision (a) of Section 17620 of the Education Code * * *, a fee, charge, dedication, or other requirement authorized under this section and Section 65995.7 shall be expended solely on the school facilities identified in the needs analysis as being attributable to projected enrollment growth from the construction of new residential units. This subdivision does not preclude the expenditure of a fee, charge, dedication, or other requirement, authorized pursuant to subparagraph (C) of paragraph (1) of subdivision (a) of Section 17620, on school facilities identified in the needs analysis as necessary due to projected enrollment growth attributable to the new residential units.

(g) "Residential units" and "residences" as used in this section and in Sections 65995.6 and 65995.7 means the development of single-family detached housing units, single-family attached housing units, manufactured homes and mobilehomes, as defined in subdivision (f) of Section 17625 of the Education Code, condominiums, and multifamily housing units, including apartments, residential hotels, as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code, and stock cooperatives, as defined in Section 1351 of the Civil Code.

(h) Site acquisition costs shall not exceed half of the amount determined by multiplying the land acreage determined to be necessary under the guidelines of the State Department of Education, as published in the "School Site Analysis and Development Handbook," as that handbook read as of January 1, 1998, by the estimated cost determined pursuant to Section 17072.12 of the Education Code. Site development costs shall not exceed * * * the estimated amount that would be funded by the State Allocation Board pursuant to its regulations governing grants for site development costs.

SEC. 17. Section 65995.6 of the Government Code is amended to read:

65995.6. (a) The school facilities needs analysis required by paragraph (2) of subdivision (b) of Section 65995.5 shall be conducted by the governing board of a school district to determine the need for new school facilities for unhoused pupils that are attributable to

projected enrollment growth from the development of new residential units over the next five years. The school facilities needs analysis shall project the number of unhoused elementary, middle, and high school pupils generated by new residential units, in each category of pupils enrolled in the district. This projection of unhoused pupils shall be based on the historical student generation rates of new residential units constructed during the previous five years that are of a similar type of unit to those anticipated to be constructed either in the school district or the city or county in which the school district is located, and relevant planning agency information, such as multiphased development projects, that may modify the historical figures. For purposes of this paragraph, "type" means a single family detached, single family attached, or multifamily unit. The existing school building capacity shall be calculated pursuant to Article 2 (commencing with Section 17071.10) of Chapter 12.5 of Part 10 of the Education Code. The existing school building capacity shall be recalculated by the school district as part of any revision of the needs analysis pursuant to subdivision (e) of this section. If a district meets the requirements of paragraph (3) of subdivision (b) of Section 65995.5 by having a substantial enrollment on a multitrack year-round schedule, the determination of whether the district has school building capacity area shall reflect the additional capacity created by the multitrack year-round schedule.

(b) When determining the funds necessary to meet its facility needs, the governing board shall do each of the following:

(1) Identify and consider any surplus property owned by the district that can be used as a schoolsite or that is available for sale to finance school facilities.

(2) Identify and consider the extent to which projected enrollment growth may be accommodated by excess capacity in existing facilities.

(3) Identify and consider local sources other than fees, charges, dedications, or other requirements imposed on residential construction available to finance the construction or reconstruction of school facilities needed to accommodate any growth in enrollment attributable to the construction of new residential units.

(c) The governing board shall adopt the school facility needs analysis by resolution at a public hearing. The school facilities needs analysis may not be adopted until the school facilities needs analysis in its final form has been made available to the public for a period of not less than 30 days during which time the school facilities needs analysis shall be provided to the local agency responsible for land use planning for its review and comment. Prior to the adoption of the school facilities needs analysis, the public shall have the opportunity to review and comment on the school facilities needs analysis and the governing board shall respond to written comments it receives regarding the school facilities needs analysis.

(d) Notice of the time and place of the hearing, including the location and procedure for viewing or requesting a copy of the proposed school facilities needs analysis and any proposed revision of the school facilities needs analysis, shall be published in at least one newspaper of general circulation within the jurisdiction of the school district that is conducting the hearing no less than 30 days prior to the hearing. If there is no paper of general circulation, the notice shall be posted in at least three conspicuous public places within the jurisdiction of the school district not less than 30 days prior to the hearing. In addition to these notice requirements, the governing board shall mail a copy of the school facilities needs analysis and any proposed revision to the school facilities needs analysis not less than 30 days prior to the hearing to any person who has made a written request if the written request was made 45 days prior to the hearing. The governing board may charge a fee reasonably related to the cost of providing these materials to those persons who request the school facilities needs analysis or revision.

(e) The school facilities needs analysis may be revised at any time in the same manner, and the revision is subject to the same conditions and requirements, applicable to the adoption of the school facilities needs analysis.

(f) A fee, charge, dedication, or other requirement in an amount authorized by this section or Section 65995.7, shall be adopted by a resolution of the governing board as part of the adoption or revision of the school facilities needs analysis and may not be effective for more than one year. Notwithstanding subdivision (a) of Section 17621 of the Education Code, or

any other provision of law, the fee, charge, dedication, or other requirement authorized by the resolution shall take effect immediately after the adoption of the resolution.

(g) Division 13 (commencing with Section 21000) of the Public Resources Code may not apply to the preparation, adoption, or update of the school facilities needs analysis, or adoption of the resolution specified in this section.

(h) Notice and hearing requirements other than those provided in this section may not be applicable to the adoption or revision of a school facilities needs analysis or the resolutions adopted pursuant to this section.

SEC. 18. The Legislature finds and declares that the modifications to the Class Size Reduction Kindergarten–University Public Education Facilities Bond Act of 1998 made by this act further the purposes of, and are consistent with, that act.

4902

CODE MAINTENANCE—GENERAL AMENDMENTS

CHAPTER 135

A.B. No. 2539

AN ACT to amend Sections 651, 680, 4112, 4982, 4998, 4998.2, 4998.5, 4998.6, 6086.65, and 17537.11 of the Business and Professions Code, to amend Sections 1102.2, 1103, and 2924c of the Civil Code, to amend Sections 131.4, 703.140, and 704.115 of the Code of Civil Procedure, amend Sections

[5] Water Code App. § 117–4.2.

[6] Water Code App. § 117–4.3.

(m) "State act" means the Carpenter–Presley–Tanner Hazardous Substance Account Act (Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code).

SEC. 32. Section 17284.5 of the Education Code is amended to read:

17284.5. * * * Notwithstanding any provision of law to the contrary, any waiver granted by the State Allocation Board to a school district for use of a nonconforming existing private building acquired for conversion for use as a school building, that had not expired prior to January 1, 2000, is hereby extended until January 1, 2001, if the work to make the building a conforming structure commenced prior to January 1, 2000, but had not been completed by that date.

SEC. 33. Section 17620 of the Education Code is amended to read:

17620. (a)(1) The governing board of any school district is authorized to levy a fee, charge, dedication, or other requirement against any construction within the boundaries of the district, for the purpose of funding the construction or reconstruction of school facilities, subject to any limitations set forth in Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7 of the Government Code. This fee, charge, dedication, or other requirement may be applied to construction only as follows:

(A) To new commercial and industrial construction. The chargeable covered and enclosed space of commercial or industrial construction shall not be deemed to include the square footage of any structure existing on the site of that construction as of the date the first building permit is issued for any portion of that construction.

(B) To new residential construction.

(C)(i) Except as otherwise provided in clause (ii), to other residential construction, only if the resulting increase in assessable space exceeds 500 square feet. The calculation of the "resulting increase in assessable space" for this purpose shall reflect any decrease in assessable space in the same residential structure that also results from that construction. Where authorized under this paragraph, the fee, charge, dedication, or other requirement is applicable to the total resulting increase in assessable space.

(ii) This subparagraph does not authorize the imposition of a levy, charge, dedication, or other requirement against residential construction, regardless of the resulting increase in assessable space, if that construction qualifies for the exclusion set forth in subdivision (a) of Section 74.3 of the Revenue and Taxation Code.

(D) To location, installation, or occupancy of manufactured homes and mobilehomes, as defined in Section 17625.

(2) For purposes of this section, "construction" and "assessable space" have the same meaning as defined in Section 65995 of the Government Code.

(3) For purposes of this section and Section 65995, "construction or reconstruction of school facilities" does not include any item of expenditure for any of the following:

(A) The regular maintenance or routine repair of school buildings and facilities.

(B) The inspection, sampling, analysis, encapsulation, or removal of asbestos-containing materials, except where incidental to school facilities construction or reconstruction for which the expenditure of fees or other consideration collected pursuant to this section is not prohibited.

(C) The purposes of deferred maintenance described in Section 17582.

(4) The appropriate city or county may be authorized, pursuant to contractual agreement with the governing board, to collect and otherwise administer, on behalf of the school district, any fee, charge, dedication, or other requirement levied under this subdivision. In the event of any agreement authorizing a city or county to collect that fee, charge, dedication, or other requirement in any area within the school district, the certification requirement set forth in subdivision (b) or (c), as appropriate, is deemed to be complied with as to any residential construction within that area upon receipt by that city or county of payment of the fee, charge, dedication, or other requirement imposed on that residential construction.

(5) Fees or other consideration collected pursuant to this section may be expended by a school district for the costs of performing any study or otherwise making the findings and determinations required under subdivisions (a), (b), and (d) of Section 66001 of the Govern-

ment Code, or in preparing the school facilities needs analysis described in Section 65995.6 of the Government Code. In addition, an amount not to exceed, in any fiscal year, 3 percent of the fees collected in that fiscal year pursuant to this section may be retained by the school district, city, or county, as appropriate, for reimbursement of the administrative costs incurred by that entity in collecting the fees. When any city or county is entitled, under an agreement as described in paragraph (4), to compensation in excess of that amount, the payment of that excess compensation shall be made from other revenue sources available to the school district. For purposes of this paragraph, "fees collected in that fiscal year pursuant to this section" does not include any amount in addition to the amounts specified in paragraphs (1) and (2) of subdivision (b) of Section 65995 of the Government Code.

(b) A city or county, whether general law or chartered, may not issue a building permit for any construction absent certification by the appropriate school district that any fee, charge, dedication, or other requirement levied by the governing board of that school district has been complied with, or of the district's determination that the fee, charge, dedication, or other requirement does not apply to the construction. The school district shall issue the certification immediately upon compliance with the fee, charge, dedication, or other requirement.

(c) If, pursuant to subdivision (c) of Section 17621, the governing board specifies that the fee, charge, dedication, or other requirement levied under subdivision (a) is subject to the restriction set forth in subdivision (a) of Section 66007 of the Government Code, the restriction set forth in subdivision (b) of this section does not apply. In that event, however, a city or county, whether general law or chartered, may not conduct a final inspection or issue a certificate of occupancy, whichever is later, for any residential construction absent certification by the appropriate school district of compliance by that residential construction with any fee, charge, dedication, or other requirement levied by the governing board of that school district pursuant to subdivision (a).

(d) Neither subdivision (b) nor (c) shall apply to a city or county as to any fee, charge, dedication, or other requirement as described in subdivision (a), or as to any increase in that fee, charge, dedication, or other requirement, except upon the receipt by that city or county of notification of the adoption of, or increase in, the fee or other requirement in accordance with subdivision (c) of Section 17621.

SEC. 34. Section 23812 of the Education Code is amended to read:

23812. (a) The surviving spouse of a deceased member who previously lost entitlement to benefits prescribed by this part due to remarriage shall be entitled to resume payment of the benefits effective either on January 1, 2000, or the first day of the month following receipt by the board of a written application for resumption of benefits, whichever date is later. The amount of the benefits payable shall be calculated as though the benefits had been paid without interruption from the date of remarriage through the benefits resumption effective date.

(b) The board shall be under no requirement to identify, locate, or notify a remarried spouse of a deceased member who previously lost entitlement as a result of remarriage about the resumption of benefits provided in this section. The board shall be under no requirement to provide the name or address or any other information concerning any remarried spouse of a deceased member to any person, agency, or entity for the purpose of notifying those who may be eligible for the resumption of benefits under this section.

(c) Nothing in this section shall be construed to imply or interpreted to mean that the benefits addressed shall be required to be paid retroactively.

SEC. 35. Section 24255 of the Education Code is amended to read:

24255. (a) There is in the State Treasury a trust fund to be known as the Teachers' Replacement Benefits Program Fund. There shall be deposited directly in that fund, and not transferred from the Teachers' Retirement Fund, that portion of employer contributions determined by the board as necessary to fund the replacement benefits program.

(b) Notwithstanding Section 13340 of the Government Code, moneys in the Teachers' Replacement Benefits Program Fund are continuously appropriated without regard to fiscal years to pay benefits to members and beneficiaries of the defined benefit program, and to pay related administrative expenses.

For purposes of performing these calculations, the Controller shall review the information submitted by the county. If, consistent with information available from any other reliable source, the Controller determines that the information may be inaccurate, the Controller may request the Director of Finance to review the amount reported by the county in accordance with paragraph (1) of subdivision (a). The Director of Finance may direct the Controller to adjust the amount reported to the Controller by the county in accordance with paragraph (1) of subdivision (a). The Controller shall inform the county of any adjustment that is so made.

(2) No later than February 1, 2000, the Controller shall, from the appropriated revenues subject to this section, allocate to the county the amount determined for that county pursuant to paragraph (1).

(c) In each county that receives revenue in accordance with subdivision (b), the county auditor shall allocate that revenue to those local agencies among the county, and cities and special districts in the county, that contributed a positive amount to the county's Educational Revenue Augmentation Fund for the 1998–99 fiscal year. The allocation share for each recipient local agency shall be determined pursuant to the following calculations:

(1) Divide the amount of revenue shifted for the 1998–99 fiscal year from the local agency to the county's Educational Revenue Augmentation Fund by the total amount of revenue shifted for the 1998–99 fiscal year to the county's Educational Revenue Augmentation Fund by all local agencies in the county contributing a positive amount to that fund.

(2) Multiply the ratio determined pursuant to paragraph (1) by the amount of revenues allocated to the county pursuant to paragraph (2) of subdivision (b).

SEC. 176. Any section of any act enacted by the Legislature during the 2000 calendar year that takes effect on or before January 1, 2001, and that amends, amends and renumbers, adds, repeals and adds, or repeals a section that is amended, amended and renumbered, added, repealed and added, or repealed by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act. The repeal, or repeal and addition, of any article, chapter, part, title, or division of any code by this act shall not become operative if any section of any other act that is enacted by the Legislature during the 2000 calendar year and takes effect on or before January 1, 2001, amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

EDUCATION—KINDERGARTEN-UNIVERSITY PUBLIC EDUCATION FACILITIES BOND ACT

CHAPTER 33

A.B. No. 16

AN ACT to amend Sections 17070.15, 17070.35, 17070.40, 17070.43, 17070.51, 17070.65, 17070.70, 17071.33, 17071.75, 17072.10, 17072.25, 17074.10, 17074.15, 17075.10, 17075.15, 17076.10, 17088.2, 17262, and 17280 of, to add Sections 17070.95, 17074.16, 17074.26, 17077.35, 17251.5, and 17280.5 to, to amend and renumber Section 17077.10 of, to amend and renumber the heading of Article 10 (commencing with Section 17077.10) of Chapter 12.5 of Part 10 of, to add Article 10.6

seismic retrofitting needed to significantly reduce, in the judgment of the particular university or college, seismic hazards in buildings identified as high priority by the university or college. Requests forwarded by the California Community Colleges shall be accompanied by a five-year capital outlay plan reflecting the needs and priorities of the community college system, prioritized on a statewide basis.

100950. All money deposited in the 2004 Higher Education Capital Outlay Bond Fund that is derived from premium and accrued interest on bonds sold shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

100955. The bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code, which is a part of the State General Obligation Bond Law. Approval by the voters of the state for the issuance of the bonds described in this chapter includes the approval of the issuance of any bonds issued to refund any bonds originally issued under this chapter or any previously issued refunding bonds.

100960. The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this chapter are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

100970. This chapter shall only become operative upon approval of the voters pursuant to subdivision (c) of Section 35 of the act adding this chapter.

SEC. 32. Section 15490 of the Government Code is amended to read:

15490. (a) There is in the state government the State Allocation Board, consisting of the Director of Finance, the Director of General Services, a person appointed by Governor, and the Superintendent of Public Instruction. * * * The board shall also include three Members of the Senate appointed by the Senate Committee on Rules, * * * two of whom shall belong to the majority party and one of whom shall belong to the minority party, and three Members of the Assembly appointed by the Speaker * * * of the Assembly, two of whom shall belong to the majority party and one of whom shall belong to the minority party.

(b) The members of the board and the Members of the Legislature meeting with the board shall receive no compensation for their services but shall be reimbursed for their actual and necessary expenses incurred in connection with the performance of their duties.

(c) The Director of General Services shall provide assistance to the board as the board requires. The board may, by a majority vote of all members, do one or more of the following:

(1) Appoint an employee to report directly to the board as assistant executive officer.

(2) Fix the salary and other compensation of the assistant executive officer.

(3) Employ additional staff members, and secure office space and furnishings, as necessary to support the assistant executive officer in the performance of his or her duties.

SEC. 33. Section 65995.7 of the Government Code is amended to read:

65995.7. (a)(1) If state funds for new school facility construction are not available, the governing board of a school district that complies with Section 65995.5 may increase the alternative fee, charge, dedication, or other requirement calculated pursuant to subdivision (c) of Section 65995.5 by an amount that may not exceed the amount calculated pursuant to subdivision (c) of Section 65995.5, except that for the purposes of calculating this additional amount, the amount identified in paragraph (2) of subdivision (c) of Section 65995.5 may not be subtracted from the amount determined pursuant to paragraph (1) of subdivision (c) of Section 65995.5. For purposes of this section, state funds are not available if the State Allocation Board is no longer approving apportionments for new construction pursuant to Article 5 (commencing with Section 17072.20) of Chapter 12.5 of Part 10 of the Education Code due to a lack of funds available for new construction. Upon making a determination that state funds are no longer available, the State Allocation Board shall notify the Secretary of the Senate and the Chief Clerk of the Assembly, in writing, of that determination and the date when state funds are no longer available for publication in the respective journal of each house. For the purposes of making this determination, the board shall not consider whether

funds are available for, or whether it is making preliminary apportionments or final apportionments pursuant to, Article 11 (commencing with Section 17078.10).

(2) Paragraph (1) shall become inoperative commencing on the effective date of the measure that amended this section to add this paragraph, and shall remain inoperative through the earlier of either of the following:

(A) November 5, 2002, if the voters reject the Kindergarten University Public Education Facilities Bond Act of 2002, after which date paragraph (1) shall again become operative.

(B) The date of the 2004 direct primary election after which date paragraph (1) shall again become operative.

(b) A governing board may offer a reimbursement election to the person subject to the fee, charge, dedication, or other requirement that provides the person with the right to monetary reimbursement of the supplemental amount authorized by this section, to the extent that the district receives funds from state sources for construction of the facilities for which that amount was required, less any amount expended by the district for interim housing. At the option of the person subject to the fee, charge, dedication, or other requirement the reimbursement election may be made on a tract or lot basis. Reimbursement of available funds shall be made within 30 days as they are received by the district.

(c) A governing board may offer the person subject to the fee, charge, dedication, or other requirement an opportunity to negotiate an alternative reimbursement agreement if the terms of the agreement are mutually agreed upon.

(d) A governing board may provide that the rights granted by the reimbursement election or the alternative reimbursement agreement are assignable.

SEC. 33.2. Section 51451.5 is added to the Health and Safety Code, to read:

51451.5. The Homebuyer Down Payment Assistance Program of 2002 is hereby established, to provide assistance in the amount of the applicable school facility fee on affordable housing developments. The Homebuyer Down Payment Assistance Program of 2002 shall, with funds provided by the Housing and Emergency Shelter Trust Fund Act of 2002 (Part 11 (commencing with with Section 53500)), provide the following assistance:

(a) Downpayment assistance to the purchaser of any newly constructed residential structure in a development project in an economically distressed area in the amount of school facility fees paid pursuant to Section 65995.5 or 65995.7 of the Government Code, less the amount that would be required pursuant to subdivision (b) of Section 65995 of the Government Code, notwithstanding Sections 65995.5 and 65995.7 of the Government Code, if all of the following conditions are met:

(1) The development project is located in a county with an unemployment rate that equals or exceeds 125 percent of the state unemployment rate.

(2) Five hundred or more residential structures have been constructed in the county during 2001.

(3) A building permit for an eligible residential structure in the development project is issued by the local agency on or after January 1, 2002.

(4) The eligible residential structure is to be owner occupied for at least five years. If a structure is owner occupied for fewer than five years, the recipient of the assistance shall repay the School Facilities Fee Assistance Fund the amount of the assistance, on a prorated basis.

(5) The sales price of the eligible residential structure does not exceed 175 percent of the median sales price of residential structures in the county during the average of the previous five years.

(b) Downpayment assistance to the purchaser of any newly constructed residential structure in a development project in the aggregate amount of school facility fees paid pursuant to one, all, or any combination of subdivision (b) of Section 65995, Section 65995.5, or Section 65995.7 of the Government Code for the eligible residential structure if all of the following conditions are met:

(1) The assistance is provided to a qualified first-time home buyer pursuant to Section 50068.5.

SEC. 37. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide adequate school facilities to house the growing pupil population attending the California schools, to renovate existing facilities, to provide for the wiring and cabling of schools for education technology, to provide for joint-use facilities, and to provide adequate higher education facilities to accommodate the growing number of students, it is necessary that this act take effect immediately.

STATE AGENCIES—INFRASTRUCTURE—FUNDS

CHAPTER 1016

A.B. No. 857

AN ACT to amend Sections 13102, 13103, 65041, 65042, 65048, 65049, and 66037 of, and to add Sections 65041.1 and 65404 to, the Government Code, relating to state planning.

[Filed with Secretary of State September 28, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 857, Wiggins. Infrastructure planning: priorities and funding.

(1) Existing law requires the Governor, in conjunction with the Governor's Budget, to submit annually to the Legislature a proposed 5–year infrastructure plan containing specified information concerning infrastructure needed by state agencies, schools, and postsecondary educational institutions and a proposal for funding the needed infrastructure.

This bill would clarify the information that is required to be included in a proposal for funding state infrastructure identified in the 5–year plan.

(2) Existing law requires the Governor to prepare and cause to be maintained, reviewed, and revised a comprehensive State Environmental Goals and Policy Report.

SEC. 7. Section 65049 of the Government Code is amended to read:

65049. Following approval of the State Environmental Goals and Policy Report as provided in Section 65046, the report shall serve as a guide for state expenditures * * *. In transmitting the annual budget to the Legislature, information shall be included relating proposed * * * expenditures to the achievement of statewide goals and objectives set forth in the report.

SEC. 8. Section 65404 is added to the Government Code, to read:

65404. (a) On or before January 1, 2005, the Governor shall develop conflict resolution processes to do all of the following:

(1) Resolve conflicting requirements of two or more state agencies for a local plan, permit, or development project.

(2) Resolve conflicts between state functional plans.

(3) Resolve conflicts between state infrastructure projects.

(b) The conflict resolution process may be requested by a local agency, project applicant, or one or more state agencies.

SEC. 9. Section 66037 of the Government Code is amended to read:

66037. No action filed on or after January 1, 2006, shall be subject to this chapter unless a later enacted statute, which is chaptered before January 1, 2006, extends this date or deletes this section.

Exhibit 3
Copies of Code Sections Cited

§ 17620. Levies against development projects by school districts

(a)(1) The governing board of any school district is authorized to levy a fee, charge, dedication, or other requirement against any construction within the boundaries of the district, for the purpose of funding the construction or reconstruction of school facilities, subject to any limitations set forth in Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7 of the Government Code. This fee, charge, dedication, or other requirement may be applied to construction only as follows:

(A) To new commercial and industrial construction. The chargeable covered and enclosed space of commercial or industrial construction shall not be deemed to include the square footage of any structure existing on the site of that construction as of the date the first building permit is issued for any portion of that construction.

(B) To new residential construction.

(C)(i) Except as otherwise provided in clause (ii), to other residential construction, only if the resulting increase in assessable space exceeds 500 square feet. The calculation of the "resulting increase in assessable space" for this purpose shall reflect any decrease in assessable space in the same residential structure that also results from that construction. Where authorized under this paragraph, the fee, charge, dedication, or other requirement is applicable to the total resulting increase in assessable space.

(ii) This subparagraph does not authorize the imposition of a levy, charge, dedication, or other requirement against residential construction, regardless of the resulting increase in assessable space, if that construction qualifies for the

exclusion set forth in subdivision (a) of Section 74.3 of the Revenue and Taxation Code.

(D) To location, installation, or occupancy of manufactured homes and mobilehomes, as defined in Section 17625.

(2) For purposes of this section, "construction" and "assessable space" have the same meaning as defined in Section 65995 of the Government Code.

(3) For purposes of this section and Section 65995, "construction or reconstruction of school facilities" does not include any item of expenditure for any of the following:

(A) The regular maintenance or routine repair of school buildings and facilities.

(B) The inspection, sampling, analysis, encapsulation, or removal of asbestos-containing materials, except where incidental to school facilities construction or reconstruction for which the expenditure of fees or other consideration collected pursuant to this section is not prohibited.

(C) The purposes of deferred maintenance described in Section 17582.

(4) The appropriate city or county may be authorized, pursuant to contractual agreement with the governing board, to collect and otherwise administer, on behalf of the school district, any fee, charge, dedication, or other requirement levied under this subdivision. In the event of any agreement authorizing a city or county to collect that fee, charge, dedication, or other requirement in any area within the school district, the certification requirement set forth in subdivision (b) or (c), as appropriate, is deemed to be complied with as to any residential construction within that area upon receipt by that city or county of payment of the fee, charge, dedication, or other requirement imposed on that residential construction.

(5) Fees or other consideration collected pursuant to this section may be expended by a school district for the costs of performing any study or otherwise making the findings and determinations required under subdivisions (a), (b), and (d) of Section 66001 of the Government Code, or in preparing the school facilities needs analysis described in Section 65995.6 of the Government Code. In addition, an amount not to exceed, in any fiscal year, 3 percent of the fees collected in that fiscal year pursuant to this section may be retained by the school district, city, or county, as appropriate, for reimbursement of the administrative costs incurred by that entity in collecting the fees. When any city or county is entitled, under an agreement as described in paragraph (4), to compensation in excess of that amount, the payment of that excess compensation shall be made from other revenue sources available to the school district. For purposes of this paragraph, "fees collected in that fiscal year pursuant to this section" does not include any amount in addition to the amounts specified in paragraphs (1) and (2) of subdivision (b) of Section 65995 of the Government Code.

(b) A city or county, whether general law or chartered, may not issue a building permit for any construction absent certification by the appropriate school district that any fee, charge, dedication, or other requirement levied by

the governing board of that school district has been complied with, or of the district's determination that the fee, charge, dedication, or other requirement does not apply to the construction. The school district shall issue the certification immediately upon compliance with the fee, charge, dedication, or other requirement.

(c) If, pursuant to subdivision (c) of Section 17621, the governing board specifies that the fee, charge, dedication, or other requirement levied under subdivision (a) is subject to the restriction set forth in subdivision (a) of Section 66007 of the Government Code, the restriction set forth in subdivision (b) of this section does not apply. In that event, however, a city or county, whether general law or chartered, may not conduct a final inspection or issue a certificate of occupancy, whichever is later, for any residential construction absent certification by the appropriate school district of compliance by that residential construction with any fee, charge, dedication, or other requirement levied by the governing board of that school district pursuant to subdivision (a).

(d) Neither subdivision (b) nor (c) shall apply to a city or county as to any fee, charge, dedication, or other requirement as described in subdivision (a), or as to any increase in that fee, charge, dedication, or other requirement, except upon the receipt by that city or county of notification of the adoption of, or increase in, the fee or other requirement in accordance with subdivision (c) of Section 17621.

(Added by Stats.1996, c. 277 (S.B.1562), § 3, operative Jan. 1, 1998. Amended by Stats.1998, c. 407 (S.B.50), § 12, eff. Aug. 27, 1998, operative Nov. 4, 1998; Stats.1999, c. 300 (A.B.847), § 1; Stats.2000, c. 135 (A.B.2539), § 33.)

§ 17621. Procedures for adoption or increase of levy; protest

(a) Any resolution adopting or increasing a fee, charge, dedication, or other requirement pursuant to Section 17620, for application to residential, commercial, or industrial development, shall be enacted in accordance with Chapter 5 (commencing with Section 66000) of Division 1 of Title 7 of the Government Code. The adoption, increase, or imposition of any fee, charge, dedication, or other requirement pursuant to Section 17620 shall not be subject to the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code. The adoption of, or increase in, the fee, charge, dedication, or other requirement shall be effective no sooner than 60 days following the final action on that adoption or increase, except as specified in subdivision (b).

(b) Without following the procedure otherwise required for adopting or increasing a fee, charge, dedication, or other requirement, the governing board of a school district may adopt an urgency measure as an interim authorization for a fee, charge, dedication, or other requirement, or increase in a fee, charge, dedication, or other requirement, where necessary to respond to a current and immediate threat to the public health, welfare, or safety. The interim authorization shall require a four-fifths vote of the governing board for adoption, and shall contain findings describing the current and immediate threat to the public health, welfare, or safety. The interim authorization shall have no force or effect on and after a date 30 days after its adoption. After notice and hearing in accordance with subdivision (a), the governing board, upon a four-fifths vote of the board, may extend the interim authority for an additional 30 days. Not more than two extensions may be granted.

(c) Upon adopting or increasing a fee, charge, dedication, or other requirement pursuant to subdivision (a) or (b), the school district shall transmit a copy of the resolution to each city and each county in which the district is situated, accompanied by all relevant supporting documentation and a map clearly indicating the boundaries of the area subject to the fee, charge, dedication, or other requirement. The school district governing board shall specify, pursuant to that notification, whether or not the collection of the fee or other charge is subject to the restriction set forth in subdivision (a) of Section 66007 of the Government Code.

(d) Any party on whom a fee, charge, dedication, or other requirement has been directly imposed pursuant to Section 17620 may protest the establishment or imposition of that fee, charge, dedication, or other requirement in accordance with Section 66020 of the Government Code, except that the procedures set forth in Section 66021 of the Government Code are deemed to apply, for this purpose, to commercial and industrial development, as well as to residential development.

(e) In the case of any commercial or industrial development, the following procedures shall also apply:

(1) The school district governing board shall, in the course of making the findings required under subdivisions (a) and (b) of Section 66001 of the Government Code, do all of the following:

(A) Make the findings on either an individual project basis or on the basis of categories of commercial or industrial development. Those categories may include, but are not limited to, the following uses: office, retail, transportation, communications and utilities, light industrial, heavy industrial, research and development, and warehouse.

(B) Conduct a study to determine the impact of the increased number of employees anticipated to result from the commercial or industrial development upon the cost of providing school facilities within the district. For the purpose of making that determination, the study shall utilize employee generation estimates that are calculated on either an individual project or categorical basis, in accordance with subparagraph (A). Those employee generation estimates shall be based upon commercial and industrial factors within the district or upon, in whole or in part, the applicable employee generation estimates set forth in the January 1990 edition of "San Diego Traffic Generators," a report of the San Diego Association of Governments.

(C) The governing board shall take into account the results of that study in making the findings described in this subdivision.

(2) In addition to any other requirement imposed by law, in the case of any development project against which a fee, charge, dedication, or other requirement is to be imposed pursuant to Section 53080 on the basis of a category of commercial or industrial development, as described in paragraph (1), the governing board shall provide a process that permits the party against whom the fee, charge, dedication, or other requirement is to be imposed the opportunity for a hearing to appeal that imposition. The grounds for that appeal include, but are not limited to, the inaccuracy of including the project within the category pursuant to which the fee, charge, dedication, or other requirement is to be imposed, or that the employee generation or pupil generation factors utilized under the applicable category are inaccurate as applied to the project. The party appealing the imposition of the fee, charge, dedication, or other requirement shall bear the burden of establishing that the fee, charge, dedication, or other requirement is improper.

(Added by Stats.1996, c. 277 (S.B.1562), § 3, operative Jan. 1, 1998. Amended by Stats.1998, c. 689 (S.B.1362), § 1.3.)

§ 17622. School districts; levies on enclosed agricultural space

(a) No fee, charge, dedication, or other requirement may be levied by any school district pursuant to Section 17620 upon any greenhouse or other space that is covered or enclosed for agricultural purposes, unless and until the district first complies with subdivisions (b) and (c).

(b) The school district governing board shall make a finding, supported by substantial evidence, of both of the following:

(1) The amount of the proposed fees or other requirements and the location of the land, if any, to be dedicated, bear a reasonable relationship and are limited to the needs of the community for elementary or high school facilities caused by the development.

(2) The amount of the proposed fees or other requirements does not exceed the estimated reasonable cost of providing for the construction or reconstruction of the school facilities necessitated by the development projects from which the fees or other requirements are to be collected.

(c) In determining the amount of the fees or other requirements, if any, to be levied on the development of any structure as described in subdivision (a), the school district governing board shall consider the relationship between the proposed increase in the number of employees, if any, the size and specific use of the structure, and the cost of the construction. No fee, charge, dedication, or other form of requirement, as authorized under Section 17620, shall be applied to the development of any structure described in subdivision (a) where the governing board finds either that the number of employees is not increased as a result of that development, or that housing has been provided for those employees, to the extent of any increase, by their employer, against which housing a fee, charge, or dedication, or other form of requirement has been applied under Section 17620. In developing the finding described in this section, the governing board shall consult with the county agricultural commissioner or the county director of the cooperative extension service.

(Added by Stats.1996, c. 277 (S.B.1562), § 3, operative Jan. 1, 1998.)

§ 17623. Distribution of fee levied by two nonunified school districts with common territorial jurisdiction

In the event the fee authorized pursuant to Section 17620 is levied by two nonunified school districts having common territorial jurisdiction, in a total amount that exceeds the maximum fee authorized under Section 65995 of the Government Code, the fee revenue for the area of common jurisdiction shall be distributed in the following manner:

(a) The governing boards of the affected school districts shall enter into an agreement specifying the allocation of fee revenue and the duration of the agreement. A copy of that agreement shall be transmitted by each district to the State Allocation Board.

(b) In the event the affected school districts are unable to reach an agreement pursuant to subdivision (a), the districts shall jointly submit the dispute to a three-member arbitration panel composed of one representative chosen by each of the districts and one representative chosen jointly by both of the districts. The decision of the arbitration panel shall be final and binding upon both districts for a period of three years.

(Added by Stats.1996, c. 277 (S.B.1562), § 3, operative Jan. 1, 1998.)

§ 17624. Repayment of levy on development project without commencement of construction

(a) Any school district that has imposed or, subsequent to the operative date of this section, imposes, any fee, charge, dedication, or other requirement under Section 17620 against any development project that subsequently meets the description set forth in subdivision (b), shall repay or reconvey, as appropriate, that fee, charge, dedication, or other requirement to the person or persons from whom that fee, charge, dedication, or other requirement was collected, less the amount of the administrative costs incurred in collecting and repaying the fee, charge, dedication, or other requirement.

(b) This section applies to any development project for which the building permit, including any extensions, expires on or after January 1, 1990, without the commencement of construction, as defined in subdivision (c) of Section 65995 of the Government Code.

(Added by Stats.1996, c. 277 (S.B.1562), § 3, operative Jan. 1, 1998.)

§ 17625. Levies against manufactured home or mobilehome by school districts

Notwithstanding any other law, any fee, charge, dedication, or other form of requirement levied by the governing board of a school district under Section 17620 may apply, as to any manufactured home or mobilehome, only pursuant to compliance with all of the following conditions:

(1) The fee, charge, dedication, or other form of requirement is applied to the initial location, installation, or occupancy of the manufactured home or mobilehome within the school district.

(2) The manufactured home or mobilehome is to be located, installed, or occupied on a space or site on which no other manufactured home or mobilehome was previously located, installed, or occupied.

(3) The manufactured home or mobilehome is to be located, installed, or occupied on a space in a mobilehome park, or on any site or in any development outside a mobilehome park, on which the construction of the pad or foundation system commenced after September 1, 1986.

(b)[1] Compliance on the part of any manufactured home or mobilehome with any fee, charge, dedication, or other form of requirement, as described in subdivision (a), or certification by the appropriate school district of that compliance, shall be required as a condition of the following, as applicable:

(1) The close of escrow, where the manufactured home or mobilehome is to be located, installed, or occupied on a mobilehome park space, or on any site or in any development outside a mobilehome park, as described in subdivision (a), and the sale or transfer of the manufactured home or mobilehome is subject to escrow as provided in Section 18035 or 18035.2 of the Health and Safety Code.

(g)(1) Whenever a manufactured home or a mobilehome owned by a person 55 years of age or older who is also a member of a lower income household as defined by Section 50079.5 of the Health and Safety Code, and which has been moved from a mobilehome park space located in one school district, where the mobilehome owner has resided, to a space or lot located in a mobilehome park or a subdivision, cooperative, or condominium for mobilehomes or manufactured homes located in another school district, is subject to any fee or other requirement under Section 17620, this section, and Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7 of the Government Code, the district in which the manufactured home or mobilehome has been newly located may waive the fee or other requirement under Section 53080, this section, and Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7 of the Government Code, or otherwise shall be required to grant the homeowner the necessary approval for occupancy of the home, and permission to pay the amount of the fee or other requirement thereafter, in installments, over a period totaling no less than 36 months. A school district may require that the installments be paid monthly, quarterly, or every six months during the 36–month period, and that the fee be secured as a lien perfected against the mobilehome or manufactured home pursuant to Section 18080.7 of the Health and Safety Code.

(2) Costs of filing the lien and reasonable late charges or interest may be added to the amount of the lien. This subdivision does not apply where a school facilities fee, charge, or other requirement is imposed pursuant to Section 65995.2 of the Government Code.

(Added by Stats.1996, c. 277 (S.B.1562), § 3, operative Jan. 1, 1998.)

§ 17626. Application of levy to reconstruction after damage or destruction by disaster

(a) A fee, charge, dedication, or other requirement authorized under Section 17620, whether or not allowable under Chapter 6 (commencing with Section 66010) of Division 1 of Title 7 of the Government Code, may not be applied to the reconstruction of any residential, commercial, or industrial structure that is damaged or destroyed as a result of a disaster, except to the extent the square footage of the reconstructed structure exceeds the square footage of the structure that was damaged or destroyed. That square footage comparison shall be made, in the case of a commercial or industrial structure, on the basis of chargeable covered and enclosed space, as defined in Section 65995 of the Government Code, or, in the case of a residential structure, on the basis of assessable space, as defined in Section 65995 of the Government Code.

(b) The following definitions apply for the purposes of this section:

(1) "Disaster" means a fire, earthquake, landslide, mudslide, flood, tidal wave, or other unforeseen event that produces material damage or loss.

(2) "Reconstruction" means the construction of property that replaces, and is equivalent in kind to, the damaged or destroyed property.

(Added by Stats.1996, c. 277 (S.B.1562), § 3, operative Jan. 1, 1998.)

§ 65970. Legislative findings and declaration

The Legislature finds and declares as follows:

(a) Adequate school facilities should be available for children residing in new residential developments.

(b) Public and private residential developments may require the expansion of existing public schools or the construction of new school facilities.

(c) In many areas of the state, the funds for the construction of new classroom facilities are not available when new development occurs, resulting in the overcrowding of existing schools.

(d) New housing developments frequently cause conditions of overcrowding in existing school facilities which cannot be alleviated under existing law within a reasonable period of time.

(e) That, for these reasons, new and improved methods of financing for interim school facilities necessitated by new development are needed in California.

(Added by Stats.1977, c. 955, p. 2902, § 1.)

§ 65971. Findings by school district; notice to city or county; mitigation measures

(a) The governing body of a school district which operates an elementary or high school shall notify the city council or board of supervisors of the city or county within which the school district is located if the governing body makes both of the following findings supported by clear and convincing evidence:

(1) That conditions of overcrowding exist in one or more attendance areas within the district which will impair the normal functioning of educational programs including the reason for the existence of those conditions.

(2) That all reasonable methods of mitigating conditions of overcrowding have been evaluated and no feasible method for reducing those conditions exist.

(b) The notice of findings sent to the city or county pursuant to subdivision (a) shall specify the mitigation measures considered by the school district. The notice of findings shall include a completed application to the Office of Public School Construction for preliminary determination of eligibility under the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code). The city council or board of supervisors shall take no action on the notice of findings sent to the city or county pursuant to subdivision (a) until the findings have been made available to the public for 60 days after the date of receipt by the city or county. The city council or board of supervisors shall either concur or not concur in the notice of findings within 61 days to 150 days after the date of receipt of the findings. The city council or board of supervisors may extend the period to concur or not to concur for one 30-day period. The failure of the city council or board of supervisors to either concur or not concur within the time period prescribed in this subdivision shall not be deemed as an act of concurrence in the notice of findings by the council or board.

The date of receipt of the notice of findings is the date when all of the materials required by this section are completed and filed by the school district with the city council or board of supervisors.

If the city council or board of supervisors concurs in those findings, Section 65972 shall be applicable to actions taken on residential development by the city council or board of supervisors.

(Added by Stats.1977, c. 955, p. 2902, § 1. Amended by Stats.1985, c. 836, § 1; Stats.1985, c. 1498, § 1.5; Stats.1994, c. 1228 (S.B.1735), § 6.)

§ 65972. Findings by city council or board of supervisors

Within the attendance area where it has been determined pursuant to Section 65971 that conditions of overcrowding exist, the city council or board of supervisors shall not approve an ordinance rezoning property to a residential use, grant a discretionary permit for residential use, or approve a tentative subdivision map for residential purposes, within such area, unless the city council or board of supervisors makes one of the following findings:

(1) That an ordinance pursuant to Section 65974 has been adopted, or

(2) That there are specific overriding fiscal, economic, social, or environmental factors which in the judgment of the city council or board of supervisors would benefit the city or county, thereby justifying the approval of a residential development otherwise subject to Section 65974.

(Added by Stats.1977, c. 955, p. 2902, § 1.)

§ 65973. Definitions

As used in this chapter the following terms means [1]:

(a) "Conditions of overcrowding" means that the total enrollment of a school, including enrollment from proposed development, exceeds the capacity of the school as determined by the governing body of the district.

(b) "Reasonable methods for mitigating conditions of overcrowding" shall include, but are not limited to, agreements between a subdivider or builder and the affected school district whereby temporary-use buildings will be leased to the school district or temporary-use buildings owned by the school district will be used and agreements between the affected school district and other school districts whereby the affected school district agrees to lease or purchase surplus or underutilized school facilities from other school districts.

(c) "Residential development" means a project containing residential dwellings, including mobilehomes, of one or more units or a subdivision of land for the purpose of constructing one or more residential dwelling units.

(Added by Stats.1977, c. 955, p. 2902, § 1. Amended by Stats.1985, c. 836, § 2; Stats.1985, c. 1498, § 2.5.)

§ 65974. Land or fees for interim classroom facilities where overcrowding exists; conditional approval of residential development; developer fees under school facilities master plans

(a) For the purpose of establishing an interim method of providing classroom facilities where overcrowded conditions exist, as determined necessary pursuant to Section 65971, and notwithstanding Section 66478, a city, county, or city and county may, by ordinance, require the dedication of land, the payment of fees in lieu thereof, or a combination of both, for classroom and related facilities for elementary or high schools as a condition to the approval of a residential development, if all of the following occur:

(1) The general plan provides for the location of public schools.

(2) The ordinance has been in effect for a period of 30 days prior to the implementation of the dedication or fee requirement.

(3) The land or fees, or both, transferred to a school district shall be used only for the purpose of providing interim elementary or high school classroom and related facilities. If fees are paid in lieu of the dedication of land and those fees are utilized to purchase land, no more land shall be purchased than is necessary for the placement thereon of interim facilities.

(4) The location and amount of land to be dedicated or the amount of fees to be paid, or both, shall bear a reasonable relationship and be limited to the needs of the community for interim elementary or high school facilities and shall be reasonably related and limited to the need for schools caused by the development. However, the value of the land to be dedicated or the amount of fees to be paid, or both, shall not exceed the amount necessary to pay five annual lease payments for the interim facilities. In lieu of the dedication of land or the payment of fees, or both, the builder of a residential development may, at his or her option and at his or her expense, provide interim facilities, owned or controlled by the builder, at the place designated by the school district, and at the conclusion of the fifth school year the builder shall, at the builder's expense, remove the interim facilities from that place.

(5) A finding is made by the city council or board of supervisors that the facilities to be constructed from the fees or the land to be dedicated, or both, is consistent with the general plan.

(b) The ordinance may specify the methods for mitigating the conditions of overcrowding which the school district shall consider when making the finding required by paragraph (2) of subdivision (a) of Section 65971.

(c) If the payment of fees is required, the payment shall be made at the time the building permit is issued or at a later time as may be specified in the ordinance.

(d) Only the payment of fees may be required in subdivisions containing 50 parcels or less.

(e) Notwithstanding any other provision of this chapter, contracts entered into or contracts to be entered into pursuant to a school facilities master plan administered by a joint powers authority created under Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code for a designated community plan area adopted by a city, county, or city and county, whether general law or chartered, on or before September 1, 1986, that requires the payment of a fee, charge, or dedication for the construction of school facilities as a condition to the approval of residential development shall not be subject to the provisions of subdivision (b) of Section 65995. However, in determining developer fees under that school facilities master plan, the cost and maximum building area standards for school buildings prescribed by Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code shall apply, and the school district or districts involved are required to have on file with the Office of Public School Construction, and actively pursue in good faith, an application for preliminary determination of eligibility for project funding under that chapter, and shall actively pursue in good faith the estab-

lishment of a community capital facilities district or other permanent financing mechanisms to reduce or eliminate developer fees.

Any fees collected or land dedicated after September 1, 1986, pursuant to this section, and not used to avoid overcrowding of the facilities to be built pursuant to the school facilities master plan, shall be subject to disposition in accordance with subdivision (b) of Section 65979.

Fees collected in excess of the limitations set forth in subdivision (b) of Section 65995 for schools constructed under that school facilities master plan shall neither advantage nor disadvantage a school district's application for project funding under Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code.

(Added by Stats.1977, c. 955, p. 2902, § 1. Amended by Stats.1979, c. 282, p. 1023, § 53, eff. July 24, 1979; Stats.1982, c. 923, § 3, eff. Sept. 13, 1982; Stats.1985, c. 150, § 1; Stats.1985, c. 1498, § 3; Stats.1986, c. 887, § 10; Stats.1994, c. 1228 (S.B.1735), § 7.)

§ 65974.5. Expenditure of funds for construction or reconstruction purposes

Notwithstanding any other provision of this chapter, the governing board of any school district that receives funds that are collected pursuant to this chapter under a local ordinance, resolution, or other regulation in existence on September 1, 1986, may expend those funds for any of the construction or reconstruction purposes authorized under Section 53080, where the governing board has first held a public hearing on the subject of the proposed expenditure.

(Added by Stats.1989, c. 1209, § 24, eff. Oct. 1, 1989.)

§ 65975. Interim facility fees; fair market value of dedicated land; use for capital outlay project payments

(a) Whenever a school district has received approval, under the State School Building Lease-Purchase Law of 1976, (Ch. 22 (commencing with Section 17700), Pt. 10, Ed.C.) of a school project to be constructed in an attendance area where fees have been collected pursuant to Section 65974, all or a portion of the fees so collected for interim facilities may be used by the district to provide its 10 percent of the project as required by item (1) of Section 17761 of the Education Code. Nothing in this section shall increase the amount of fees that would otherwise be collected pursuant to Section 65974.

(b) Whenever a school district has received approval, under the State School Building Lease-Purchase Law of 1976 (Ch. 22 (commencing with Section 17700), Pt. 10, Ed.C.), of a school project to be constructed in an attendance area where land has been received pursuant to Section 65974, the district may use the fair market value of the land to provide all or a portion of its 10 percent of the school project as required by item (1) of subdivision (a) of Section 17761. In order to use the value of land to meet the 10 percent match requirement, the district shall construct the capital outlay project on the land used to make the match, and shall provide the full 10 percent of the project cost at one time as provided in item (1) of subdivision (a) of Section 17761 of the Education Code.

(Added by Stats.1983, c. 1254, § 5.)

§ 65976. Schedule by school district; solution of conditions of overcrowding; contents; modifications

As a part of the notice required by Section 65971, or in any event before the city council or board of supervisors make a decision to require the dedication of land or the payment of fees, or both, or to increase the amount of land to be dedicated or the fees to be paid, or both, the governing body of the school district shall submit a schedule to the city council or board of supervisors specifying how the school district will use the land or fees, or both, to solve the conditions of overcrowding. The schedule shall include the school sites to be used, the classroom facilities to be made available, and the times when those facilities will be available. If the governing body of the school district cannot meet the schedule, it shall submit modifications to the city council or board of supervisors and the reasons for the modifications.

(Added by Stats.1977, c. 955, p. 2902, § 1. Amended by Stats.1985, c. 836, § 3; Stats.1985, c. 1498, § 4.5.)

§ 65977. Agreement with two separate school districts; distribution of revenues

Where two separate school districts operate schools in an attendance area where overcrowding conditions exist for both school districts, the governing body of the city or county shall enter into an agreement with the governing body of each school district for the purpose of determining the distribution of revenues from the fees levied pursuant to this chapter.

(Added by Stats.1977, c. 955, p. 2902, § 1.)

§ 65978. Fees; separate accounting; reports

Any school district receiving funds pursuant to this chapter shall maintain a separate account for any fees paid and shall file a report with the city council or board of supervisors on the balance in the account at the end of the previous fiscal year; the facilities leased, purchased, or constructed; and the dedication of land during the previous fiscal year. In addition, the report shall specify which attendance areas will continue to be overcrowded when the fall term begins and where conditions of overcrowding will no longer exist. The report shall be filed by October 15 of each year and shall be filed more frequently at the request of the board of supervisors or city council.

The board of supervisors or city council may approve a 30-day extension for the filing of the report in the case of extenuating circumstances, as determined by the board of supervisors or city council.

During the time that the report has not been filed in the manner prescribed in this section, there shall be a waiver of any performance of the payment of fees or the dedication of land.

If overcrowding conditions no longer exist, the city or county shall cease levying any fee or requiring the dedication of any land pursuant to this chapter.

(Added by Stats.1977, c. 955, p. 2902, § 1. Amended by Stats.1981, c. 201, § 1; Stats.1984, c. 1062, § 1.)

§ 65979. Receipt of apportionment pursuant to building lease-purchase law; fee or dedication; determination of overcrowding

(a) One year after receipt of an apportionment pursuant to the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 22 (commencing with Section 17700 of Part 10 of the Education Code) [1] for the construction of a school, the city or county shall not be permitted thereafter, pursuant to this chapter or pursuant to any other school facilities financing arrangement the district may have with builders of residential development, to levy any fee or to require the dedication of any land within the attendance area of the school for which the apportionment was received. However, any time after receipt of the apportionment there may be a determination of overcrowding pursuant to Section 65971, if both of the following further findings are made:

(1) That during the period of construction, or after construction has been completed, additional overcrowding would occur from continued residential development.

(2) That any fee levied and any required dedication of land levied after the receipt of the construction apportionment can be used to avoid the additional overcrowding prior to the school being available for use by the school district.

(b) Any amounts of fees collected or land dedicated after the receipt of the construction apportionment and not used to avoid overcrowding shall be returned to the person who paid the fee or made the land dedication.

(Added by Stats.1979, c. 282, p. 1024, § 54, eff. July 24, 1979. Amended by Stats.1980, c. 1354, p. 4883, § 62.5, eff. Sept. 30, 1980; Stats.1985, c. 1498, § 5; Stats.1986, c. 136, § 1.)

§ 65980. Definitions

For the purposes of Section 65974 the following terms mean:

(a) "Approval of a residential development" means any approval for the development prior to and including the issuance of a building permit for the development.

(b) "Classroom facilities," "classroom and related facilities," and "elementary or high school facilities" mean "interim facilities" and shall include no other facilities.

(c) "Interim facilities" are limited to any of the following:

(1) Temporary classrooms not constructed with permanent foundation and defined as a structure containing one or more rooms, each of which is designed, intended, and equipped for use as a place for formal instruction of pupils by a teacher in a school.

(2) Temporary classroom toilet facilities not constructed with permanent foundations.

(3) Reasonable site preparation and installation of temporary classrooms.

(4) Land necessary for the placement thereon of any of the facilities described in paragraph (1) or (2).

(Added by Stats.1979, c. 282, p. 1024, § 55, eff. July 24, 1979. Amended by Stats.1980, c. 1354, p. 4884, § 62.6, eff. Sept. 30, 1980; Stats.1985, c. 1498, § 6.)

§ 65981. Recommendation of fees to provide interim facilities; submission to city or county; failure to provide as waiver

If an ordinance has been adopted pursuant to Section 65974 which provides for the school district governing body to recommend the fees for providing interim facilities that are to be assessed on a development as a condition of city or county approval of a subdivision, such recommendation shall be required to be submitted to the respective city or county within 60 days following the issuance of the initial permit for the development. Failure to provide the recommendation of fees to be assessed within the 60-day period shall constitute a waiver by the governing body of the school district of its authority to request fees pursuant to this chapter.

(Added by Stats.1979, c. 282, p. 1024, § 56, eff. July 24, 1979.)

(a) Except for a fee, charge, dedication, or other requirement authorized under Section * * * 17620 of the Education Code, or pursuant to Chapter 4.7 (commencing with Section 65970), a fee, charge, dedication, or other requirement * * * for the construction or reconstruction of school facilities may not be levied or imposed in connection with, or made a condition of, any legislative or adjudicative act, or both, by any state or local agency involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization, as defined in Section 56021 or 56073.

(b) * * * Except as provided in Sections 65995.5 and 65995.7, the amount of any fees, charges, dedications, or other requirements authorized under Section * * * 17620 of the Education Code, or pursuant to Chapter 4.7 (commencing with Section 65970), or both, may not exceed the following:

(1) In the case of residential construction, including the location, installation, or occupancy of manufactured homes and mobilehomes, one dollar and ninety-three cents ($1.93) per square foot of assessable space * * *. "Assessable space," for this purpose, means all of the square footage within the perimeter of a residential structure, not including any carport, walkway, garage, overhang, patio, enclosed patio, detached accessory structure, or similar area. The amount of the square footage within the perimeter of a residential structure shall be calculated by the building department of the city or county issuing the building permit, in accordance with the standard practice of that city or county in calculating structural perimeters. "Manufactured home" and "mobilehome" have the meanings set forth in subdivision (f) of Section 17625 of the Education Code. The application of any fee, charge, dedication, or other form of requirement to the location, installation, or occupancy of manufactured homes and mobilehomes is subject to Section 17625 of the Education Code.

(2) In the case of any commercial or industrial * * * construction, thirty-one cents ($0.31) per square foot of chargeable covered and enclosed space. "Chargeable covered and enclosed space," for this purpose, means the covered and enclosed space determined to be within the perimeter of a commercial or industrial structure, not including any storage areas incidental to the principal use of the construction, garage, parking structure, unenclosed walkway, or utility or disposal area. The determination of the chargeable covered and enclosed space within the perimeter of a commercial or industrial structure shall

be made by the building department of the city or county issuing the building permit, in accordance with the building standards of that city or county.

(3) The amount of the limits set forth in paragraphs (1) and (2) shall be increased in 2000, and every two years thereafter, according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the State Allocation Board at its January meeting, which increase shall be effective as of the date of that meeting. * * *

(c)(1) Notwithstanding any other provision of law, during the term of a contract entered into between a subdivider or builder and a school district, city, county, or city and county, whether general law or chartered, on or before January 1, 1987, that requires the payment of a fee, charge, or dedication for the construction of school facilities as a condition to the approval of residential construction, neither Section * * * 17620 of the Education Code nor this chapter applies to that residential construction.

(2) Notwithstanding any other provision of state or local law, construction that is subject to a contract entered into between a person and a school district, city, county, or city and county, whether general law or chartered, after January 1, 1987, and before the operative date of the act that adds paragraph (3) that requires the payment of a fee, charge, or dedication for the construction of school facilities as a condition to the approval of construction, may not be affected by the act that adds paragraph (3).

(3) Notwithstanding any other provision of state or local law, until January 1, 2000, any construction not subject to a contract as described in paragraph (2) that is carried out on real property for which residential development was made subject to a condition relating to school facilities imposed by a state or local agency in connection with a legislative act approving or authorizing the residential development of that property after January 1, 1987, and before the operative date of the act adding this paragraph, shall be required to comply with that condition.

* * * Notwithstanding any other provision of state or local law, on and after January 1, 2000, any construction not subject to a contract as described in paragraph (2) that is carried out on real property for which residential development was made subject to a condition relating to school facilities imposed by a state or local agency in connection with a legislative act approving or authorizing the residential development of that property after January 1, 1987, and before the operative date of the act adding this paragraph, may not be subject to a fee, charge, dedication, or other requirement * * * exceeding the amount specified in paragraphs (1) and (2) of subdivision (b), or, if a district has increased the limit specified in paragraph (1) of subdivision (b) pursuant to either Section 65995.5 or 65995.7, that increased amount.

(4) Any construction that is not subject to a contract as described in paragraph (2), or to paragraph (3), and that satisfies both of the requirements of this paragraph, may not be subject to any increased fee, charge, dedication, or other requirement authorized by the act that adds this paragraph beyond the amount specified in paragraphs (1) and (2) of subdivision (b).

(A) A tentative map, development permit, or conditional use permit was approved before the operative date of the act that amends this subdivision.

(B) A building permit is issued before January 1, 2000.

(d) For purposes of * * * this chapter, "* * * construction" means new construction and reconstruction of existing building for residential, commercial, or industrial. "Residential, commercial, or industrial construction" does not include any facility used exclusively for religious purposes that is thereby exempt from property taxation under the laws of this state, any facility used exclusively as a private full-time day school as described in Section 48222 of the Education Code, or any facility that is owned and occupied by one or more agencies of federal, state, or local government. In addition, "commercial or industrial construction" includes, but is not limited to, any hotel, inn, motel, tourist home, or other lodging for which the maximum term of occupancy for guests does not exceed 30 days, but does not include any residential hotel, as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code.

(e) The Legislature finds and declares that the * * * financing of school facilities * * * and the mitigation of the impacts of land use approvals, whether legislative or adjudicative, or both, on the need for school facilities are matters of statewide concern. For this reason, the Legislature hereby occupies the subject matter of * * * requirements related to school facilities levied or imposed in connection with, or made a condition of, any land use approval, whether legislative or adjudicative act, or both, and the mitigation of the impacts of land use approvals, whether legislative or adjudicative, or both, on the need for school facilities, to the exclusion of all other measures * * *, financial or nonfinancial, on the subjects. For purposes of this subdivision, "school facilities" means any school-related consideration relating to a school district's ability to accommodate enrollment.

(f) Nothing in this section shall be interpreted to limit or prohibit the use of Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 to finance the construction or reconstruction of school facilities. However, the use of Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 may not be

required as a condition of approval of any legislative or adjudicative act, or both, if the purpose of the community facilities district is to finance school facilities.

* * *

(g)(1) The refusal of a person to agree to undertake or cause to be undertaken an act relating to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5, including formation of, or annexation to, a community facilities district, voting to levy a special tax, or authorizing another to vote to levy a special tax, may not be a factor when considering the approval of a legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization, as defined in Section 56021 or 56073, if the purpose of the community facilities district is to finance school facilities.

(2) If a person voluntarily elects to establish, or annex into, a community facilities district and levy a special tax approved by landowner vote to finance school facilities, the present value of the special tax specified in the resolution of formation shall be calculated as an amount per square foot of assessable space and that amount shall be a credit against any applicable fee, charge, dedication, or other requirement for the construction or reconstruction of school facilities. For purposes of this paragraph, the calculation of present value shall use the interest rate paid on the United States Treasury's 30-year bond on the date of the formation of, or annexation to, the community facilities district, as the capitalization rate.

(3) For purposes of subdivisions (f), (h), and (i), and this subdivision, "school facilities" means any school-related consideration relating to a school district's ability to accommodate enrollment.

(h) The payment or satisfaction of a fee, charge, or other requirement levied or imposed pursuant to Section 17620 of the Education Code in the amount specified in Section 65995 and, if applicable, any amounts specified in Section 65995.5 or 65995.7 are hereby deemed to be full and complete mitigation of the impacts of any legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization as defined in Section 56021 or 56073, on the provision of adequate school facilities.

(i) A state or local agency may not deny or refuse to approve a legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization as defined in Section 56021 or 56073 on the basis of a person's refusal to provide school facilities mitigation that exceeds the amounts authorized pursuant to this section or pursuant to Section 65995.5 or 65995.7, as applicable.

(Amended by Stats.1998, c. 407 (S.B.50), § 19, eff. Aug. 27, 1998, operative Nov. 4, 1998.)

§ 65995.1. Senior citizen and migrant worker housing; conversions; approval

(a) Notwithstanding any other provision of law, as to any development project for the construction of senior citizen housing, as described in Section 51.3 of the Civil Code, a residential care facility for the elderly as described in subdivision (k) of Section 1569.2 of the Health and Safety Code, or a multilevel facility for the elderly as described in paragraph (9) of subdivision (d) of Section 15432, any fee, charge, dedication, or other form of requirement that is levied under Section 53080 may be applied only to new construction, and is subject to the limits and conditions applicable under subdivision (b) of Section 65995 in the case of commercial or industrial development.

(b) Notwithstanding any other provision of law, as to any development project for the construction of agricultural migrant worker housing financed in whole or part pursuant to Chapter 8.5 (commencing with Section 50710) of Part 2 of Division 31 of the Health and Safety Code, no fees, charges, dedications, or other forms of requirements that are levied under Section 53080 shall be applied to new construction, reconstruction, or rehabilitation of this housing. The exemption provided by this subdivision shall be applicable only to that agricultural migrant worker housing which is owned by the state and which is subject to a contract ensuring compliance with the requirements of Chapter 8.5 (commencing with Section 50710) of Part 2 of Division 31 of the Health and Safety Code.

(c) Any development project against which school facilities fees or other requirements have been levied or waived in accordance with the limit or exemption set forth in subdivision (a) or (b) may be converted to any use other than those uses described in the statutes cited in that subdivision only with the approval of the city or county that issued the building permit for the project. That approval shall not be granted absent certification by the appropriate school district that payment has been made on the part of the development project at the rate of the school facilities fee, charge, dedication, or other form of requirement applied by the district under Section 53080 to residential development as of the date of conversion, less the amount of any school facilities fees or other requirements paid on the part of the project in accordance with the limits set forth in subdivision (a) or (b).

(Added by Stats.1988, c. 29, § 4, eff. March 14, 1988. Amended by Stats.1989, c. 1209, § 26, eff. Oct. 1, 1989; Stats.1990, c. 633 (A.B.530), § 3, eff. Sept. 11, 1990; Stats.1991, c. 536 (S.B.1095), § 1, eff. Oct. 7, 1991.)

§ 65995.2. Manufactured home or mobilehome located within park or subdivision limited to older persons; changes in age limit; fees and other requirements

(a) Notwithstanding any other provision of law, the imposition of any fee, charge, dedication, or other requirement authorized under Section 53080, or Chapter 4.7 (commencing with Section 65970), or both, against any manufactured home or mobilehome that is located within a mobilehome park, or subdivision, cooperative, or condominium for mobilehomes, in which residence is limited to older persons, as defined pursuant to the federal Fair Housing Amendments Act of 1988, is subject to the limits and conditions that are applicable under subdivision (b) of Section 65995 in the case of commercial and industrial development.

(b) Any mobilehome park, or subdivision, cooperative, or condominium for mobilehomes, in which school facilities fees, charges, dedications, or other requirements have been imposed against one or more manufactured homes or mobilehomes in accordance with the limit set forth in subdivision (a) may subsequently choose to permit the residence of persons other than older persons, in which event it shall so notify the appropriate school district and city or county. As a condition of the first sale, subsequent to that notification, of each manufactured home or mobilehome in the mobilehome park, or subdivision, cooperative, or condominium for mobilehomes, payment shall be made to the school district in the amount of the school facilities fee or other requirement applied by the district under Section 53080, or Chapter 4.7 (commencing with Section 65970), or both, to residential development as of the date of that sale, less the amount of any school facilities fees, charges, dedications, or other requirements imposed against that manufactured home or mobilehome in accordance with the limits described in subdivision (a). Any prospective purchaser of a manufactured home or mobilehome that is subject to the requirement set forth in this subdivision shall be given written notice of the existence of that requirement by the seller prior to entering into any contract for that purchase.

(c) Compliance on the part of any manufactured home or mobilehome with any additional fee or other requirement applied by the school district pursuant to subdivision (b), and certification by the appropriate school district of that compliance, shall be required as a condition of the following, as applicable:

(1) The close of escrow of the first sale of the manufactured home or mobilehome following the notice required by subdivision (b), where the manufactured home or mobilehome is to be located, installed, or occupied in a mobilehome park that has chosen to permit the residence of persons other than older persons pursuant to subdivision (b) and the sale or transfer of the manufactured home or mobilehome is subject to escrow as provided in Section 18035 or 18035.2 of the Health and Safety Code.

(2) The approval of the manufactured home or mobilehomes for initial occupancy pursuant to Section 18551 or 18613 of the Health and Safety Code following the notice required by subdivision (b), where the manufactured home or mobilehome is to be located, installed, or occupied in a mobilehome park that has chosen to permit the residence of persons other than older persons pursuant to subdivision (b), in the event that paragraph (1) does not apply.

(Added by Stats.1989, c. 1209, § 27, eff. Oct. 1, 1989.)

§ 65995.5. Alternative calculation of amounts

(a) The governing board of a school district may impose the amount calculated pursuant to this section as an alternative to the amount that may be imposed on residential construction calculated pursuant to subdivision (b) of Section 65995.

(b) To be eligible to impose the fee, charge, dedication, or other requirement up to the amount calculated pursuant to this section, a governing board shall do all of the following:

(1) Make a timely application to the State Allocation Board for new construction funding for which it is eligible and be determined by the board to meet the eligibility requirements for new construction funding set forth in Article 2 (commencing with Section 17071.10) and Article 3 (commencing with Section 17071.75) of Chapter 12.5 of Part 10 of the Education Code. A governing board that submits an application to determine the district's eligibility for new construction funding shall be deemed eligible if the State Allocation Board fails to notify the district of the district's eligibility within 120 days of receipt of the application.

(2) Conduct and adopt a school facility needs analysis pursuant to Section 65995.6.

(3) Until January 1, 2000, satisfy at least one of the requirements set forth in subparagraphs (A) to (D), inclusive, and, on and after January 1, 2000, satisfy at least two of the requirements set forth in subparagraphs (A) to (D), inclusive:

(A) The district is a unified or elementary school district that has a substantial enrollment of its elementary school pupils on a multitrack year-round schedule. "Substantial enrollment" for purposes of this paragraph means at least 30 percent of district pupils in kindergarten and grades 1 to 6, inclusive, in the high school attendance area in which all or some of the new residential units identified in the needs analysis are planned for construction. A high school district shall be deemed to have met the requirements of this paragraph if either of the following apply:

(i) At least 30 percent of the high school district's pupils are on a multitrack year-round schedule.

(ii) At least 40 percent of the pupils enrolled in public schools in kindergarten and grades 1 to 12, inclusive, within the boundaries of the high school attendance area for which the school district is applying for new facilities are enrolled in multitrack year-round schools.

(B) The district has placed on the ballot in the previous four years a local general obligation bond to finance school facilities and the measure received at least 50 percent plus one of the votes cast.

(C) The district meets one of the following:

(i) The district has issued debt or incurred obligations for capital outlay in an amount equivalent to 15 percent of the district's local bonding capacity, including indebtedness that is repaid from property taxes, parcel taxes, the district's general fund, special taxes levied pursuant to Section 4 of Article XIII A of the California Constitution, special taxes levied pursuant to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 that are approved by a vote of registered voters, special taxes levied pursuant to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 that are approved by a vote of landowners prior to November 4, 1998, and revenues received pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code). Indebtedness or other obligation to finance school facilities to be owned, leased, or used by the district, that is incurred by another public agency, shall be counted for the purpose of calculating whether the district has met the debt percentage requirement contained herein.

(ii) The district has issued debt or incurred obligations for capital outlay in an amount equivalent to 30 percent of the district's local bonding capacity, including indebtedness that is repaid from property taxes, parcel taxes, the district's general fund, special taxes levied pursuant to Section 4 of Article XIII A of the California Constitution, special taxes levied pursuant to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 that are approved by a vote of registered voters, special taxes levied pursuant to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 that are approved by a vote of landowners after November 4, 1998, and revenues received pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code). Indebtedness or other obligation to finance school facilities to be owned, leased, or used by the district, that is incurred by another public agency, shall be counted for the purpose of calculating whether the district has met the debt percentage requirement contained herein.

(D) At least 20 percent of the teaching stations within the district are relocatable classrooms.

(c) The maximum square foot fee, charge, dedication, or other requirement authorized by this section that may be collected in accordance with Chapter 6 (commencing with Section 17620) of Part 10.5 of the Education Code shall be calculated by a governing board of a school district, as follows:

(1) The number of unhoused pupils identified in the school facilities needs analysis shall be multiplied by the appropriate amounts provided in subdivision (a) of Section 17072.10. This sum shall be added to the site acquisition and development cost determined pursuant to subdivision (h).

(2) The full amount of local funds the governing board has dedicated to facilities necessitated by new construction shall be subtracted from the amount determined pursuant to paragraph (1). Local funds include fees, charges, dedications, or other requirements imposed on commercial or industrial construction.

§ 65995.5. Alternative calculation of amounts

(3) The resulting amount determined pursuant to paragraph (2) shall be divided by the projected total square footage of assessable space of residential units anticipated to be constructed during the next five-year period in the school district or the city and county in which the school district is located. The estimate of the projected total square footage shall be based on information available from the city or county within which the residential units are anticipated to be constructed or a market report prepared by an independent third party.

(d) A school district that has a common territorial jurisdiction with a district that imposes the fee, charge, dedication, or other requirement up to the amount calculated pursuant to this section or Section 65995.7, may not impose a fee, charge, dedication, or other requirement on residential construction that exceeds the limit set forth in subdivision (b) of Section 65995 less the portion of that amount it would be required to share pursuant to Section 17623 of the Education Code, unless that district is eligible to impose the fee, charge, dedication, or other requirement up to the amount calculated pursuant to this section or Section 65995.7.

(e) Nothing in this section is intended to limit or discourage the joint use of school facilities or to limit the ability of a school district to construct school facilities that exceed the amount of funds authorized by Section 17620 of the Education Code and provided by the state grant program, if the additional costs are funded solely by local revenue sources other than fees, charges, dedications, or other requirements imposed on new construction.

(f) * * * Except as provided in paragraph (5) of subdivision (a) of Section 17620 of the Education Code * * *, a fee, charge, dedication, or other requirement authorized under this section and Section 65995.7 shall be expended solely on the school facilities identified in the needs analysis as being attributable to projected enrollment growth from the construction of new residential units. This subdivision does not preclude the expenditure of a fee, charge, dedication, or other requirement, authorized pursuant to subparagraph (C) of paragraph (1) of subdivision (a) of Section 17620, on school facilities identified in the needs analysis as necessary due to projected enrollment growth attributable to the new residential units.

(g) "Residential units" and "residences" as used in this section and in Sections 65995.6 and 65995.7 means the development of single-family detached housing units, single-family attached housing units, manufactured homes and mobilehomes, as defined in subdivision (f) of Section 17625 of the Education Code, condominiums, and multifamily housing units, including apartments, residential hotels, as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code, and stock cooperatives, as defined in Section 1351 of the Civil Code.

(h) Site acquisition costs shall not exceed half of the amount determined by multiplying the land acreage determined to be necessary under the guidelines of the State Department of Education, as published in the "School Site Analysis and Development Handbook," as that handbook read as of January 1, 1998, by the estimated cost determined pursuant to Section 17072.12 of the Education Code. Site development costs shall not exceed * * * the estimated amount that would be funded by the State Allocation Board pursuant to its regulations governing grants for site development costs.

(Added by Stats.1998, c. 407 (S.B.50), § 20, eff. Aug. 27, 1998, operative Nov. 4, 1998. Amended by Stats.1999, c. 858 (A.B.695), § 16.)

§ 65995.6. School facilities needs analysis

(a) The school facilities needs analysis required by paragraph (2) of subdivision (b) of Section 65995.5 shall be conducted by the governing board of a school district to determine the need for new school facilities for unhoused pupils that are attributable to projected enrollment growth from the development of new residential units over the next five years. The school facilities needs analysis shall project the number of unhoused elementary, middle, and high school pupils generated by new residential units, in each category of pupils enrolled in the district. This projection of unhoused pupils shall be based on the historical student generation rates of new residential units constructed during the previous five years that are of a similar type of unit to those anticipated to be constructed either in the school district or the city or county in which the school district is located, and relevant planning agency information, such as multiphased development projects, that may modify the historical figures. For purposes of this paragraph, "type" means a single family detached, single family attached, or multifamily unit. The existing school building capacity shall be calculated pursuant to Article 2 (commencing with Section 17071.10) of Chapter 12.5 of Part 10 of the Education Code. The existing school building capacity shall be recalculated by the school district as part of any revision of the needs analysis pursuant to subdivision (e) of this section. If a district meets the requirements of paragraph (3) of subdivision (b) of Section 65995.5 by having a substantial enrollment on a multitrack year-round schedule, the determination of whether the district has school building capacity area shall reflect the additional capacity created by the multitrack year-round schedule.

(b) When determining the funds necessary to meet its facility needs, the governing board shall do each of the following:

(1) Identify and consider any surplus property owned by the district that can be used as a schoolsite or that is available for sale to finance school facilities.

(2) Identify and consider the extent to which projected enrollment growth may be accommodated by excess capacity in existing facilities.

(3) Identify and consider local sources other than fees, charges, dedications, or other requirements imposed on residential construction available to finance the construction or reconstruction of school facilities needed to accommodate any growth in enrollment attributable to the construction of new residential units.

(c) The governing board shall adopt the school facility needs analysis by resolution at a public hearing. The school facilities needs analysis may not be adopted until the school facilities needs analysis in its final form has been made available to the public for a period of not less than 30 days during which time the school facilities needs analysis shall be provided to the local agency responsible for land use planning for its review and comment. Prior to the adoption of the school facilities needs analysis, the public shall have the opportunity to review and comment on the school facilities needs analysis and the governing board shall respond to written comments it receives regarding the school facilities needs analysis.

(d) Notice of the time and place of the hearing, including the location and procedure for viewing or requesting a copy of the proposed school facilities needs analysis and any proposed revision of the school facilities needs analysis, shall be published in at least one newspaper of general circulation within the jurisdiction of the school district that is conducting the hearing no less than 30 days prior to the hearing. If there is no paper of general circulation, the notice shall be posted in at least three conspicuous public places within the jurisdiction of the school district not less than 30 days prior to the hearing. In addition to these notice requirements, the governing board shall mail a copy of the school facilities needs analysis and any proposed revision to the school facilities needs analysis not less than 30 days prior to the hearing to any person who has made a written request if the written request was made 45 days prior to the hearing. The governing board may charge a fee reasonably related to the cost of providing these materials to those persons who request the school facilities needs analysis or revision.

(e) The school facilities needs analysis may be revised at any time in the same manner, and the revision is subject to the same conditions and requirements, applicable to the adoption of the school facilities needs analysis.

(f) A fee, charge, dedication, or other requirement in an amount authorized by this section or Section 65995.7, shall be adopted by a resolution of the governing board as part of the adoption or revision of the school facilities needs analysis and may not be effective for more than one year. Notwithstanding subdivision (a) of Section 17621 of the Education Code, or any other provision of law, the fee, charge, dedication, or other requirement authorized by the resolution shall take effect immediately after the adoption of the resolution.

(g) Division 13 (commencing with Section 21000) of the Public Resources Code may not apply to the preparation, adoption, or update of the school facilities needs analysis, or adoption of the resolution specified in this section.

(h) Notice and hearing requirements other than those provided in this section may not be applicable to the adoption or revision of a school facilities needs analysis or the resolutions adopted pursuant to this section.

(Added by Stats.1998, c. 407 (S.B.50), § 21, eff. Aug. 27, 1998, operative Nov. 4, 1998. Amended by Stats.1999, c. 858 (A.B.695), § 17.)

§ 65995.7. State funds unavailable; supplemental amounts authorized

(a)(1) If state funds for new school facility construction are not available, the governing board of a school district that complies with Section 65995.5 may increase the alternative fee, charge, dedication, or other requirement calculated pursuant to subdivision (c) of Section 65995.5 by an amount that may not exceed the amount calculated pursuant to subdivision (c) of Section 65995.5, except that for the purposes of calculating this additional amount, the amount identified in paragraph (2) of subdivision (c) of Section 65995.5 may not be subtracted from the amount determined pursuant to paragraph (1) of subdivision (c) of Section 65995.5. For purposes of this section, state funds are not available if the State Allocation Board is no longer approving apportionments for new construction pursuant to Article 5 (commencing with Section 17072.20) of Chapter 12.5 of Part 10 of the Education Code due to a lack of funds available for new construction. Upon making a determination that state funds are no longer available, the State Allocation Board shall notify the Secretary of the Senate and the Chief Clerk of the Assembly, in writing, of that determination and the date when state funds are no longer available for publication in the respective journal of each house. For the purposes of making this determination, the board shall not consider whether funds are available for, or whether it is making preliminary apportionments or final apportionments pursuant to, Article 11 (commencing with Section 17078.10).

(2) Paragraph (1) shall become inoperative commencing on the effective date of the measure that amended this section to add this paragraph, and shall remain inoperative through the earlier of either of the following:

(A) November 5, 2002, if the voters reject the Kindergarten University Public Education Facilities Bond Act of 2002, after which date paragraph (1) shall again become operative.

(B) The date of the 2004 direct primary election after which date paragraph (1) shall again become operative.

(b) A governing board may offer a reimbursement election to the person subject to the fee, charge, dedication, or other requirement that provides the person with the right to monetary reimbursement of the supplemental amount authorized by this section, to the extent that the district receives funds from state sources for construction of the facilities for which that amount was required, less any amount expended by the district for interim housing. At the option of the person subject to the fee, charge, dedication, or other requirement the reimbursement election may be made on a tract or lot basis. Reimbursement of available funds shall be made within 30 days as they are received by the district.

(c) A governing board may offer the person subject to the fee, charge, dedication, or other requirement an opportunity to negotiate an alternative reimbursement agreement if the terms of the agreement are mutually agreed upon.

(d) A governing board may provide that the rights granted by the reimbursement election or the alternative reimbursement agreement are assignable.

(Added by Stats.1998, c. 407 (S.B.50), § 22, eff. Aug. 27, 1998, operative Nov. 4, 1998. Amended by Stats.2002, c. 33 (A.B.16), § 33.)

§ 65996. Conditions for approval of development projects; adequacy of school facilities; mitigating environmental effects

(a) Notwithstanding Section 65858, or Division 13 (commencing with Section 21000) of the Public Resources Code, or any other provision of state or local law, the following provisions shall be the exclusive methods of considering and mitigating * * * impacts on school facilities * * * that occur or might occur as a result of any legislative or adjudicative act, or both, by any state or local agency involving, but not limited to, the planning, use, or development of real property or any change of governmental organization or reorganization, as defined in Section * * * 56021 or 56073:

* * *

(1) Section 17620 of the Education Code.

(2) Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 * * *.

(b) * * * The provisions of this chapter are hereby deemed to provide full and complete school facilities mitigation and, notwithstanding Section 65858, or Division 13 (commencing with Section 21000) of the Public Resources Code * * *, or any other provision of state or local law, a state or local agency may not deny or refuse to approve a legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property or any change in governmental organization or reorganization, as defined in Section 56021 or 56073, on the basis that school facilities are inadequate.

(c) For purposes of this section, "school facilities" means any school-related consideration relating to a school district's ability to accommodate enrollment.

(d) Nothing in this chapter shall be interpreted to limit or prohibit the ability of a local agency to utilize other methods to provide school facilities if these methods are not levied or imposed in connection with, or made a condition of, a legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property or a change in governmental organization or reorganization, as defined in Section 56021 or 56073. Nothing in this chapter shall be interpreted to limit or prohibit the assessment or reassessment of property in conjunction with ad valorum taxes, or the placement of a parcel on the secured roll in conjunction with qualified special taxes as that term is used in Section 50079.

(e) Nothing in this section shall be interpreted to limit or prohibit the ability of a local agency to mitigate the impacts of land use approvals other than on the need for school facilities, as defined in this section.

(f) This section shall become inoperative * * * during any time that Section 65997 is operative and this section shall become operative at any time that Section 65997 is inoperative.

(Amended by Stats.1998, c. 407 (S.B.50), § 23, eff. Aug. 27, 1998, operative Nov. 4, 1998.)

§ 65997. Exclusive methods of mitigating environmental effects related to adequacy of school facilities

(a) The following provisions shall be the exclusive methods of mitigating environmental effects related to the adequacy of school facilities when considering the approval or the establishment of conditions for the approval of a development project, as defined in Section 17620, pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code:

(1) Chapter 12 (commencing with Section 17000) of Part 10 of the Education Code or Chapter 12.5 (commencing with Section 17070.10).

(2) Chapter 14 (commencing with Section 17085) of Part 10 of the Education Code.

(3) Chapter 18 (commencing with Section 17170) of Part 10 of the Education Code.

(4) Article 2.5 (commencing with Section 17430) of Chapter 4 of Part 10.5 of the Education Code.

(5) Section 17620 of the Education Code.

(6) Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 of the Government Code.

(7) Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 of the Government Code.

(b) A public agency may not, pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code or Division 2 (commencing with Section 66410) of this code, deny approval of a project on the basis of the adequacy of school facilities.

(c)(1) This section shall become operative on or after any statewide election in 2006, if a statewide general obligation bond measure submitted for voter approval in 2006 or thereafter that includes bond issuance authority to fund construction of kindergarten and grades 1 to 12, inclusive, public school facilities is submitted to the voters and fails to be approved.

(2)(A) This section shall become inoperative if subsequent to the failure of a general obligation bond measure described in paragraph (1) a statewide general bond measure as described in paragraph (1) is approved by the voters.

(B) Thereafter, this section shall become operative if a statewide general obligation bond measure submitted for voter approval that includes bond issuance authority to fund construction of kindergarten and grades 1 to 12, inclusive, public school facilities is submitted to the voters and fails to be approved and shall become inoperative if subsequent to the failure of the general obligation bond measure a statewide bond measure as described in this subparagraph is approved by the voters.

(d) Notwithstanding any other provision of law, a public agency may deny or refuse to approve a legislative act involving, but not limited to, the planning, use, or development of real property, on the basis that school facilities are inadequate, except that a public agency may not require the payment or satisfaction of a fee, charge, dedication, or other financial requirement in excess of that levied or imposed pursuant to Section 65995 and, if applicable, any amounts specified in Sections 65995.5 or 65995.7.

(Added by Stats.1998, c. 407 (S.B.50), § 24, eff. Aug. 27, 1998, operative Nov. 4, 1998.)

§ 65998. Scope of chapter

(a) Nothing in this chapter or in Section 17620 of the Education Code shall be interpreted to limit or prohibit the authority of a local agency to reserve or designate real property for a schoolsite.

(b) Nothing in this chapter or in Section 17620 of the Education Code shall be interpreted to limit or prohibit the ability of a local agency to mitigate the impacts of a land use approval involving, but not limited to, the planning, use, or development of real property other than on the need for school facilities.

(Added by Stats.1998, c. 407 (S.B.50), § 25, eff. Aug. 27, 1998, operative Nov. 4, 1998.)

§ 66001. Fee as condition of approval; agency requirements

(a) In any action establishing, increasing, or imposing a fee as a condition of approval of a development project by a local agency on or after January 1, 1989, the local agency shall do all of the following:

(1) Identify the purpose of the fee.

(2) Identify the use to which the fee is to be put. If the use is financing public facilities, the facilities shall be identified. That identification may, but need not, be made by reference to a capital improvement plan as specified in Section 65403 or 66002, may be made in applicable general or specific plan requirements, or may be made in other public documents that identify the public facilities for which the fee is charged.

(3) Determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed.

(4) Determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.

(b) In any action imposing a fee as a condition of approval of a development project by a local agency on or after January 1, 1989, the local agency shall determine how there is a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed.

(c) Upon receipt of a fee subject to this section, the local agency shall deposit, invest, account for, and expend the fees pursuant to Section 66006.

(d) For the fifth fiscal year following the first deposit into the account or fund, and every five years thereafter, the local agency shall make all of the following findings with respect to that portion of the account or fund remaining unexpended, whether committed or uncommitted:

(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 identified in paragraph (2) of subdivision (a).

(4) Designate the approximate dates on which the funding referred to in paragraph (3) is expected to be deposited into the appropriate account or fund.

When findings are required by this subdivision, they shall be made in connection with the public information required by subdivision (b) of Section 66006. The findings required by this subdivision need only be made for moneys in possession of the local agency, and need not be made with respect to letters of credit, bonds, or other instruments taken to secure payment of the fee at a future date. If the findings are not made as required by this subdivision, the local agency shall refund the moneys in the account or fund as provided in subdivision (e).

(e) Except as provided in subdivision (f), when sufficient funds have been collected, as determined pursuant to subparagraph (F) of paragraph (1) of subdivision (b) of Section 66006, to complete financing on incomplete public improvements identified in paragraph (2) of subdivision (a), and the public improvements remain incomplete, the local agency shall identify, within 180 days of the determination that sufficient funds have been collected, an approximate date by which the construction of the public improvement will be commenced, or shall refund to the then current record owner or owners of the lots or units, as identified on the last equalized assessment roll, of the development project or projects on a prorated basis, the unexpended portion of the fee, and any interest accrued thereon. By means consistent with the intent of this section, a local agency may refund the unexpended revenues by direct payment, by providing a temporary suspension of fees, or by any other reasonable means. The determination by the governing body of the local agency of the means by which those revenues are to be refunded is a legislative act.

(f) If the administrative costs of refunding unexpended revenues pursuant to subdivision (e) exceed the amount to be refunded, the local agency, after a public hearing, notice of which has been published pursuant to Section 6061 and posted in three prominent places within the area of the development project, may determine that the revenues shall be allocated for some other purpose for which fees are collected subject to this chapter and which serves the project on which the fee was originally imposed.

(Added by Stats.1987, c. 927, § 1, operative Jan. 1, 1989. Amended by Stats.1988, c. 418, § 8; Stats.1996, c. 569 (S.B.1693), § 1.)

§ 66002. Capital improvement plan; adoption; updates; hearings

(a) Any local agency which levies a fee subject to Section 66001 may adopt a capital improvement plan, which shall indicate the approximate location, size, time of availability, and estimates of cost for all facilities or improvements to be financed with the fees.

(b) The capital improvement plan shall be adopted by, and shall be annually updated by, a resolution of the governing body of the local agency adopted at a noticed public hearing. Notice of the hearing shall be given pursuant to Section 65090. In addition, mailed notice shall be given to any city or county which may be significantly affected by the capital improvement plan. This notice shall be given no later than the date the local agency notices the public hearing pursuant to Section 65090. The information in the notice shall be not less than the information contained in the notice of public hearing and shall be given by first-class mail or personal delivery.

(c) "Facility" or "improvement," as used in this section, means any of the following:

(1) Public buildings, including schools and related facilities; provided that school facilities shall not be included if Senate Bill 97 of the 1987–88 Regular Session is enacted and becomes effective on or before January 1, 1988.

(2) Facilities for the storage, treatment, and distribution of nonagricultural water.

(3) Facilities for the collection, treatment, reclamation, and disposal of sewage.

(4) Facilities for the collection and disposal of storm waters and for flood control purposes.

(5) Facilities for the generation of electricity and the distribution of gas and electricity.

(6) Transportation and transit facilities, including but not limited to streets and supporting improvements, roads, overpasses, bridges, harbors, ports, airports, and related facilities.

(7) Parks and recreation facilities.

(8) Any other capital project identified in the capital facilities plan adopted pursuant to Section 66002.

(Added by Stats.1987, c. 927, § 1, operative Jan. 1, 1989.)

§ 66003. Reimbursement agreements; inapplicability of §§ 66001 and 66002; operative date of chapter

Sections 66001 and 66002 do not apply to a fee imposed pursuant to a reimbursement agreement by and between a local agency and a property owner or developer for that portion of the cost of a public facility paid by the property owner or developer which exceeds the need for the public facility attributable to and reasonably related to the development. This chapter shall become operative on January 1, 1989.

(Added by Stats.1987, c. 927, § 1, operative Jan. 1, 1989. Amended by Stats.1988, c. 418, § 9; Stats.1989, c. 170, § 2.)

§ 66004. Establishment or increase of fees; applicable requirements

The establishment or increase of any fee pursuant to this chapter shall be subject to the requirements of Section 66018.

(Added by Stats.1988, c. 418, § 10. Amended by Stats.1990, c. 1572 (A.B.3228), § 15.)

§ 66005. Limitation on imposition of fees or exactions as condition of approval

(a) When a local agency imposes any fee or exaction as a condition of approval of a proposed development, as defined by Section 65927, or development project, those fees or exactions shall not exceed the estimated reasonable cost of providing the service or facility for which the fee or exaction is imposed.

(b) This section does not apply to fees or monetary exactions expressly authorized to be imposed under Sections 66475.1 and 66477.

(c) It is the intent of the Legislature in adding this section to codify existing constitutional and decisional law with respect to the imposition of development fees and monetary exactions on developments by local agencies. This section is declaratory of existing law and shall not be construed or interpreted as creating new law or as modifying or changing existing law.

(Formerly § 65959, added by Stats.1986, c. 1203, § 3. Renumbered § 66005 and amended by Stats.1988, c. 418, § 6.)

§ 66006. Local agency improvement fees; public availability of account or fund information

(a) If a local agency requires the payment of a fee specified in subdivision (c) in connection with the approval of a development project, the local agency receiving the fee shall deposit it with the other fees for the improvement in a separate capital facilities account or fund in a manner to avoid any commingling of the fees with other revenues and funds of the local agency, except for temporary investments, and expend those fees solely for the purpose for which the fee was collected. Any interest income earned by moneys in the capital facilities account or fund shall also be deposited in that account or fund and shall be expended only for the purpose for which the fee was originally collected.

(b)(1) For each separate account or fund established pursuant to subdivision (a), the local agency shall, within 180 days after the last day of each fiscal year, make available to the public the following information for the fiscal year:

(A) A brief description of the type of fee in the account or fund.

(B) The amount of the fee.

(C) The beginning and ending balance of the account or fund.

(D) The amount of the fees collected and the interest earned.

(E) 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.

(F) An identification of an approximate date by which the construction of the public improvement will commence if the local agency determines that sufficient funds have been collected to complete financing on an incomplete public improvement, as identified in paragraph (2) of subdivision (a) of Section 66001, and the public improvement remains incomplete.

(G) 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.

(H) The amount of refunds made pursuant to subdivision (e) of Section 66001 and any allocations pursuant to subdivision (f) of Section 66001.

(2) The local agency shall review the information made available to the public pursuant to paragraph (1) at the next regularly scheduled public meeting not less than 15 days after this information is made available to the public, as required by this subdivision. Notice of the time and place of the meeting, including the address where this information may be reviewed, shall be mailed, at least 15 days prior to the meeting, to any interested party who files a written request with the local agency for mailed notice of the meeting. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service.

(c) For purposes of this section, "fee" means any fee imposed to provide for an improvement to be constructed to serve a development project, or which is a fee for public improvements within the meaning of subdivision (b) of Section 66000, and that is imposed by the local agency as a condition of approving the development project.

(d) Any person may request an audit of any local agency fee or charge that is subject to Section 66023, including fees or charges of school districts, in accordance with that section.

(e) The Legislature finds and declares that untimely or improper allocation of development fees hinders economic growth and is, therefore, a matter of statewide interest and concern. It is, therefore, the intent of the Legislature that this section shall supersede all conflicting local laws and shall apply in charter cities.

(f) At the time the local agency imposes a fee for public improvements on a specific development project, it shall identify the public improvement that the fee will be used to finance.

(Formerly § 53077, added by Stats.1983, c. 921, § 1. Amended by Stats.1987, c. 1002, § 1. Renumbered § 66006 and amended by Stats.1988, c. 418, § 2; Stats.1988, c. 926, § 1. Amended by Stats.1989, c. 170, § 3; Stats.1992, c. 169 (A.B.2953), § 1; Stats. 1996, c. 569 (S.B.1693), § 2.)

§ 66007. Construction of public improvements or facilities; payment of fees or charges; residential development; time; definitions

(a) Except as otherwise provided in subdivision (b), any local agency that imposes any fees or charges on a residential development for the construction of public improvements or facilities shall not require the payment of those fees or charges, notwithstanding any other provision of law, until the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs first. However, utility service fees may be collected at the time an application for utility service is received. If the residential development contains more than one dwelling, the local agency may determine whether the fees or charges shall be paid on a pro rata basis for each dwelling when it receives its final inspection or certificate of occupancy, whichever occurs first; on a pro rata basis when a certain percentage of the dwellings have received their final inspection or certificate of occupancy, whichever occurs first; or on a lump-sum basis when the first dwelling in the development receives its final inspection or certificate of occupancy, whichever occurs first.

(b) Notwithstanding subdivision (a), the local agency may require the payment of those fees or charges at an earlier time if (1) the local agency determines that the fees or charges will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency has adopted a proposed construction schedule or plan prior to final inspection or issuance of the certificate of occupancy or (2) the fees or charges are to reimburse the local agency for expenditures previously made. "Appropriated," as used in this subdivision, means authorization by the governing body of the local agency for which the fee is collected to make expenditures and incur obligations for specific purposes.

(c)(1) If any fee or charge specified in subdivision (a) is not fully paid prior to issuance of a building permit for construction of any portion of the residential development encumbered thereby, the local agency issuing the building permit may require the property owner, or lessee if the lessee's interest appears of record, as a condition of issuance of the building permit, to execute a contract to pay the fee or charge, or applicable portion thereof, within the time specified in subdivision (a). If the fee or charge is prorated pursuant to subdivision (a), the obligation under the contract shall be similarly prorated.

(2) The obligation to pay the fee or charge shall inure to the benefit of, and be enforceable by, the local agency that imposed the fee or charge, regardless of whether it is a party to the contract. The contract shall contain a legal description of the property affected, shall be recorded in the office of the county recorder of the county and, from the date of recordation, shall constitute a lien for the payment of the fee or charge, which shall be enforceable against successors in interest to the property owner or lessee at the time of issuance of the building permit. The contract shall be recorded in the grantor-grantee index in the name of the public agency issuing the building permit as grantee and in the name of the property owner or lessee as grantor. The local agency shall record a release of the obligation, containing a legal description of the property, in the event the obligation is paid in full, or a partial release in the event the fee or charge is prorated pursuant to subdivision (a).

(3) The contract may require the property owner or lessee to provide appropriate notification of the opening of any escrow for the sale of the property for which the building permit was issued and to provide in the escrow instructions that the fee or charge be paid to the local agency imposing the same from the sale proceeds in escrow prior to disbursing proceeds to the seller.

(d) This section applies only to fees collected by a local agency to fund the construction of public improvements or facilities. It does not apply to fees collected to cover the cost of code enforcement or inspection services, or to other fees collected to pay for the cost of enforcement of local ordinances or state law.

(e) "Final inspection" or "certificate of occupancy," as used in this section, have the same meaning as described in Sections 305 and 307 of the Uniform Building Code, International Conference of Building Officials, 1985 edition.

(f) Methods of complying with the requirement in subdivision (b) that a proposed construction schedule or plan be adopted, include, but are not limited to, (1) the adoption of the capital improvement plan described in Section 66002, or (2) the submittal of a five-year plan for construction and rehabilitation of school facilities pursuant to subdivision (c) of Section 17017.5 of the Education Code.

(Amended by Stats.1998, c. 689 (S.B.1362), § 6.5.)

§ 66008. Expenditures; authorized purposes

A local agency shall expend a fee for public improvements, as accounted for pursuant to Section 66006, solely and exclusively for the purpose or purposes, as identified in subdivision (f) of Section 66006, for which the fee was collected. The fee shall not be levied, collected, or imposed for general revenue purposes.

(Added by Stats.1996, c. 569 (S.B.1693), § 3.)

§ 66016. Local agency fees; new fees and increases; procedures

(a) Prior to levying a new fee or service charge, or prior to approving an increase in an existing fee or service charge, a local agency shall hold at least one open and public meeting, at which oral or written presentations can be made, as part of a regularly scheduled meeting. Notice of the time and place of the meeting, including a general explanation of the matter to be considered, and a statement that the data required by this section is available, shall be mailed at least 14 days prior to the meeting to any interested party who files a written request with the local agency for mailed notice of the meeting on new or increased fees or service charges. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service. At least 10 days prior to the meeting, the local agency shall make available to the public data indicating the amount of cost, or estimated cost, required to provide the service for which the fee or service charge is levied and the revenue sources anticipated to provide the service, including General Fund revenues. Unless there has been voter approval, as prescribed by Section 66013 or 66014, no local agency shall levy a new fee or service charge or increase an existing fee or service charge to an amount which exceeds the estimated amount required to provide the service for which the fee or service charge is levied. If, however, the fees or service charges create revenues in excess of actual cost, those revenues shall be used to reduce the fee or service charge creating the excess.

(b) Any action by a local agency to levy a new fee or service charge or to approve an increase in an existing fee or service charge shall be taken only by ordinance or resolution. The legislative body of a local agency shall not delegate the authority to adopt a new fee or service charge, or to increase a fee or service charge.

(c) Any costs incurred by a local agency in conducting the meeting or meetings required pursuant to subdivision (a) may be recovered from fees charged for the services which were the subject of the meeting.

(d) This section shall apply only to fees and charges as described in Sections 51287, 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of this code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code.

(e) Any judicial action or proceeding to attack, review, set aside, void, or annul the ordinance, resolution, or motion levying a fee or service charge subject to this section shall be brought pursuant to Section 66022.

(Added by Stats.1990, c. 1572 (A.B.3228), § 20. Amended by Stats.1992, c. 487 (A.B.2567), § 1; Stats.1995, c. 657 (S.B.647), § 1; Stats.1995, c. 686 (S.B.660), § 6.5, eff. Oct. 10, 1995, operative Jan. 1, 1996.)

§ 66017. Development projects; adoption or increase of fees and charges

(a) Any action adopting a fee or charge, or increasing a fee or charge adopted, upon a development project, as defined in Section 66000, which applies to the filing, accepting, reviewing, approving, or issuing of an application, permit, or entitlement to use shall be enacted in accordance with the notice and public hearing procedures specified in Section 54986 or 66016 and shall be effective no sooner that[1] 60 days following the final action on the adoption of the fee or charge or increase in the fee or charge.

(b) Without following the procedure otherwise required for the adoption of a fee or charge, or increasing a fee or charge, the legislative body of a local agency may adopt an urgency measure as an interim authorization for a fee or charge, or increase in a fee or charge, to protect the public health, welfare and safety. The interim authorization shall require four-fifths vote of the legislative body for adoption. The interim authorization shall have no force or effect 30 days after its adoption. The interim authority shall contain findings describing the current and immediate threat to the public health, welfare and safety. After notice and public hearing pursuant to Section 54986 or 66016, the legislative body may extend the interim authority for an additional 30 days. Not more than two extensions may be granted. Any extension shall also require a four-fifths vote of the legislative body.

(Added by Stats.1990, c. 1572 (A.B.3228), § 20.)

§ 66018. Hearing

(a) Prior to adopting an ordinance, resolution, or other legislative enactment adopting a new fee or approving an increase in an existing fee to which this section applies, a local agency shall hold a public hearing, at which oral or written presentations can be made, as part of a regularly scheduled meeting. Notice of the time and place of the meeting, including a general explanation of the matter to be considered, shall be published in accordance with Section 6062a.

(b) Any costs incurred by a local agency in conducting the hearing required pursuant to subdivision (a) may be recovered as part of the fees which were the subject of the hearing.

(c) This section applies only to the adopting or increasing of fees to which a specific statutory notice requirement, other than Section 54954.2, does not apply.

(d) As used in this section, "fees" do not include rates or charges for water, sewer, or electrical service.

(Added by Stats.1990, c. 1572 (A.B.3228), § 20.)

§ 66018.5. Local agency defined

"Local agency," as used in this chapter, has the same meaning as provided in Section 66000.

(Added by Stats.1990, c. 1572 (A.B.3228), § 20.)

§ 66020. Development projects; exactions; protest procedures; refunds

(a) Any party may protest the imposition of any fees, dedications, reservations, or other exactions imposed on a development project, as defined in Section 66000, by a local agency by meeting both of the following requirements:

(1) Tendering any required payment in full or providing satisfactory evidence of arrangements to pay the fee when due or ensure performance of the conditions necessary to meet the requirements of the imposition.

(2) Serving written notice on the governing body of the entity, which notice shall contain all of the following information:

(A) A statement that the required payment is tendered or will be tendered when due, or that any conditions which have been imposed are provided for or satisfied, under protest.

(B) A statement informing the governing body of the factual elements of the dispute and the legal theory forming the basis for the protest.

(b) Compliance by any party with subdivision (a) shall not be the basis for a local agency to withhold approval of any map, plan, permit, zone change, license, or other form of permission, or concurrence, whether discretionary, ministerial, or otherwise, incident to, or necessary for, the development project. This section does not limit the ability of a local agency to ensure compliance with all applicable provisions of law in determining whether or not to approve or disapprove a development project.

(c) Where a reviewing local agency makes proper and valid findings that the construction of certain public improvements or facilities, the need for which is directly attributable to the proposed development, is required for reasons related to the public health, safety, and welfare, and elects to impose a requirement for construction of those improvements or facilities as a condition of approval of the proposed development, then in the event a protest is lodged pursuant to this section, that approval shall be suspended pending withdrawal of the protest, the expiration of the limitation period of subdivision (d) without the filing of an action, or resolution of any action filed. This subdivision confers no new or independent authority for imposing fees, dedications, reservations, or other exactions not presently governed by other law.

(d)(1) A protest filed pursuant to subdivision (a) shall be filed at the time of approval or conditional approval of the development or within 90 days after the date of the imposition of the fees, dedications, reservations, or other exactions to be imposed on a development project. Each local agency shall provide to the project applicant a notice in writing at the time of the approval of the project or at the time of the imposition of the fees, dedications, reservations, or other exactions, a statement of the amount of the fees or a description of the dedications, reservations, or other exactions, and notification that the 90-day approval period in which the applicant may protest has begun.

(2) Any party who files a protest pursuant to subdivision (a) may file an action to attack, review, set aside, void, or annul the imposition of the fees, dedications, reservations, or other exactions imposed on a development project by a local agency within 180 days after the delivery of the notice. Thereafter, notwithstanding any other law to the contrary, all persons are barred from any action or proceeding or any defense of invalidity or unreasonableness of the imposition. Any proceeding brought pursuant to this subdivision shall take precedence over all matters of the calendar of the court except criminal, probate, eminent domain, forcible entry, and unlawful detainer proceedings.

(e) If the court finds in favor of the plaintiff in any action or proceeding brought pursuant to subdivision (d), the court shall direct the local agency to

refund the unlawful portion of the payment, with interest at the rate of 8 percent per annum, or return the unlawful portion of the exaction imposed.

(f)(1) If the court grants a judgment to a plaintiff invalidating, as enacted, all or a portion of an ordinance or resolution enacting a fee, dedication, reservation, or other exaction, the court shall direct the local agency to refund the unlawful portion of the payment, plus interest at an annual rate equal to the average rate accrued by the Pooled Money Investment Account during the time elapsed since the payment occurred, or to return the unlawful portion of the exaction imposed.

(2) If an action is filed within 120 days of the date at which an ordinance or resolution to establish or modify a fee, dedication, reservation, or other exactions to be imposed on a development project takes effect, the portion of the payment or exaction invalidated shall also be returned to any other person who, under protest pursuant to this section and under that invalid portion of that same ordinance or resolution as enacted, tendered the payment or provided for or satisfied the exaction during the period from 90 days prior to the date of the filing of the action which invalidates the payment or exaction to the date of the entry of the judgment referenced in paragraph (1).

(g) Approval or conditional approval of a development occurs, for the purposes of this section, when the tentative map, tentative parcel map, or parcel map is approved or conditionally approved or when the parcel map is recorded if a tentative map or tentative parcel map is not required.

(h) The imposition of fees, dedications, reservations, or other exactions occurs, for the purposes of this section, when they are imposed or levied on a specific development.

(Added by Stats.1990, c. 1572 (A.B.3228), § 22. Amended by Stats.1992, c. 605 (A.B.2945), § 1; Stats.1993, c. 589 (A.B.2211), § 80; Stats.1996, c. 549 (A.B.3081), § 2.)

§ 66021. Developments and development projects; protest procedures

(a) Any party on whom a fee, tax, assessment, dedication, reservation, or other exaction has been imposed, the payment or performance of which is required to obtain governmental approval of a development, as defined by Section 65927, or development project, may protest * * * the establishment or imposition of the fee, tax, assessment, dedication, reservation, or other exaction * * * as provided in Section * * * 66020.

(b) The protest procedures of subdivision (a) do not apply to the protest of any tax or assessment (1) levied pursuant to a principal act that contains protest procedures, or (2) that is pledged to secure payment of the principal of, or interest on, bonds or other public indebtedness.

(Amended by Stats.1998, c. 689 (S.B.1362), § 7.)

§ 66022. Judicial actions to challenge fees and charges

(a) Any judicial action or proceeding to attack, review, set aside, void, or annul an ordinance, resolution, or motion adopting a new fee or service charge, or modifying or amending an existing fee or service charge, adopted by a local agency, as defined in Section 66000, shall be commenced within 120 days of the effective date of the ordinance, resolution, or motion.

If an ordinance, resolution, or motion provides for an automatic adjustment in a fee or service charge, and the automatic adjustment results in an increase in the amount of a fee or service charge, any action or proceeding to attack, review, set aside, void, or annul the increase shall be commenced within 120 days of the effective date of the increase.

(b) Any action by a local agency or interested person under this section shall be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

(c) This section shall apply only to fees, capacity charges, and service charges described in and subject to Sections 66013 and 66014.

(Added by Stats.1990, c. 1572 (A.B.3228), § 22.)

§ 66023. Requests for audits of local agency fees or charges; independent auditors; costs; local laws superseded

(a) Any person may request an audit in order to determine whether any fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of any product or service provided by the local agency. If a person makes that request, the legislative body of the local agency may retain an independent auditor to conduct an audit to determine whether the fee or charge is reasonable.

(b) Any costs incurred by a local agency in having an audit conducted by an independent auditor pursuant to subdivision (a) may be recovered from the person who requests the audit.

(c) Any audit conducted by an independent auditor to determine whether a fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of providing the product or service shall conform to generally accepted auditing standards.

(d) The procedures specified in this section shall be alternative and in addition to those specified in Section 54985.

(e) The Legislature finds and declares that oversight of local agency fees is a matter of statewide interest and concern. It is, therefore, the intent of the Legislature that this chapter shall supersede all conflicting local laws and shall apply in charter cities.

(f) This section shall not be construed as granting any additional authority to any local agency to levy any fee or charge which is not otherwise authorized by another provision of law, nor shall its provisions be construed as granting authority to any local agency to levy a new fee or charge when other provisions of law specifically prohibit the levy of a fee or charge.

(Added by Stats.1990, c. 1572 (A.B.3228), § 22.)

§ 66024. Development fees as special taxes; judicial actions

(a) In any judicial action or proceeding to validate, attack, review, set aside, void, or annul any ordinance or resolution providing for the imposition of a development fee by any city, county, or district in which there is at issue whether the development fee is a special tax within the meaning of Section 50076, the city, county, or district has the burden of producing evidence to establish that the development fee does not exceed the cost of the service, facility, or regulatory activity for which it is imposed.

(b) No party may initiate any action or proceeding pursuant to subdivision (a) unless both of the following requirements are met:

(1) The development fee was directly imposed on the party as a condition of project approval.

(2) At least 30 days prior to initiating the action or proceeding, the party requests the city, county, or district to provide a copy of the documents which establish that the development fee does not exceed the cost of the service, facility, or regulatory activity for which it is imposed. In accordance with Section 6257, the city, county, or district may charge a fee for copying the documents requested pursuant to this paragraph.

(c) For purposes of this section, costs shall be determined in accordance with fundamental fairness and consistency of method as to the allocation of costs, expenses, revenues, and other items included in the calculation.

(Added by Stats.1990, c. 1572 (A.B.3228), § 22.)

§ 66025. Local agency defined

"Local agency," as used in this chapter, means a local agency as defined in Section 66000.

(Added by Stats.1990, c. 1572 (A.B.3228), § 22.)

§ 66030. Legislative findings and intent

(a) The Legislature finds and declares all of the following:

(1) Current law provides that aggrieved agencies, project proponents, and affected residents may bring suit against the land use decisions of state and local governmental agencies. In practical terms, nearly anyone can sue once a project has been approved.

(2) Contention often arises over projects involving local general plans and zoning, redevelopment plans, the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), development impact fees, annexations and incorporations, and the Permit Streamlining Act (Chapter 4.5 (commencing with Section 65920)).

(3) When a public agency approves a development project that is not in accordance with the law, or when the prerogative to bring suit is abused, lawsuits can delay development, add uncertainty and cost to the development process, make housing more expensive, and damage California's competitiveness. This litigation begins in the superior court, and often progresses on appeal to the Court of Appeal and the Supreme Court, adding to the workload of the state's already overburdened judicial system.

(b) It is, therefore, the intent of the Legislature to help litigants resolve their differences by establishing formal mediation processes for land use disputes. In establishing these mediation processes, it is not the intent of the Legislature to interfere with the ability of litigants to pursue remedies through the courts.

(Added by Stats.1994, c. 300 (S.B.517), § 1.)

§ 66031. Actions subject to mediation proceeding; selecting a mediator; considerations; failure to select a mediator

(a) Notwithstanding any other provision of law, any action brought in the superior court relating to any of the following subjects may be subject to a mediation proceeding conducted pursuant to this chapter:

(1) The approval or denial by a public agency of any development project.

(2) Any act or decision of a public agency made pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(3) The failure of a public agency to meet the time limits specified in Chapter 4.5 (commencing with Section 65920), commonly known as the Permit Streamlining Act, or in the Subdivision Map Act (Division 2 (commencing with Section 66410)).

(4) Fees determined pursuant to Sections 53080 to 53082, inclusive, or Chapter 4.9 (commencing with Section 65995).

(5) Fees determined pursuant to Chapter 5 (commencing with Section 66000).

(6) The adequacy of a general plan or specific plan adopted pursuant to Chapter 3 (commencing with Section 65100).

(7) The validity of any sphere of influence, urban service area, change of organization or reorganization, or any other decision made pursuant to the Cortese–Knox Local Government Reorganization Act (Division 3 (commencing with Section 56000) of Title 5).

(8) The adoption or amendment of a redevelopment plan pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code).

(9) The validity of any zoning decision made pursuant to Chapter 4 (commencing with Section 65800).

(10) The validity of any decision made pursuant to Article 3.5 (commencing with Section 21670) of Chapter 4 of Part 1 of Division 9 of the Public Utilities Code.

(b) Within five days after the deadline for the respondent or defendant to file its reply to an action, the court may invite the parties to consider resolving their dispute by selecting a mutually acceptable person to serve as a mediator, or an organization or agency to provide a mediator.

(c) In selecting a person to serve as a mediator, or an organization or agency to provide a mediator, the parties shall consider the following:

(1) The council of governments having jurisdiction in the county where the dispute arose.

(2) Any subregional or countywide council of governments in the county where the dispute arose.

(3) The Office of Permit Assistance within the Trade and Commerce Agency, pursuant to its authority in Article 1 (commencing with Section 15399.50) of Chapter 11 of Part 6.7 of Division 3 of Title 2.

(4) Any other person with experience or training in mediation including those with experience in land use issues, or any other organization or agency which can provide a person with experience or training in mediation, including those with experience in land use issues.

(d) If the court invites the parties to consider mediation, the parties shall notify the court within 30 days if they have selected a mutually acceptable person to serve as a mediator. If the parties have not selected a mediator within 30 days, the action shall proceed. The court shall not draw any implication, favorable or otherwise, from the refusal by a party to accept the invitation by the court to consider mediation. Nothing in this section shall preclude the parties from using mediation at any other time while the action is pending.

(Added by Stats.1994, c. 300 (S.B.517), § 1. Amended by Stats.1995, c. 686 (S.B.660), § 7, eff. Oct. 10, 1995, operative Jan. 1, 1996; Stats.1996, c. 799 (S.B.1748), § 7.)

§ 66032. Tolling of time limitations; consideration of mediation as meeting of legislative or state body; reactivation of action; findings of mediator; applicability of Evidence Code sections

(a) Notwithstanding any provision of law to the contrary, all time limits with respect to an action shall be tolled while the mediator conducts the mediation, pursuant to this chapter.

(b) Mediations conducted by a mediator pursuant to this chapter that involve less than a quorum of a legislative body or a state body shall not be considered meetings of a legislative body pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), nor shall they be considered meetings of a state body pursuant to the Bagley–Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2).

(c) Any action taken regarding mediation conducted pursuant to this chapter shall be taken in accordance with the provisions of current law.

(d) Ninety days after the commencement of the mediation, and every 90 days thereafter, the action shall be reactivated unless the parties to the action do either of the following:

(1) Arrive at a settlement and implement it in accordance with the provisions of current law.

(2) Agree by written stipulation to extend the mediation for * * * another 90–day period.

* * *

* * *(e) Section 703.5 and * * * Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code * * * apply to any mediation conducted pursuant to this chapter.

(Amended by Stats.1997, c. 772 (A.B.939), § 7.)

§ 66033. Completion of mediation; report to office of permit assistance

(a) At the end of the mediation, the mediator shall file a report with the Office of Permit Assistance, consistent with Chapter 2 (commencing with Section * * * 1115) of Division 9 of the Evidence Code, containing each of the following:

(1) The title of the action.

(2) The names of the parties to the action.

(3) An estimate of the costs avoided, if any, because the parties used mediation instead of litigation to resolve their dispute.

(b) The sole purpose of the report required by this section is the collection of information needed by the office to prepare its report to the Legislature pursuant to Section 66036.

(Amended by Stats.1997, c. 772 (A.B.939), § 8.)

§ 66034. Failure of mediation to resolve action; settlement conferences

If the mediation does not resolve the action, the court may, in its discretion, schedule a settlement conference before a judge of the superior court. If the action is later heard on its merits, the judge hearing the action shall not be the same judge who conducted the settlement conference, except in counties with only one judge of the superior court.

(Added by Stats.1994, c. 300 (S.B.517), § 1.)

§ 66035. Adoption of rules, forms, and standards

The Judicial Council may adopt rules, forms, and standards necessary to implement this chapter.

(Added by Stats.1994, c. 300 (S.B.517), § 1.)

§ 66036. Report to legislature

By January 1, 2001, the Office of Permit Assistance within the Trade and Commerce Agency, in cooperation with the Judicial Council, shall report to the Legislature regarding the implementation of this chapter. The office shall consult with persons and interest groups with knowledge of the mediation process, and affected public agencies, including, but not limited to, councils of governments. The report may recommend the extension of the chapter, changes to the chapter, or the repeal of the chapter.

(Added by Stats.1994, c. 300 (S.B.517), § 1.)

§ 66037. Application of chapter to actions filed on or after January 1, 2006

No action filed on or after January 1, 2006, shall be subject to this chapter unless a later enacted statute, which is chaptered before January 1, 2006, extends this date or deletes this section.

(Amended by Stats.2002, c. 1016 (A.B.857), § 9.)