

Date of Hearing: May 13, 2015

ASSEMBLY COMMITTEE ON EDUCATION
Patrick O'Donnell, Chair
AB 715 (Daly) – As Introduced February 25, 2015

SUBJECT: Residential development: school facilities fees

SUMMARY: Revises, for the purpose of calculating fees levied by school districts for the construction or reconstruction of school facilities, the definition of "assessable space" to specify that a covered walkway, uncovered walkway, and enclosed walkway are excluded from the calculation, and that similarly excluded areas include, but are not limited to, a bike storage locker or detached personal property storage space that is not a part of the existing livable residential structure.

EXISTING LAW:

Under the Education Code:

- 1) Authorizes the governing board of any school district 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. (Education Code (Section 17620(a)(1))
- 2) Specifies that "construction" and "assessable space" have the same meaning as defined in Section 65995 of the Government Code. (Section 17620(a)(2))
- 3) Prohibits a city or county, whether general law or chartered, or the office of Statewide Health Planning and Development, from issuing 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. Requires the school district to issue the certification immediately upon compliance with the fee, charge, dedication, or other requirement. (Section 17620(b))

Under the Government Code:

- 4) Specifies various levels of fees that may be assessed to fund school facilities and the types of construction projects subject to the fees. Authorizes \$1.93 per square foot of assessable space in the case of residential construction, including the location, installation, or occupancy of manufactured homes and mobile homes, and \$.31 per square foot of chargeable covered and enclosed space for any commercial or industrial construction. (Section 65995(b)(1)(2))
- 5) Specifies that the fee limits for residential and commercial or industrial construction 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 (SAB) at its January meeting, which increase shall be effective as of the date of that meeting. (Section 65995(b)(3))

- 6) Defines "assessable space" as 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. Specifies that 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. (Section 65995(b)(1))
- 7) Requires the amount of the square footage within the perimeter of a residential structure to 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. (Section 65995(b)(1))
- 8) Specifies that the payment or satisfaction of a fee, charge, or other requirement levied or imposed in the amount specified in Government Code Sections 65995, 65995.5 or 65995.7 are deemed to be full and complete mitigation of the impacts of any legislative or adjudicated act, or both, involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization, on the provision of adequate school facilities. (Section 65995(h)).

FISCAL EFFECT: None. This bill is keyed non-fiscal by the Legislative Counsel.

COMMENTS: *Background.* Prior to the enactment of SB 50 (L. Greene), Chapter 407, Statutes of 1998, which established the School Facility Program (SFP), developers were assessed a mitigation fee of \$1.50 per square foot of livable space for each newly constructed house. This fee provided a share of the funds needed for the construction of schools to accommodate new pupils expected to be served as result of the new development. In addition to this fee, local governments also had the authority, confirmed by the courts through litigation popularly known as the *Mira, Hart* and *Murrieta* line of cases, to require developers to pay for additional school-related expenses as identified in local environmental impact reports.

SB 50 established the current School Facility Program and changed the method for determining the share of school construction costs that developers would pay, which provided consistency in the amount of fees developers pay to build schools to accommodate new developments. SB 50 suspended the threat of lawsuits and the ability of local governments to deny new developments on the basis of inadequate schools.

SB 50 established three levels of fees. Level I is the mitigation fee based on square footage. SB 50 increased the pre-SB 50 fee from \$1.50 to \$1.93 per square foot with an inflation adjustment every two years according to the class B construction index as determined by the SAB, the body that allocates state bond funds and oversees the administration of the SFP, at its January meeting. The fee is currently at \$3.36 per square foot for residential construction and \$.54 per square foot for commercial/industrial construction, and is assessed if the district conducts a Justification Study that establishes the connection between the development coming into the district and the assessment of fees to pay for the cost of the facilities needed to house future students. Levels II and III are based on availability of state bond funds. The developer fee amounts are based on the state grant levels for Level II and twice the state grant levels for Level III.

Assessable space. SB 50 defined "assessable space" for residential construction as all of the square footage *within the perimeter* of the residential structure. SB 50 excludes any carport, walkway, garage, overhang, patio, enclosed patio, detached accessory structure, or similar area.

What does this bill do? This bill, sponsored by the California Apartment Association, expands the assessable space exclusions to include any covered walkway, uncovered walkway, and enclosed walkway. The bill also specifies that exclusion of a "similar area" includes, but is not limited to, a bike storage locker or detached personal property storage space that is not a part of the existing livable residential structure.

"Assessable space" is determined by a city or county building department and the fee must be determined and paid before a building permit is issued. According to the author's office, the intent of the bill is not to expand excluded areas, but to provide some level of clarification and consistency. Because the law is not specific, building and planning departments throughout the state have different interpretations of what is assessable.

Walkways. Current law specifies that what is countable includes the area "within" the perimeter of a residential building. It is up to city or county planning departments to determine which areas "within" the perimeters are counted, commonly in accordance with California building standards practices. While walkways outside an exterior wall or a door are not counted, a hallway or walkway inside a residential structure is counted. Adding "covered" or "uncovered" before walkway is clarifying in nature and does not change what is currently assessable, but the bill's inclusion of "enclosed walkway" may be construed as excluding inside hallways or walkways that are currently assessable.

Opposition, including the Orange County Department of Education (OCDE), has raised this concern. The OCDE states, "Prior to this bill being introduced, there was disagreement about how livable space should be defined in a development in a part of the City of Santa Ana that is in the Tustin Unified School District [USD]. The developer in this case challenged the payment of fees on internal hallways that the developer deemed to be 'non-livable space.' An appeal to the City's Planning Commission found for the school district. What is at stake is no small amount of developer fee revenue. In all, developers in this portion of the district have challenged the internal hallway fees which total \$930,343,000. Should AB 715 have been in law when these fees had been levied, the fee revenue, which serves as a part of the local school construction match in Tustin USD, would have been reduced by almost \$1 million."

According to the author, this bill is intended to clarify that walkways may be covered or uncovered and is not intended to affect hallways inside the perimeter of a residential building. **Staff recommends** striking "enclosed walkway" to eliminate any confusion.

Bike storage lockers. The bill's expansion of excluded "similar area" to include, but not be limited to, exclusion of "detached bike storage lockers" is consistent with current law if the lockers are in separate units outside of the residential structure. In the Tustin USD conflict, the lockers are separate from the apartment units, but are located in a corridor within the perimeter of a residential building. If these lockers increase the square footage available to a resident, similar to closets inside an apartment unit, the Committee may wish to consider whether they should be assessed. The Committee may also wish to consider whether a detached bike storage locker is similar to a detached accessory structure currently excluded as assessable space. **Staff recommends** clarifying that a detached accessory structure includes a detached bike storage locker. Adding "including, but not limited to," is ambiguous and may perpetuate the

inconsistencies in assessing "assessable space" of concern to the author. **Staff recommends** striking the remaining parts of the bill.

Financing school facilities. SB 50 not only standardized the amount and levels of developer fees, the bill also established a funding program that relies on a partnership between the state through state bond funds, local communities through local bond funds, and developers through developer fees. The last statewide bond was passed in November 2006. Funds for the construction of new schools and the modernization of existing facilities were exhausted in 2012. The Governor, in his 2015-16 budget, proposes to decrease the level of state funding substantially and increase local contributions by adjusting the tax rates for local bonds and modifying developer fees by consolidating the three levels into one fee at a level between Level II and Level III, subject to local negotiation.

Arguments in support. The California Apartment Association states, "Advances in apartment design and construction have created confusion for local jurisdictions regarding what is considered 'assessable space' under state statute. As environmental consciousness and bike ridership have increased, many new apartment structures have added detached bike storage lockers and other types of storage, which are separate from the apartment unit. Similarly, many developers have put covers on walkways to accommodate tenants and those with disabilities. AB 715 would make it clear that covered walkways and detached bike lockers and storage are exempt from assessment, just as 'walkways' and 'detached accessory structures' are today in current law."

Arguments in opposition. The Association of California School Administrators (ACSA) states, "Since 1986, when the state allowed school district levied developer fees, the definition of assessable space has included internal hallways; although, districts typically do not levy fees on external or covered walkways. By excluding internal hallways from the definition of assessable space, AB 715 would significantly reduce the chargeable square footage that fees could be levied upon. ACSA believes that the legislature should not approve significant changes to the financing of school facilities without consideration to the overall program. The future of state participation in the funding of school facilities is at risk. We do not believe this is the time to limit legitimate developer fee square footage from financing needed school facilities."

REGISTERED SUPPORT / OPPOSITION:

Support

California Apartment Association

Opposition

Association of California School Administrators
California Association of School Business Officials
California School Boards Association
Coalition for Adequate School Housing
Orange County Department of Education

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