Policy 7211: Developer Fees **Status:** ADOPTED

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CSBA NOTE: The following policy is optional. Education Code 17620-17621 and Government Code 65995-65995.7 provide authority for three levels of developer fees that may be levied by school districts on residential, commercial, and industrial construction to mitigate the impact of increased enrollment on school facilities. Before imposing developer fees, the Governing Board must conduct a fee justification study and comply with other requirements.

Due to the failure of state bond measure Proposition 13 in March 2020, Government Code 65997 is operative until a new state bond measure is approved. Pursuant to Government Code 65997, public agencies may, on the basis of the inadequacy of school facilities, deny or refuse to approve a "legislative" act but may not require the payment of a fee in excess of that imposed pursuant to Government Code 65995-65995.7. Courts have distinguished between legislative acts (e.g., zoning ordinances) and adjudicative acts (e.g., subdivision approvals, variances, and conditional use permits). Districts with specific questions as to the operation of Government Code 65997 should consult legal counsel.

Level 1 fees, the basic mitigation fee, may be applied to residential, commercial, and industrial construction projects and must be within the limits established by law and the State Allocation Board (SAB). Level 2 fees apply only to residential construction, and the amount of the fee varies across districts as determined through a school facilities needs analysis. Level 3 fees may be double the amount of Level 2 fees, but may only be collected when SAB certifies that state funds for new school facility construction are not available.

Pursuant to Education Code 17620, some types of construction may be exempted from the developer fee. Districts should consult with legal counsel as appropriate.

In order to finance the construction or reconstruction of school facilities needed to accommodate increased student enrollment resulting from new development, the Governing Board may establish, levy, and collect developer fees on residential, commercial, and industrial construction within the district, subject to restrictions specified by law.

Level 1 Fees: Residential, Commercial and Industrial Construction

CSBA NOTE: For Level 1 fees, Government Code 65995 establishes a maximum amount of fee, which is adjusted for inflation by SAB every two years. In order to levy developer fees, Government Code 66001 requires that the Board conduct a fee justification study which demonstrates a reasonable relationship between residential, commercial, and industrial development in the district and the need for additional school facilities. Pursuant to Government Code 66001 and 66016, before increasing any fee, districts must update their fee justification study and satisfy the notice and hearing requirements, as specified below. Education Code 17622 requires separate, special findings when levying fees on spaces enclosed for agricultural purposes.

Courts have held that boards must be able to show that a valid method was used in the fee justification study. In Summerhill Winchester LLC v. Campbell Union School District, the Court of

Appeal concluded that a fee justification study must include the following three factors: (1) a projection of the total amount of new housing expected to be built within the district; (2) an estimate of how many students will be generated by the new development; and (3) an estimate of what it will cost to provide the necessary school facilities for the new students. Districts with questions about the adequacy of a fee justification study or how to analyze the reasonableness of a fee in relation to the type of development at issue should consult legal counsel.

Before taking action to establish, increase, or impose Level 1 developer fees, the Board shall conduct a fee justification study which: (Government Code 66001)

1. Identifies the purpose of the fee and the use to which the fee will be put

2. Determines a reasonable relationship between the fee's use and the type of development project for which the fee is imposed

3. Determines a reasonable relationship between the need for the facility and the type of development project for which the fee is imposed

4. Determines a reasonable relationship between the amount of the fee and the cost of the facility or portion of the facility attributed to the development for which the fee is imposed

Before levying developer fees or prior to increasing an existing fee, the Board shall hold a public hearing. The Superintendent or designee shall mail notice of the time and place of the meeting at which a public hearing shall occur, including a general explanation of the matter to be considered and a statement that the required data are available, at least 14 days prior to the meeting to any interested party who has requested such information. 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 district may charge a fee reasonably related to the cost of providing these materials. (Government Code 66016)

Information on the anticipated amount of fees, other available funds and funding sources, and the estimated cost of planning, land acquisition, and school construction shall be made available to the public at least 10 days before the hearing. (Government Code 66016)

At the hearing, the Board shall adopt a resolution for the levying of the developer fees. (Government Code 66016)

The resolution shall set forth:

1. The purpose of the fee, the use to which the fee is to be put, and the public improvement(s) that the fee will be used to finance (Government Code 66001, 66006)

2. The Board's findings of reasonable relationship which justify the fees pursuant to Government Code 66001

3. If the district requires payment of the fee at a time earlier than the date of final inspection or the issuance of a certificate of occupancy, the district's determination of either of the following conditions which allow collection of the fees at the time when building permits are issued: (Government Code 66007)

    a. That the fees are to reimburse the district for previous expenditures

b. That the fees shall be collected for public improvements or facilities for which an account has been established, funds have been appropriated, and the district has adopted a proposed construction schedule or plan

In the case of any commercial or industrial development, the Board shall make 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. The Board shall also 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. (Education Code 17621)

Level 2 Fees: Residential Construction

CSBA NOTE: Government Code 65995.5 allows the Board to impose a fee on residential construction that is higher than the Level 1 fee limit set forth in Government Code 65995 if the district makes a timely application to SAB for new construction funding under the State Facilities Program for which it is determined to be eligible by SAB pursuant to Education Code 17071.10-17071.76. In addition, Government Code 65995.5 requires the district to adopt a facility needs analysis and to satisfy the cost-saving/revenue-enhancing measures described in that section. The facility needs analysis required by Government Code 65995.6 serves a similar purpose as the fee justification study detailed above, but specifies different legal requirements, as well as a different approval and adoption process. Government Code 65995.5 clarifies that developer fees may be expended on the costs of performing the needs analysis as well as on the administrative costs associated with collecting the fees.

In order to impose Level 2 residential construction fees within the limits of Government Code 65995.5, the Board shall, in addition to fulfilling the requirements above for Level 1 fees, undertake the following: (Government Code 65995.5)

1. Make a timely application to the State Allocation Board (SAB) for new construction funding and be determined to be eligible by SAB

2. Conduct and adopt a school facility needs analysis pursuant to Government Code 65995.6

3. Satisfy at least two of the requirements set forth in Government Code 65995.5(b)(3)(A-D)

CSBA NOTE: Government Code 65352.2 requires the district to provide the notification specified below to the appropriate city or county planning agency. If the parties decide to meet, Government Code 65352.2 specifies issues that may be considered at the meeting.

At least 45 days prior to completion of the school facility needs analysis, the Board shall notify and provide copies of the analysis to the planning commission or agency of the city or county with land use jurisdiction within the district. Upon request of either party, the Board and city or county shall meet within 15 days following notification. (Government Code 65352.2)

The Board shall adopt the school facility needs analysis by resolution at a public hearing. (Government Code 65995.6)

This analysis shall not be adopted until the analysis, in its final form, has been made available to the public for a period of not less than 30 days. Prior to its adoption, the public shall have the opportunity to review and comment on the analysis and the Board shall respond to written

comments it receives regarding the analysis. (Government Code 65995.6)

Not less than 30 days prior to the hearing, notice of the time and place of the hearing, including the location and procedure for viewing or requesting a copy of the proposed analysis, shall be published in at least one newspaper of general circulation within the jurisdiction of the district. If there is no paper of general circulation, the notice shall be posted in at least three conspicuous places within the district's jurisdiction not less than 30 days prior to the hearing. (Government Code 65995.6)

In addition, the Superintendent or designee shall mail a copy of the 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 district may charge a fee reasonably related to the cost of providing these materials. (Government Code 65995.6)

During the period of public review, the analysis shall be provided to the local agency responsible for land use planning for its review and comment. (Government Code 65995.6)

CSBA NOTE: Government Code 65995.6 provides that if the school facility needs analysis is revised during the period of public review or at the public hearing, the approval process must recommence (e.g., another 30-day review period, published notice, etc.).

The school facility needs analysis may be revised at any time. The revision is subject to the same conditions and requirements applicable to the adoption of the analysis. The existing school building capacity shall be recalculated as part of any revision to the needs analysis. (Government Code 65995.6)

CSBA NOTE: Pursuant to Government Code 65995.6, the fees take effect immediately upon adoption and are effective for only one year. After one year, the district must repeat the adoption process.

The fees authorized by Government Code 65995.6 and 65995.7 shall be adopted by resolution as part of the adoption or revision of the school facilities needs analysis. The fees shall take effect immediately upon adoption of the resolution and may not be effective for more than one year. (Government Code 65995.6)

Level 3 Fees: Residential Construction

CSBA NOTE: Government Code 65995.7 authorizes a district that is eligible to receive the Level 2 funding the authority to levy a still higher fee on residential construction (Level 3 funding) upon a determination by SAB that state funds are no longer available.

When Level 3 fees are authorized by law and the district qualifies for Level 2 fees pursuant to Government Code 65995.5, the Board may assess a fee on residential construction pursuant to Government Code 65995.7.

The notice and hearing requirements, resolution requirement, and term of effectiveness for Level 3 fees shall be the same as the requirements for Level 2 fees as specified above. (Government Code 65995.7)

Use of Fees

CSBA NOTE: Pursuant to Government Code 66006, the district may establish a reasonable annual charge, based on estimated cost, for sending the following notice.

The Board shall review information provided by the Superintendent or designee pursuant to Government Code 66006 regarding each account or fund into which developer fees have been deposited, at the first regularly scheduled public Board meeting which occurs 15 days after the information is made available to the public. Fifteen-day prior notice of this meeting shall be mailed to any parties filing a written request pursuant to Government Code 66006. (Government Code 66006)

CSBA NOTE: Pursuant to Government Code 66001, if the following findings are not made every five years as required, the district may be required to refund the moneys in the account or fund pursuant to Government Code 66006(e).

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

1. Identify the purpose to which the fee is to be put

2. Demonstrate a reasonable relationship between the fee and the purpose for which it is charged

3. Identify all sources and amounts of funding anticipated to complete financing in incomplete improvements originally identified

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