

Legislature Corrects Error Regarding Requirements for Schools' Adoption of Developer Fee Justification Studies

September 29, 2022
Number 44

Written by:

Harold M. Freiman
Partner
Walnut Creek Office

William F. Charley
Associate
Walnut Creek Office

On July 19, 2022, Governor Newsom signed Assembly Bill (AB) 2536 into law. AB 2536 includes a provision to correct a drafting error in AB 602 from the prior legislative year that had sparked confusion for school districts as to the applicability of new requirements for local educational agencies conducting developer fee studies.

AB 2536 will take effect on January 1, 2023 and will allow school districts to revert to the procedures for noticing and adopting developer fee justification studies that were in place prior to January 1, 2022. Among other things, those procedures allowed school districts to adopt a fee study simultaneously with adoption of new or increased developer fee amounts.

Background

The earlier bill, AB 602, added the following requirements:

1. All local agencies must adopt a supporting fee justification study prior to adopting any new development fee or increase to an existing development fee.
2. Local agencies must post a 30-day notice of the public hearing where the study will be adopted and provide that same notice to any member of the public that had requested notice.
3. Justification studies must be updated at least every eight years, from the period beginning on January 1, 2022.

AB 602 went into effect on January 1, 2022, and immediately sowed uncertainty as to whether or not these new requirements applied to school districts.

AB 602's legislative history suggested that school districts were not intended to be affected. Additionally, the new requirements conflicted with the existing statutory process that governs the manner in which school districts notice and adopt impact fees and fee justification studies. As we had noted in our [2022 Client News Brief Number 14](#), through correspondence with staff of the Assembly Member who authored AB 602, we were informed that a legislative "clean up" was likely in process that would restore the status quo for school districts. The new legislation, AB 2536, explicitly amends Government Code section 66016.5 to clarify that it applies only to

cities, counties, or special districts, and has corrected the former “local agency” definition that had encompassed school districts.

AB 2536 was not enacted as an urgency measure, so AB 602 continues to apply to school districts until the “clean up” legislation goes into effect on January 1, 2023.

Takeaways

- Starting on January 1, 2023, the new adoption and noticing requirements under Government Code section 66016.5 will no longer apply to school districts.
- Until then, school districts should continue to adopt a fee study prior to adopting any associated development fee or an increase in any existing fees. Starting in 2023, school districts will again be able to adopt the impact fee nexus study simultaneously with the adopted fee amounts in the same action.
- School districts should continue to adhere to the 30-day notice period for the public hearing where the study will be adopted and provide that same notice to any member of the public that requests notice. After the “clean up” legislation goes into effect on January 1, 2023, school districts will again only be required to provide a 14-day notice of the public hearing where studies could be adopted.

Lozano Smith publishes the *Developer Fee Handbook for School Facilities: A User’s Guide to Qualifying for, Imposing, Increasing, Collecting, Using and Accounting for School Impact Fees in California*. The Handbook is intended to help school districts reduce their legal costs by providing comprehensive information regarding school impact fees. The Handbook contains procedures, timelines, checklists, and forms to be used when adopting and implementing new fees and/or increases.

Lozano Smith has made the current version of the Handbook available [here](#). For more information on the Developer Fee Handbook or how to access the Handbook, you may also contact our Client Services department at clientservices@lozanosmith.com or call 800.445.9430.

If you have any questions about the applicability of AB 602 or AB 2536, or developer impact fees in general, please contact the author of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.