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# SENATE COMMITTEE ON EDUCATION

Senator Carol Liu, Chair  
2015 - 2016 Regular

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**Bill No:** AB 715  
**Author:** Daly  
**Version:** May 20, 2015  
**Urgency:** No  
**Consultant:** Kathleen Chavira  
**Hearing Date:** June 17, 2015  
**Fiscal:** No

**Subject:** Residential development: school facilities fees

## SUMMARY

This bill modifies the calculation of developer fees for determining school facilities fees on residential construction by redefining “assessable space” to exclude covered or uncovered walkways and detached bike storage lockers.

## BACKGROUND

Existing law 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, as specified. (Education Code § 17620)

Existing law provides for the payment of fees, charges, dedications or other requirements against a development project. (Government Code § 65995 – 65998)

Existing law authorizes a district to levy per square footage fees of \$1.93 per square foot of assessable space for residential construction and \$0.31 for commercial or industrial construction for chargeable covered and enclosed space, and provides for an inflation adjustment of this amount every two years, as determined by the State Allocation Board at its January meeting. In the case of residential construction, “assessable space” is defined 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. Existing law requires the building department of the city or county issuing the building permit, in accordance with the standard practice of that city or county, to calculate the amount of the square footage within the perimeter of a residential structure. (Government Code § 65995)

## ANALYSIS

This bill modifies the calculation of developer fees for determining school facilities fees on residential construction. It:

- 1) Maintains the definition of “assessable space” to mean all the square footage within the perimeter of a residential space.
- 2) Specifically excludes a covered or uncovered walkway from this definition.
- 3) Specifically excludes a detached bike storage locker from this definition.

**STAFF COMMENTS**

- 1) ***Need for the bill.*** According to the author, advances in apartment design and construction have created confusion for local jurisdictions regarding what is considered “assessable space.” Many new apartment complexes feature covered walkways for the comfort of tenants and to meet American with Disabilities Act (ADA) requirements. In addition, particularly in urban areas, apartment communities are adding detached bike storage. According to the author, this bill is intended to clarify existing law with regards to assessable space and ensure that it is consistently applied state-wide.
- 2) ***Related disputes.*** Both the Orange County Department of Education (OCDE) and the Santa Ana Unified School District report that, prior to the introduction of this bill, there has been disagreement, and two recent appeals of decisions by the cities of Tustin and Santa Ana, in relation to development projects within the Tustin Unified School District. These disputes arose over whether space internal to the perimeter of a development should be assessable. In this case, the developer 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 was found in favor of the school district. The OCDE reports that challenges by developers regarding the internal hallway fees totaled \$930,343,000 in developer fees. Both the District and the OCDE assert that the provisions of this bill would have resulted in a reduction of fee revenue for local school construction of almost \$1 million for the Tustin Unified School District.
- 3) ***Developer fees.*** SB 50 (Green, Chapter 407, Statutes of 1998) in addition to authorizing a \$9.2 billion education bond and revising the School Facility Construction program, revised developer fee procedures for school facility purposes. SB 50 authorized three different levels of developer fees to be assessed under specified conditions:
  - a) Level 1 – A district is authorized to levy per square footage fees of \$1.93 per square foot for residential construction and \$0.31 for commercial or industrial construction to be adjusted for inflation every two years. This fee level is currently at \$3.36 per square foot for residential construction and \$0.54 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.
  - b) Level 2 – A district may levy Level 2 fees, which may not exceed 50% of construction and site acquisition and development costs. If it has conducted a needs analysis, as specified, has SAB approval of eligibility for state funding and meets two of four conditions related to the passage of a local bond, debt capacity, and demonstrated facilities needs.
  - c) Level 3 – A district is authorized to seek 100 percent of school facilities costs if the state has exhausted state school bond funds and the State Allocation Board is no longer approving apportionments for new construction projects.

This bill proposes changes to the definition of “assessable space” for purposes of calculating Level 1 developer fees.

- 4) ***Current status of the School Facilities Program (SFP).*** Bond authority for new construction and modernizations programs has essentially been depleted, respectively, since July 2012 and May 2012.

Since 2009, the State Allocation Board (SAB) has been making "unfunded approvals" which represented approved projects waiting to convert to funding apportionments when bonds are sold and cash becomes available. In addition, since November 1, 2012, the SAB has maintained an "Applications Received Beyond Bond Authority" list. This list is presented to the SAB for acknowledgement, but not approval. Because the applications are not fully processed for final grant determination, the project funding amounts on the list are only estimates. As of January 2015, the list indicated 116 new construction applications totaling \$571 million and 200 modernizations applications of about \$330 million.

- 5) ***Related Governor’s proposal.*** Amid concerns about the complexity and structure of the current program and the state's increasing debt service obligations, the Governor has proposed significant changes to the way school facilities are funded. In order to allow districts to better meet their facilities needs at the local level, the Governor's 2015-16 budget proposed to:

- a) Expand revenue generation tools at the local level by expanding local funding capacity and increasing caps on local bond indebtedness;
- b) Restructure developer fees to set one level for all projects at a level between existing Level II and Level III fees subject to local negotiation; and
- c) Expand allowable uses of Routine Restricted Maintenance Funding to authorize the pooling of these funds over multiple years for modernization and new construction projects.

The Governor has also noted that he is prepared to engage with the Legislature and education stakeholders to shape a future state program that is focused on districts with the greatest need, including communities with low property values and few borrowing options, as well as overcrowded schools.

- 6) ***Is this the right time for change?*** Under current law funding for new construction and modernization of school facilities comes from both state and local sources. Current law establishes the School Facility Program under which the state provides general obligation bond funding for various school construction projects. Local funding comes from a variety of sources including local General Obligation bonds, Mello-Roos bonds and developer fees.

Notwithstanding the potential need for clarity, in light of the lack of state general obligation bond funding, and the uncertain future of such funding, should this Committee endorse any changes to the definitions of “assessable space” for purposes of calculating developer fees?

- 7) **Clarity or more confusion?** Current law specifies that all square footage within the perimeter of a residential structure is assessable space and specifically excludes any carport, walkway, garage, overhang, patio, enclosed patio, detached accessory structure or similar area from this definition. City and County building departments determine which areas within the perimeter are counted for this purpose, in accordance with the standard practice of that city or county in calculating structural perimeters.

Current law already provides for the exclusion of a detached accessory structure or similar area. Arguably, current law would already accommodate bike storage lockers outside of the residential structure. But would this bill create an incentive for developers to avoid fees by shifting interior closet space to exterior “bike storage” that would still be within the perimeter of the residential structure? Should bike storage lockers be excluded, if similar to closets within a unit, they increase the square footage available to a resident?

**Staff recommends** the bill be amended to delete “including a detached bike storage locker.”

## **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  
Santa Ana Unified School District

**-- END --**