Blogs
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California Land Use & Development Law Report

Court Blocks Implementation of Level 3 School Fees

A Sacramento Superior Court judge has issued a temporary restraining order barring the State Allocation Board from formally notifying the California Senate and Assembly that state funds for new school facility construction are no longer available. The order, issued yesterday, effectively blocks implementation of Level 3 school fees, which would otherwise have been triggered as a result of the notification. As we reported yesterday (see State Allocation Board Approves Level 3 Fees), on May 25, the State Allocation Board voted to provide notice to the Senate and Assembly that "state funds for new school facility construction are not available." Under Government Code § 65595.7, this notice authorizes school districts that have adopted Level 2 fees to increase the fees to a Level 3 rate, which may be up to 200% of the Level 2 fee. Under the State School Facility Program, Level 2 fees are intended to fund 50% of the cost of providing school facilities for new residential development, with the other half paid for from state bond revenues. However, upon a determination by the State Allocation Board that such state funds have been exhausted, the law authorizes school districts to increase their fees to cover the full cost of new facilities. The formal trigger for Level 3 fees is the notice from the SAB to the Senate and Assembly that school facility funds are not available. The judge's order barring the SAB from transmitting the notice results from a lawsuit filed by the California Building Industry Association on the same day as the SAB's action. In the suit, CBIA contends that the SAB erred in concluding that state funds have been exhausted because funds from bonds authorized by the voters in 2006 through Proposition 1D remain available for new school construction. CBIA maintains that the SAB used "creative accounting" to relabel certain funds designated under Proposition 1D for new construction as "seismic repair" funds and concluded that such funds were therefore not available for new construction. This action, CBIA argues, was unlawful both because only the legislature or the voters are authorized to reallocate funds approved for a specific purpose by the voters, and because under Proposition 1D, seismic repair funds are a subcategory of the funds approved for new construction. The court's decision is not a ruling on the merits of the CBIA's claims. Rather, it is intended to preserve the status quo pending a hearing on CBIA's motion for a preliminary injunction, set for July 1, 2016. The restraining order will remain in effect until that hearing, at which time the court will decide whether to extend the bar against the SAB notice pending a trial on the merits, which could be several months away. In the interim, CBIA, together with the Coalition for Adequate School Housing, a school district-sponsored advocacy group, will continue to campaign for voter approval of a $9 billion school bond initiative on the November 2016 ballot. This initiative, placed on the ballot through the efforts of Californians for Quality Schools -- an entity formed by CBIA and CASH -- would include $3 billion in new school construction funding, effectively mooting the issue of whether such funds remain from the last bond authorization.

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