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Court of Appeal Clears the Way for Level 3 School Fees

school halls The California Court of Appeal yesterday lifted a stay it had imposed in a lawsuit by the California Building Industry Association challenging implementation of "Level 3" school facilities fees. Lifting the stay allows the California State Allocation Board to formally notify the Legislature that it is no longer apportioning State funds for school facilities. Receipt by the Legislature of the notice will authorize school districts to impose up to twice the amount of their current "Level 2" fees. As we reported earlier ([State Allocation Board Approves Level 3 Fees](#)), in May of this year, the State Allocation Board voted to notify the Legislature that "state funds for new school facility construction are not available." By law, this notice authorizes school districts to increase their Level 2 fees by up to 100%, to a Level 3 rate. Under the State School Facility Program, Level 2 fees are intended to fund 50% of the cost of school facilities for new residential development, with the other half paid from State funds. If the State is no longer providing such funds, however, school districts are authorized 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. Although the SAB voted to provide this notice, the move was blocked when a judge issued a temporary restraining order barring the SAB from transmitting the notice pending further consideration of a lawsuit filed by CBIA challenging the Board's decision. (See our report: [Court Blocks Implementation of Level 3 Fees](#)). The TRO was in effect until late August, when the trial court denied CBIA's request for a preliminary injunction and dissolved the TRO. However, CBIA filed an immediate request with the Court of Appeal for a stay pending its appeal from the trial court's ruling. The appellate court issued the stay, which was in effect until yesterday. Now that the legal impediments have been cleared away, the SAB is expected to provide the formal notice to the Legislature. Once the notice is printed in the Senate and Assembly journals -- which could occur in a matter of days -- school districts will be authorized to levy fees at the higher, Level 3 rate which, in some districts, will mean fees of over \$30,000 per residential unit. *UPDATE:* On November 1, 2016, the State Allocation Board sent [Senate and Assembly Notification Letters](#) providing notice that funds were no longer available for school construction under the State School Facility Program.