

**CLIENT NEWS BRIEF**

**No. 33**

**August 2009**

**BUDGET DEAL INCLUDES INCREASED FLEXIBILITY IN USE OF  
REVENUE FROM SALE OF SURPLUS PROPERTY**

As many had anticipated, the Education Budget Trailer Bill (Assembly Bill (“AB”) No. X4 2), passed last week as part of the State budget compromise, it includes a provision allowing school districts to use the proceeds from sales of surplus property for any one-time general fund purchase, *as long as the property was originally purchased entirely with local funds*. These changes go into effect immediately and will last until January 1, 2012.

Existing Education Code section 17462 currently permits a school district to use the proceeds from the sale of surplus property for capital outlay costs or for maintenance that a governing board determines will not recur within five years. If the district’s Governing Board and the State Allocation Board (SAB) determine that the funds would not be needed for facilities purposes for ten years, and the district has no major deferred maintenance requirements, the Governing Board may deposit the funds directly into the general fund or a special reserve fund for “one-time expenditures,” although the district cannot use the proceeds for salaries or ongoing general operating expenses. The district then generally becomes ineligible for new construction or modernization funding from the State for up to ten years, although it may apply for new funding after five years if it can demonstrate to the SAB that it has experienced new enrollment growth or a need for new school sites that could not have been easily anticipated.

ABX4 2 adds a new section to the Education Code, section 17463.7, which, until it is repealed by its own terms on January 1, 2012, permits a school district to deposit some or all of the proceeds of a sale of surplus property into its general fund for one-time expenditures. Such a deposit can be made without the previous requirement to determine that the proceeds will not be needed for facilities purposes for the next ten years, as long as the property was originally purchased with local funds. There is also no impact on future State new construction funding, although there is an effect on hardship funding.

If general obligation bonds or developer fees were used to purchase the property, a percentage of the proceeds, determined by dividing the difference between the original purchase price for the property and the proceeds of the sale by the amount of the transaction proceeds, may be used for one-time general fund purposes. For example, if the surplus property was originally

purchased for one million dollars using general obligation bonds or developer fees, and the proceeds from the sale (after deducting reasonable expenses from the sale) is five million dollars, eighty percent of the sale proceeds, or four million dollars, may be deposited in the general fund for one-time expenses.

A district must present an expenditure plan for the use of the proceeds at a meeting of its Governing Board prior to using this authority. There are also certain certifications which still need to be made to the SAB, though no SAB approval is expressly required. A district must certify that it has no major deferred maintenance requirements not covered by existing capital outlay sources, that the sale would not violate the provisions of a local bond act, and that the real property sold is not suitable to meet projected school construction needs for the next ten years. However, the district will not have to determine or certify that it has no anticipated needs for additional school sites or building construction for the next ten years, as currently required by section 17462.

Also, the SAB will reduce any hardship apportionment to the school district by an amount equal to the amount of surplus property proceeds used for one-time expenditures under this bill, and a school district will be ineligible for hardship funding from the School Deferred Maintenance Fund for five years after using surplus property proceeds for general fund purposes.

The practical result of ABX4 2 is that school districts will now have more flexibility to use the funds from the sale of surplus property between now and 2012, provided that the property was purchased with local funds. It is unclear from the legislation whether the new law applies to all property sales or just those occurring after the July 28, 2009, effective date of ABX4 2. We have contacted the office of the bill's author, and that office has not yet been able to answer this question. We will provide further guidance as needed once we receive the answer. Please note that the bill does not change the current procedural requirements for sale of surplus school property and the findings and notices required under the Education Code and Government Code.

Should you have any questions about ABX4 2 or other surplus property issues, please contact any of our offices.

*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.*

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