

CLIENT NEWS BRIEF

New Law Eases Path to School Employee Housing

As a result of California's affordable housing crisis, school districts face challenges in retaining teachers and school district employees, particularly in regions with high housing costs. California lawmakers sought to address the problem by proposing Assembly Bill (AB) 1157 and AB 45 to make it easier for districts to promote housing development for district employees, though Governor Jerry Brown vetoed the latter bill.

AB 1157 was part of a package of 15 housing bills approved by lawmakers that became effective on January 1, 2018. ([See 2017 Client News Brief No. 81.](#)) While most of the bills were not focused specifically on school employee housing issues, they have the potential to substantially impact school districts by creating an influx of new students.

AB 1157: School Surplus Property Use for Teacher Housing

Effective January 1, 2018, AB 1157 exempts school districts from the requirement that they establish a property advisory committee to consider declaring property surplus if the district intends to use the surplus property for employee rental housing. Education Code sections 17388 and 17391 require the governing board of a school district to appoint a school district advisory committee (commonly known as a "7-11 Committee" for the number of positions on the committee) prior to the sale, lease, or rental of surplus real property, with limited exceptions. AB 1157 adds language to Education Code section 17391 to create an exception to this requirement for the sale, lease, or rental of real property that is to be used for teacher or district employee housing.

This new law also provides that school or community college district property used for teacher or district employee rental housing are tax exempt.

AB 1157 also adds language to Education Code section 17456 regarding the financing of school district employee housing projects. That statute exempts certain sale/saleback and lease/leaseback property transactions from the full surplus property process, including notice and offer requirements and either competitive bidding or a waiver of the bidding requirement from the State Board of Education, so long as proceeds from the transaction are used for construction, reconstruction, or renovation of school facilities or to acquire property for use as a school site. The statute now also specifies that "the construction, reconstruction, or renovation of rental housing facilities for school district employees" is a permissible capital outlay expenditure.

The express legislative intent behind AB 1157 was to exempt school district property to be used for teacher or district employee housing from the surplus property process. According to the author of the bill, such housing serves an "educational purpose," and is therefore not surplus property. It seems that by adding language regarding employee housing projects to a statute that already exempted certain transactions from the surplus property process, the bill's author intended to exempt employee housing projects from that entire

February 2018
Number 5



Harold M. Freiman
Partner
Walnut Creek Office
hfreiman@lozanosmith.com



Devon B. Lincoln
Partner and Co-Chair
Facilities & Business Practice Group
Monterey Office
dlincoln@lozanosmith.com



Lauren Kawano
Associate
Sacramento Office
lkawano@lozanosmith.com



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.

process. It is unclear, however, whether the revised statute as written provides a blanket exemption for all school district employee housing projects regardless of the type of transaction or financing mechanism employed, or if some employee housing projects may be ineligible for the exemption.

AB 45: California School Employee Housing Assistance Grant Program

AB 45 would have created a \$25 million fund for school district employee housing development, but the bill was vetoed by Governor Brown. In his veto message, the Governor noted that he recently signed Senate Bill (SB) 2, which made funds available for local government planning purposes. Rather than creating a new housing program with AB 45, the Governor concluded that districts could work with local governments and the California Housing Financing Authority to maximize funding from SB 2. Unfortunately, this makes local school districts more reliant on other local agencies to achieve funding support for employee housing projects, when those other agencies may be competing for the same dollars.

2017 Housing Bill Package: School Districts May Feel Impacts

The package of housing bills approved by lawmakers in 2017 will make it more difficult for local public agencies to say no to housing projects and will streamline review of certain types of housing development, limiting public input in the approval process. Many school districts attempt to address overcrowding concerns during California Environmental Quality Act (CEQA) review of development projects. Now, the time in which to address school capacity concerns or even the opportunity to do so will be curtailed.

School districts should be prepared to engage in further advance planning to address capacity issues and should stay informed about housing development proposals within their boundaries. The earlier an affected district gets involved in the process, the better prepared the district will be to handle capacity issues and to address the impact of development with the city or county and the developer. Additionally, if housing does create a rapid influx of students, districts may have to engage in school facility planning earlier than in the past.

School districts that qualify for Level 2 developer fees may need to be prepared to review and update their School Facility Needs Analysis (SFNA) more than once per year in order to keep pace with the impacts of the expedited housing bills.

Takeaways

While AB 1157 was intended to streamline the process for approval of employee housing projects, a host of challenges await school districts seeking to embark on such projects. Challenges include collective bargaining implications, tax consequences, and local government oversight. In light of the possible ambiguity in the new law and the aforementioned challenges, school districts may wish to consult with their legal counsel before embarking on employee housing. Lozano Smith has an Employee Housing Working Group, and is ready to assist with these complex considerations.

With the Legislature back in session, lawmakers are proposing new housing bills that could further alter the local development landscape. Lozano Smith will be closely watching the progress of these bills in the event that any become law.

For more information on how school districts can prepare for the effects of these new laws, please contact an attorney at one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).