



CLIENT NEWS BRIEF

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LEGISLATURE EXTENDS FLEXIBILITY IN USE OF REVENUE FROM SALE OF SURPLUS PROPERTY

As a part of the 2009 State Budget package, the Legislature passed Assembly Bill (AB) No. 4X 2, which added section 17463.7 to the Education Code allowing school districts to use the proceeds from sales of surplus property for any one-time general fund purchase, as long as certain criteria were met, including that the property was originally purchased entirely with local funds. For a fuller explanation of the 2009 legislation and these surplus property provisions, please see [Client News Brief No. 33, August 2009](#). The 2009 bill provided that these changes would expire on January 1, 2012, unless extended. By enacting Senate Bill (SB) No. 70 earlier this year, the Legislature has extended this flexibility until January 1, 2014.

Prior to the enactment of Education Code section 17463.7 ("section 17463.7"), a school district could 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. Under certain circumstances, a district could deposit the funds directly into its general fund or a special reserve fund for "one-time expenditures," but the district would then generally become ineligible for new construction or modernization funding from the state for up to ten years.

Under the provisions of section 17463.7, until January 1, 2014, a school district may deposit some or all of the proceeds of a sale of surplus property into its general fund for one-time expenditures. In its first two years, section 17463.7 has generally been applied to sale proceeds even if the sale predated the 2009 legislation. Such a deposit into the general fund can be made without having 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 new construction funding, although there is an effect on eligibility for hardship funding. Limitations on how much can be spent for general fund purposes apply if general obligation bonds or developer fees were used to purchase the property.

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While the extension of the sunset date for section 17463.7 will continue to provide some school districts with flexibility, districts seeking to take advantage of that flexibility in the past two years have faced various challenges. These have ranged from lack of evidence or institutional memory regarding what funds were used for the original property purchase to challenges in obtaining a State Allocation Board concurrence that particular planned expenditures are truly one-time in nature. We expect that reliance on section 17463.7 will continue to come with limitations and complications over the next two years.

If you have any questions about the application of Education Code section 17463.7 or any other surplus property issues, please do not hesitate to contact one of our [eight offices](#) located statewide or consult our [website](#).

Written by:

[Harold Freiman](#)

Shareholder

Walnut Creek Office

hfreiman@lozanosmith.com

Michael Dunne

Paralegal

Fresno Office

mdunne@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.