

# CLIENT NEWS BRIEF

## Legislature Extends and Revises Requirements Related to Charter Schools and Surplus Property

July 2013  
Number 38

As part of the trailer bills adopted to implement the 2013-2014 State Budget, the Legislature extended until July 1, 2016, the requirement that school districts offer surplus property to interested charter schools. The Legislature also made other modifications to the law relating to such offers, and extended the right of school districts to deposit the proceeds from the sale of certain surplus real property into the general fund for one-time general fund purposes to January 1, 2016. The Governor signed the legislation on July 1, 2013, and it is effective immediately.

### Offers to Charter Schools

Generally, before surplus property can be sold or leased, a school district must comply with various requirements, including making statutory offers to sell or lease the property to certain entities. Education Code section 17457.5, which became effective on June 27, 2012, added a requirement that school districts seeking to sell or lease surplus property must first offer that property to any charter school that has previously submitted a written statement of interest in such property. Such offers to interested charter schools are given priority over offers that are required by statute to be made to certain other entities. (See Lozano Smith [Client News Brief No. 41](#) (July 2012) for further discussion of Education Code section 17457.5.) Charters are then entitled to purchase or lease the property at a capped amount based on an inflation rate applied to the original acquisition cost, plus the cost of facilities construction that has occurred on the site. We note that the school district is not required to proceed with a sale or lease to any party if it so chooses.

As originally enacted, section 17457.5 was to become inoperative on June 30, 2013, and to be repealed as of January 1, 2014. However, on July 1, 2013, the Governor approved Assembly Bill (AB) 86, which instead states that a school district selling or leasing surplus property is now required to offer that property to an interested charter school through July 1, 2016. The bill also makes the following changes:

1. The new legislation specifies that offers need only be made if the charter school, at the time of the offer, has projections of at least 80 units of in-district average daily attendance for the following fiscal year. This change is consistent with thresholds under Proposition 39, which requires school districts to provide facilities to charter schools.
2. The prior version of section 17457.5 required the charter school buying or leasing surplus property to use that property exclusively to provide direct instruction or instructional support. If the charter failed to do so for at least five years from a sale, it would be required to sell the property pursuant to surplus property requirements applicable to school districts. The new legislation removed this five-year cap, presumably requiring the charter school to use the property for direct instruction or instructional support indefinitely.



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



Kelly M. Rem  
Associate  
Walnut Creek Office  
krem@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.*

3. In the event of a lease, both the prior and current version of the law require the charter school to use the property to provide direct instruction or instructional support until possession is returned to the school district. Failure by the charter school to do so entitles the school district to immediate possession of the facility and any damages allowed under the lease agreement.
4. If a charter school purchases surplus property but fails to use it to provide instruction or instructional support, section 17457.5 previously would have required the charter school to offer the property for sale according to the surplus property rules applicable to school districts. As revised, the section first requires the charter school to offer the property for sale back to the school district from which it acquired the property, and to comply with all requirements that would otherwise apply to a school district. Presumably, this means that the same price cap applicable to a sale to the charter school would be applicable to the sale back to the school district. If the school district does not want to purchase the property, it must furnish a list of charter schools that requested notification of surplus property for sale or lease, and the charter school that owns the real property in question must offer it for sale to the charter schools on the list. In such a case, the charter school must comply with all of the requirements of section 17457.5 that would apply to a school district. If the property remains unsold, the charter school must then offer the property for sale according to the surplus property rules applicable to school districts.
5. The Legislature also added a provision that a charter school constructing a school building on property acquired pursuant to section 17457.5 must comply with the Field Act. (Ed. Code, §§ 17280, *et seq.*, 17365, *et seq.*, & 81130, *et seq.*) If a charter school reconstructs, alters, or adds to a school building that is already located on the property acquired, it must comply with the Field Act only if the building complied on the date the property was purchased by the charter school.
6. The revisions also added a requirement that the charter school *selling* real property obtained pursuant to section 17457.5 must use the proceeds only for capital outlay, maintenance, and other facility-related costs, much like the requirement of Education Code section 17462 applicable to school districts.

## Flexibility in Spending Surplus Property Proceeds

Additionally, AB 86 extended previously-enacted legislation providing flexibility in the use of the funds derived from the sale of surplus property. Generally, those funds must be used for capital outlay or costs of maintenance of school district property that the governing board determines will not recur within a five-year period. Education Code section 17463.7, enacted in 2009, added some flexibility by allowing school districts to deposit the proceeds from the sale of surplus real property purchased entirely with local funds, together with any personal property located on the property, into the general fund for any one-time general fund purpose. Such flexibility is permitted only if the school district meets certain exacting requirements and receives State Allocation Board approval. (For more information on section 17463.7, see Lozano Smith Client News Brief No. 33 (August 2009) and No. 25 (July 2011).) Section 17463.7, previously set to expire on January 1, 2014, has been extended by the Legislature to January 1, 2016.

These requirements and other rules applicable to surplus school property are described in greater detail in Lozano Smith's [Checklist for Sale or Lease of School District Surplus Property](#). For a copy of the most recent edition of the [Checklist](#), please contact Harold Freiman or Kelly Rem at the email addresses listed.

If you have any questions regarding this Client News Brief, or surplus property or charter school issues in general, please feel free to contact 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](#).