

# CLIENT NEWS BRIEF

## New Bill Makes Significant Revisions to Prequalification, Lease-Leaseback, and Lease-to-Own Statutes

In a year when lease-leaseback agreements have been a hot topic, a new bill makes prequalification mandatory for all lease-leaseback and lease-to-own agreements by school districts having more than 2,500 average daily attendance (ADA), and makes other significant changes to school construction law.

Commencing in 2012, Public Contract Code section 20111.6 made prequalification mandatory for school district public projects where three criteria were met: (1) a projected expenditure of at least \$1,000,000; (2) ADA in the school district of at least 2,500; and (3) the use of state bond funds. In 2014, Assembly Bill (AB) 1581 expanded the application of this mandatory prequalification requirement to "lease-leaseback" (where construction will occur on land owned by the school district) and "lease-to-own" (where construction will occur on land not yet owned by the school district) under Education Code sections 17406 and 17407, respectively. Governor Jerry Brown has now signed AB 566, which further revises these statutes in three important ways. AB 566 becomes effective January 1, 2016.

***AB 566 expands the above prequalification criteria to include projects where state funds will be requested in the future.*** PCC section 20111.6 was not clear as to whether prequalification would be required where a school district uses local funds during the project, but after construction seeks reimbursement from future state bonds. The new bill clarifies that prequalification is required if the District anticipates seeking state funds in the future.

***AB 566 expands the requirement of prequalification to most lease-leaseback and lease-to-own arrangements*** under Education Code sections 17406 and 17407. Both statutes currently state that if the lease-leaseback instrument or lease-to-own agreement uses state bond funds and \$1,000,000 or more will be expended on the project, then the instrument or agreement shall require that the contractor and its mechanical, electrical, and plumbing (MEP) subcontractors are subject to prequalification under Public Contract Code section 20111.6.

Going forward under AB 566, prequalification for lease-leaseback and lease-to-own construction will be required *regardless* of the funding source and *regardless* of the cost of the project. Even if a school district is not going to use or request funds from state bonds, and even if the project will be valued at less than \$1,000,000, the district must still use prequalification under PCC section 20111.6 for lease-leaseback and lease-to-own construction. However, districts with ADA under 2,500 remain exempt from prequalification requirements.

***AB 566 imposes significant labor requirements on lease-leaseback and lease-to-own arrangements.*** These requirements are often addressed in project labor agreements between public agencies and trade unions. AB 566 adds Education Code section 17407.5, which prohibits a lease-leaseback instrument or lease-to-own agreement unless the contracting entity provides to the school district an "enforceable commitment" that the contractor and its

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Devon B. Lincoln  
Partner  
Monterey Office  
dlincoln@lozanosmith.com



Arne B. Sandberg  
Senior Counsel  
Walnut Creek Office  
asandberg@lozanosmith.com



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subcontractors will use “a skilled and trained workforce to perform all work ... that falls within an apprenticeable occupation.” The statute provides detailed definitions for “skilled and trained workforce,” “apprenticeable occupation,” and other key terms.

The contractor may make an enforceable commitment in one of three ways: (a) Stating in the agreement that it, and its subcontractors, will comply with the statute, and that the contractor will submit monthly reports; (b) agreeing that it will become a party to the school district’s project labor agreement for the project that binds all contractors and subcontractors to the terms of the statute; or (c) having previously entered a project labor agreement that binds all contractors and subcontractors to the terms of the statute. If a contractor agrees to submit monthly reports but it fails to do so, the school district must immediately cease payment to the contractor.

Lozano Smith regularly updates prequalification materials and construction documents to comply with changes in the law. To obtain the most up-to-date materials, or if you have any questions regarding prequalification or the lease-leaseback or lease-to-own delivery methods, please contact one of our [nine offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#), or download our [Client News Brief App](#).