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Opportunities for Use of Proceeds from School District Surplus Property: *Practical Suggestions for the 2020-21 State Budget*

The newly enacted 2020-21 state budget, signed by Governor Newsom on June 30, 2020, anticipates a deep decline in the State's economic conditions as a result of the COVID-19 pandemic. In response, Senate Bill 98, effective immediately, introduces new fiscal and programmatic flexibilities for school districts, including the option to use certain surplus property proceeds for one-time General Fund purposes.

Typically, school districts may only use the proceeds from the sale of surplus property for capital facilities expenditures or long-term maintenance costs that will not reoccur within five years. (Cal. Educ. Code §17462). Existing law also prevents school districts from depositing property sale proceeds into the General Fund unless the district demonstrates to the State Allocation Board (SAB) that it has no anticipated need for the money to fund additional school sites or building construction over the next ten years.

SB 98 adds Education Code section 17463.7, allowing school districts to deposit proceeds from the sale of surplus property (or a lease with purchase option) into the General Fund for a one-time purpose. This "one-time" use cannot create ongoing costs nor commit the district to any future expenditures. Expenditures for recurring costs, such as salaries and benefits, are not permitted under the new law. The flexibility under Section 17436.7 is effective until July 1, 2024.

Before depositing surplus property proceeds into the General Fund under Section 17463.7, the district must: (1) at a regularly scheduled board meeting, present a detailed plan verifying the one-time use of the funds; and (2) submit various certification documents to SAB. Additionally, SAB will also reduce the district's hardship assistance by an amount equal to any property proceeds used for one-time General Fund purposes. The amount of proceeds available for General Fund use will also depend on the purchase history of the district property and the funds originally used to acquire it. We anticipate further guidance and procedures from SAB on exercising this option in the coming months.

Many will recall the Legislature adopted a previous version of this law in 2009 during the Great Recession. The 2020 version of Section 17463.7 is similar, but with a few added flexibilities: (1) the 2009 version applied only to the proceeds from a *sale* of real property, while the 2020 version applies to the proceeds from a *sale or lease with option to purchase*; (2) unlike the 2009 version, Districts will not lose hardship funding for five years; and (3) Districts no longer need to show a lack of major deferred maintenance costs. Although Section 17463.7 now covers leases that include an option to purchase the property, the new law does not appear to impact the proceeds from traditional leases without purchase options, which are not subject to statutory use restrictions.

In response to this new fiscal flexibility, we encourage districts looking for alternative revenue sources to do the following to assess the potential sale or lease of surplus property:

- Inventory current District properties, assess current enrollment at active school sites and consider use and need for current non-student, administrative or vacant properties;
- Calculate the appropriate timelines and steps to sell or lease the surplus property, including making statutory offers to other public entities and organizations;
- Assess the temperature of the community and openness to potential school closures or disposition of other non-student properties;
- Identify individuals that could cooperatively represent various community stakeholders (such as parents, teachers, administrators and local business owners) and contribute to a district committee formed to assess the district's facilities needs and surplus property;
- Investigate the environmental condition of sites initially flagged for consideration as surplus and the potential resulting environmental effects of a sale or other disposition;
- Consider district goals and begin to formulate internal messaging regarding the benefits of selling or otherwise disposing of a particular property and the resulting opportunities; and
- Commission an appraisal and/or otherwise estimate the market value of potential surplus property and identify any additional expenses needed or recommended in order to maximize the potential return on sale or lease.

F3 Law recently partnered with CASBO and FCMAT on a complimentary webinar to provide guidance on Section 17463.7 and best practices for surplus property. The webinar was recorded and is available here:

<https://resources.casbo.org/blog/reopening-californias-schools-fcmat-f3law-discussion-on-considering-surplus-district-property>.

If you have any questions regarding the impact of the 2020-21 Budget, or would like further guidance on this new law or the surplus property process, please contact one of our offices.

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