



LAW UPDATE SCHOOL BUSINESS

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AB 1486 EXPANDS AND CLARIFIES THE SURPLUS LAND ACT WITH MINIMAL EFFECTS ON SCHOOL DISTRICTS

Background

Effective January 1, 2020, AB 1486 (Ting) expanded the definition of local agencies and the requirements agencies must meet for compliance with the Surplus Land Act (Act).¹ The Act has been in existence since 1968 and has been amended several times since its enactment. The main purpose of the bill is to achieve more affordable housing on government owned surplus properties. The new law expands the number of agencies subject to the Act's requirements. The definition of "local agency" is revised to include not only every city, county, city and county, and district, including school districts, but it adds specifically, sewer, water, utility, local and regional park districts, joint powers authorities, successor agencies to former redevelopment agencies, housing authorities, or other political subdivisions of the State among others.

Other revisions to the Act include but are not limited to:

- Requiring legislative bodies to take formal action in a regular public meeting to declare land either "surplus land" or "exempt surplus land." The declaration must now be supported by written findings.
- Significantly expanding the definition of "exempt surplus land" to include land covered by certain provisions of the Education Code, and land that is conveyed (by sale or exchange) to another local, state or federal agency for that agency's use, as well as others.
- Prohibiting the negotiations between a disposing agency and interested entities from including deal terms that would reduce or disallow residential use of the site.
- Requiring a disposing agency to send a notice of availability to housing sponsors that have notified the Department of Housing and Community Development (HCD) of their interest. HCD is also required to maintain a listing of all notices of availability throughout the State on its website.
- Requiring a disposing agency, prior to agreeing to the terms for the disposition of surplus land, to provide specified information about its disposition process to HCD. HCD then has 30 days to review the information and submit written findings to the disposing agency if HCD determines the

¹ Government Code § 54220 et seq.

proposed land disposal will violate requirements of this new law. Violations would be subject to monetary penalties or enforcement action. HCD is required to implement these provisions beginning January 1, 2021.

- Adding a requirement that the planning agency of a city or county include a listing of specified sites owned by the city or county that have been sold, leased or otherwise disposed of in the prior year. The list must include the name of the entity that each site was transferred to and the intended use for the site.

Applicability of the Changes to School Districts

Luckily, school and community college districts can be spared from the more onerous provisions of the bill if their boards make a written finding that the contemplated sale is of “exempt surplus land” pursuant to an applicable definition of the term such as that found in Government Code section 54221(f)(1)(I) which reads in pertinent part:

- (f)(1) Except as provided in paragraph (2), “exempt surplus land” means any of the following:
 - ...
 - (I) Land that is subject to Sections 17388, 17515, 17536, 81192, 81397, 81399, 81420 and 81422 of the Education Code ... unless compliance with this article is expressly required.

Section 54222.3 of the Act provides that “Section 54222 shall not apply to the disposal of exempt surplus land as defined in Section 54221 by an agency of the state or any local agency.”

In short, in order to qualify a K-12 district’s surplus property sale as exempt from most of the new requirements of the Act, a district’s board will need to make written findings, at a regular public meeting, that the contemplated sale is subject to the requirements of either Education Code section 17388 (7-11 Committee), Education Code section 17515 (joint use) or Education Code section 17536 (exchange) or another applicable exemption. Declaring a property as “exempt surplus land” does not relieve a district from the requirements of the Naylor Act² or other Education Code provisions dealing with the sale of surplus property.³ However, by categorizing land that is subject to the various Education Code sections listed above as “exempt surplus land” the Legislature has made the extended noticing and penalty provisions of the Act inapplicable to most, if not all, school district surplus property sales.

If you have any questions concerning this update or related surplus property issues, do not hesitate to contact our office.

~ Christopher P. Burger

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² Education Code § 17485 et seq.

³ See e.g., Education Code §§ 17230; 17459; 17464(b)