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# Surplus Property

## *Education Codes* Pertaining to Disposing Surplus School Property

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**CALIFORNIA DEPARTMENT OF EDUCATION**  
Jack O'Connell, State Superintendent of Public Instruction



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# Agenda

- Before You Sell
- The Process
- The Use of Proceeds
- Role of the State Board of Education (SBE)



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## Definition

- Surplus Real Property (*Education Code Section 17455*)

“Any real property, together with any personal property located thereon, belonging to the district which is not or will not be needed by the district for school classroom buildings at the time of delivery of title or possession.”



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## Before You Sell

Considerations prior to selling property—  
once sold it's not coming back:

- A facility master plan is essential before beginning any property evaluations.
  - Will enrollment trends change?
- Consider future program needs
  - Reduce school size
  - Reduce number of portables
  - Preschool
- Community needs and concerns
  - Parks and gyms
  - Child care and development services



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## Before You Sell

### Options to consider before selling:

- Joint Use Leases
- Joint Occupancy
- Exchange



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## Before You Sell

### Confer with counsel—early and often

- Complicated
- Numerous exceptions
- Interaction with other codes
  - *Government Code*
  - *Public Resource Code*
  - *Health and Safety Code*



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## Sale or Lease of Surplus Property

- General authority is provided in *Education Code* Section 17455
  - Districts may sell land and buildings no longer needed for school classroom buildings at the time of delivery of title
    - May also lease for 99 years
  - Establishes process for selling or leasing property
- Legislation exempts land transactions involved in capital financing
  - Certificate of Participation (COP)
  - Lease-Lease Back



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## Site Sale/Lease Process Seven Eleven Committee *Education Code* Sections 17387-17391

Prior to the sale, lease, or rental of surplus property the governing board must appoint the “Seven Eleven Committee” advisory committee.

Exception—may lease to private school for summer classes without forming committee (*Education Code* Section 17391)



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# Members of Seven Eleven Committee

*Education Code Section 17389*

Committee shall consist of not less than seven nor more than eleven members and be representative of the following:

- Ethnic, age group, and socioeconomic composition of the district
- Business community
- Landowners or renters
- Teachers
- Administrators
- Parents or students
- Persons with expertise in environmental impact, legal contracts, building codes, and land use planning



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# Duties of the Seven Eleven Committee

- Review projected enrollments, master plan, and other data to determine the amount of surplus space and real property.
- Establish a priority list of surplus property.
- Recommend the availability and potential uses of surplus property, such as:
  - Change use
    - elementary to a small high school
    - administrative
  - Make available to charter schools (*Education Code Section 47614*)
  - Sell, lease or lease with option to purchase



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## Priorities and Procedures

- If the decision is made to sell or lease
  - Consider community effects of school closure
  - Consider the Naylor Act
  - Confer with counsel



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## Priorities and Procedures

- *Education Code* Section 17459—The sale of real property subject to provisions of the *Government Code* Section 54220 (pertains to offering property first to other local government entities for development of low and moderate income housing or park and recreational purposes).
- *Education Code* Section 17464 provides priorities and procedures for sale or lease with purchase option.
- School districts may be subject to *Education Code* Section 17485 et seq. (The Naylor Act).
  - Legislative intent is to retain community use of recreational areas (i.e. school fields)



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## Naylor Act

### *Education Code Section 17485*

The Act sets forth three conditions which must exist for the Act to apply. (*Education Code Section 17486*)

1. Either the whole or a portion of the schoolsite consists of land which is used for school playground, playing field, or other outdoor recreational purposes and open-space land particularly suited for recreational purposes.
2. The land described above has been used for one or more of the purposes specified for at least eight years immediately preceding the date of the governing board's determination to sell or lease the schoolsite.
3. No other available publicly owned land in the vicinity of the schoolsite is adequate to meet the existing and foreseeable needs of the community for playground, playing field, or other outdoor recreational and open-space purposes.



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## Priorities and Procedures

### The Naylor Act

- *Education Code Section 17489* requires that the property to be sold or leased must be offered to:
  - First, any city where the property is located.
  - Second, to any park or recreation district having jurisdiction within the area in which the land is situated.
  - Third, to any regional park authority having jurisdiction within the area in which the land is situated.
  - Fourth, to any county within which the land may be situated.



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## Priorities and Procedures The Naylor Act

- Any public entity entitled with priority desiring to lease the land must notify the district within sixty days of receiving the written offer.
- The district shall have the discretion to determine whether the offer shall be to sell or lease.
- The price shall not be less than 25 percent of the fair market value of the land



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## Priorities and Procedures If not Naylor Act

- If the property is to be sold or leased with the option to sell the district must comply with *Education Code* Section 17464.



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## Priorities and Procedures *Education Code Section 17464*

- First, *Education Code Section 17464(a)* requires that the property be offered for park and recreational purposes pursuant to *Government Code Section 54220*, et seq.
  - A written offer to sell must be provided for the purpose of developing low-and-moderate income housing to any local public entity within jurisdiction the land is located.
  - Written offers must be sent to nonprofit neighborhood enterprise associations or corporations if the property is located in an enterprise zone and/or to a program area. (*Government Code Section 54222[d]* and [e]).



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## Priorities and Procedures *Education Code Section 17464*

- Any of the above entities must notify the district of their intent to purchase within sixty (60) days after receipt of the notice of intent. (*Government Code Section 54222[f]*)



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## Priorities and Procedures *Education Code Section 17464*

- Second, *Education Code Section 17464(b)* requires that the property be offered for sale at fair market value
  - In writing to:
    - Director of General Services
    - Regents of the University of California
    - Trustees of the California State University
    - County and City in which the property is located
    - Any public housing authority in the county in which the property is located



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## Priorities and Procedures *Education Code Section 17464*

- By public notice to:
  - Any public district
  - Public authority
  - Public agency
  - Public corporation
  - Any other political subdivision in this state
  - The federal government
  - Non-profit charitable corporations



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## Priorities and Procedures

Current legislation, Assembly Bill 1941, authored by Assembly Member Carter, would:

- Add to *Government Code* Section 5422 that a school district offer to sell or lease the property to all governmental entities in the jurisdiction the land is located.
- Allow the district to re-convey property that it has purchased to a for-profit developer for a development that is consistent with the redevelopment plan and general plan of the jurisdiction.



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## Use of Site Sale Proceeds

*Education Code* Section 17462

- Proceeds to be used for capital outlay or maintenance purposes
- Governing board must find that the expenditures will not “recur” in a five-year period

May request State Allocation Board to deposit in general fund if there is no facility need for ten years.



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## Use of Site Sale Proceeds

- State Allocation Board Regulations 1700.
- State Allocation Board to consider:
  - Ability to use site proceeds as “one time” buy down of unfunded post employment obligations.
  - Incurred prior to January 1, 2007
  - Determined pursuant to Governmental Accounting Standards Board Statement 45
  - Local Educational Agency plan



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## Use of Site Sale Proceeds Special Legislation

*Education Code* Section 17463.6 and 17463.8

Instances of special legislation to allow use of proceeds in general fund for one time purposes and not have the 10-year exclusion from State Allocation Board funding.



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## Use of Site Sale Proceeds Other Considerations

- Developer fees
- Hardship status in School Facility Program
- Entitle property before sale
  - Rezone
  - Map



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## Waivers

- When a school district is unsuccessful in securing responsive bid proposals for leasing or selling surplus real property, or believes that bidding is not in its best interest, a district may seek a general waiver from the normal competitive bidding procedures.



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## Role of the State Board of Education (SBE)

- Waiver Requests
- Joint Occupancy Requests
- State Board of Education forms may be downloaded at <http://www.cde.ca.gov/re/lr/wr/>.



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## *Education Code Waivers*

- *Education Code Section 33050*
  - The SBE may waive any provision of the Education Code unless specifically precluded in statute.



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## *Education Code Waivers*

The SBE “shall approve” waiver requests unless (*Education Code* Section 33051):

1. Educational needs of pupils are not met.
2. Affects a program that requires a school site council.
3. The appropriate district advisory committee did not have adequate opportunity to review.
4. Pupil and employee protections are jeopardized.
5. Guarantees of parental involvement are jeopardized.
6. The request would substantially increase state costs.
7. Bargaining units were not involved in the development of the waiver.



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## *Education Code Waivers*

SBE “shall not approve” waiver requests related to property sales and leases unless:

1. The district provided written notice pursuant to *Education Code* Section 33050(f).
2. The district, after making a good-faith effort to that purpose, was unable to reach agreement with any public agency under Section 39394 (Now Section 17489).
3. The detriment to the district's ability to financially meet the educational needs of the community resulting from the disposition of the school site pursuant to the sale price or lease rate limitations set forth in Section 39396 (Now Section 17491), as compared to the fair market value of the site, outweighs the need for the use of the site for outdoor recreational purposes.
4. In the event the district enters into a long-term lease during the period of the waiver or any extension thereof, the school district shall be exempt from the requirements of Section 39390 et seq. (Now Section 17485 et seq.), for the duration of the lease term for that site.



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## *Education Code Sections That May Not Be Waived*

- Section 17459—The sale of real property subject to provisions of the *Government Code* Section 54220 (pertains to offering property first to other local government entities for low- and moderate-income housing and park and recreational purposes).



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## *Education Code Sections That May Not Be Waived*

### *Education Code Section 17462*

- Proceeds to be used for capital outlay or maintenance purposes
- Governing board must find that the expenditures will not “recur” in a five-year period



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## *Education Code Sections That May Not Be Waived*

- Section 17464(a)—the property shall be offered for park or recreational purposes. This section is similar to *Education Code* Section 17549.



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## *Education Code Waivers* Approved by the State Board of Education

- Section 17472 is related to the opening and accepting of all proposals at public meetings.
  - The SBE has allowed the district to determine what constitutes the most “desirable” bid (sealed or oral), set their own terms and conditions, and remove the requirement that oral bids be the only bids accepted.



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## *Education Code Waivers*

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- In the past the SBE has waived portions or in whole the following *Education Code* sections:
  - Section 17466 – related to the declaring of intention to sell or lease real property.
  - The SBE has allowed portions of this section to be waived that allows districts to avoid specifying minimum bids at public meetings and allows districts to set their own terms and conditions. Districts normally work with brokers in order to solicit proposals from potential buyers.



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## *Education Code Waivers*

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- Section 17473 is related to call for and acceptance of oral bids.
  - The SBE has allowed districts to waive this whole section. By waiving this section it allows districts to eliminate the oral bidding process and allows the district to negotiate with specific interested parties.



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## *Education Code Waivers*

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- Section 17474 is related to the broker's commission upon sale on an oral bid.
  - The SBE has allowed districts to waive this whole section. This section is irrelevant if Section 17473 is eliminated.



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## *Education Code Waivers*

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- Section 17475—related to the final acceptance of bids. The SBE has allowed portions of this section to be modified. The modification requires:
  - Board wait between 30 and 60 days to award the final bid allowing extra time for review.
  - Determination of the most desirable bid must be identified in public session.



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## Joint Occupancy and State Board of Education

- Joint Occupancy—the joint-use of real property and buildings by any private person, firm, or corporation—most commonly are communication towers, affordable housing, and early childhood education centers.
- *Education Code* Section 17524—the governing board shall not approve a joint occupancy agreement until the proposal has been approved by the State Board of Education.



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