



LAW OFFICES OF MIDDLETON, YOUNG & MINNEY, LLP

Charter Schools Are Entitled to First Priority to School Facilities if a School District Decides to Sell or Lease Surplus Property

SB 1016 (the Budget Trailer Bill) requires school districts seeking to sell or lease “surplus” property to first offer the property to qualifying charter schools for purchase or lease. This new law is limited to property that is “designed to provide direct instruction or instructional support” (certain types of facilities may be excluded, for example, a bus transportation yard). This is a significant change in the law in that prior to this amendment of the Education Code a school district could sell or lease real property without ever having the obligation to sell or lease this “surplus” property to a charter school.

In order to take advantage of this new law a charter school must have submitted a written request to the school district to be notified of surplus property offered for sale or lease. MYM has developed a sample written request for your use (please email Sarah Kollman at skollman@mymlaw for a copy of this written notification).

If a charter school has submitted the required notice, and a school district declares a property to be surplus, the school district must first provide a written offer to sell or lease the real property to each charter school that submits the required notice. If the charter school does want to purchase or lease the property, a charter school must notify the school district within 60 days of receiving the school district’s notice. If more than one charter school has submitted the required notice and wants to purchase or lease the property, it is left to the discretion of the school district to decide which charter school will get to purchase or lease the property.

The cost to purchase or lease the property is fixed by statute and is relatively complicated and will require historical information regarding the district’s cost of acquisition, cost-of-living adjustments, modernization expenses etc.

A charter school must use the property to provide direct instruction or instructional support for at least five years. If the charter school that purchases property under this section does not use the property to provide direct instruction or instructional support for at least five years, the charter school is required to immediately sell the property -- if the property was leased the lease may be terminated by the school district and the facility returned to the school district.

Please note that a charter school does not have to be located in the school district offering the surplus property to submit the written notice and receive first priority. However, charter schools will need to ensure they are in compliance with the geographic limitations in the Charter Schools Act, as well as in their charter petition and Memorandum of Understanding with their authorizer, when considering the purchase or lease of a school facility outside their authorizer’s boundaries.

In addition, the intersection of this new law and Proposition 39 is not addressed in the statute; however, under the current statutory scheme a school district may not have “surplus” property unless and until it has fully complied with its obligations to provide reasonably equivalent, contiguous, furnished and equipped facilities to all qualifying charter schools.

Charter schools may also be able to qualify for Charter School Facility Grant Program and/or Charter Schools Facilities Incentive Grant Program monies depending upon the structure of the lease or purchase with the school district. Please confer with legal counsel regarding how best to structure the purchase or lease in order to qualify for these grants and other resources.

Please be aware that this law is currently scheduled to become inoperative on June 30, 2013; unless the Legislature renews the law it will only apply to properties declared surplus by a school district between now and June 30th of next year.

If you have any questions about this new law and how it might apply to your situation, please feel free to contact either Paul Minney (pminney@mymlaw.com) or Sarah Kollman (skollman@mymlaw.com) via email or at 916-646-1400.

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