REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, June 25, 2014

IMPLEMENTATION OF ASSEMBLY BILL 308 PROPOSED REGULATIONS

PURPOSE OF REPORT

To request State Allocation Board (Board) approval of proposed regulations to implement the return of monies from a state school facilities funding program following a site sale as a result of Assembly Bill (AB) 308 Chapter 496, Statutes of 2013.

DESCRIPTION

This item includes proposed regulations and a form to implement the provisions AB 308 Chapter 496, Statutes of 2013. Approval of this item would result in the creation of the Return of Real Property Sale Proceeds Program.

AUTHORITY

See Attachment A.

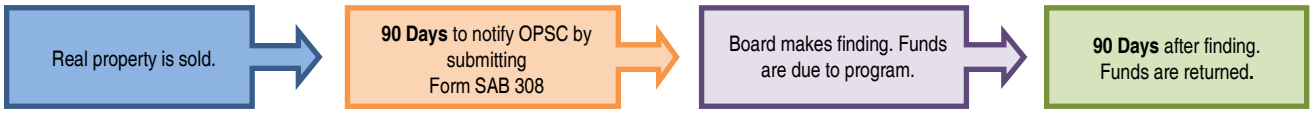
BACKGROUND

AB 308 Chapter 496, Statutes of 2013, established Education Code (EC) Section 17462.3. This statute provides the Board the option to establish a program that would require a school district, county office of education, or charter school that sells real property that was purchased with or modernized with, or on which improvements were constructed, to return moneys received through a state school facilities funding program. Any moneys received within the 10 years preceding the sale of the real property would be required to be returned, unless certain conditions are met.

STAFF ANALYSIS/STATEMENTS

Return of Real Property Sale Proceeds Program
Staff is presenting proposed regulations to establish the Return of Real Property Sale Proceeds Program pursuant to EC Section 17462.3. The program requires that a school district, county office of education, or charter school that sells real property to return any moneys received through state school facilities funding program for the purchase, modernization, or construction of improvements on the real property, unless specific conditions are met. The proposed regulations define terms, clarify the parameters of the 10-year period, and establish notification and repayment requirements.

The illustration below shows how the program would work:



(Continued on page Two)

STAFF ANALYSIS/STATEMENTS (cont.)

Proposed Regulations
The proposed regulations amend the existing Section 1700 and add Sections 1701 and 1702 to Subgroup 3.5 of the Title 2 of the California Code of Regulations, which is separate from the School Facility Program (SFP) Regulations Section that begins with Section 1859.1.

Defined Terms
Staff is proposing to add the following defined terms *Apportionment, Board, Charter School, District Representative, Form SAB 308, Office of Public School Construction (OPSC*), and *Portable Facility* to the existing Section 1700. While some of these terms are already defined in Chapter 12.5 of the EC and in SFP Regulation Section 1859.1, it is necessary to define them for purposes of this section of Title 2 of the California Code of Regulations. The definitions of each term are specific to the requirements of EC Section 17462.3. In addition, Staff is proposing a technical change to the introductory sentence to strike the phrase "subject to the provisions of the Act". This removes a reference to an undefined term "the Act", as there is no "Act" to which this EC Section refers.

10-Year Time Period
Staff is also proposing to add Section 1701 titled "10-Year Time Period". This new section clarifies that the date funds are received is the date the school district, county office of education or charter school was provided an Apportionment from the Board. The date the real property is sold is the date of the title transfer. In addition to the sale of real property, subsection (c) is added to include property that may be transferred through condemnation proceedings. Finally, sale of individual Portable Facilities are not subject to the requirements of EC Section 17462.3.

Reporting and Return of Funds
Staff is also proposing to add Section 1702 titled, "Reporting and Return of Funds". This new section clarifies that for the purposes of the provisions of EC Section 17462.3:

- A school district, county office of education, or charter school that is subject to the provisions of EC Section 17462.3 must file Form SAB 308 with the OPSC within 90 calendar days of the sale of the real property.
- If a portion of real property is sold, the proportionate share of any funding required to be returned will be determined on:
    - The acreage/square footage of land sold compared to the total acreage/square footage of the site, and
    - The total square footage of facilities on site compared to the total square footage of facilities sold.
- Any school district, county office of education, or charter school that is subject to the provisions of EC Section 17462.3 must return funds within 90 calendar days of the Board's finding.

RECOMMENDATIONS

1. Establish the Return of Real Property Sale Proceeds Program pursuant to EC Section 17462.3 and provide that it be administered by the OPSC on behalf of the director of the Department of General Services.

2. Adopt the proposed regulations, including a new form, as shown on Attachment B.

3. Authorize the Executive Officer to file the proposed regulations with the Office of Administrative Law.

This Item was approved by the State Allocation Board on June 25, 2014.

ATTACHMENT A

Education Code Section 17462 states:

(a) The funds derived from the sale of surplus property shall be used for capital outlay or for costs of maintenance of school district property that the governing board of the school district determines will not recur within a five-year period. Proceeds from a lease of school district property with an option to purchase may be deposited into a restricted fund for the routine repair of district facilities, as defined by the State Allocation Board, for up to a five-year period. In addition, the proceeds from the sale or lease with option to purchase may be deposited in the general fund of the district if the school district governing board and the State Allocation Board have determined that the district has no anticipated need for additional sites or building construction for the ten-year period following the sale or lease with option to purchase, and the district has no major deferred maintenance requirements. Proceeds from the sale or lease with option to purchase of school district property shall be used for one-time expenditures, and may not be used for ongoing expenditures including, but not limited to, salaries and other general operating expenses.

(b) The proceeds may also be deposited into a special reserve fund for capital outlay, for costs of maintenance of school district property that the governing board determines will not recur within a five-year period, or for the future maintenance and renovation of school sites if the district governing board and the State Allocation Board have determined that the district has no anticipated need for school sites or building construction or major deferred maintenance projects for a ten-year period following the sale or lease with option to purchase. Proceeds deposited in the special reserve fund shall not be available for general operating expenses as provided in Section 42842.

(c) The State Allocation Board, in consultation with the department, shall adopt regulations that govern the use of proceeds pursuant to this section for one-time expenditures and define ongoing expenditures for purposes of subdivision (a).

(d) Notwithstanding a determination by the State Allocation Board pursuant to subdivision (a) that a school district has no anticipated need for additional sites or building construction for the ten-year period following the sale or lease with option to purchase of surplus school property, the district may apply for new construction or modernization funding pursuant to this chapter if both of the following conditions are satisfied:

(1) Five years have elapsed since the date upon which the sale or lease with option to purchase was executed.

(2) The State Allocation Board determines that the district has demonstrated enrollment growth or a need for additional sites or building construction that the district could not have easily anticipated at the time the board made its original determination that the district had no anticipated need for the ten-year period following the sale or lease with option to purchase.

Education Code Section 17462.3 states:

(a) The State Allocation Board may establish a program that requires a school district, county office of education, or charter school that sells real property that was purchased with or modernized with, or on which improvements were constructed that were funded with, any moneys from a state school facilities funding program, to return to the State Allocation Board the moneys the school district, county office of education, or charter school received from the state school facilities funding program for the purchase, modernization, or construction if all of the following conditions are met:

(1) The real property is not sold to a charter school, a school district, a county office of education, or an agency that will use the property exclusively for the delivery of child care and development services, pursuant to Section 17457.5.

(2) The proceeds from the sale of the real property are not used for capital outlay.

(3) The real property was purchased, or the improvements were constructed or modernized on the real property, within 10 years before the real property is sold.

(b) The moneys to be returned to the State Allocation Board under this section are those received within 10 years before the real property is sold.

(c) If a portion of the real property is sold, a proportionate amount of funds received from a state school facilities funding program shall be returned to the State Allocation Board under this section based on the percentage of the real property sold.

Government Code Section 15490 (c) states in part “The Director of General Services shall provide assistance to the board as the board requires.”

ATTACHMENT B

Title 2: Administration
Division 2: Financial Operations
Chapter 3: Department of General Services
Subchapter 4: Office of Public School Construction
Group 1: State Allocation Board
Subgroup 3.5: Regulations Relating to Surplus School Property; Use of Proceeds; Return of Moneys from a State School Facilities Fund Program

Section 1700. Definitions.

For the purpose of the provisions of Education Code Sections 17462 and 17462.3, the terms set forth below shall have the following meanings~~, subject to the provisions of the Act~~:

"Apportionment" means a reservation of funds for the purpose of the purchase of real property, modernization of real property, or construction of improvements on real property, that is approved by the Board for a school district, county office of education or Charter School.

"Board" means the State Allocation Board as established by Section 15490 of the Government Code.

"Charter School" shall mean a school as established in California pursuant to Education Code Section 47600, et seq.

"District Representative" means a member of the a school district, county office of education or Charter School staff or other agent authorized on behalf of the school district, county office of education or Charter School to serve as the "District Representative" to execute and file forms with the Board on behalf of the school district, county office of education, or Charter School and/or act as a liaison between the Board and the school district, county office of education or Charter School.

"Form SAB 308" means the *Return of Real Property Sale Proceeds Notification,* Form SAB 308 (New 06/14), which is incorporated by reference.

"Office of Public School Construction (OPSC)" means the State office within the Department of General Services that assists the Board as necessary on behalf of the Director.

….

"Portable Facility" means a building of one or more stories that is designed and constructed to be relocatable and transportable over public streets, and with respect to a single story portable building, is designed and constructed for relocation without the separation of the roof or floor from the building and when measured at the most exterior walls, has a floor area not in excess of 2,000 square feet.

Note: Authority cited: Sections 17462 and 17462.3, Education Code, Section 15490, Government Code.
Reference: Sections 17462, 17462.3 and 17463.8, Education Code.

Section 1701. 10-Year Time Period

For the purpose of the provisions of Education Code Section 17462.3(a)(3) and (b):

(a) Moneys shall be considered received on the date the Board approved an Apportionment.

(b) The real property is considered sold on the date of the title transfer.

(c) Sale of real property shall include real property transferred through condemnation proceedings.

(d) Sale of a Portable Facility that does not include the land to which it is affixed is not subject to Education Code Section 17462.3.

Note: Authority cited: Section 17462.3, Education Code.
Reference: Sections 17462.3, Education Code.

Section 1702. Reporting Requirements and Return of Funds

(a) Any school district, county office of education, or Charter School that sells real property and is subject to the provisions of Education Code Section 17462.3(a) is required to submit a completed Form SAB 308 to the OPSC within 90 calendar days of the sale of the real property, as outlined in Section 1701(b).

(b)When calculating the portion of the real property sold pursuant to EC Section 17463.2(c), the gross acreage/square footage of the school site as well as square footage of building area shall be considered for the purpose of determining the proportionate percentage of funding to be returned.

(c) When the Board makes a finding that the school district, county office of education, or Charter School, is subject to the provisions of Education Code Section 17462.3, the school district, county office of education, or Charter School must return the moneys to the Board within 90 calendar days of the Board's finding.

Note: Authority cited: Section 17462.3, Education Code.
Reference: Section 17462.3, Education Code.

RETURN OF REAL PROPERTY SALE PROCEEDS NOTIFICATION

GENERAL INFORMATION

This form is to be used by a school district, county office of education or Charter School that is subject to the provisions of Education Code Section 17462.3 and is required to submit a completed Form SAB 308 to Office of Public School Construction (OPSC) of the sale of real property.

The following document(s) must be submitted with this form:

- A copy of the closing escrow document(s), or other legal document, that clearly indicates the seller(s), purchaser(s), total acres/square footage (Sq.Ft.) of real property sold, and final sale price.
- A copy of the assessor's parcel map that clearly indicates the gross area of the site and the total area of the property sold.
- A copy of a current site plan diagram that clearly indicates the square footage of all facilities on site and which (if any) facilities sold.

SPECIFIC INSTRUCTIONS

1. **Date of Sale of Real Property**
   Enter the date the title is transferred.

2. **Real Property Sold**
   - Use the table provided to indicate gross area of real property (land and building area), the total area sold, the percentage of area sold, and associated Assessor's Parcel Number(s).

3. **Purchasing Entity**
   Check the box that best describes the purchaser of the real property.
   - If the purchaser of the property was a school district, county office of education, Charter School or an agency that will use the property exclusively for the delivery of child care and development services, pursuant to Education Code Section 17457.5, check the applicable box.
   - If the purchaser of the property is an entity other than a school district, county office of education, Charter School or an agency that will use the property exclusively for the delivery of child care and development services, pursuant to Education Code Section 17457.5, check the box labeled "other" and enter the name of the purchasing entity.

4. **Total Funds Received**
   Use the table provided to insert the OPSC application number, Board apportionment date, the total of all Apportionments provided within the 10 year period preceding the sale date of the real property, and the applicable portion of the apportionment to be returned to the State based on the percentage of real property sold.

5. **Certification**
   The school district, county office of education, or Charter School representative must complete this section.

RETURN OF REAL PROPERTY SALE PROCEEDS NOTIFICATION

The school district, county office of education or charter school named below reports to the State Allocation Board via the Office of Public School Construction the sale of real property under the provisions of Chapter 4, Article 4, Part 10.5, Division 1, Section 17462.3 of the Education Code and the Regulations thereto.

SCHOOL DISTRICT		COUNTY
SITE NAME		CDE SITE CODE
PRIOR SITE NAME (IF APPLICABLE)		PRIOR CDE SITE CODE (IF APPLICABLE)
PROPERTY ADDRESS		ASSESSORS PARCEL NUMBER (APN)
DISTRICT REPERSENTATIVE NAME (PRINT NAME)	TELEPHONE NUMBER	E-MAIL ADDRESS

1. Date of Title Transfer: _____

2. Real Property Sold

AREA TYPE		AREA	ASSOCIATED APN(S)	PERCENTAGE OF TOTAL SITE
Gross Area of Site	☐ Acres ☐ Sq. Ft.			100%
Total Area Sold	☐ Acres ☐ Sq. Ft.			
Gross Building Area on Site (Sq. Ft.)			N/A	100%
Total Building Area Sold (Sq. Ft.)			N/A	

3. Purchasing Entity:

☐ School District
☐ County Office of Education
☐ Charter School
☐ An agency that will use the real property exclusively for the delivery of child care and development services, pursuant to Education Code Section 17457.5.
☐ Other: _____

4. Total Funds Received for the Site:

OPSC APPLICATION NUMBER	STATE ALLOCATION BOARD APPORTIONMENT DATE	TOTAL STATE APPORTIONMENT	PORTION OF APPORTIONMENT TO BE RETURNED
TOTAL		$	$

I certify, as the District Representative, that the information reported on this form is true and correct and that:

- I am designated as an authorized district representative by the governing board of the district; and,
- This form is an exact duplicate (verbatim) of the form provided by the Office of Public School Construction. In the even a conflict should exist, the language in the OPSC form will prevail.

SIGNATURE OF DISTRICT REPRESENTATIVE	DATE