Policy 3280: Sale Or Lease Of District-Owned Real Property **Status:** ADOPTED

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CSBA NOTE: The following optional policy and accompanying administrative regulation detail the procedures that govern the district's sale or lease of surplus real property, and may be revised to reflect district practice.

Education Code 17455 authorizes the sale, or lease for up to 99 years, of any district real property together with any personal property located thereon without approval of the voters within the district. To do so, the property must not or will not be needed by the district and the district must follow the procedures specified in Education Code 17387-17391.

Pursuant to Education Code 33050, a district may request the State Board of Education to waive the statutory bid procedures specified in Education Code 17387-17391, in order to sell surplus real property through a request for proposal process.

Pursuant to Education Code 17219, when the district has not used a previously used site for school purposes within the preceding five years, or has not used a newly acquired site within five years of acquisition for any of grades K-8 or seven years of acquisition for any of grades 7-12, the State Allocation Board (SAB) is authorized to charge an "unused site fee" in accordance with Education Code 17219-17224. For further information regarding non-use payments, see the Office of Public School Construction's, "Unused Site Program Handbook."

Additionally, the Surplus Land Act (Government Code 54220-54234) requires local agencies, including school districts, prior to disposing of certain land, to offer to sell or lease such land to certain entities for affordable housing, parks and recreation, and other specified uses.

Due to the complexities surrounding the disposal of surplus real property, it is recommended that districts consult CSBA's District and County Office of Education Legal Services or district legal counsel before initiating the process to sell or lease surplus real property.

The Governing Board believes that district facilities and resources should be utilized in an economical and practical manner. The Superintendent or designee shall periodically study the current and projected use of all district facilities to ensure the efficient utilization of space for the effective delivery of instruction.

CSBA NOTE: Pursuant to Education Code 17387-17391, before surplus real property is sold or leased, the Governing Board must appoint an advisory committee to advise the Board on the disposition of such property. Education Code 17388 and 17391 establish exceptions from this requirement, which are listed in Items #1-3 below.

Education Code 17389 requires that the advisory committee be representative of specific groups within the community and be composed of not less than seven or more than 11 members, commonly referred to as a "7-11 Committee". See the accompanying administrative regulation for further information on the composition and duties of this committee.

Prior to the sale or lease of any surplus real property, the Board shall appoint a district advisory committee to advise the Board regarding the use or disposition of schools or school building space

which is not needed for school purposes. The Board may elect not to appoint a district advisory committee for any of the following: (Education Code 17388, 17391)

1. A rental of property for a period of time not exceeding 30 days

2. A lease or rental of surplus property to a private educational institution for the purpose of offering summer school

3. A sale, lease, or rental of surplus property to be used for teacher or other employee housing

CSBA NOTE: Pursuant to Government Code 65402, if the county or city has adopted a general plan which is applicable in the area where the district property is located, the district must notify the county or city planning agency of the location, purpose, and extent of the proposed disposition of district property. The planning agency is required to report back to the district within 40 days, indicating whether the proposed disposition conforms with the general plan. If objections are not raised within 40 days, the lack of response is deemed to be a finding that the district's proposed disposition of the property is in conformity with the local planning agency's adopted general plan. Even if the planning agency disapproves of the location, purpose, or extent of the proposed disposition, the district may overrule the disapproval.

In addition, to ensure that the proposed disposition of the property conforms with any general plan adopted by the local planning agency that affects or includes the area where the surplus property is located, the Board shall submit a report to the local planning agency describing the location of the surplus property and the purpose and extent of the proposed sale or lease. (Government Code 65402)

CSBA NOTE: When proposing the sale or lease of surplus property, the district must also comply with the California Environmental Quality Act (CEQA) (Public Resources Code 21000-21177), when applicable. Pursuant to 14 CCR 15061, the sale or lease of property is exempt from detailed CEQA review if there is no possibility that the sale or lease will have a significant environmental effect. In such cases, the district must adopt a notice of exemption in accordance with 14 CCR 15062.

The Board shall determine whether the sale or lease of the surplus property is subject to review under the California Environmental Quality Act. (Public Resources Code 21000-21177; 14 CCR 15061-15062)

CSBA NOTE: Pursuant to Government Code 54956.8, the Board may hold a closed session for real property negotiations, including the sale or lease of property by the district. The Attorney General opined in 94 Ops.Cal.Atty.Gen. 82 (2011) that only three subjects related to real property negotiations may be considered in closed session, which are (1) the amount of consideration the local agency is willing to pay or accept in exchange for the real property rights to be acquired or transferred, (2) the form, manner, and timing of how that consideration will be paid, and (3) items that are essential to arriving at the authorized price and payment terms. See BB 9321 - Closed Session.

The Board may meet in closed session with its real property negotiator prior to the sale or lease of real property by the district in order to grant its negotiator authority regarding the minimum price or rent and terms of the sale or lease. (Government Code 54956.8)

CSBA NOTE: Pursuant to Government Code 54221, the Board must first declare land to be either (1) surplus land or (2) exempt surplus land under the Surplus Land Act before taking any action to dispose of the land. If land is determined to be "exempt surplus land", certain requirements set forth in the Surplus Land Act (Government Code 54220-54234) do not apply, except for providing

notice of the property's availability for sale or lease to specified public entities.

The declaration of whether land is surplus land or exempt surplus land may be done by way of a resolution, which is separate from the resolution adopted to order the sale or lease of surplus property, described below in "Resolution of Intention to Sell or Lease."

Before taking action to dispose of any land, the Board shall declare, at a regular meeting, supported by written findings that, under the Surplus Land Act, the land is either (1) surplus land or (2) exempt surplus land. (Government Code 54221)

CSBA NOTE: Pursuant to Government Code 54221, as amended by AB 480 (Ch. 788, Statutes of 2023), the Board is not required to make a resolution of intent to sell or lease described below at a public meeting for certain exempt surplus land if the district provides notice and opportunity for public comment as described below. Additionally, the Board is required to provide the Department of Housing and Community Development (HCD) notice as specified in its August 2024, "Updated Surplus Land Act Guidelines." For more information regarding land that is defined as "exempt surplus land", see the accompanying administrative regulation.

However, if the land involved is exempt surplus land as specified in Government Code 54221(f)(1), the Board, at its discretion, may decide not to make such a declaration. Instead of the declaration, the Board may identify the land as exempt surplus land in a notice that is published and available for public comment and to the entities identified in Government Code 54222 at least 30 days before the exemption takes effect. (Government Code 54221)

Additionally, at least 30 days prior to disposing of exempt surplus land, the district shall provide the Department of Housing and Community Development (HCD) a copy of the Board's declarations and findings supporting the Board's determination that the land is exempt surplus land using the form prescribed by HCD. (Government Code 54221)

CSBA NOTE: If the Board determines that under the Surplus Land Act the land involved is not exempt surplus land, then certain requirements must be followed in order to dispose of the property. Pursuant to Government Code 54230.5, before agreeing to terms for the disposition of surplus land, districts are required to provide HCD with a description of the notices of availability sent to public entities, summary of negotiations conducted with any responding public entities, and a copy of any restrictions to be recorded against the property as required by the Surplus Land Act. Pursuant to Government Code 54230.7, as added by SB 229 (Ch. 774, Statutes of 2023), districts disposing of surplus land that received a notification of violation from HCD are required to hold an open and public meeting to review and consider the substance of the notice of violation and may not take final action to ratify or approve the proposed disposal until a public meeting is held; see BB 9323.2-E(1) - Actions by the Board.

If the district has received notification from HCD that the district has violated the Surplus Land Act pursuant to Government Code 54230.5, the Board shall not pursue a final action to ratify or approve the proposed disposal of surplus land unless the Board holds an open and public meeting in compliance with Government Code 54230.7 to review and consider the substance of the notice.

CSBA NOTE: When a district is selling any surplus property or leasing it with an option to purchase, Education Code 17464 and Government Code 54222 of the Surplus Land Act list the public entities that must be given priority to lease or purchase the property and the types of notice that the district must provide such entities before disposing of the property.

Pursuant to Education Code 17464, the notice is required to be mailed to specified public entities and a general notice published once each week for three successive weeks in a regularly published newspaper, with at least five days intervening between the publication dates. If a public entity(ies)

desiring to purchase or lease the property responds to the notice within 60 days after the third publication, the district is required to negotiate with the public entity in an effort to arrive at a mutually satisfactory price or lease payment during that 60-day period.

Additionally, pursuant to Government Code 54222 and 54223 of the Surplus Land Act, a public entity interested in leasing or purchasing the land is required to respond within sixty days after the notice is sent and is entitled to a negotiation period of ninety days.

Under certain circumstances, districts may also need to comply with the Naylor Act (Education Code 17485-17500), which requires that priority be given to public agencies when disposing of any district property that includes a playground, playing field, or land particularly suited for outdoor recreational or open-space purposes.

Under certain conditions, the district may grant priority to licensed child care providers pursuant to Education Code 17458 or may sell surplus property for less than fair market value to public entities for recreational purposes pursuant to Education Code 17230.

When selling or leasing district real property, the Board shall comply with applicable procedures and give priority to specified public agencies as required by law. (Education Code 17230, 17464, 17485-17500; Government Code 54221-54234)

Resolution of Intention to Sell or Lease

Before ordering the sale or lease of any real property, the Board shall adopt a resolution by a two-thirds vote of all of its members at a regularly scheduled open meeting. The resolution shall describe the property proposed to be sold or leased in such a manner as to identify it, specify the minimum price or rent, describe the terms upon which it will be sold or leased, and specify the commission or rate, if any, which the Board will pay to a licensed real estate broker out of the minimum price or rent. The resolution shall fix a time, not less than three weeks thereafter, for a public meeting, held at the Board's regular meeting place, at which sealed proposals to purchase or lease will be received and considered. (Education Code 17466)

The Superintendent or designee shall provide notice of the adoption of the resolution and of the time and place of the meeting that will be held to consider bids by posting copies of the resolution, signed by the Board, in three public places not less than 15 days before the date of the meeting. In addition, the notice shall be published at least once a week for three successive weeks before the meeting, in a newspaper of general circulation published in the county in which the district is located, if such a newspaper exists. (Education Code 17469)

CSBA NOTE: Education Code 17470 requires districts to take reasonable steps to notify the former owner of the property of the public meeting at which bids will be considered. However, the Board is not required to accord the former owner the right to purchase the property at the tentatively accepted highest bid price nor to offer to sell the property to the former owner at the tentatively accepted highest bid price.

At least 60 days prior to the public meeting, the Superintendent or designee shall take reasonable steps to provide written notification of the public meeting, by certified mail, to the former owner from whom the district acquired the property. (Education Code 17470)

Acceptance/Rejection of Bids

At the public meeting specified in the resolution of intention to sell or lease property, the Board shall open, examine, and declare all sealed bids. Before accepting a written proposal, the Board

shall call for oral bids in accordance with law. (Education Code 17472, 17473)

The Board may reject any and all bids, either written or oral, and withdraw the properties from sale when the Board determines that rejection is in the best public interest. If no proposals are submitted or the submitted proposals do not conform to all the terms and conditions specified in the resolution of intention to lease, the Board may lease the property in accordance with Education Code 17477. (Education Code 17476, 17477)

Of the proposals submitted by responsible bidders which conform to all terms and conditions specified in the resolution of intention to sell or lease, the Board shall finally accept the highest bid after deducting the commission, if any, to be paid to a licensed real estate broker, unless the Board accepts a higher oral bid or rejects all bids. (Education Code 17472)

The final acceptance of the bid may be made either at the same meeting specified in the resolution or at any adjourned/continued meeting held within 10 days. Upon acceptance of the bid, the Board may adopt a resolution of acceptance that directs the Board president, or any other Board member, to execute the deed or lease and to deliver the document upon performance and compliance by the successful bidder of all of the terms and conditions of the contract. (Education Code 17475-17478)

Use of Proceeds

CSBA NOTE: Pursuant to Education Code 17462, the proceeds derived from the sale of surplus property or lease with an option to purchase must generally be used for one-time expenditures for capital outlay or maintenance, with specified exceptions. The law does not place limitations on the use of proceeds for a lease of surplus property that does not include an option to purchase.

The Superintendent or designee shall ensure that the proceeds from the sale or lease with an option to purchase of surplus district property are used for one-time expenditures and not for ongoing expenditures such as salaries and general operating expenses. (Education Code 17462; 2 CCR 1700)

Proceeds from a sale of surplus district property shall generally be used for capital outlay or maintenance costs that the Board determines will not recur within a five-year period. Proceeds from a lease of 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 (SAB), for up to a five-year period. (Education Code 17462)

CSBA NOTE: Pursuant to Education Code 17462, proceeds from the sale or lease with an option to purchase may be deposited in the district's general fund when the Board and SAB determine that the district has no anticipated need for additional sites or building construction for the next 10 years and no major deferred maintenance requirements. Thus, districts may not apply to the state for new construction or modernization funding during that time period unless certain conditions specified in Education Code 17462 are satisfied.

However, if the Board and SAB determine that the district has no anticipated need for additional sites or building construction for the next 10 years and no major deferred maintenance requirements, the proceeds from the sale or lease with an option to purchase may be deposited in a special reserve fund for the future maintenance and renovation of school sites or in the district's general fund. (Education Code 17462)

CSBA NOTE: Pursuant to Education Code 17462.3, if the district is selling real property purchased, improved, or modernized with funds received from a state school facilities funding program within

the previous 10 years, the district is required to return those funds to SAB under specified conditions. The district must notify OPSC of the sale by submitting Form SAB 308, available on OPSC's website.

Whenever the district sells real property that was purchased, improved, or modernized with funds that were received from a state school facilities funding program within the previous 10 years, the district shall notify OPSC within 90 calendar days of the sale of the property if the proceeds from the sale are not used for capital outlay and the property is not sold to a charter school, another 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. If SAB subsequently makes a finding that the sale is subject to Education Code 17462.3, the district shall return the funds to the SAB within 90 calendar days of the finding. (2 CCR 1702)