Lease-Leaseback and the Latest Word on Construction Delivery Methods

CASBO CBO Symposium

November 18, 2016

Presented by:
Harold Freiman
Megan Macy

Lozano Smith
ATTORNEYS AT LAW
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What We Will Cover

Lease-Leaseback
Multiple Prime
Design-Build
Construction Management

How to Pick a Delivery Method?

Which one best suits your project?
Which one best suits your District?
LEASE-LEASEBACK

LEASE-LEASEBACK (*LLB*)

The law as it exists today:

“[T]he governing board of a school district, without advertising for bids, may let, for a minimum rental of one dollar ($1) a year ... any real property that belongs to the district if the instrument ... requires the lessee therein to construct ... a building ... for the use of the school district during the term of the lease, and provides that title to that building shall vest in the school district at the expiration of that term.”

(Ed. Code, § 17406.)
Potential Advantages of Lease-Leaseback

- Factors other than price are taken into consideration
- Potentially fewer change orders
- Pre-contract design review?

Potential Disadvantages of Lease-Leaseback

- Risk of Davis challenge
- Potentially higher contract price
- Change orders and extra payments
- Prequalification
- Greater legal expense

Court Challenges to Lease-Leaseback

- Various challenges to LLB have been filed in court over the last few years.

Court Challenges to Lease-Leaseback

June 2015
– Held that an LLB agreement must contain lease terms and a financing component in order to be valid
– Held that a contractor or consultant hired to perform preconstruction services may have a disqualifying conflict of interest if the contractor is then hired to perform the work

Court Challenges to Lease-Leaseback

May 2016
– Disagreed with Davis’ holding that an LLB agreement must contain lease terms and a financing component
– Agreed with Davis’ holding regarding the potential conflict of interest issue

Lease-Leaseback: Legislative Updates

Assembly Bill 566:
• Effective January 1, 2016
• Expanded prequalification requirements to all LLB contracts, except for school districts with less than 2,500 average daily attendance (ADA)
• Imposed additional labor requirements on LLB arrangements
  – Must have an enforceable commitment that the contractor and its subcontractors will use a “skilled and trained workforce” to perform all work that falls within an apprenticeable occupation.
Assembly Bill (AB) 2316:
• Effective January 1, 2017
• Requires school districts to select LLB contractors through an extensive competitive process and based on a “best-value” procedure.

The new process for selection of LLB contractors will include the following requirements:
• Board adoption and publication of procedures and guidelines for evaluating qualifications of proposers.
• Must ensure the best value selections by the District are conducted in a fair and impartial manner.

• Preparation of an RFP that includes:
  • An estimate of price,
  • Precise description of any preconstruction services that may be required,
  • Key elements of the contract,
  • Description of the format to be followed and elements to include, standard to be used in evaluating proposals,
  • Date when proposals are due, and
  • Timetable for review and evaluation of proposals.
Lease-Leaseback: Assembly Bill 2316

• The RFP must identify the scoring criteria that will be used to select the LLB contractor.
• Once proposals are received, the District must score them according to the specific criteria and award the contract to the responsive proposer with the highest score.

AB 2316: Lump sum vs. Fee Proposal

• Lump Sum Proposal:
  – RFP for LLB contractor cannot be issued until after DSA approval without including preconstruction services (which may not be possible for a lump sum proposal).
• Fee Proposal:
  – RFP can be issued prior to DSA approval in order to include preconstruction services.
  – Additional competitive process applies for selecting contractor’s selection of subcontractors following DSA approval.
Two Types of Competitive Bidding

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Potential Advantages of Single Prime Contractor

- Contractor locked into low lump sum price
- Simple and familiar procedures
- Pre-bid constructability review and value engineering
- Contractor or District may perform post-bid value engineering
- Limits appearance of bias or favoritism

Potential Disadvantages of Single Prime Contractor

- Little control over selection of contractor
- Bid protests
- Contractor may be less cooperative
- Contractor cannot perform pre-bid services

CAUTION
Potential Advantages of Multiple Prime Contractor

- Lower total price of construction contracts
- Potential to start sooner
- Potential flexibility to match budget
- Flexibility in scheduling

Potential Disadvantages of Multiple Prime Contractor

- District stands in the shoes of the general contractor:
  - Added costs
  - Increased liability risk
  - Difficulty in assessing damages
- Potential for greater legal expense

DESIGN-BUILD
### Design-Build: Overview

- Education Code sections 17250.10, et seq.
  - One entity designs and builds the project
  - Specific selection process required
  - May award based on best value

### Design Build: Recent Legislation

Assembly Bill (AB) 1358:
- Signed by Governor Jerry Brown on October 10, 2015
- Applies to any RFP issued on or after July 1, 2016
- Lowered the threshold of eligible projects from $2.5 million to $1 million
- Simplified the process for letting and awarding design-build contracts.

### Significant Procedural Changes

- District’s governing board no longer required to make specific written findings regarding the benefits of using the design-build method
- District is allowed to develop its own prequalification questionnaire and rating system.
- More freedom to districts when awarding the contract on factors other than lowest price.
Potential Advantages of Design-Build

- Quality can be used as a selection factor
- Unity of design and construction
- Eliminates the “liability gap”

Potential Disadvantages of Design-Build

- Loss of some control over design
- Higher price
- Design problems may still cause delay
- Change orders may still be needed
- No checks and balances
- Potentially greater legal expense
Use of Construction Managers

- Traditional “Agency” Construction Managers
- Selection Process
- Role will vary depending on LLB, multiple prime, design-build, etc.

Takeaways

1. All delivery methods have advantages and disadvantages
2. Best delivery method for a project depends on the project itself, and depends on the District’s objectives and risk tolerance

Questions
Attorney Biography

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Partner

Harold M. Freiman is a Partner in Lozano Smith's Walnut Creek office and co-chair of the Technology and Innovation Practice Group. He represents school districts, county offices of education, and community college districts in such areas as school facilities, property, general education law, governing boards, student issues, business, and general litigation. He is a recognized leader on such topics as developer fees, school district reorganization, surplus property, the Brown Act and the Public Records Act. Additionally, he provides advice and litigation services related to the California Environmental Quality Act (CEQA) to cities, special districts and educational agencies. He has been with the firm and representing public entities for over 20 years. Mr. Freiman has appeared before the California Supreme Court on behalf of the California School Boards Association’s Education Legal Alliance, and has been named a Northern California “Super Lawyer.” He also received the 2014 CASBO Associate Member of the Year Award for his exemplary service to schools and to CASBO for many years.

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Megan Macy is a Partner in Lozano Smith’s Sacramento office and an active member of the Labor and Employment and Charter Schools Practice Groups. She is also co-chair of the firm’s Facilities and Business Practice Group. Ms. Macy provides general counsel to school districts and special districts with a focus on fire protection districts, routinely advising clients on the Brown Act, Public Records Act, conflict of interest issues and development of governing board policies. Her primary goal is to assist educational agencies in maximizing their limited resources through risk management, preventative legal services and effective planning. Ms. Macy utilizes her litigation background to counsel clients on effective risk management strategies in the facilities and business arena, including public bidding issues, real property transactions and negotiation of school facilities agreements, related to new residential development. Those skills are also invaluable in handling the array of labor and employment issues school districts routinely encounter, from employee discipline issues to labor disputes.

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Despite a recent appellate court decision that affirmed the validity of “lease-leaseback” contracts for school districts to build facilities under Education Code §§17400, et seq., a new appellate court decision from a different appellate court district has allowed a lawsuit to proceed against a particular lease-leaseback arrangement that was similar to many in use by school districts in the State. In a portion of the decision relevant to all public agencies, the court also concluded that a civil cause of action for conflict of interest under Government Code section 1090, et seq., can be brought to seek invalidation of a contract where the conflict involves an outside consultant, rather than a public agency employee or officer. The court’s decision is not yet final, and may be subject to further review.

Lease-Leaseback

Last year, the Fourth District appellate court in Los Alamitos Unified School District v. Howard Contracting, Inc. (2014) 229 Cal.App.4th 1222, upheld a school district’s use of lease-leaseback under Education Code section 17406 to build facilities and confirmed that competitive bidding was not required when using that authority. (See Client News Brief No. 62, September 2014.)

This week, in Davis v. Fresno Unified School District (June 1, 2015) case no. F068477 (5th App. Dist.), the court agreed with Los Alamitos that lease-leaseback can comply with the law, and does not require competitive bidding. However, the court allowed a lawsuit, currently only at the pleading stage, to move forward challenging a specific lease-leaseback arrangement. The case was sent back to the trial court for further proceedings and, as a result, the ultimate outcome of this case may be decided on appeal or after a trial on the specific issues. For these reasons, it is too soon to say to what extent Davis may impact other school districts in their specific lease-leaseback arrangements. The case does not directly address lease-leaseback for other public agencies.

While it is premature to say that Davis has changed or will change the landscape of lease-leaseback, the court’s decision calls into question a number of aspects of many school district lease-leaseback agreements. A primary concern regarding the lease-leaseback agreement addressed by the court is that the agreement functioned more like a construction contract than a “true” lease. The court addressed a number of alleged characteristics of the school district’s specific contract documents, and concluded that the plaintiff might be able to establish at trial that the agreement was not a “true” lease under the lease-leaseback statutes. The court opined that in order to be a lease, the statute requires the district to occupy and have use of the site for some period of time while the lease and leaseback (sublease) were in effect. The court also opined that a lease-leaseback under Section 17406 must function as a financing vehicle for the school district, although the court rejected the notion that a school district must lack access to facility funding in order to use lease-leaseback. The court’s conclusions are debatable, and may yet be subject to further judicial review.
Conflict of Interest

In addition to the lease-leaseback issue, the Court addressed conflict of interest in a manner that is applicable to all local agencies. The court allowed further legal action on a claim that the contractor, as a pre-construction consultant to the school district, participated in the making of a contract in which it subsequently became financially interested, and thus potentially violated conflict of interest laws. The plaintiff alleged that the contractor had a conflict of interest because it developed the plans and specifications for the project, and simultaneously acted in its role as a government agency consultant to participate in making the overall lease-leaseback contract, which was a substantial financial benefit to the contractor. While the court acknowledged prior case law holding that an outside consultant cannot be criminally prosecuted for an alleged conflict of interest violation under Government Code section 1090, the court left open the possibility that the consultant might be found to have committed a violation that can be pursued in a civil lawsuit. Such a lawsuit could seek to invalidate the contract in question. This opens the door to potential scrutiny of outside consultants in a variety of contexts beyond construction. The court did, however, find that the Political Reform Act (Gov. Code §§ 87100, et seq.) does not apply to an outside corporation offering consulting services.

Lozano Smith will be monitoring this case closely and will report on any significant developments. Because of the scrutiny of the lease-leaseback authority that will likely follow the Davis case, and may continue until the case is finally resolved, school districts may wish to work particularly closely with their legal counsel on lease-leaseback issues and agreements. Similarly, for all public agencies, care should be taken when considering issuing contracts to consultants who have previously advised the agency on a related matter.

If you have any questions regarding this case or lease-leaseback agreements that school districts may have in place or are considering, please contact one of our nine offices located statewide. You can also visit our website, follow us on Facebook or Twitter, or download our Client News Brief App.

As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.
An appellate court has ruled that a lease-leaseback (LLB) contract without competitive bidding was legally enforceable. In McGee v. Balfour Beatty Construction, LLC, et al. (Apr. 12, 2016) 2016 Cal.App.Unpub. Lexis 2626, a California appellate court rejected the holding of Davis v. Fresno Unified School District (2015) 237 Cal.App.4th 261, that competitive bidding was required for an LLB contract unless additional non-statutory contract terms were included. However, the McGee decision agreed with Davis that a third party had standing to sue regarding the LLB contractor’s potential conflict of interest. Unfortunately, the McGee court elected not to publish its decision, meaning that it cannot be cited by other courts as legal precedent. Lozano Smith filed an amicus curiae brief with the McGee appellate court on behalf of the California Association of School Business Officials (CASBO).

As in Davis, the plaintiffs in McGee alleged that the LLB contract documents were not genuine leases, but instead were a “subterfuge” to avoid competitive bidding. However, unlike Davis, the appellate court in McGee held that the plain language of the LLB statute (Education Code §17406) only required that the school district own the land, that the lease be for purposes of construction, and that the title vest in the school district at the end of the school term. The court held that the plaintiffs’ “efforts to engraft additional requirements – such as the timing of the lease payments, the duration of the lease, and the financing – are not based on the plain language of the statute.” This in effect repudiates the Davis case.

In short, the McGee court declined to “rewrite the [LLB] statute.” It relied heavily on Los Alamitos Unified School District v. Howard Contracting, Inc. (2014) 229 Cal.App.4th 1222, which held that Education Code section 17406’s exception from competitive bidding was valid.

McGee also focused on whether the taxpayer plaintiff had standing as a third party to allege a cause of action for conflict of interest under Government Code section 1090 (as held in Davis), or did not have such standing (as held in another recent case, San Bernardino County v. Superior Court (2015) 239 Cal.App.4th 679). The appellate court held that the plaintiffs had standing since the present case was a validation action like Davis, and since a prior Supreme Court case (on which Davis relied) implicitly gave standing to third parties. In addition, the appellate court held that the plaintiffs’ allegations that the LLB contractor acted as an officer or employee of the District when performing pre-construction services were sufficient to let the cause of action proceed to trial.

What does the McGee decision mean for school districts? Since it is not binding precedent, it merely provides additional perspective on certain LLB issues, but this perspective highlights the ongoing uncertainty surrounding LLB. The appellate courts have not agreed on LLB and what contract terms are required, or on the standing of third parties to sue regarding an LLB contractor’s conflict of interest and the application of conflict of interest laws to private contractors. The California Supreme Court dodged this issue by

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denying review of the Davis case. There is yet another LLB case pending in another appellate court (California Taxpayers Action Network v. Taber Construction Inc., et al.), in which Lozano Smith also filed an amicus brief on behalf of CASBO. The hope remains that clarity will yet come out of these divergent cases.

One or more parties may request reconsideration, publication, or Supreme Court review of the McGee decision. If not reconsidered by the appellate court or reviewed by the Supreme Court, the McGee action would move forward in the trial court solely on the conflict of interest cause of action. However, the final judgment cannot be predicted, and may yet be appealed.

If you have any questions about the legality of LLB and which appellate court decisions may apply to your project, or about other project delivery methods, please contact one of our nine offices located statewide. You can also visit our website, follow us on Facebook or Twitter, or download our Client News Brief App.
On May 4, the Second District Court of Appeal in McGee v. Balfour Beatty Construction, LLC, et al. (McGee) ordered publication of its decision upholding the validity of a lease-leaseback arrangement. Publication of the decision means that it now serves as precedent on which school districts and others may rely.

In McGee, the court reviewed the validity of a lease-leaseback arrangement that was challenged on the grounds that the arrangement did not comply with Education Code § 17406. The party challenging the lease-leaseback arrangement relied heavily on the Fifth District’s decision in Davis v. Fresno Unified School Dist. (2015) 237 Cal.App.4th 261 (Davis), which held that a valid lease-leaseback arrangement under Section 17406 must include a “financing component” and a “genuine lease.” (For a further discussion of the Davis decision, see Client News Brief No. 30, June 2015.)

On April 12, the McGee court issued its decision to uphold the validity of the lease-leaseback arrangement. McGee also rejected Davis’ interpretation of Section 17406 and Davis’ attempt to improperly add requirements into the statute. Specifically, McGee disagreed with Davis’ conclusion that a valid lease-leaseback arrangement must contain elements of a “genuine lease,” which Davis understood to include occupancy of the premises during the lease term and a financing component. (For a further discussion of the McGee decision, see Client News Brief No. 25, April 2016.)

On behalf of the California Association of School Business Officials (CASBO), Lozano Smith filed a request for partial publication, and sought to have the court publish the portion of the decision specific to Education Code § 17406 and the lease-leaseback construction delivery method. CASBO also requested that the court refrain from publishing a portion of the decision concurring with Davis that a third-party taxpayer may have standing to allege a conflict of interest under Government Code § 1090 when applied to the conduct of independent contractors. Although CASBO sought only partial publication, the McGee court granted publication of the entire decision, including the portion relating to a conflict of interest under Section 1090 (the court, however, has at least made it clear that application of Government Code § 1090 to independent contractors is very dependent on the specific facts). As a result of the publication order, the entire McGee decision is now precedent and can be relied on outside the Fifth District Court of Appeal, where Davis still controls. Legislation has recently been proposed which could again address lease-leaseback issues. We will be tracking all such legislation.

If you have any questions about this decision or the lease-leaseback construction delivery method, or about other project delivery methods, please contact one of our nine offices located statewide. You can also visit our website, follow us on Facebook or Twitter, or download our Client News Brief App.
Scrutiny regarding school districts’ use of lease-leaseback (LLB) construction contracts has prompted the Legislature to impose additional contracting requirements that will make the use of LLB more complicated, and will limit a school district’s discretion in selecting the LLB contractor. Assembly Bill (AB) 2316, which the Governor signed on September 23, 2016, will require school districts to use a comprehensive “best value” selection process for LLB contractors. AB 2316 also grants specific financial protection to contractors who were awarded LLB contracts prior to July 1, 2015. The bill goes into effect on January 1, 2017.

What is Lease-Leaseback?

Education Code section 17406 permits a school district to lease a site to a contractor for $1 per year for the purpose of the contractor performing construction on that site. The contractor typically leases the site back to the school district in exchange for payments to compensate the contractor for the cost of construction. Until now, section 17406 has specifically permitted selection of the LLB contractor without advertising for bids and without requiring any selection process.

Recent History of Lease-Leaseback

The law related to LLB contracts has changed significantly over the last two years. Effective January 1, 2015, AB 1581 required prequalification for contractors on LLB projects that were over $1 million, funded by the state and for districts with an average daily attendance (ADA) of 2,500 or more. (Ed. Code, § 17406; Pub. Contract Code, § 20111.6; see 2014 Client News Brief No. 71.) Though not a model of clarity, effective January 1, 2016, AB 566 appears to have extended prequalification to all LLB projects for districts with ADA of 2,500 or more, regardless of funding source and regardless of price. AB 566 also required use of a “skilled and trained workforce.” (See Ed. Code, §§ 17406, 17407.5; and 2015 Client News Brief No. 51.)

On June 1, 2015, an appellate court held that an LLB contract must contain provisions that reflect contractor financing and post-construction tenancy by the school district, and that an LLB contract with an entity that provided preconstruction services under a separate contract could be subject to legal challenge for a potential conflict of interest under Government Code section 1090. (Davis v. Fresno Unified School District (2015) 237 Cal.App.4th 261; see 2015 Client News Brief No. 30.)

On April 12, 2016, an appellate court agreed with the Davis court about the potential for a conflict of interest in an LLB contractor’s performance of preconstruction services under an earlier contract, but disagreed with the Davis court regarding terms required for LLB contracts, ruling that an LLB contractor need not include provisions about contractor financing and post-construction tenancy. (McGee v. Balfour Beatty Construction (2016) 247 Cal.App.4th 235; see 2016 Client News Brief No. 25.) A conflict therefore exists in California courts...
New Procedures for Selection of Lease-Leaseback Contractor

Beginning on January 1, 2017, AB 2316 requires selection of the LLB contractor through a "best value" procedure specifically laid out in statute. Proposals submitted in response to a request for proposals (RFP) will be ranked by their best value scores and the Board must award to the contractor that submitted the sealed proposal determined by the Board to be the best value. In other words, aside from developing a scoring system for ranking the proposals, a school district will now have limited discretion in selecting its LLB contractor.

Beneficially, the bill expressly permits a school district to award a single LLB contract that includes preconstruction services, thus avoiding any potential conflict of interest issue under Davis and McGee resulting from the award of multiple contracts to the same contractor. AB 2316 also permits a school district to award the LLB contract for an agreed-upon lump sum or a fee for performing the services.

Protection for Pre-Davis Lease-Leaseback Contractors

Another significant aspect of AB 2316 is that it provides protection for contractors that entered into an LLB contract prior to July 1, 2015. For these contracts, if a court declares the contract award invalid due to a lack of competitive bidding, the contractor would be allowed to recover its reasonable costs incurred in performing the project, but not its profit. To recover such costs, the contractor must meet several requirements, such as establishing that it had a good faith belief that the LLB contract was valid.

Effect of AB 2316 on Recent Lease-Leaseback Law

The bill does not change existing statutory requirements that contractors be prequalified prior to award of an LLB contract and that they use a skilled and trained workforce. In addition, AB 2316 does not provide any guidance on what lease and payment terms are required in the LLB contract, and does not eliminate the risk of a conflict of interest caused by multiple contracts with the same contractor. (See Davis and McGee, above.)

Given the new requirements and the remaining unresolved legal issues concerning LLB, school districts considering this delivery method should consult closely with their legal counsel to evaluate the use of LLB as an alternative delivery method for construction projects.

If you have any questions about the new LLB contractor selection procedures or the legality of LLB contracts under the Davis and McGee cases, or about public works issues in general, please contact the authors of this Client News Brief or an attorney at one of our 10 offices located statewide. You can also visit our website, follow us on Facebook or Twitter or download our Client News Brief App.
Although the ‘design-build’ construction delivery method has been available to California school districts for several years, this method has been used somewhat infrequently, as districts have opted for more traditional construction methods, like design-bid-build (Public Contract Code § 20111, et seq.), or alternatives like lease-leaseback (Education Code § 17406). The Legislature recently amended the current laws governing the design-build method for school districts. The changes make the method more accessible and more streamlined, and to give school districts more flexibility. However, the Legislature also imposed a new requirement of a skilled and trained workforce.

Design-build is a construction delivery method by which an owner retains a single entity to provide architectural, engineering, and construction services under a single contract. Although Education Code section 17250.10 et seq. has permitted school districts to utilize the design-build method since 2000, the method has not been widely used. Under present law, school districts are only authorized to use design-build for those construction projects exceeding $2.5 million. Current law also requires a district to make a formal written finding that use of the design-build method will accomplish certain objectives, and requires a district to establish a process to prequalify bidders using a standard questionnaire developed by the Department of Industrial Relations. Also, while the district has some leeway in awarding a contract under design-build (and can consider more than just lowest price), a school district is still required to use the following designated factors to represent at least 50% of the total weight or consideration given to any criteria used by the district: price, technical expertise, life-cycle costs over 15 years or more, skilled labor force availability, and acceptable safety record.

On October 10, 2015, Governor Jerry Brown signed Assembly Bill (AB) 1358, which makes several changes to the design-build method specific to school districts. The changes brought by AB 1358 apply to any request for proposal (RFP) issued on or after July 1, 2016. Most notably, AB 1358 lowers the threshold from $2.5 million to $1 million, expanding the pool of projects eligible to be awarded through design-build. AB 1358 also somewhat simplifies the process for letting and awarding design-build contracts. First, a district’s governing board is no longer required to make specific written findings regarding the benefits of using the design-build method. Second, a district is allowed to develop its own prequalification questionnaire and rating system. Third, AB 1358 gives more freedom to a district when awarding the contract on factors other than lowest price. While a school district is still required to consider certain factors (price, technical design and construction experience, and life-cycle costs over 15 or more years), the district now has discretion on how these factors are weighted and what other factors, if any, the district should consider.

Another significant change brought by AB 1358 is the addition of a “skilled and trained workforce” requirement. Specifically, any entity seeking prequalification for a school district’s design-build project must provide an enforceable commitment to the district that the entity, and every subcontractor at every tier, will use a skilled and trained workforce to perform all work on the project. This enforceable commitment can be made by the design-build entity in one of:
three ways: (i) stating in the contract that it will comply with the labor requirements, with monthly written confirmation from the contractor, and with payments to the contractor ceasing if the confirmation is not received; (ii) agreeing to become a party to the school district’s project labor agreement for the project, if one already exists; or (iii) entering a new project labor agreement for the project. This new requirement is similar to recent changes made to lease-leaseback projects, which also become subject to a ‘skilled and trained workforce’ obligation. (For a further discussion of recent changes to lease-leaseback and lease-to-own agreements, see Client News Brief No. 51, September 2015.)

Even though school districts have been slow to use design-build contracts, other public agencies have used the design-build method and found it advantageous. Given the current uncertainty surrounding lease-leaseback construction agreements, and the fact that some school districts have sought alternatives to the design-bid-build method, AB 1358 may allow the design-build method to become a viable and beneficial construction delivery method for California school districts moving forward, as long as school districts are also prepared to accept the new labor requirements.

If you have questions regarding the implications of AB 1358, or have any planned or anticipated construction projects and would like to discuss construction delivery methods, please contact one of our nine offices located statewide. You can also visit our website, follow us on Facebook or Twitter, or download our Client News Brief App.
Overview

Harold M. Freiman is a Partner in Lozano Smith’s Walnut Creek office and co-chair of the Technology and Innovation Practice Group. He represents school districts, county offices of education, and community college districts in such areas as school facilities, property, general education law, governing boards, student issues, business, and general litigation. He is a recognized leader on such topics as developer fees, school district reorganization, surplus property, the Brown Act and the Public Records Act. Additionally, he provides advice and litigation services related to the California Environmental Quality Act (CEQA) to cities, special districts and educational agencies. He has been with the firm and representing public entities for over 20 years. Mr. Freiman has appeared before the California Supreme Court on behalf of the California School Boards Association’s Education Legal Alliance, and has been named a Northern California "Super Lawyer." He also received the 2014 CASBO Associate Member of the Year Award for his exemplary service to schools and to CASBO for many years.

Presenter Experience

Mr. Freiman, who has received numerous awards for public speaking, has been a speaker for, among others, the California School Boards Association (CSBA), the California Association of School Business Officials (CASBO), the National School Boards Association (NSBA), and the Coalition for Adequate School Housing (CASH). Mr. Freiman also regularly conducts board workshops on topics such as the Brown Act and Board governance.

Articles

In addition to writing several of the firm's Client News Briefs, Mr. Freiman's article, "Upcoming Developer Fee Increase, Being Proactive Can Result in More School Facilities Funds" was published in the CASBO Journal in December 2005. Mr. Freiman also co-authored "Water and Sewer Service Impacts and Fees," Environmental Mitigation Handbook (California’s Coalition for Adequate School Housing, 2009) and Senate Bill 50 and School Facility Fees: A Report Prepared by C.A.S.H.’s Legal Advisory Committee (1999). Mr. Freiman’s article, “In Service to the Client” was published in California Lawyer Magazine in September 2013.
Professional Affiliations
Mr. Freiman is a frequent presenter and trainer for CASBO, is a member and former Chair of CASBO's statewide Associate Member Committee, and served on the CASBO Board of Directors for 2015-2016. He has also served on the Legal Advisory Panel for the Coalition for Adequate School Housing. Additionally, he is a member of CSBA’s Council of School Attorneys as well as the National School Boards Association’s Council of School Attorneys.

Education
Mr. Freiman received his J.D. from Columbia Law School, and holds a B.A. from the University of California at Berkeley. He was admitted to the California State Bar in 1990.

In college, he was a teaching assistant and reader in the Rhetoric Department, and worked as an instructor in the Contra Costa College for Kids summer program. While at Columbia, he instructed first year law students in Real Property Law.
Megan Macy is a Partner in Lozano Smith’s Sacramento office and co-chair of the firm’s Facilities and Business Practice Group. She is also an active member of the Labor and Employment and Charter Schools Practice Groups.

Ms. Macy provides general counsel to school districts, routinely advising clients on the Brown Act, Public Records Act, conflict of interest issues and development of governing board policies. Her primary goal is to assist educational agencies in maximizing their limited resources through risk management, preventative legal services and effective planning.

Ms. Macy utilizes her litigation background to counsel clients on effective risk management strategies in the facilities and business arena, including public bidding issues, real property transactions and negotiation of school facilities agreements related to new residential development. Those skills are also invaluable in handling the array of labor and employment issues school districts routinely encounter, from employee discipline issues to labor disputes.

Ms. Macy is an expert in charter school law, having advised school districts on the full array of charter school issues, including petition review, denial and appeal, Prop. 39 requests and other facilities use issues, charter school formation and revocation. Her general counsel experience pairs well in this arena, offering clients a broad understanding of employment, student and governance issues that must be scrutinized during the charter approval and administration process.

Presenter Experience
Ms. Macy is an accomplished speaker presenting at various events including the California School Boards Association (CSBA), the California Association of School Business Officials (CASBO), the Coalition for Adequate School Housing (CASH), the Small School Districts Association (SSDA) and Lozano Smith’s Facilities and Business workshops on various topics ranging from school closure to developer fees to construction.

Significant Cases
Ms. Macy has participated in several cases that involved significant issues, including:

- Negotiating Developer Mitigation Agreements on behalf of school districts for developments ranging in size from 100 units up to 20,000 units
- Successfully negotiating resolution of multi-party construction litigation stemming from contractor termination
(Air Systems, Inc., v. Campbell Union High School District)

- Successfully negotiating resolution of facilities accessibility issues related to existing consent decree (Spieler v. Mt. Diablo Unified School District)

**Education**

Ms. Macy earned her law degree from the University of Oregon School of Law. She attended the Alternative Dispute Resolution Program to be a certified mediator for Lane County Small Claims Court, and served as chief justice at the University of Oregon Constitution Court. Ms. Macy earned her B.A. in public policy and religion from Washington and Lee University, and she completed the Shepherd Program for the Interdisciplinary Study of Poverty.