

# Builders want changes to state's lease-leaseback law

By Hannah Furfaro  
hfurfaro@fresnobee.com

A group of California building organizations is rallying to change state law in hopes of torpedoing a recent court opinion on school construction projects — and fend off school districts looking to be repaid for multimillion-dollar school projects built under illegal deals.

Associated General Contractors of America in San Diego and California's Coalition for Adequate School Housing (C.A.S.H.) are two of the [organizations pushing for the changes](#) to government, education and contract codes. The changes could include tweaks to state conflict of interest law and also could retroactively make certain deals legal that were crafted under lease-leaseback, an alternative to competitive bidding.

In short, the revisions could help contractors across California avoid the threat of having to return millions of dollars they were paid by school districts to construct schools through contracts now deemed unlawful under the appellate court decision.

Squeezing in proposed changes this year could be a long shot, however. It's too late in the legislative session to introduce new measures, and among the three pieces of legislation introduced this session related to school construction, no one's ready to say they'd add amendments.

Republican Sen. Joel Anderson of San Diego dispelled the possibility that his [cleanup bill](#) to lease-leaseback law will be amended this year. His spokeswoman, Lea Park-Kim, said he has no plans to add changes. Staff of Long Beach Democratic Assembly Member Patrick O'Donnell's office said he hasn't been approached to modify [his school facilities bill](#). A third bill [from Democratic Assembly Member Jim Frazier](#) of Oakley is the other option. His office did not return messages left by The Bee on Thursday.

At issue is a [5th District Court of Appeal opinion this month](#) that found Fresno Unified School District violated state law when it struck a deal with local builder Harris Construction Co. to construct the new Rutherford B. Gaston Middle School in southwest Fresno. Instead of contracting with a builder who offers the lowest price, the district used the contract award process called lease-leaseback.

The appellate case has fueled a flurry of statewide interest over the past few weeks, in part because state law dating back to the early 1940s makes it clear that contractors are responsible for paying back public entities if they sign illegal deals.

I know there is great support to pursue this legally and legislatively to get the fix done as fast as possible.

Michael Hanson, Fresno Unified Superintendent

Lease-leaseback has traditionally been used to help poor or small school districts build schools. Schools in areas too poor to pass a bond have been allowed to lease land where they want to build to a contractor for a small amount, usually \$1. Then the contractor pays all the upfront costs to raise the school. The district "leases back" the building from the contractor and pays down the project costs over several years.

Districts across California have used the tactic for years. But in more recent memory, some have come under fire for misusing the process.

Such was the case in Fresno Unified, where the \$36.7 million Gaston Middle was paid for outright through the district's \$280 million Measure Q bond. The appellate court opinion this month found the school contract was illegal

since Fresno Unified had the money in hand to pay for the school and never actually leased out the facility. At least one school trustee and a member of the public have [asked the school board to probe all the district's lease-leaseback contracts](#).

That opinion could be reviewed and reversed by the state's Supreme Court. Last week, the [district's school board asked the state's highest court](#) to do so.

But the proposed legislative scrubbing would make the Fresno Unified deal legal a lot faster.

Officials from both C.A.S.H. and Associated General Contractors of America in San Diego acknowledged they're pushing changes, but declined to talk about specifics.

"Whenever there's an issue where a court troubles over interpretation of language, people will say OK, let's consider looking at that language and maybe making it more clear or some adjustment in it. That's something that's natural to happen," said Tom Duffy, a lobbyist and legislative director for C.A.S.H.

Brad Barnum, vice president for the San Diego chapter of the Associated General Contractors of America, would only say he's read the proposal.

Fresno Unified Superintendent Michael Hanson said he's received a letter from the Associated General Contractors of America showing "full support of Fresno Unified's decision in seeking to get this remedied." Hanson said Thursday that the district plans to respect the appellate court's decision when it designs future contracts, but said he has every intention of using legal and legislative channels to find a fix.

"I know there is great support to pursue this legally and legislatively to get the fix done as fast as possible," he said.

The attorney for the plaintiff in the case involving Fresno Unified and Harris Construction said some contractors have been "caught with their hand in the cookie jar" and in the process, it's the public and contractors who chose to play by the rules who have been hurt.

Said Kevin Carlin, who represents Fresno builder Stephen Davis in the appellate case, "For (builders) to say, 'It would be unfair for us to have to pay back the money to the school district,' it's a crock. The bottom line is, the school districts get the money."

Hannah Furfaro: [\(559\) 441-6412](tel:(559)441-6412), [@HannahFurfaro](https://twitter.com/HannahFurfaro)