



# The Board of Governors of the California Community Colleges

PRESENTED TO THE BOARD OF GOVERNORS

DATE: September 9-10, 2013

SUBJECT: Request for Waiver of Property Use Requirements: Sale, Lease, Use, Gift and Exchange		Item Number: 1.4	
		Attachment: Yes	
CATEGORY:	College Finance and Facilities Planning	TYPE OF BOARD CONSIDERATION:	
Recommended By:	 Frederick E. Harris, Assistant Vice Chancellor	Consent/Routine	X
		First Reading	
Approved for Consideration:	 Brice W. Harris, Chancellor	Action	
		Information	

**ISSUE:** This item requests approval for the Waiver of Property Use Requirements: Sale, Lease, Use, Gift and Exchange pursuant to the requirements of Education Code sections 81365, 81370, and 81374 as authorized by Education Code sections 81250 and 81252.

**BACKGROUND:** Chabot-Las Positas Community College District is requesting a waiver of portions of the Education Code sections 81365, 81370, and 81374 which govern the ways in which community college districts lease property. The district attempted to lease their former administration building as specified under these provisions of the Education Code without any waiver. No inquiries or bid proposals were received despite the district using the services of a commercial real estate broker to help prepare the bid and aggressively follow up on soliciting bid interest and proposals.

The building is approximately 24,751 square feet and will require significant space reconfiguration and tenant improvements to make the building suitable for single-tenant or multi-tenant use. The district now believes only aggressive marketing and tenant negotiations focused on rental rates, space allocation and tenant improvement with select target users will allow the building to be successfully leased over what will require an extended period of negotiations. The district further believes waivers of portions of Education Code sections 81365, 81370, and 81374 are in the best interest of the district because it will give the district reasonable flexibility to lease the building.

**RECOMMENDED ACTION:** It is recommended that the Board of Governors approves Chabot-Las Positas Community College District's request for waivers of portions of Education Code sections 81365, 81370, and 81374 (with conditions) as shown in Exhibit 1 and described in this item for the lease of the district's former administration building.

## **ANALYSIS: BOARD OF GOVERNORS' WAIVER AUTHORITY**

Education Code section 81252 allows the Board of Governors of the Community Colleges to approve any waiver upon finding that it would promote efficiency and further the public benefit and:

- Chabot-Las Positas Community College District has provided a request for a waiver in writing.
- Although the district is not selling the site as provided for in Education Code section 81252, Chabot-Las Positas Community College District did attempt to lease the property without a waiver per the provisions of Education Code sections 81365, 81370, and 81374 and was unsuccessful.
- The waiver will not increase state costs or decrease state revenues.
- The waiver will further the ability of the district to meet the educational needs of the community because the district anticipates using the lease revenues to support the operation of vocational programs, career technical education and improve educational services.

Education Code section 81250 allows the governing board of a community college district to request a waiver of all or part of any section of the California Education Code, Division 7, Part 49 Chapter 2. In the case of leasing of district property, a district is required to give 30-day notice of the public hearing to various public agencies which Chabot Las-Positas Community College District has done. Education Code sections 81365, 81370, and 81374 are all included in Chapter 2 of the Education Code.

### **Waiver Request**

In April 2013 Chabot-Las Positas Community College District advertised the 25,000 square foot former district administration building pursuant to the leasing provisions of the California Education Code, Division 7, Part 49 Chapter 2 without any waiver. Interested bidders were to attend a mandatory property inspection, but no firms or individuals attended the mandatory inspection.

The district then retained a commercial real estate broker to advise the district on the local commercial real estate market. The broker indicated that the building is not economically suitable for a single tenant and to maximize the return on the property it will require negotiation with multiple tenants on lease terms and tenant improvements.

A waiver of portions of the California Education Code sections 81365, 81370, and 81374 will allow the district to negotiate directly with potential tenants to lease all or portions of the former administration building and maximize the revenue to be received by the district.

### **STATUTORY REQUIREMENTS**

Education Code section 81365. The Chabot-Las Positas Community College District Board of Trustees has been unsuccessful in leasing the property under the provisions of Education Code section 81365 which require public bidding, sealed bids, and minimum lease and commission rate

terms. A waiver of these portions of Education Code section 81365 would allow the Board of Trustees to: 1) avoid specifying a minimum bid at a public meeting; 2) set their own terms and conditions; and 3) remove references to minimum bids and actions to be taken with "sealed" bids. The board may instead work with a real estate broker to develop a plan for advertising and marketing the property in order to solicit proposals from potential buyers.

Education Code section 81370. The waiver of the sealed proposal and highest bid requirements contained in Education Code section 81370 will allow the Chabot-Las Positas Community College District Board of Trustees greater flexibility in considering non-economic factors in evaluating proposals. The Board of Trustees at some point may decide to take possession of the property for educational or administrative purposes. In the event a proposed tenant contemplates alterations or improvements to the property, the Board of Trustees will have the flexibility to consider such alterations and improvements in evaluating and awarding proposals.

Education Code section 81370(b) is waived in its entirety because the waiver request is per Education Code section 81250 rather than the waiver provisions contained in Education Code section 81370.

Education Code section 81374. The district Board of Trustees sets its meeting calendar at the start of each calendar year. The waiver of the requirement that the final acceptance of the bid must be within ten days, with the condition that the final acceptance must be within 30 days of the adjourned session of the same meeting, would allow the board to adjourn to the next regularly scheduled meeting rather than hold a special meeting. Public participation is likely to increase if the adjourned meeting is held at a regularly scheduled meeting.

## EXHIBIT 1

(Education Code Provisions to be Waived)

*Education Code Section 81365. Before ordering the sale or lease of any property the governing board, in a regular open meeting, by two-thirds vote of all its members, shall adopt a resolution, declaring its intention to sell or lease the property, as the case may be. The resolution shall describe the property proposed to be sold or leased in such manner as to identify it. and shall specify the minimum price or rental and the terms upon which it will be sold or leased and the commission or rate thereof, if any, which the board will pay to a licensed real estate broker out of the minimum price or rental.*

*The resolution shall fix a time not less than three weeks thereafter for a public meeting of the governing board to be held at its regular place of meeting, at which sealed proposals to purchase or lease will be received and considered.*

*Education Code Section 81370. (a) At the time and place fixed in the resolution for the meeting of the governing body, all sealed proposals that have been received shall, in public session, be opened, examined, and declared by the board. Except as provided in subdivision (b), of the proposals submitted that conform to all terms and conditions specified in the resolution of intention to sell or to lease and that are made by responsible bidders, the sealed proposal that is the highest, after deducting therefrom the commission, if any, to be paid a licensed real estate broker in connection therewith, shall be finally accepted, unless the board rejects all of these bids.*

*(b) Notwithstanding subdivision (a), the governing board of any community college district may apply to the Board of Governors of the California Community Colleges for a waiver of the requirement that the governing board accept the highest responsible bid for the sale or lease of real property. The board of governors may grant a waiver pursuant to this subdivision if it determines that the waiver is in the best interests of the community college district.*

*Education Code Section 81370. The final acceptance by the governing body may be made either at the same session or at any adjourned session of the same meeting held within the 10 days following.*