



The Board of Governors of the California Community Colleges

PRESENTED TO THE BOARD OF GOVERNORS

DATE May 19-20, 2014

SUBJECT: Request for Waiver of Property Use Requirements: Sale, Lease, Use, Gift and Exchange		Item Number: 2.2	
		Attachment: Yes	
CATEGORY:	College Finance and Facilities Planning	TYPE OF BOARD CONSIDERATION:	
Recommended By:	 Frederick E. Harris, Assistant Vice Chancellor	Consent/Routine	
		First Reading	
Approved for Consideration:	 Brice W. Harris, Chancellor	Action	X
		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 81360 et seq. as authorized by Education Code sections 81250 and 81252.

BACKGROUND: The Desert Community College District is requesting waivers of two requirements of the Education Code: (1) a waiver of the requirement that property which the district needs for classroom purposes may not be sold or leased per Education Code sections 81360 et seq. and (2) a waiver of the sealed bid process defined in Education Code sections 81365 et seq. The district seeks these waivers because these provisions typically apply when a community college district is offering to lease or sell property to the public, whereas in this case the district will in effect be leasing property to itself.

The district intends to enter into a lease/lease-back transaction involving the facilities at its Indio campus. The district will form a separate IRS 501(c)(4) nonprofit corporation to provide a vehicle to satisfy requirements of tax credit investors who purchase tax credit allocations under the New Markets Tax Credit program (a federal program that encourages investment in qualified low-income communities). Investor participation in the New Markets Tax Credit program will result in economic benefit to the district. Because of various New Markets Tax Credit program guidelines, the separate IRS 501(c)(4) nonprofit corporation will lease the facilities from, and back to, the district. Since the district will be leasing the facilities from an entity created by the district for this transaction, the public is not invited to bid or participate in the transaction and the district is assured that the Indio campus will continue to be used for classrooms.

RECOMMENDATION: It is recommended that the Board of Governors approve Desert Community College District's request for a waiver of Education Code sections 81360 et seq., including Education Code section 81365.

ANALYSIS: The Desert Community College District is requesting waiver of the requirements that property which the district needs for classroom purposes may not be sold or leased per Education Code sections 81360 et seq. and of the sealed bid process defined in Education Code sections 81365 et seq. These waivers will allow the district, in conjunction with Border Communities Capital Company, LLC, to enter into a financing transaction involving the facilities at the district's Indio campus. The purpose of this transaction is to secure federal tax credits which will generate significant revenues for future district development projects as allowed under Section 45D of the Internal Revenue Code of 1986.

On March 21, 2014, the Desert Community College District Board of Trustees adopted a resolution to enter into a New Markets Tax Credit transaction pursuant to Section 45D of the Internal Revenue Code of 1986. The New Markets Tax Credit Program promotes investment in "low income communities," which are census tracts that exhibit high unemployment, low incomes, and high poverty rates. The New Markets Tax Credit Program, through the U.S. Department of the Treasury, provides tax credits to "community development entities" through which tax credits are then sold to investors. The proceeds from the sale of the tax credits provide equity capital which must be used to subsidize real estate development and businesses in low income communities.

In order to proceed with this transaction, the district will enter into a lease/lease-back transaction involving the facilities at the Indio campus. The Indio campus of College of the Desert is located in Indio, California, and is within a low income community. The Indio campus has been constructed and is currently being used for district classrooms with related ground floor retail and commercial uses. The district will retain ownership of the facilities throughout the term of the lease/lease-back structure which is a minimum of seven years under the provisions of the New Markets Tax Credit program.

BOARD OF GOVERNORS' WAIVER AUTHORITY

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. Education Code sections 81360 et seq. are included in chapter 2 of the Education Code.

The district has demonstrated that the following requirements have been met in order for the Board of Governors to approve the waiver per Education Code section 81252 as described below:

- (1) The district must provide the written notice pursuant to Education Code section 81250(b). The Desert Community College District held a duly noticed public hearing to consider this request of waiver on April 17, 2014 and provided 30-day notice of the intent to seek the waiver to all public entities within the area in which the Indio campus is located.
- (2) Not Applicable (This section says the district must make a good faith effort to reach agreement with any public agency seeking to acquire the site pursuant to Education Code section 81363.5. Education Code section 81363.5 is only applicable to sales or leases with option to purchase; neither is the case in this instance.)
- (3) The waiver will not increase state costs, but rather will result in savings to the district through a federal tax credit program.

- (4) The waiver will further the ability of the district to meet the educational needs of the community because the waiver will result in economic benefit to the district.