



# The Board of Governors of the California Community Colleges

PRESENTED TO THE BOARD OF GOVERNORS  
DATE: May 18-19, 2015

SUBJECT: Request for Waiver of Property Use Requirements: Sale, Lease, Use, Gift and Exchange		Item Number: 2.4	
		Attachment: Yes	
CATEGORY:	College Finance and Facilities Planning	TYPE OF BOARD CONSIDERATION:	
Recommended By:	 Dan Troy, 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 all portions of Education Code sections 81363 *et seq.* (excluding section 81371.5, hereafter “sections 81363 *et seq.*”) as authorized by Education Code sections 81250 and 81252.

**BACKGROUND:** North Orange County Community College District is requesting a waiver of all or portions of Education Code sections 81363 *et seq.* which, in part, govern the way in which a community college district may sell property to another entity. The district is requesting a waiver to sell its property located at 1000 S. Leslie Street, La Habra, California 90631. The district has attempted to sell the property per the provisions of Education Code sections 81363 *et seq.* on two occasions. The district received one bid proposal which the district determined to be a counter-offer because it contained terms that differed materially from those contained in the district’s bid package. After reviewing the counter-offer, the district’s Board of Trustees voted to reject the counter-offer. (**Background Cont.**)

**RECOMMENDED ACTION:** It is recommended that the Board of Governors approve North Orange County Community College District’s request for a waiver of Education Code sections 81363 *et seq.* (excluding section 81371.5) for the purpose of selling the La Habra property.

**(Background Cont.)**

The district, therefore, is requesting a waiver to sell its La Habra property at its highest value and best use pursuant to a negotiated purchase and sale agreement. The waiver will allow the district to continue to pursue its effort to sell the property to a suitable buyer and gives the district the ability to negotiate in a manner that allows it to maximize the potential income from a purchase and sale agreement. In the district's experience, many potential buyers are reluctant to submit unconditional bids in a competitive process, and require a negotiated purchase and sale agreement that can take into consideration specific business terms and approvals.

**ANALYSIS:**

**BOARD OF GOVERNORS' WAIVER AUTHORITY**

Education Code sections 81250 *et seq.* allow the Board of Governors of the California Community Colleges to approve any waiver upon finding a public hearing has been held and that it would promote efficiency and further the public benefit. Pursuant to those sections:

- The district conducted a public hearing regarding its intent to request a waiver of Education Code sections 81363 *et seq.* on January 27, 2015 and provided written notice to the appropriate public entities 30 days before the hearing.
- North Orange County Community College District has attempted to sell the property without a waiver twice per the provisions of Education Code section 81363.5 and was unsuccessful. No public agency made an effort to acquire the site during the bid process.
- 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 by providing the district with additional funds.

**DISTRICT AUTHORITY TO REQUEST WAIVER**

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 selling district property, a district is required to give a 30-day notice of the public hearing to various public agencies, which the North Orange County Community College District has done. Education Code sections 81363 *et seq.* are included in Chapter 2 of the Education Code.

**WAIVER REQUEST**

The North Orange County Community College District is requesting a waiver of the bid process defined in Education Code sections 81363 *et seq.*, made pursuant to the requirements of Education Code sections 81250 *et seq.*, so the district may sell the property to the most qualified entity in order to maximize the district's revenue.

The district's Board of Trustees declared the property surplus on April 8, 2014 and authorized the district, by way of Resolution No. 14/15-03, to proceed with the process set forth under Education Code sections 81363 *et seq.* to sell the property. The district proceeded to draft and disseminate a

bid that set forth minimum terms and solicited bids from interested parties to purchase the property. A public bid hearing was held on November 3, 2014 and proper notice procedures were followed for the bid hearing. The district received one bid proposal which the district determined to be a counter-offer because it contained terms that differed materially from those contained in the district's bid package. After reviewing the counter-offer, the district's Board of Trustees voted to reject the counter-offer.

This was the district's second attempt to sell the property per the provisions of Education Code 81363 *et seq.*, the first attempt having resulted in no interested parties. Education code section 81371.5 gives the board of any community college district located in Orange County the right to enter into a negotiated sale of real property if the district has bid the property two or more times without accepting a bid.

The district has followed the required procedures for selling the property pursuant to Education Code sections 81363 *et seq.*; however certain conditions imposed by these sections have proved incompatible with receiving competitive bids. The district states that repeating the statutory competitive bidding process set forth in the Education Code would not be effective given the district's experience. Additionally, the district has found that the specific size, freeway access, condition of the buildings, and visibility from the street has made this a unique site to market. This waiver will promote efficiency and further the public benefit because it gives the district the ability to be flexible and directly negotiate with interested parties which will allow the district to market the property more effectively, resulting in a sale. The district would benefit substantially from the potential receivables that could be generated by a carefully negotiated purchase and sale agreement with a suitable bidder for the property.

*Staff: Sandy Jacobson, Facilities Analyst  
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