





# The Board of Governors of the California Community Colleges

PRESENTED TO THE BOARD OF GOVERNORS

DATE: July 18, 2016

SUBJECT: Request for Waiver of Property Use Requirements: Sale, Lease, Use, Gift and Exchange		Item Number: 2.6	
		Attachment: Yes	
CATEGORY:	College Finance and Facilities Planning	TYPE OF BOARD CONSIDERATION:	
Recommended By:	 Mario Rodriguez, Acting Vice Chancellor	Consent/Routine	
		First Reading	
Approved for Consideration:	 Erik Skinner, Interim Chancellor	Action	X
		Information	

**ISSUE:** This item requests approval for the waiver of certain property disposition requirements identified in Education Code sections 81365, 81368, 81370, 81374 and 81375 as requested by the Long Beach Community College District (“District”). District requests that the Board of Governors approve the waiver consistent with the authority granted by Education Code sections 81250 and 81252 to allow for the negotiated sale of District property.

**BACKGROUND:** Long Beach Community District desires to sell its property located at 3340 Los Coyotes Diagonal, Long Beach California, 90808 (“Property”). The District’s Board of Trustees declared the Property surplus on April 23, 2013 and authorized the District to lease the Property.

The District attempted to lease the Property per the provisions of Education Code sections 81360 *et seq.* in July 2013. The District received only one proposal and that proposal did not meet minimum bid requirements. In June 2014, the District’s Board of Trustees again authorized the District to lease or sell the property under Education Code sections 81360 *et seq.* The District attempted to sell per the provisions of Education Code sections 81360 *et seq.* and received three bids at public bid hearing in October 2014. The District selected the highest offer and opened escrow in November 2014; (**Background cont.**)

**RECOMMENDATION:** It is recommended that the Board of Governors approve Long Beach Community College District’s request for a waiver of Education Code sections 81365, 81368, 81370, 81374 and 81375 for the purpose of selling the Property.

**(Background cont.)**

however, the buyer cancelled escrow. In May 2015, the District tried again to sell the Property under Education Code sections 81360 *et seq.* On May 25, 2015, the District accepted the highest conforming bid and opened escrow. On December 18, 2015, the buyer cancelled escrow. The District has tried once to lease and twice to sell the Property consistent with the competitive bidding, notice and public hearing requirements of Education Code sections 81360 *et seq.*

This waiver will allow the District to negotiate directly with the entity determined by the District's Board of Trustees to be best suited for the development of the Property rather than go through the time and expense of a fourth, and potentially unsuccessful, bid process.

**ANALYSIS:**

**WAIVER REQUEST**

Pursuant to the requirements of Education Code sections 81250 and 81252, the Long Beach Community College District is requesting a waiver of the bid process defined in Education Code sections 81365, 81368, 81370, 81374 and 81375 to develop 2.2 acres of surplus property to its highest value and best use.

Education Code sections 81365, 81368, 81370, 81374 and 81375 limit the District's ability to negotiate a sale or lease with any potential buyer or lessee by requiring the District' board to specify, in advance, a minimum price or rental and any sale or lease terms. Sealed bids must be accepted and opened, per Education Code section 81365, at a public meeting no later than three weeks after such board resolution is passed; and, the District cannot renegotiate terms with potential buyers or lessees.

On April 23, 2013, the District's Board of Trustees declared the Property as surplus and issued a resolution authorizing the District to lease the Property. The District attempted to lease the Property per the provisions of Education Code sections 81360 *et seq.* A public hearing was held on July 18, 2013. The District received one bid proposal which constituted a counteroffer. The counteroffer contained terms that materially differed from the District's bid package, and was ultimately rejected.

On October 22, 2013, the District's board adopted Resolution 102213A requesting Board of Governor's approval to waive Education Code sections 81360 *et seq.* allowing the District to negotiate an income producing ground lease. The Board of Governors approved the waiver; however, the District did not lease the Property.

On June 10, 2014 the District's Board of Trustees again authorized the District to lease or sell the Property under Education Code sections 81360 *et seq.* The District received three bids at a public bid hearing on October 28, 2014, each of which constituted a counteroffer. The District selected the highest offer and escrow was opened on November 18, 2014. The buyer cancelled escrow soon thereafter.

At public bid hearing on May 12, 2015, the District tried a third time to sell or lease the Property consistent with Education Code sections 81360 *et seq.* On May 25, 2015, the District accepted the

highest conforming bid and escrow was opened. On December 18, 2015, the buyer cancelled escrow.

The District states that repeating the statutory competitive bidding process set forth in the Education Code a fourth time would not be effective given the District's experience and after consultation with the its real estate advisors. Experience indicates that a successful sale will require extensive negotiations with potential commercial property developers. The District requires flexibility in selecting the best fit for the disposition and development of the Property.

#### **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 81365, 81368, 81370, 81374 and 81375 are included in Chapter 2 of the Education Code.

Education Code section 81252 allows the Board of Governors of the California Community Colleges to approve any waiver upon finding that a public hearing has been held and that the action would promote efficiency and further the public benefit. Additionally, Education Code section 81252(b) requires the District seeking the waiver to demonstrate all of the following:

- (1) The District has provided written notice to certain public entities at least 30 days prior to holding a public hearing on the waiver request.
- (2) The District, after making a good faith effort, was unable to reach agreement with any public agency that sought to acquire the site pursuant to Education Code section 81363.5.
- (3) The waiver will not substantially increase state costs or decrease state revenues.
- (4) The waiver will further the ability of the District to meet the educational needs of the community.

Consistent with the requirements of Education Code section 81252(b):

- The District conducted a public hearing regarding its intent to request a waiver of Education Code sections 81360 *et seq.* on March 22, 2016.
- The District provided written notice to the appropriate public entities 30 days before the hearing per section 81250(b).
- No public agency made an effort to acquire the site pursuant to Education Code section 81363.
- The District did attempt to lease, as well as sell, the Property without a waiver per the provisions of Education Code section 81360 *et seq.* and was unsuccessful.
- A waiver will not increase state costs nor decrease state revenues.
- A waiver will further the ability of the District to meet the educational needs of the community by providing the District with needed additional funds.

Attachments: *Attachment A – Education Code Sections, Attachment B – District Board's Resolution*

Staff: *Harold Flood, Facilities Planning and Utilization Specialist  
College Finance and Facilities Planning*