

1 SENATE BILL 35

2 **49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010**

3 INTRODUCED BY

4 Timothy M. Keller

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10 AN ACT

11 RELATING TO PUBLIC PROPERTY; PROVIDING FOR THE DISPOSITION OF
12 USED STATE VEHICLES BY THE GOVERNING AUTHORITY OF EACH STATE
13 AGENCY, LOCAL PUBLIC BODY, SCHOOL DISTRICT AND STATE
14 EDUCATIONAL INSTITUTION.

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 Section 1. Section 13-6-1 NMSA 1978 (being Laws 1961,
18 Chapter 100, Section 1, as amended) is amended to read:

19 "13-6-1. DISPOSITION OF OBSOLETE, WORN-OUT OR UNUSABLE
20 TANGIBLE PERSONAL PROPERTY.--

21 A. The governing authority of each state agency,
22 local public body, school district and state educational
23 institution may dispose of any item of tangible personal
24 property, except for a used state vehicle, belonging to that
25 authority and delete the item from its public inventory upon a

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1 specific finding by the authority that the item of property is:

2 (1) of a current resale value of five thousand
3 dollars (\$5,000) or less; and

4 (2) worn-out, unusable or obsolete to the
5 extent that the item is no longer economical or safe for
6 continued use by the body.

7 B. The governing authority shall, as a prerequisite
8 to the disposition of any items of tangible personal property
9 except for a used state vehicle:

10 (1) designate a committee of at least three
11 officials of the governing authority to approve and oversee the
12 disposition; and

13 (2) give notification at least thirty days
14 prior to its action making the deletion by sending a copy of
15 its official finding and the proposed disposition of the
16 property to the state auditor and the appropriate approval
17 authority designated in Section 13-6-2 NMSA 1978, duly sworn
18 and subscribed under oath by each member of the authority
19 approving the action.

20 C. A copy of the official finding and proposed
21 disposition of the property sought to be disposed of shall be
22 made a permanent part of the official minutes of the governing
23 authority and maintained as a public record subject to the
24 Inspection of Public Records Act.

25 D. The governing authority shall dispose of the

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1 tangible personal property, except for a used state vehicle, by
2 negotiated sale to any governmental unit of an Indian nation,
3 tribe or pueblo in New Mexico or by negotiated sale or donation
4 to other state agencies, local public bodies, school districts,
5 state educational institutions or municipalities or through the
6 central purchasing office of the governing authority by means
7 of competitive sealed bid or public auction or, if a state
8 agency, through the surplus property bureau of the
9 transportation services division of the general services
10 department.

11 E. Except for the disposition of a used state
12 vehicle, a state agency shall give the surplus property bureau
13 of the transportation services division of the general services
14 department the right of first refusal when disposing of
15 obsolete, worn-out or unusable tangible personal property of
16 the state agency.

17 F. If the governing authority is unable to dispose
18 of the tangible personal property, other than a used state
19 vehicle, pursuant to Subsection D or E of this section, the
20 governing authority may sell or, if the property has no value,
21 donate the property to any organization described in Section
22 501(c)(3) of the Internal Revenue Code of 1986.

23 G. If the governing authority is unable to dispose
24 of the tangible personal property pursuant to Subsection D, E
25 or F of this section, it may order that the property be

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1 destroyed or otherwise permanently disposed of in accordance
2 with applicable laws.

3 H. If the governing authority determines that the
4 tangible personal property is hazardous or contains hazardous
5 materials and may not be used safely under any circumstances,
6 the property shall be destroyed and disposed of pursuant to
7 Subsection G of this section.

8 I. No tangible personal property shall be donated
9 to an employee or relative of an employee of a state agency,
10 local public body, school district or state educational
11 institution; provided that nothing in this subsection precludes
12 an employee from participating and bidding for public property
13 at a public auction.

14 J. This section shall not apply to any property
15 acquired by a museum through abandonment procedures pursuant to
16 the Abandoned Cultural Properties Act."

17 Section 2. Section 13-6-2 NMSA 1978 (being Laws 1979,
18 Chapter 195, Section 3, as amended) is amended to read:

19 "13-6-2. SALE OF PROPERTY BY STATE AGENCIES OR LOCAL
20 PUBLIC BODIES--AUTHORITY TO SELL OR DISPOSE OF PROPERTY--
21 APPROVAL OF APPROPRIATE APPROVAL AUTHORITY.--

22 A. Providing a written determination has been made,
23 a state agency, local public body, school district or state
24 educational institution may sell or otherwise dispose of real
25 or tangible personal property, except for a used state vehicle,

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1 belonging to the state agency, local public body, school
2 district or state educational institution.

3 B. Except for the disposition of a used state
4 vehicle, a state agency, local public body, school district or
5 state educational institution may sell or otherwise dispose of
6 real property:

7 (1) by negotiated sale or donation to an
8 Indian nation, tribe or pueblo located wholly or partially in
9 New Mexico, or to a governmental unit of an Indian nation,
10 tribe or pueblo in New Mexico, that is authorized to purchase
11 land and control activities on its land by an act of congress
12 or to purchase land on behalf of the Indian nation, tribe or
13 pueblo;

14 (2) by negotiated sale or donation to other
15 state agencies, local public bodies, school districts or state
16 educational institutions;

17 (3) through the central purchasing office of
18 the state agency, local public body, school district or state
19 educational institution by means of competitive sealed bid,
20 public auction or negotiated sale to a private person or to an
21 Indian nation, tribe or pueblo in New Mexico; or

22 (4) if a state agency, through the surplus
23 property bureau of the transportation services division of the
24 general services department.

25 C. A state agency shall give the surplus property

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1 bureau of the transportation services division of the general
2 services department the right of first refusal to dispose of
3 tangible personal property, except for a used state vehicle, of
4 the state agency. A school district may give the surplus
5 property bureau the right of first refusal to dispose of
6 tangible personal property, except for a used state vehicle, of
7 the school district.

8 D. Except as provided in Section 13-6-2.1 NMSA 1978
9 requiring state board of finance approval for certain
10 transactions, sale or disposition of real or tangible personal
11 property, except for a used state vehicle, having a current
12 resale value of more than five thousand dollars (\$5,000) may be
13 made by a state agency, local public body, school district or
14 state educational institution if the sale or disposition has
15 been approved by the state budget division of the department of
16 finance and administration for state agencies, the local
17 government division of the department of finance and
18 administration for local public bodies, the public education
19 department for school districts and the higher education
20 department for state educational institutions.

21 E. Prior approval of the appropriate approval
22 authority is not required if the tangible personal property is
23 to be used as a trade-in or exchange pursuant to the provisions
24 of the Procurement Code.

25 F. The appropriate approval authority may condition

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1 the approval of the sale or other disposition of real or
2 tangible personal property, except for a used state vehicle,
3 upon the property being offered for sale or donation to a state
4 agency, local public body, school district or state educational
5 institution.

6 G. The appropriate approval authority may credit a
7 payment received from the sale of such real or tangible
8 personal property to the governmental body making the sale.
9 The state agency, local public body, school district or state
10 educational institution may convey all or any interest in the
11 real or tangible personal property without warranty.

12 H. This section does not apply to:

- 13 (1) computer software of a state agency;
14 (2) those institutions specifically enumerated
15 in Article 12, Section 11 of the constitution of New Mexico;
16 (3) the New Mexico state police division of
17 the department of public safety;
18 (4) the state land office or the department of
19 transportation;
20 (5) property acquired by a museum through
21 abandonment procedures pursuant to the Abandoned Cultural
22 Properties Act;
23 (6) leases of county hospitals with any person
24 pursuant to the Hospital Funding Act;
25 (7) property acquired by the economic

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1 development department pursuant to the Statewide Economic
2 Development Finance Act; and

3 (8) the state parks division of the energy,
4 minerals and natural resources department."

5 Section 3. Section 13-6-8 NMSA 1978 (being Laws 2007,
6 Chapter 57, Section 3) is amended to read:

7 "13-6-8. DISPOSITION OF STATE PROPERTY.--The surplus
8 property bureau of the transportation services division of the
9 general services department may dispose of tangible personal
10 property or a used state vehicle, except property acquired from
11 the United States government, by advertising the availability
12 of the property as follows:

13 A. for the first forty-five-day period, to any
14 agency that has entered into an agreement with the bureau;

15 B. for the second forty-five-day period, to any
16 agency or tax-exempt entity that has filed its written
17 certificate of tax exemption with the bureau;

18 C. for the third forty-five-day period, to any
19 agency or tax-exempt entity or to the public through a
20 storefront operation on days and at times specified by rule of
21 the bureau; and

22 D. after the third forty-five-day period, by
23 auction or any other means of disposal in compliance with
24 environmental standards for disposal of tangible personal
25 property."

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1 Section 4. A new section of the Procurement Code is
2 enacted to read:

3 "[NEW MATERIAL] DISPOSITION OF A USED STATE VEHICLE.--

4 A. The governing authority of each state agency,
5 local public body, school district and state educational
6 institution shall offer the right of first refusal in the
7 disposal of a used state vehicle belonging to that authority to
8 an organization recognized in New Mexico as a not-for-profit
9 organization pursuant to Section 501(c)(3) of the Internal
10 Revenue Code of 1986.

11 B. An organization recognized in New Mexico as a
12 not-for-profit organization pursuant to Section 501(c)(3) of
13 the Internal Revenue Code of 1986 that accepts the right of
14 first refusal from the governing authority of a state agency,
15 local public body, school district or state educational
16 institution shall have a reasonable period of time to purchase
17 the offered used state vehicle at a price that a private
18 consumer could expect to pay for a used vehicle in good
19 condition.

20 C. If an organization recognized in New Mexico as a
21 not-for-profit organization pursuant to Section 501(c)(3) of
22 the Internal Revenue Code of 1986 fails to exercise the right
23 of first refusal from the governing authority of a state
24 agency, local public body, school district or state educational
25 institution, the governing authority of a state agency, local

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1 public body, school district or state educational institution
2 shall dispose of the used state vehicle according to procedures
3 established pursuant to Section 13-6-8 NMSA 1978.

4 D. The governing authority of each state agency,
5 local public body, school district and state educational
6 institution shall, prior to offering a used state vehicle to a
7 not-for-profit organization described in Subsection A or B of
8 this section for its first refusal, shall:

9 (1) appoint a three-member committee to
10 inspect the used state vehicle and make a finding that the used
11 state vehicle is no longer economical or safe for continued
12 state use;

13 (2) file the finding under oath with the
14 appropriate governing authority, where it shall remain as a
15 public record; and

16 (3) send the finding with a notice to the
17 state auditor at least thirty days prior to its action of its
18 intention to delete the property from its inventory.

19 E. The appropriate approval authority for a state
20 agency, local public body, school district and state
21 educational institution may credit payment received from an
22 organization recognized in New Mexico as a not-for-profit
23 organization pursuant to Section 501(c)(3) of the Internal
24 Revenue Code of 1986 exercising its right of first refusal to
25 the governmental body making the sale of a used state vehicle."

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