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F I S C A L I M P A C T R E P O R T

SPONSOR Burt ORIGINAL DATE 02/24/15 LAST UPDATED 03/15/15 HB _____
SHORT TITLE Disposal of Property by State Agencies SB 642/aSPAC
ANALYST Hanika-Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Responses Received From

Department of Finance and Administration (DFA)
General Services Department (GSD)
Attorney General's Office (AGO)
New Mexico Municipal League (NMML)

SUMMARY

Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment provides for a technical change by removing the word “retractable” to correct redundant language. The amendment further clarifies that the State Board of Finance (SBOF) will first review a proposed sale, trade, lease or other disposition of real property and make a recommendation to the Legislature for its review and final approval. The amended bill now mirrors HB 516 as amended by the House Business and Education Committee.

Synopsis of Bill

Senate Bill 642 increases the statutory thresholds that determine which approval authority is required (DFA, SBOF, or Legislature) for public bodies to sell, trade, lease or otherwise dispose of certain property. The bill also requires all real property dispositions with a value over \$200,000 to be reviewed by the SBOF and forwarded to the Legislature with a recommendation for approval prior to legislative review and final approval.

More specifically,

Section 1 amends Section 13-6-2 to require a written determination by a state agency, local public body, school district or state educational institution that disposing of the real or tangible personal property is in their best interest; provides that the property may be conveyed without warranty; and increases the threshold that triggers approval by DFA's Local Government Division or State Budget Division, or the Public Education Department, from \$5,000 to \$10,000.

Section 2 amends Section 13-6-2.1 to increase the threshold that triggers review and approval by the SBOF before any sale, trade, lease exceeding five years, or other disposition of real property belonging to a state agency, local public body or school district, from \$25,000 to \$60,000.

Section 3 amends Section 13-6-3 to increase the threshold that triggers the requirement that state agencies obtain legislative approval of real property sales, trades, or leases exceeding 25 years, from \$100,000 to \$200,000; adds language making transactions not having been approved by the Legislature retractable; and, requires SBOF review and recommend approval to the Legislature in advance of the Legislature approving real property dispositions worth \$200,000 or more.

Section 4 amends Section 13-6-4 to add a definition for the term “consideration” to include cash, other property, services or another form of compensation that is of equal or greater value.

FISCAL IMPLICATIONS

Administrative impacts of this bill can be absorbed with current staff and resources.

SIGNIFICANT ISSUES

Under current law, a state agency must first obtain legislative approval before selling, trading, or leasing for 25 years or more real property, where the consideration is at least \$100,000.

The bill would require the SBOF review and recommend approval to the Legislature prior to the Legislature approving real property dispositions, where the consideration is at least \$200,000.

The AGO notes the bill limits the Legislature’s ability to approve real property dispositions by state agencies. Specifically, the Legislature would not be able to approve a disposition that did not receive a positive recommendation from SBOF – no such limitation currently exists.

The level of review by the SBOF to approve lesser-valued state agency property often exceeds the level of review currently exercised by the Legislature for higher-valued real property.

DFA reports the SBOF reviews and approves about 40 requests each year for real property dispositions between \$25,000 and \$100,000. In contrast, on average, about four joint resolutions are introduced each legislative session to dispose of real property valued at \$100,000 or more.

DFA further notes that submission requirements to seek SBOF approval are established by rule and include the form of quitclaim deed that will convey the property; the purchase agreement or lease signed by both parties; evidence that the governing body that owns the property has approved the transaction; and, a current appraisal and review thereof by the Property Tax Division of the Taxation and Revenue Department (except for sales between two public bodies).

PERFORMANCE IMPLICATIONS

Property dispositions became an issue last year when the Legislature, through HJR 8, approved the sale of a historic property in the capital to a private entity. HJR 8 required that the property not be sold until the sale had been “reviewed” by the Capital Buildings Planning Commission (CBPC). This prompted much discussion about whether or not the term “reviewed” implied an approval process. In the end, CBPC reviewed the sale, showing concerns and objections to the sale. The sale highlighted the need to review the various roles in the disposition of real property.

ADMINISTRATIVE IMPLICATIONS

State agency real property dispositions between \$100,000 and \$200,000 will require approval by the SBOF instead of the Legislature. The SBOF will assume the duty to review and recommend approval to the Legislature for any state agency property dispositions worth \$200,000 or more.

CONFLICT, DUPLICATION

Conflicts with SB 629 requiring the CBPC review proposed real property dispositions worth \$100,000 or more beforehand, and report those findings to the Legislature for its consideration.

Duplicates House Bill 516.

OTHER SUBSTANTIVE ISSUES

DFA’s table below compares approvals under current law versus new requirements in the bill.

Current Law: Approval Authority by Type of Entity Disposing of Real Property					
Real Property Value	School District	Local Public Body*	State Agency	Higher Educational Institution**	Statute
\$0-\$5,000	na	na	na	na	13-6-2
\$5,000-\$25,000	Public Education Department	Local Government Division	State Budget Division	Higher Education Department	13-6-2
\$25,000-\$100,000	State Board of Finance	State Board of Finance	State Board of Finance (leases over \$100,000 but less than 25 years)		13-6-2.1
\$100,000 +			Legislature (leases over \$100,000 and 25 years)		13-6-3

SB 642: Approval Authority by Type of Entity Disposing of Real Property					
Real Property Value	School District	Local Public Body*	State Agency	Higher Educational Institution**	Statute
\$0-\$10,000	na	na	na	na	13-6-2
\$10,000-\$60,000	Public Education Department	Local Government Division	State Budget Division	Higher Education Department	13-6-2
\$60,000-\$200,000	State Board of Finance	State Board of Finance	State Board of Finance (leases over \$200,000 but less than 25 years)		13-6-2.1
\$200,000 +			State Board of Finance Recommendation and Legislative Approval (leases over \$200,000 and 25 years)		13-6-3

*Local public bodies include counties, special districts, community colleges, but exclude municipalities

**Higher educational institutions include the universities and special schools created in Article VII, Section 11 of the State Constitution

AMENDMENTS

The AGO suggests altering the definition of “local public body” to include municipalities in Section 13-6-4, however, DFA responded to the suggestion by noting that adding them to the law would require significant additional resources at DFA’s Local Government Division and SBOF.

The AGO also suggest adding language not restricting the Legislature’s ability to approve property dispositions even where they have not received a positive recommendation from SBOF.

AHO/bb/je/aml/bb