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AN ACT

RELATING TO PUBLIC PROPERTY; ENACTING THE PUBLIC PROPERTY
DISPOSITION ACT; PROVIDING POWERS AND DUTIES; REQUIRING
APPROVALS FOR CERTAIN DISPOSITIONS; REQUIRING LEGISLATIVE
ACTION FOR CERTAIN DISPOSITIONS; REPEALING SECTIONS OF THE
NMSA 1978 PERTAINING TO THE DISPOSITION OF PUBLIC PROPERTY.

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

SECTION 1. SHORT TITLE.--This act may be cited as the
"Public Property Disposition Act".

SECTION 2. DEFINITIONS.--As used in the Public Property
Disposition Act:

A. "bureau" means the surplus property bureau of
the transportation services division of the general services
department;

B. "disposition" means the sale, trade, lease,
exchange or donation of tangible personal property or real
property; provided that "sale", "trade", "lease" or
"exchange" does not include "donation";

C. "division" means the facilities management
division of the general services department;

D. "governing authority" means the head or
policymaking body of a state agency, the appropriate
governing authority of a legislative or judicial agency or
local public body, the local school board of a school

1 district or the governing body of a charter school;

2 E. "governmental entity" means a state agency,
3 local public body, school district or charter school;

4 F. "Indian tribe" means an Indian nation, tribe or
5 pueblo that is located wholly within New Mexico or an Indian
6 nation or tribe's governmental unit that is located wholly
7 within New Mexico if it is authorized to purchase tangible
8 personal or real property and control activities on its land
9 by an act of congress or on behalf of the tribe;

10 G. "local public body" means a political
11 subdivision of the state and the political subdivision's
12 agencies, institutions and instrumentalities, excluding
13 municipalities, class A counties and school districts;

14 H. "school district" means a political subdivision
15 of the state established for the administration of public
16 schools, segregated geographically for taxation and bonding
17 purposes and governed by the Public School Code;

18 I. "state agency" means the state or any of its
19 branches, agencies, departments, boards, instrumentalities or
20 institutions, excluding state educational institutions;

21 J. "state educational institution" means an
22 educational institution designated in Article 12, Section 11
23 of the constitution of New Mexico;

24 K. "state oversight agency" means the:

25 (1) state budget division of the department

1 of finance and administration for state agencies of the
2 executive, except the department of transportation;

3 (2) state transportation commission for the
4 department of transportation;

5 (3) New Mexico legislative council for
6 legislative agencies;

7 (4) administrative office of the courts for
8 the judiciary;

9 (5) public education department for school
10 districts and charter schools; and

11 (6) local government division of the
12 department of finance and administration for local public
13 bodies; and

14 L. "tax-exempt organization" means a nonprofit
15 organization that has been granted tax-exempt status by the
16 internal revenue service pursuant to Section 501(c)(3) of the
17 Internal Revenue Code of 1986, as amended.

18 SECTION 3. EXEMPTIONS FROM ACT.--

19 A. The following are exempt from the provisions of
20 the Public Property Disposition Act:

21 (1) the state land office as to the sale,
22 trade or lease of public lands under the commissioner of
23 public lands' jurisdiction;

24 (2) the New Mexico state police division of
25 the department of public safety as to the disposition of

1 property received through forfeitures and vehicle public
2 auctions;

3 (3) the economic development department as
4 to the disposition of real property acquired pursuant to the
5 Statewide Economic Development Finance Act;

6 (4) the cultural affairs department as to
7 the disposition of tangible personal property acquired
8 through abandonment procedures pursuant to the Abandoned
9 Cultural Properties Act and for accessioned collections
10 items, non-accessioned items or livestock;

11 (5) the department of transportation as to
12 the disposition of public property approved by the state
13 transportation commission, except that the department shall
14 notify the state auditor and the department of finance and
15 administration of the disposition;

16 (6) state educational institutions, except
17 that a state educational institution may donate tangible
18 personal or real property to a governmental entity; and

19 (7) municipalities and class A counties,
20 except that a municipality or class A county may donate
21 tangible personal or real property to a governmental entity.

22 B. The Public Property Disposition Act does not
23 apply to:

24 (1) the disposition of computer software of
25 a governmental entity;

1 (2) sale, trade, lease or donation of
2 tangible personal or real property of a school district to a
3 charter school; or

4 (3) leases of county hospitals with any
5 person pursuant to the Hospital Funding Act.

6 SECTION 4. TANGIBLE PERSONAL PROPERTY--SURPLUS,
7 OBSOLETE, WORN-OUT OR UNUSABLE TANGIBLE PERSONAL
8 PROPERTY--TEN THOUSAND DOLLARS (\$10,000) OR LESS--PROCEDURES
9 FOR DISPOSITION.--

10 A. A governing authority may dispose of an item of
11 tangible personal property belonging to that governmental
12 entity and delete the item from its public inventory upon a
13 special finding by the governing authority that the tangible
14 personal property is:

15 (1) of a current resale value of ten
16 thousand dollars (\$10,000) or less; and

17 (2) surplus, obsolete, worn-out or unusable
18 to the extent that the item is no longer economical for
19 continued use by the governmental entity.

20 B. The disposition of surplus, obsolete, worn-out
21 or unusable tangible personal property may be without
22 warranty.

23 C. As a prerequisite to the disposition of an item
24 of tangible personal property, the governing authority shall
25 designate a committee of at least three officials of the

1 governmental entity to oversee the disposition. The
2 governing authority may condition the disposition of property
3 upon it being offered for sale or donation to another
4 governmental entity, a state educational institution, a
5 municipality or an Indian tribe before other means of
6 disposition are considered. The committee shall report its
7 findings and proposed disposition to the governing authority,
8 which shall make the final decision regarding disposition of
9 the tangible personal property. If the governing authority
10 deviates from the recommendations of the committee, it shall
11 include its findings and reasons for deviation in the public
12 record of the action.

13 D. The governing authority shall give public
14 notification of its findings and approved disposition of the
15 property at least thirty days prior to its action, deleting
16 the tangible personal property from the public inventory by
17 posting a notice on its website and sending a copy of its
18 official finding and the proposed disposition of the property
19 to the state auditor in all cases and, in addition, to the
20 local government division of the department of finance and
21 administration in the case of a local public body and the
22 public education department in the case of a school district
23 or charter school.

24 E. A copy of the official finding and proposed
25 disposition of the tangible personal property sought to be

1 disposed of shall be made a permanent part of the official
2 minutes or records of the governing authority and maintained
3 as a public record subject to the Inspection of Public
4 Records Act.

5 F. A governing authority may dispose of surplus,
6 obsolete, worn-out or unusable tangible personal property
7 only in one or more of the following ways:

8 (1) through the bureau;

9 (2) by negotiated sale or donation to
10 another governmental entity, a state educational institution,
11 a municipality or an Indian tribe;

12 (3) through the central purchasing office of
13 the governmental entity by means of competitive sealed bid or
14 public auction;

15 (4) by using the property as a trade-in or
16 exchange pursuant to the provisions of the Procurement Code;
17 or

18 (5) by sale or donation of the property to a
19 tax-exempt organization only if the governing authority has
20 been unable to dispose of it under the provisions of
21 Paragraphs (1) through (4) of this subsection.

22 G. A state agency of the executive branch shall
23 give the bureau the right of first refusal when disposing of
24 surplus, obsolete, worn-out or unusable tangible personal
25 property of the state agency. Other state agencies, school

1 districts, charter schools and state educational institutions
2 may give the bureau the right of first refusal when disposing
3 of surplus, obsolete, worn-out or unusable tangible personal
4 property. Local public bodies and municipalities may also
5 give the bureau the right of first refusal when disposing of
6 surplus, obsolete, worn-out or unusable tangible personal
7 property.

8 H. Proceeds from the sale of tangible personal
9 property may be retained by a state agency, except by the
10 department of transportation and the state land office.
11 Proceeds from the sale of tangible personal property of the
12 department of transportation shall be deposited in the state
13 road fund, and property of the state land office shall be
14 deposited in the state lands maintenance fund. Other
15 governing authorities shall determine where proceeds from
16 sales are deposited or retained.

17 I. If a governing authority is unable to dispose
18 of the tangible personal property as provided in Subsection F
19 of this section, the governing authority shall order that the
20 property be destroyed or otherwise permanently disposed of in
21 accordance with applicable laws. If the governing authority
22 determines that the tangible personal property is hazardous
23 or contains hazardous materials or may not be used safely,
24 the property shall be destroyed and disposed of in accordance
25 with applicable laws.

1 J. Tangible personal property of a governmental
2 entity shall not be donated to an elected or appointed
3 official or employee or a relative of an elected official or
4 appointed employee of a governmental entity, state
5 educational institution, municipality or Indian tribe;
6 provided, however, that nothing in this subsection precludes
7 such elected or appointed official or employee or relative of
8 an elected or appointed official or employee from
9 participating and bidding for public property at a public
10 auction.

11 SECTION 5. TANGIBLE PERSONAL PROPERTY DEEMED
12 SURPLUS--OVER TEN THOUSAND DOLLARS (\$10,000)--DISPOSITION.--

13 A. A governmental entity may dispose of tangible
14 personal property that has a current resale value of more
15 than ten thousand dollars (\$10,000) after a determination
16 that the property is surplus or otherwise not needed by the
17 governmental entity and that the sale, trade or donation of
18 the property is in the best interests of the governmental
19 entity, the public and, for state agencies, the state. The
20 procedures for disposition and deletion of the tangible
21 personal property from the inventory of the governmental
22 entity shall be substantively as provided in Section 4 of the
23 Public Property Disposition Act, except that a disposition
24 pursuant to this section shall require the approval of the
25 governmental entity's state oversight agency. After giving

1 the bureau the right of first refusal, if required, the
2 disposition shall be by negotiated sale, competitive sealed
3 bid, public auction or allowable donation.

4 B. The state oversight agency shall consider the
5 determination by the governmental entity that the proposed
6 sale, trade or donation of tangible personal property is in
7 the best interest of the governmental entity and the public
8 and, for state agencies, the state. The state oversight
9 agency may condition its approval of the governmental
10 entity's determination of public interest on the disposition
11 of the item of tangible personal property first being offered
12 for sale or donation to another governmental entity, a state
13 educational institution, a municipality or an Indian tribe.

14 C. The proceeds from the sale of tangible personal
15 property of:

16 (1) except as otherwise provided in this
17 subsection, a state agency shall be credited to the state
18 agency;

19 (2) the department of transportation shall
20 be deposited in the state road fund;

21 (3) the state land office shall be deposited
22 in the state lands maintenance fund;

23 (4) a legislative or judicial agency shall
24 be credited to the appropriate legislative agency or judicial
25 agency or court; and

1 (5) any other governmental entity shall be
2 determined by the governing authority of the governmental
3 entity.

4 SECTION 6. K-9 DOGS--DISPOSITION.--If the secretary of
5 public safety finds that a K-9 dog presents no threat to
6 public safety, the K-9 dog may be released from public
7 ownership as provided in this section. The K-9 dog shall
8 first be offered to its trainer or handler free of charge.
9 If the trainer or handler does not want to accept ownership
10 of the K-9 dog, the K-9 dog shall be offered to a tax-exempt
11 organization free of charge. If both of the above fail, the
12 K-9 dog shall only be sold to a qualified person found
13 capable of providing a good home to the animal.

14 SECTION 7. SALE OF REAL PROPERTY--THRESHOLDS--DONATION
15 UNDER CERTAIN CIRCUMSTANCES--EXECUTIVE APPROVALS REQUIRED
16 PRIOR TO LEGISLATIVE ACTION.--

17 A. Except as provided in Subsection B of this
18 section, when a governmental entity makes a written
19 determination that particular real property having a value up
20 to sixty thousand dollars (\$60,000) is not needed to fulfill
21 the statutory responsibility or the mission of the
22 governmental entity, it may sell, trade or, under certain
23 circumstances, donate the real property to another
24 governmental entity, a state educational institution, a
25 municipality, an Indian tribe or a tax-exempt organization as

1 provided in this section. The determination to sell shall
2 set out the reasons why the property is no longer needed and
3 shall include:

- 4 (1) an appraisal, if selling the real
5 property;
- 6 (2) a market analysis, as appropriate;
- 7 (3) the purchase price;
- 8 (4) the form of quitclaim deed and a legal
9 description of the property;
- 10 (5) a sale agreement, if applicable;
- 11 (6) the governing authority's authorization;
- 12 (7) the state engineer's approval of any
13 transfer of water rights;
- 14 (8) for a school district or charter school,
15 information that the building does not meet public school
16 capital outlay council occupancy standards or that all public
17 schools located in the school district have declined use of
18 the real property; and
- 19 (9) a proposal for the method of
20 disposition.

21 B. A governmental entity may sell real property:

- 22 (1) through the bureau;
- 23 (2) by negotiated sale without an appraisal
24 to another governmental entity, state educational
25 institution, municipality or Indian tribe; or

1 (3) through its central purchasing office by
2 means of competitive sealed bid, competitive sealed proposal
3 or public auction.

4 C. A governmental entity or state educational
5 institution may donate real property to another governmental
6 entity or state educational institution, a municipality, an
7 Indian tribe or a tax-exempt organization upon approval of
8 its state oversight agency and, if required by the provisions
9 of this section, further review by the capitol buildings
10 planning commission and approval by the state board of
11 finance and the legislature.

12 D. Approval of a sale, trade or donation of real
13 property may be conditioned on the property first being
14 offered for sale, trade or donation to another governmental
15 entity, state educational institution or municipality before
16 other buyers or donees are considered.

17 E. Real property with a fair market value as
18 follows requires the following additional review or approvals
19 before a governmental entity may sell, trade or donate the
20 property:

21 (1) between sixty thousand one dollars
22 (\$60,001) and two hundred thousand dollars (\$200,000), the
23 state oversight agency; and

24 (2) over two hundred thousand dollars
25 (\$200,000):

1 (a) approval of the state oversight
2 agency;

3 (b) review by the capitol buildings
4 planning commission if the real property is state property
5 and the proposed disposition comports with the state's or
6 local public body's inventory and master plan and is in the
7 best interest of the state, the state agency or the local
8 public body;

9 (c) approval by the state board of
10 finance; and

11 (d) ratification of the proposed sale,
12 trade or donation by the legislature is required before
13 certain state property may be sold, traded or donated.

14 F. Real property with a fair market value over two
15 hundred thousand dollars (\$200,000) that is proposed to be
16 sold, traded or donated by a state agency shall be ratified
17 by joint resolution of the legislature after prior review and
18 approvals have been granted and the findings and
19 recommendations of the state oversight agency and the state
20 board of finance and, if required, review by the capitol
21 buildings planning commission, have been provided to the
22 legislature, along with the conditional agreement between the
23 state agency and the buyer, trading partner or donee that
24 specifies how the sale, trade or donation is to be conducted,
25 to whom the property is to be sold, traded or donated and the

1 purchase price, value of the trade or market value of the
2 donation.

3 G. Real property belonging to a state agency by
4 virtue of legislative action, either by bill or resolution,
5 shall remain under the control, maintenance and
6 administration of that state agency and the state agency
7 shall not change the ownership of that property to another
8 state agency or other governmental entity without legislative
9 approval.

10 SECTION 8. SALE OF REAL PROPERTY BY STATE
11 AGENCIES--LAND GRANT RIGHT OF FIRST REFUSAL.--

12 A. Notwithstanding any other provisions of the
13 Public Property Disposition Act, a state agency shall give
14 the board of trustees of a community land grant governed
15 pursuant to the provisions of Chapter 49, Article 1 NMSA 1978
16 or by statutes specific to the named land grant the right of
17 first refusal when selling real property belonging to the
18 state agency if the property is land that is located within
19 the boundaries of that community land grant as shown in the
20 United States patent to the grant.

21 B. If the board of trustees of the community land
22 grant elects not to purchase the land offered for sale or
23 does not respond to the notice of sale within forty-five days
24 of receipt of the notice, the state agency may otherwise
25 dispose of the real property in accordance with applicable

1 law.

2 C. The provisions of this section do not apply to
3 lands held in trust pursuant to the Enabling Act for
4 New Mexico and for which that act prescribes how that land
5 may be disposed of.

6 D. The provisions of this section do not apply to
7 the conveyance or transfer of state highways to local
8 governments.

9 SECTION 9. LEASES OF PUBLIC PROPERTY.--

10 A. When a state agency proposes to lease its real
11 property for a period of between five years and twenty-five
12 years, the lease shall not be valid unless it is approved by
13 the state oversight agency; reviewed by the capitol buildings
14 planning commission if the real property is located in the
15 greater metropolitan areas of Santa Fe, Las Cruces and
16 Albuquerque to determine if the proposed lease comports with
17 the respective master plan and is in the best interest of the
18 state and the state agency; and approved by the state board
19 of finance prior to its effective date.

20 B. When a state agency proposes to enter into a
21 lease of real property as the lessee for a period of between
22 five years and twenty-five years, the lease shall be approved
23 by the state oversight agency; reviewed by the capitol
24 buildings planning commission if the real property being
25 leased is located in the greater metropolitan areas of

1 Santa Fe, Las Cruces and Albuquerque and a state master plan
2 includes building a state building that is planned to be used
3 by the state agency within the time frame of the proposed
4 lease; and approved by the state board of finance.

5 C. When a state agency proposes to lease its real
6 property for longer than twenty-five years or for
7 consideration of more than one hundred thousand dollars
8 (\$100,000), it shall be ratified by a joint resolution of the
9 legislature after all prior approvals and reviews have been
10 granted and the findings and recommendations of the state
11 oversight agency, the capitol buildings planning commission
12 and the state board of finance have been provided to the
13 legislature, along with the pertinent information required in
14 Subsection A of Section 7 of the Public Property Disposition
15 Act.

16 D. Any attempt by a state agency to enter into a
17 lease in violation of this section is not valid and shall be
18 retracted.

19 SECTION 10. EXEMPTED STATE AGENCIES AND STATE
20 EDUCATIONAL INSTITUTIONS--PROCESSES AND PROCEDURES.--State
21 agencies and state educational institutions exempted from the
22 provisions of the Public Property Disposition Act shall have
23 in place a process and procedures for disposing of tangible
24 personal property and real property that provides for the
25 protection of governmental assets that is promulgated by rule

1 of the governing authority that is readily available to the
2 public. The rules, and any property disposition ordinance of
3 a municipality, shall allow for the sale, trade, lease or
4 donation of property to the state.

5 SECTION 11. SURPLUS PROPERTY BUREAU CREATED--
6 DUTIES--POWERS.--

7 A. The "surplus property bureau" is created in the
8 transportation services division of the general services
9 department. The bureau is designated as the New Mexico
10 agency responsible for distribution of federal surplus
11 personal property, excepting food commodities, in accordance
12 with Subdivision (j) of Section 203 of the Federal Property
13 and Administrative Services Act of 1949. The bureau is also
14 designated as the agency for distribution or disposal of
15 state surplus property.

16 B. The bureau shall:

17 (1) develop a detailed state plan of
18 operation for the management and administration of surplus
19 property acquired from the federal government that complies
20 with the Federal Property and Administrative Services Act of
21 1949 and regulations promulgated in accordance with that act;

22 (2) cooperate with the federal government
23 and its agencies in securing the expeditious and equitable
24 distribution of federal surplus personal property, excepting
25 food commodities, to eligible institutions in New Mexico, and

1 assist those institutions in securing that property;

2 (3) dispose of unusable federal surplus
3 property in accordance with Subdivision (j) of Section 203 of
4 the Federal Property and Administrative Services Act of 1949;
5 and

6 (4) manage a program to recycle, donate,
7 sell or dispose of surplus tangible personal property of
8 governmental entities, state educational institutions and
9 municipalities.

10 C. The bureau may:

11 (1) enter into agreements with the federal
12 government or its agencies for the purchase, lease, receipt
13 as a loan or gift or any other means of acquisition of any
14 real or personal property without regard to provisions of
15 state law that require:

16 (a) the posting of notices or public
17 advertising for bids;

18 (b) the inviting or receiving of
19 competitive bids; or

20 (c) the delivery of purchases before
21 payment;

22 (2) enter into cooperative agreements for
23 the sale, transfer or disposal of federal surplus property
24 that has not been distributed;

25 (3) enter into contracts with governmental

1 entities, state educational institutions and municipalities
2 for the purpose of acquiring or disposing of tangible
3 personal property originally purchased with public money as
4 specified by rule of the transportation services division of
5 the general services department; and

6 (4) designate the representative of a user
7 to enter a bid at a sale of real or personal property owned
8 by the United States government or any agency or department
9 of the federal government and authorize that person to make
10 payment required in connection with the bidding.

11 SECTION 12. SURPLUS PROPERTY FUND--CREATED--
12 EXPENDITURES.--

13 A. The "surplus property fund" is created as a
14 nonreverting fund in the state treasury. The fund consists
15 of money received from the sale of surplus property by the
16 bureau. The bureau shall administer the fund, and money in
17 the fund is subject to appropriation by the legislature to
18 carry out activities relating to the acquisition, transfer
19 and sale of surplus government property. Money in the fund
20 shall be disbursed pursuant to vouchers signed by the chief
21 of the bureau or the chief's authorized representative upon
22 warrants signed by the director of the transportation
23 services division of the general services department or the
24 director's authorized representative.

25 B. Money in the surplus property fund attributable SB 154
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1 to the sale of federal property shall be held and accounted
2 for separately from money attributable to the purchase or
3 sale of state or local government property.

4 SECTION 13. DISPOSITION OF STATE PROPERTY.--The bureau
5 may dispose of tangible personal property, except property
6 acquired from the United States government, by advertising
7 the availability of the property as follows:

8 A. for the first forty-five-day period, to any
9 governmental entity, state educational institution or
10 municipality that has entered into an agreement with the
11 bureau;

12 B. for the second forty-five-day period, to any
13 government agency or Indian tribe or to a tax-exempt
14 organization that has filed its written certificate of tax
15 exemption with the bureau;

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

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

24 SECTION 14. REPEAL.--Sections 13-6-1 through 13-6-8
25 NMSA 1978 (being Laws 1961, Chapter 100, Section 1,

1 Laws 1979, Chapter 195, Section 3, Laws 1989, Chapter 380,
2 Section 1, Laws 1961, Chapter 41, Section 1, Laws 1979,
3 Chapter 195, Section 5, Laws 2005, Chapter 251, Section 1 and
4 Laws 2007, Chapter 57, Sections 1 through 3, as amended) are
5 repealed.

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