FISCAL IMPACT REPORT

		LAST UPDATED	03/13/23
SPONSOR	HGEIC	**ORIGINAL DATE**	03/02/23
SHORT TITLE	Public Property Sales & Counties	**BILL NUMBER**	CS/House Bill 512/HGEICS
		ANALYST	Hitzman

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal			

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Response Received From
Office of the State Auditor (OSA)
Public Education Department (PED)
Department of Finance and Administration (DFA)

No Response Received
Association of Counties
Higher Education Department (HED)

SUMMARY

Synopsis of HGEIC Substitute for House Bill 512

The House Government, Elections and Indian Affairs Committee substitute for House Bill 512 (HB512) amends the statute regarding public purchases and property to exclude counties from the definition of “local public body” and exempt counties from the requirements applicable to local public bodies for the sale or other disposal of public property.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

The bill does not contain an appropriation. Because the bill only changes sections related to purchases and property for counties, there is likely no fiscal impact to the state other than the costs associated with actual donations to counties, which is likely minimal on those agencies. The Office of the State Auditor notes the bill will not impact their agency in the review or conducting of audits.

SIGNIFICANT ISSUES

The statute originally required governing authorities of each state agency, local public body, school district, and state educational institution to dispose of public property through a specific process, including the designation of a committee to approve and oversee the disposition. The statute also allowed those authorities to dispose of property by negotiated sale to any unit of government and to other state agencies, local public bodies, school districts, educational institutions, and municipalities via public auction as provided for in subsequent sections of law. Because the bill excludes counties from the definition of "local public body" relating to the sale of public property, counties would no longer have to undergo that process to dispose of public property. The bill attempts to bring parity to the review and oversight process, exempting counties from oversight in the same way that municipalities are exempt. Further, the bill exempts counties from Local Government Division review for some of these same sale and disposition activities.

Although the bill attempts to remove oversight and review processes for counties to bring parity or align with municipalities, there is a broader policy question as to whether or not the state should have oversight and review processes in place for these sales and dispositions for those and other entities in general. If passed, the bill would remove these processes for counties but would not remove the requirement for higher education institutions or school districts from coming to the state Board of Finance, which may actually result in greater disparity in the way these oversight and review requirements are applied to different entities, essentially exempting some entities but not others.

To this end, it is unclear as to why municipalities were exempt from this provision in the original statute, but the Legislature should determine whether it desires to remove the oversight requirements for counties in order to bring them into parity with municipalities, which already lack that oversight, or whether it would be more appropriate to achieve parity by bringing municipalities into that oversight process alongside all the other entities that currently have to be reviewed by the state Board of Finance and Local Government Division.

Further, there may be concerns regarding the anti-donation clause. For example, Washington State also has restrictions on making gifts of public funds in the state constitution, prohibiting "any local government entity from bestowing a gift or lending money, property, or the entity's credit to a private party." Further, MRSC notes:

> The courts have used a two-step process to determine whether or not a local government has bestowed a gift of public funds. First, they will look to see if the funds were used to carry out a fundamental purpose of government. If the answer is yes, then there has not been a gift of public funds. Second, the courts will determine whether the government had "donative intent" and whether it received an adequate return for any transfer of funds.

The Department of Finance and Administration/State Board of Finance noted the following:

> Department of Finance and Administration Local Government Division and Board of Finance provide oversight to ensure public property is not disposed of below fair market value, thus violating [the anti-donation] clause. While additional oversight takes time, review and approval by the Local Government Division and Board of Finance can and does occur quickly. In the case of the Board of Finance, meetings are held monthly for consideration of such transactions, with approval often being provided within 21 to 30 days of receipt of required documents. Requirements are laid out in advance through checklists to guide counties through the requirements, including obtaining an appraisal to ensure fair market value is considered in the property transaction, which protect counties from violations of the anti-donation clause of the state Constitution. These appraisals are vetted not only by the Board of Finance, but also by the Tax and Revenue Department, to ensure the appraisals' adequacy and accuracy in determining fair market value. In the case of the Local Government Division, approval occurs within 30 days of receiving the property disposition request, as long as all required documentation, as explained through a checklist and flowchart, is submitted timely.

Without oversight processes in place for counties, there may be an increase in violations of the anti-donation clause because there would be less opportunity for reviewing county activities.

MRSC further notes "a best practice is for local governments to develop a donation acceptance policy and include any limitations on donations." For example, the City of Lakewood provided restrictions on the use of donations, to be used only for purposes related to the powers granted to the city by law.

Further, the Board of Finance review process can help ensure accuracy and transparency. DFA notes the following:

> Board of Finance and Local Government Division review has also caught and led to the correction of other legal concerns in real property transactions, such as errors in both contracts and deeds conveying public property, and the lack of documentation to show that the property disposition was considered and approved by the appropriate governing body of the county or local public body.

Without a requirement for counties to go through the Board of Finance process for these sorts of disposals, these errors may not be caught and corrected.

It is unclear if counties would need to follow other procedures or requirements from other areas of law regarding the disposition of public property or if the exemption from the definition of "local public body" will limit the counties ability to dispose of public property to other state agencies, local public bodies, school districts, educational institutions, and municipalities via public auction as provided for in subsequent sections of law, such as Section 13-6-1.

It is also unclear if donations made to counties are tax deductible. According to the Municipal Research and Services Center (MRSC) of Washington, "the IRS Code at 26 U.S.C. §170(c)(1) states that a donation is tax deductible when it is to: A State, a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia, but only if the contribution or gift is made for exclusively public purposes."

The bill amends the definition of "local public body" in Section 13-6-4 but does not amend this definition in other areas of the statute, such as Section 13-3-5 which requires local public bodies to purchase insurance for public buildings.

ALTERNATIVES

DFA provides the following alternative:

> Were the bill to retain DFA oversight of county property dispositions, 13-6-2.1 NMSA 1978 could be amended to increase the threshold at which DFA oversight is required. The current threshold for Board of Finance approval is $25 thousand. DFA is very supportive of a measurable increase to this amount, as the amount has not been adjusted for inflation or property value increases since it was established. The current threshold for LGD approval is $5,000 and could possibly be increased to $25 thousand. Such an alternative would ensure oversight and accountability for dispositions for monetarily significant public properties while eliminating unnecessary burden of smaller property transactions.

JH/rl/ne/ne/al