

<b>LFC Requester:</b>	<b>None</b>
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**AGENCY BILL ANALYSIS - 2026 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO**  
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**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

**Date Prepared:** 2/11/26 *Check all that apply:*  
**Bill Number:** SB 128 Original  Correction   
 Amendment  Substitute

**Sponsor:** Sen. Antonio Maestas **Agency Name and Code** State Land Office - 539  
**Short Title:** PUBLIC LAND DISCLOSURE & ACCOUNTABILITY ACT **Number:** \_\_\_\_\_  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY26	FY27		
None - NMSLO	None - NMSLO		

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY26	FY27	FY28		
None	None	None		

(Parenthesis ( ) indicate revenue decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	None	Indeterminate (Negative)	Indeterminate (Negative)		Recurring	Land Maintenance Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

##### Synopsis:

This bill would create a Public Land Disclosure and Accountability Act applicable to all “public agencies,” defined to include all political subdivisions of the state, all school districts, all state-chartered charters schools, all public post-secondary educational institutions, all municipalities, and all counties. Beginning in 2027 and every two years thereafter, all public agencies would be required to submit to DFA and publish on the agency’s website a land inventory report of all real property located in each “metropolitan area,” defined as a municipality or an unincorporated area within five miles of the boundaries of a municipality with a population of at least two thousand five hundred according to the most recent federal decennial census. The inventory report would include, for each real property, (1) a legal description; (2) the date the real property was acquired; (3) the current use or a statement that the real property is vacant or underutilized; and (4) if the real property has been vacant or underutilized for five years or longer, a statement of intent to use or develop the real property and a projected time line or a statement that the agency has no intent to use or develop the real property.

Except for counties and municipalities, a public agency owning real property in metropolitan areas that has been vacant or underutilized for five years or longer would be required to dispose of the real property absent an intent to use or develop it. A contract for the sale of vacant or underutilized real property would require the buyer to initiate development, obtain all required construction permits and commence construction within twelve months of the date of transfer of title. If these requirements are not met and no written extension has been executed by the grantor public agency, title to the real property would revert to the grantor public agency free and clear, and the public agency would be required to reimburse the buyer at the original sale price.

DFA would monitor compliance with the Act and report non-compliance to the legislative council. The bill would appropriate \$100,000 in general funds to DFA for expenditure in FY2027 to electronically publish the inventory reports submitted by public agencies. The bill would have an effective date of July 1, 2026.

#### **FISCAL IMPLICATIONS**

The bill lacks clarity regarding whether it is intended to include the State Land Office and the nine million acres of surface lands the agency manages under the state land trust. Assuming the State Land Office falls within the definition of a “political subdivision of the state,” see Section 3(B), the bill would result in significant but undetermined costs in compiling the required information. Furthermore, the State Land Office believes that should the bill be deemed applicable to state trust lands, the mandate to sell such lands (Section 5) would violate the NM Constitution and the Enabling Act, which prescribe limitations on the disposition of state trust lands conferred to the state from the federal government.

The State Land Office exercises custody and control of approximately nine million acres of surface

estate dispersed throughout the state, held in trust to support public schools and other state institutions. In furtherance of the State Land Office mission to exercise custody and control of state trust lands so as to generate support for the land trust beneficiary institutions now and into the future, the agency leases the land for a variety of uses, including livestock grazing, real estate planning and development, renewable energy projects, oil and gas development, mining, commercial office buildings, affordable housing, and a multitude of other uses. The State Land Office also grants easements for roads, pipelines and various other uses. Due to Enabling Act and NM Constitution restrictions on using trust land proceeds to make improvements, the State Land Office relies entirely on lessees and grantees to make improvements needed to achieve the highest and best use of the land.

Since at least the 1990s, a succession of land commissioners has had a consistent policy preference for retaining ownership of state trust lands as being in the long-term best interest of the trust and the beneficiary institutions. Significantly, rent and recurring revenues from state trust land leases and easements are distributed to the Land Maintenance Fund for disbursement to the land trust beneficiaries on a current basis with a holdback based on legislative appropriation to pay the expenses of the agency. Therefore, retaining ownership of the land allows for distribution of rent and other recurring revenue to the beneficiaries while retaining for the trust the appreciating ownership value of the land. While the NM Constitution and statutes require that all land sale revenues be distributed to the Land Grant Permanent Fund (LGPF) for investment, land sales remove the ability of the agency to retain a trust asset that is key to long-term earning potential.

By federal and state law, the state land office generally is required to reserve the mineral estate and geothermal resources when selling state trust lands. While the mineral estate is considered the “dominant” estate and includes the right to use so much of the surface as is reasonably necessary to explore for and produce oil, gas and other minerals, severance of the surface estate ownership can complicate and inhibit exploitation of the mineral estate.

The State Land Office has not done an inventory to determine the amount of state trust land located in metropolitan areas (as defined in the bill), but the amount is estimated to be quite significant. While most state trust land is leased for current occupation and use, an undetermined amount of state trust land located in metropolitan areas is not leased, primarily because of a lack of current lessee interest in leasing the particular parcel.

Depending on how the bill’s definitions of “vacant” and “underutilized” are construed, in theory selling all of the vacant or underutilized state trust land located in metropolitan areas would generate considerable revenue in an amount that has not been determined at considerable expense in an amount that has not been determined. Sale proceeds are distributed to the LGPF and invested by the state investment council with distributions made in accordance with Article 12, Section 7 of the NM Constitution. However, as previously noted, the purported mandate to sell trust lands would likely violate the authority vested with the Commissioner of Public Lands to manage state trust lands and the federal and state constitutional legal constraints on how lands may be disposed of.

Compliance with the bill’s would requirements a minimum of at least three FTEs plus significant annual recurring contractual services funds.

## **SIGNIFICANT ISSUES**

The bill should be amended to make clear that it does not apply to the State Land Office.

Under the NM Constitution and statutes, the Commissioner of Public Lands has authority over “the direction, control, care and disposition of all [state trust] lands, under the provisions of the acts of congress relating thereto and such regulations as may be provided by law.” N.M. Const. art. XIII, § 2; see also NMSA 1978, § 19-1-1. The courts have said that the law gives the commissioner broad discretion regarding management and disposition of state trust lands, sometimes characterizing the authority as “plenary” or “complete dominion” or akin to that of a “business manager.” See, e.g., *State ex rel. King v. Lyons*, 2011-NMSC-004, ¶ 28 (“We recognize that the Land Commissioner has broad discretion to manage state trust lands”); *Burguete v. Del Curto*, 1945 -NMSC- 025, ¶ 11 (“It's well settled in New Mexico that under the Enabling Act, our Constitution and the statutes based thereupon, the Commissioner of Public Lands has complete dominion, which is to say complete control, over state lands.”); *Vesely v. Ranch Realty Co.*, 1934-NMSC-067, ¶ 9 (“We have often pointed out the large powers thus conferred . . . and have referred to the commissioner as a business manager.”). The bill’s incursion into the broad discretion and long experience of the Commissioner of Public Lands in determining whether to retain ownership of any particular parcel of state trust lands would have broad and largely unforeseen ramifications for the state’s interest in state trust lands in ways that may be subject to challenge on federal law and constitutional grounds.

In addition, the courts have recognized a strong public interest in the protection of state trust lands, particularly against improper disposition. See, e.g., *Prather v. Lyons*, 2011-NMCA-108, ¶ 19. There exists “a strong public interest in the protection of state land and its products, as reflected in the Enabling Act’s requirement that no sale or other disposal [of state land or its natural productions] shall be made for a consideration less than the [appraised true] value.” (citation and internal quotation marks omitted). Thus, the bill’s mandate in favor of disposition runs against a long-standing set of prohibitions intended to protect against improper or unwise dispositions of state trust lands.

## **PERFORMANCE IMPLICATIONS**

The stated purpose of the bill is to “benefit the state and its local communities by maximizing the productivity of land, stimulating economic activity and expanding the tax base by providing transparency in the use and ownership of land owned by public agencies through regular disclosures and mandating the sale of vacant and underutilized land.” Section 2.

State trust lands are already used to generate earnings to support public services (over \$2.5 billion a year), meet community needs (economic development projects, housing developments, recreational opportunities, etc.), and are managed in a transparent manner (land ownership and all leasing activities are available on the agency’s website and statelands.org.). To the extent the bill is applied to the State Land Office, it would impose significant costs and administrative burdens while reducing the long-term earning potential of the land trust.

## **ADMINISTRATIVE IMPLICATIONS**

The State Land Office maintains tract books recording the location of all state trust lands and all leases and easements providing for occupation and use by section, township and range. Determining which of the roughly nine million acres of trust surface estate is located in metropolitan areas and determining whether each parcel is vacant or underutilized would require an undetermined additional number of FTEs and operating expenditures. Selling vacant and “underutilized” state trust lands located in metropolitan areas, assuming it was done in a legally

permissible manner, would also require an undetermined additional number of FTEs and operating expenditures where the proceeds would be distributed to the LGMF without any holdback to cover those expenses.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

### **TECHNICAL ISSUES**

In requiring the sale of land that the public agency has “no intent to use or develop,” the bill does not make clear whether the intended use or development must be immediate or some time in the foreseeable future. The requirement that a sale contract require the buyer to “initiate development, obtain all required construction permits and commence construction within twelve months of the date of transfer of title” suggests that the bill would require the public agency to sell the land unless it has a bona fide plan to initiate development within 12 months. Additionally, the bill does not define what constitutes a development.

### **OTHER SUBSTANTIVE ISSUES**

While the bill states that DFA would “monitor compliance” and “report any noncompliance to the New Mexico legislative council,” it’s not clear how the bill’s requirement for selling vacant and “underutilized” land would be enforced and who would have standing to enforce it.

### **ALTERNATIVES**

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

### **AMENDMENTS**

Page 2, line 19, after “New Mexico,” insert “other than the state land office.”