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SENATE BILL 70

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Cisco McSorley

AN ACT

RELATING TO HIGHER EDUCATION; REQUIRING CERTAIN APPROVALS
BEFORE A STATE EDUCATIONAL INSTITUTION OR A RESEARCH PARK
CORPORATION MAY DISPOSE OF REAL PROPERTY; REQUIRING APPROVAL
BEFORE A RESEARCH PARK CORPORATION MAY COMMENCE A CAPITAL
OUTLAY PROJECT; RECONCILING MULTIPLE AMENDMENTS TO THE SAME
SECTION OF LAW IN LAWS 2003.

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

Section 1. Section 13-6-2 NMSA 1978 (being Laws 1979,
Chapter 195, Section 3, as amended) is amended to read:

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

A. Providing a written determination has been made,
a state agency, local public body, school district or state

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1 educational institution may sell or otherwise dispose of real
2 or tangible personal property belonging to the state agency,
3 local public body, school district or state educational
4 institution.

5 B. A state agency, local public body, school
6 district or state educational institution may sell or otherwise
7 dispose of real property:

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

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

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

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

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1 C. A state agency shall give the surplus property
2 bureau of the transportation services division of the general
3 services department the right of first refusal to dispose of
4 tangible personal property of the state agency. A school
5 district may give the surplus property bureau the right of
6 first refusal to dispose of tangible personal property of the
7 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, a sale or disposition of:

11 (1) real or tangible personal property having
12 a current resale value of more than five thousand dollars
13 (\$5,000) may be made by a state agency, local public body or
14 school district [~~or state educational institution~~] if the sale
15 or disposition has been approved by the state budget division
16 of the department of finance and administration for state
17 agencies, the local government division of the department of
18 finance and administration for local public bodies and the
19 public education department for school districts [~~and the~~
20 ~~higher education department for state educational~~
21 ~~institutions~~]; and

22 (2) real property having a current resale
23 value of more than one hundred thousand dollars (\$100,000) may
24 be made by a state educational institution if the sale or
25 disposition has been approved by the higher education

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1 department.

2 E. Prior approval of the appropriate approval
3 authority is not required if the tangible personal property is
4 to be used as a trade-in or exchange pursuant to the provisions
5 of the Procurement Code.

6 F. The appropriate approval authority may condition
7 the approval of the sale or other disposition of real or
8 tangible personal property upon the property being offered for
9 sale or donation to a state agency, local public body, school
10 district or state educational institution.

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

17 H. This section does not apply to:

18 (1) computer software of a state agency;

19 [~~(2)~~] ~~those institutions specifically~~
20 ~~enumerated in Article 12, Section 11 of the constitution of New~~
21 ~~Mexico;~~

22 [~~(3)~~] (2) the New Mexico state police division
23 of the department of public safety;

24 [~~(4)~~] (3) the state land office or the
25 department of transportation;

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1 [~~5~~] (4) property acquired by a museum
2 through abandonment procedures pursuant to the Abandoned
3 Cultural Properties Act;

4 [~~6~~] (5) leases of county hospitals with any
5 person pursuant to the Hospital Funding Act;

6 [~~7~~] (6) property acquired by the economic
7 development department pursuant to the Statewide Economic
8 Development Finance Act; and

9 [~~8~~] (7) the state parks division of the
10 energy, minerals and natural resources department."

11 Section 2. Section 13-6-2.1 NMSA 1978 (being Laws 1989,
12 Chapter 380, Section 1, as amended by Laws 2003, Chapter 142,
13 Section 3 and by Laws 2003, Chapter 349, Section 22) is amended
14 to read:

15 "13-6-2.1. SALES, TRADES OR LEASES--STATE BOARD OF
16 FINANCE APPROVAL.--

17 A. Except as provided in Section 13-6-3 NMSA 1978,
18 for state agencies, any sale, trade or lease:

19 (1) for a period of more than five years of
20 real property belonging to a state agency, local public body or
21 school district or any sale, trade or lease of such real
22 property for a consideration of more than twenty-five thousand
23 dollars (\$25,000) shall not be valid unless it is approved
24 prior to its effective date by the state board of finance; and

25 (2) of real property belonging to a state

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1 educational institution for a consideration of more than five
2 hundred thousand dollars (\$500,000) shall not be valid unless
3 it is approved prior to its effective date by the higher
4 education department and the state board of finance.

5 B. The provisions of this section shall not be
6 applicable as to [~~those institutions specifically enumerated in~~
7 ~~Article 12, Section 11 of the constitution of New Mexico~~] the
8 state land office, the state transportation commission or the
9 economic development department when disposing of property
10 acquired pursuant to the Statewide Economic Development Finance
11 Act."

12 Section 3. Section 21-1-20 NMSA 1978 (being Laws 1889,
13 Chapter 138, Section 70, as amended) is amended to read:

14 "21-1-20. POWER TO HOLD PROPERTY.--[~~Sec. 159.~~] All of the
15 [~~said~~] state educational institutions, including the New Mexico
16 military institute, shall be entitled to receive all the
17 benefits and donations made and given to similar institutions
18 of learning and charity in other states and territories of the
19 United States by the legislation of the congress of the United
20 States or from private individuals or corporations, and, for
21 the benefit of [~~said~~] those institutions, they shall have power
22 to buy and, subject to the provisions of Sections 13-6-2 and
23 13-6-2.1 NMSA 1978, to sell or lease or mortgage realty and do
24 all things that, in the opinion of the [~~several~~] boards of
25 regents, will be for the best interests of [~~said~~] the

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1 institutions and are in the line of [~~its~~] their object."

2 Section 4. Section 21-1-21 NMSA 1978 (being Laws 1971,
3 Chapter 235, Section 4) is amended to read:

4 "21-1-21. CAPITAL EXPENDITURES.--No expenditure shall be
5 made by any state educational institution confirmed by Article
6 12, Section 11 of the [~~state~~] constitution of New Mexico, or by
7 any research park corporation formed by such an institution,
8 for the purchase of real property or the construction of
9 buildings or other major structures or for major remodeling
10 projects without prior approval of the proposed purchase, [~~or~~]
11 construction or remodeling by the [~~board of educational~~
12 ~~finance~~] higher education department and the state board of
13 finance."

14 Section 5. Section 21-28-5 NMSA 1978 (being Laws 1989,
15 Chapter 264, Section 5, as amended) is amended to read:

16 "21-28-5. POWERS OF UNIVERSITY AS RELATED TO RESEARCH
17 PARKS.--

18 A. Subject to the provisions of Sections 13-6-2,
19 13-6-2.1 and 21-1-21 NMSA 1978, the regents of each university
20 shall have the power to implement and further the purposes of
21 the University Research Park and Economic Development Act,
22 including the power:

23 (1) to establish, acquire, develop, maintain
24 and operate research parks, including all necessary or suitable
25 buildings, facilities and improvements, and to acquire,

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1 purchase, construct, improve, remodel, add to, extend,
2 maintain, equip and furnish research parks or any building or
3 facility, including research and service facilities and areas
4 intended for the common use of research park tenants;

5 (2) to form research park corporations to aid
6 and assist the university to acquire, construct, finance,
7 operate and manage research parks;

8 (3) to form research park corporations to
9 engage in economic development activities that support the
10 teaching, research and service mission of the university,
11 including creating learning opportunities for the students of
12 the university;

13 (4) to lease, sell, exchange or transfer to
14 research park corporations personal property, money and all or
15 part of the land and facilities included in a research park, on
16 terms and conditions established by the regents that are fair,
17 just and reasonable to the university, and to enter into any
18 other contract or agreement with the research park corporation
19 for the construction, financing, operation and management of
20 the research park;

21 (5) to lease, either directly or through a
22 research park corporation, to any person, firm, partnership,
23 government entity or any other lawful entity recognized under
24 the laws of the state, any part or all of the land, buildings
25 and facilities of the research park under guidelines

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1 established by the regents;

2 (6) to allow a lessee, exchanger or purchaser
3 of university land to acquire or construct necessary or
4 suitable buildings, facilities and improvements upon university
5 land; provided that any improvements acquired or constructed
6 upon university land during the term of any lease of university
7 land shall revert to and become the property of the university
8 on termination of the lease or any renewal or extension;

9 (7) to construct buildings, facilities and
10 improvements and to acquire, purchase, construct, improve,
11 remodel, add to, extend, maintain, equip and furnish research
12 parks or any building or facility, including research and
13 service facilities and areas intended for common use of
14 research park occupants;

15 (8) to finance all or part of the costs of the
16 research park, including the purchase, construction,
17 reconstruction, improvement, remodeling, addition to,
18 extension, maintenance, equipment and furnishing;

19 (9) to conduct, sponsor, finance and contract
20 in connection with technological innovations of all kinds; and

21 (10) to do anything else that the regents deem
22 appropriate to further the purposes of the University Research
23 Park and Economic Development Act either directly or
24 indirectly.

25 B. The specification of powers in this section is

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1 not exclusive and shall not be construed to impair or negate
2 any other power or authority enjoyed by the regents under the
3 constitution or laws of this state."

4 Section 6. Section 21-28-6 NMSA 1978 (being Laws 1989,
5 Chapter 264, Section 6, as amended) is amended to read:

6 "21-28-6. POWERS OF RESEARCH PARK CORPORATION.--A
7 research park corporation shall have all the powers necessary
8 and convenient to carry out and effectuate the provisions of
9 the University Research Park and Economic Development Act,
10 including the power to:

- 11 A. approve or disapprove proposals;
- 12 B. sue and be sued in its corporate name;
- 13 C. purchase, take, receive or otherwise acquire;
- 14 own, hold, manage, develop, dispose of or use; and otherwise
- 15 deal in and with property, including an interest in or
- 16 ownership of intangible personal property, intellectual
- 17 property or technological innovations;
- 18 D. sell, convey, pledge, exchange, transfer, lease
- 19 or otherwise dispose of its assets and properties for
- 20 consideration upon terms and conditions that the corporation
- 21 shall determine; provided that any sale, conveyance, pledge,
- 22 exchange, transfer, lease or disposal of a real property
- 23 interest by a research park corporation shall be made in
- 24 accordance with the provisions of [~~Section 13-6-2~~] Sections
- 25 13-6-2 and 13-6-2.1 NMSA 1978;

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1 E. make contracts, incur liabilities or borrow
2 money at rates of interest that the research park corporation
3 may determine;

4 F. make and execute all contracts, agreements or
5 instruments necessary or convenient in the exercise of the
6 powers and functions of the corporation granted by the
7 University Research Park and Economic Development Act;

8 G. receive and administer grants, contracts and
9 private gifts;

10 H. invest and reinvest its funds;

11 I. conduct its activities, carry on its operations,
12 have offices and exercise the powers granted by the University
13 Research Park and Economic Development Act;

14 J. make and alter bylaws that may contain
15 provisions indemnifying any person who is or was a director,
16 officer, employee or agent of the corporation and that are
17 consistent with the University Research Park and Economic
18 Development Act, for the administration and regulation of the
19 affairs of research park corporations;

20 K. employ officers and employees that it deems
21 necessary, set their compensation and prescribe their duties;

22 L. enter into agreements with insurance carriers to
23 insure against any loss in connection with its operations;

24 M. authorize retirement programs and other benefits
25 for salaried officers and employees of the research park

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1 corporation;

2 N. employ fiscal consultants, attorneys and other
3 consultants that may be required and to fix and pay their
4 compensation; and

5 O. enter into license agreements and contracts,
6 including those involving intellectual property and
7 technological innovations such as patents, copyrights,
8 franchises and trademarks."

9 Section 7. Section 21-28-7 NMSA 1978 (being Laws 1989,
10 Chapter 264, Section 7, as amended) is amended to read:

11 "21-28-7. LIMITATIONS ON APPLICATION OF LAWS.--

12 A. A research park corporation shall not be deemed
13 an agency, public body or other political subdivision of New
14 Mexico, including for purposes of applying statutes and laws
15 relating to personnel, procurement of goods and services,
16 meetings of the board of directors, gross receipts tax,
17 disposition or acquisition of property, capital outlays, per
18 diem and mileage and inspection of records; provided that any
19 disposition or acquisition of real property and any expenditure
20 for capital outlay shall be made in accordance with the
21 provisions of Sections 13-6-2, 13-6-2.1 and 21-1-21 NMSA 1978.

22 B. A research park corporation shall be deemed an
23 agency or other political subdivision of the state for purposes
24 of applying statutes and laws relating to the furnishing of
25 goods and services to the university that operates it and the

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1 risk management fund.

2 C. A research park corporation, its officers,
3 directors and employees shall be granted immunity from
4 liability for any tort as provided in the Tort Claims Act. A
5 research park corporation may enter into agreements with
6 insurance carriers to insure against a loss in connection with
7 its operations even though the loss may be included among
8 losses covered by the risk management fund of New Mexico."

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