

SENATE BILL 154

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Mary Kay Papen

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

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. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Public Property Disposition Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the

.211960.2

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

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 district or the governing body of a charter school;

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

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

G. "local public body" means a political subdivision of the state and the political subdivision's

.211960.2

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

agencies, institutions and instrumentalities, excluding municipalities Hfl→, class A counties←Hfl and school districts;

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

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

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

K. "state oversight agency" means the:

(1) state budget division of the department of finance and administration for state agencies of the executive, except the department of transportation;

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

(3) New Mexico legislative council for legislative agencies;

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

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

.211960.2

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

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

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

SECTION 3. [NEW MATERIAL] EXEMPTIONS FROM ACT.--

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

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

(2) the New Mexico state police division of the department of public safety as to the disposition of property received through forfeitures Sfl→and vehicle public auctions←Sfl;

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

(4) the cultural affairs department SPAC→or any of its museums←SPAC as to the disposition of tangible personal property acquired through abandonment procedures pursuant to the Abandoned Cultural Properties Act SPAC→and for accessioned collections items, non-accessioned items or

.211960.2

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

livestock←SPAC;

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

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

(7) municipalities Hfl→, ~~except that a municipality~~←Hfl Hfl→ **and class A counties, except that a municipality or class A county**←Hfl may donate tangible personal or real property to a governmental entity.

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

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

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

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

SECTION 4. [NEW MATERIAL] TANGIBLE PERSONAL PROPERTY--SURPLUS, OBSOLETE, WORN-OUT OR UNUSABLE TANGIBLE PERSONAL PROPERTY--TEN THOUSAND DOLLARS (\$10,000) OR LESS--PROCEDURES

.211960.2

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

FOR DISPOSITION.--

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

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

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

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

C. As a prerequisite to the disposition of an item of tangible personal property, the governing authority shall designate a committee of at least three officials of the governmental entity to oversee the disposition. The governing authority may condition the disposition of property upon it being offered for sale or donation to another governmental entity, a state educational institution, a municipality or an Indian tribe before other means of disposition are considered. The committee shall report its findings and proposed disposition to the governing authority, which shall make the final decision regarding disposition of the tangible personal property. If the governing authority deviates from the

.211960.2

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight↔
delete = →bold, red, highlight, strikethrough↔

recommendations of the committee, it shall include its findings and reasons for deviation in the public record of the action.

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

E. A copy of the official finding and proposed disposition of the tangible personal property sought to be disposed of shall be made a permanent part of the official minutes or records of the governing authority and maintained as a public record subject to the Inspection of Public Records Act.

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

- (1) through the bureau;
- (2) by negotiated sale or donation to another

governmental entity, a state educational institution, a

.211960.2

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

municipality or an Indian tribe;

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

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

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

G. A state agency of the executive branch shall give the bureau the right of first refusal when disposing of surplus, obsolete, worn-out or unusable tangible personal property of the state agency. Other state agencies, school districts, charter schools and state educational institutions may give the bureau the right of first refusal when disposing of surplus, obsolete, worn-out or unusable tangible personal property. Local public bodies and municipalities may also give the bureau the right of first refusal when disposing of surplus, obsolete, worn-out or unusable tangible personal property.

H. Proceeds from the sale of tangible personal property may be retained by a state agency, except by the department of transportation and the state land office. Proceeds from the sale of tangible personal property of the

.211960.2

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

department of transportation shall be deposited in the state road fund, and property of the state land office shall be deposited in the state lands maintenance fund. Other governing authorities shall determine where proceeds from sales are deposited or retained.

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

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

SECTION 5. [NEW MATERIAL] TANGIBLE PERSONAL PROPERTY DEEMED SURPLUS--OVER TEN THOUSAND DOLLARS (\$10,000)--

.211960.2

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

DISPOSITION.--

A. A governmental entity may dispose of tangible personal property that has a current resale value of more than ten thousand dollars (\$10,000) after a determination that the property is surplus or otherwise not needed by the governmental entity and that the sale, trade or donation of the property is in the best interests of the governmental entity, the public and, for state agencies, the state. The procedures for disposition and deletion of the tangible personal property from the inventory of the governmental entity shall be substantively as provided in Section 4 of the Public Property Disposition Act, except that a disposition pursuant to this section shall require the approval of the governmental entity's state oversight agency. After giving the bureau the right of first refusal, if required, the disposition shall be by negotiated sale, competitive sealed bid, public auction or allowable donation.

B. The state oversight agency shall consider the determination by the governmental entity that the proposed sale, trade or donation of tangible personal property is in the best interest of the governmental entity and the public and, for state agencies, the state. The state oversight agency may condition its approval of the governmental entity's determination of public interest on the disposition of the item of tangible personal property first being offered for sale or

.211960.2

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

donation to another governmental entity, a state educational institution, a municipality or an Indian tribe.

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

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

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

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

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

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

SECTION 6. [NEW MATERIAL] K-9 DOGS--DISPOSITION.--If the secretary of public safety finds that a K-9 dog presents no threat to public safety, the K-9 dog may be released from public ownership as provided in this section. The K-9 dog shall first be offered to its trainer or handler free of charge. If the trainer or handler does not want to accept ownership of the K-9 dog, the K-9 dog shall be offered to a tax-exempt organization free of charge. If both of the above

.211960.2

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

fail, the K-9 dog shall only be sold to a qualified person found capable of providing a good home to the animal.

SECTION 7. [NEW MATERIAL] SALE OF REAL PROPERTY--
THRESHOLDS--DONATION UNDER CERTAIN CIRCUMSTANCES--EXECUTIVE
APPROVALS REQUIRED PRIOR TO LEGISLATIVE ACTION.--

A. Except as provided in Subsection B of this section, when a governmental entity makes a written determination that particular real property having a value up to sixty thousand dollars (\$60,000) is not needed to fulfill the statutory responsibility or the mission of the governmental entity, it may sell, trade or, under certain circumstances, donate the real property to another governmental entity, a state educational institution, a municipality, an Indian tribe or a tax-exempt organization as provided in this section. The determination to sell shall set out the reasons why the property is no longer needed and shall include:

- (1) an appraisal, if selling the real property;
- (2) a market analysis, as appropriate;
- (3) the purchase price;
- (4) the form of quitclaim deed and a legal description of the property;
- (5) a sale agreement, if applicable;
- (6) the governing authority's authorization;
- (7) the state engineer's approval of any

.211960.2

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

transfer of water rights;

(8) for a school district or charter school, information that the building does not meet public school capital outlay council occupancy standards or that all public schools located in the school district have declined use of the real property; and

(9) a proposal for the method of disposition.

B. A governmental entity may sell real property:

(1) through the bureau;

(2) by negotiated sale without an appraisal to another governmental entity, state educational institution, municipality or Indian tribe; or

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

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

D. Approval of a sale, trade or donation of real property may be conditioned on the property first being offered

.211960.2

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight↔
delete = →bold, red, highlight, strikethrough↔

for sale, trade or donation to another governmental entity, state educational institution or municipality before other buyers or donees are considered.

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

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

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

(a) approval of the state oversight agency;

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

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

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

.211960.2

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

F. Real property with a fair market value over two hundred thousand dollars (\$200,000) that is proposed to be sold, traded or donated by a state agency shall be ratified by joint resolution of the legislature after prior review and approvals have been granted and the findings and recommendations of the state oversight agency and the state board of finance and, if required, review by the capitol buildings planning commission, have been provided to the legislature, along with the SRC→~~information required for the determination to sell, trade or donate the real property by the state agency.~~ conditional agreement between the state agency and the buyer, trading partner or donee that specifies how the sale, trade or donation is to be conducted, to whom the property is to be sold, traded or donated and the purchase price, value of the trade or market value of the donation.←SRC

G. Real property belonging to a state agency by virtue of legislative action, either by bill or resolution, shall remain under the control, maintenance and administration of that state agency and the state agency shall not SPAC→~~attempt to~~←SPAC change the ownership SPAC→~~or management~~←SPAC of that property to another state agency or other governmental entity without legislative approval.

SECTION 8. [NEW MATERIAL] SALE OF REAL PROPERTY BY STATE AGENCIES--LAND GRANT RIGHT OF FIRST REFUSAL.--

A. Notwithstanding any other provisions of the .211960.2

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

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

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

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

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

SECTION 9. [NEW MATERIAL] LEASES OF PUBLIC PROPERTY.--

A. When a state agency proposes to lease its real property for a period of between five years and twenty-five years, the lease shall not be valid unless it is approved by the state oversight agency; reviewed by the capitol buildings

.211960.2

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight↔
delete = →bold, red, highlight, strikethrough↔

planning commission if the real property is located in the greater metropolitan areas of Santa Fe, Las Cruces and Albuquerque to determine if the proposed lease comports with the respective master plan and is in the best interest of the state and the state agency; and approved by the state board of finance prior to its effective date.

B. When a state agency proposes to enter into a lease of real property as the lessee for a period of between five years and twenty-five years, the lease shall be approved by the state oversight agency; reviewed by the capitol buildings planning commission if the real property being leased is located in the greater metropolitan areas of Santa Fe, Las Cruces and Albuquerque and a state master plan includes building a state building that is planned to be used by the state agency within the time frame of the proposed lease; and approved by the state board of finance.

C. When a state agency proposes to lease its real property for longer than twenty-five years or for consideration of more than one hundred thousand dollars (\$100,000), it shall be ratified by a joint resolution of the legislature after all prior approvals and reviews have been granted and the findings and recommendations of the state oversight agency, the capitol buildings planning commission and the state board of finance have been provided to the legislature, along with the pertinent information required in Subsection A of Section 7 of the Public .211960.2

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

Property Disposition Act.

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

SECTION 10. [NEW MATERIAL] EXEMPTED STATE AGENCIES AND STATE EDUCATIONAL INSTITUTIONS--PROCESSES AND PROCEDURES.--
State agencies and state educational institutions exempted from the provisions of the Public Property Disposition Act shall have in place a process and procedures for disposing of tangible personal property and real property that provides for the protection of governmental assets that is promulgated by rule of the governing authority that is readily available to the public. The rules, and any property disposition ordinance of a municipality, shall allow for the sale, trade, lease or donation of property to the state.

SECTION 11. [NEW MATERIAL] SURPLUS PROPERTY BUREAU CREATED--DUTIES--POWERS.--

A. The "surplus property bureau" is created in the transportation services division of the general services department. The bureau is designated as the New Mexico agency responsible for distribution of federal surplus personal property, excepting food commodities, in accordance with Subdivision (j) of Section 203 of the Federal Property and Administrative Services Act of 1949. The bureau is also designated as the agency for distribution or disposal of state
.211960.2

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight↔
delete = →bold, red, highlight, strikethrough↔

surplus property.

B. The bureau shall:

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

(2) cooperate with the federal government and its agencies in securing the expeditious and equitable distribution of federal surplus personal property, excepting food commodities, to eligible institutions in New Mexico, and assist those institutions in securing that property;

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

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

C. The bureau may:

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

.211960.2

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

that require:

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

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

(c) the delivery of purchases before payment;

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

(3) enter into contracts with governmental entities, state educational institutions and municipalities for the purpose of acquiring or disposing of tangible personal property originally purchased with public money as specified by rule of the transportation services division of the general services department; and

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

SECTION 12. [NEW MATERIAL] SURPLUS PROPERTY FUND--
CREATED--EXPENDITURES.--

A. The "surplus property fund" is created as a nonreverting fund in the state treasury. The fund consists of .211960.2

underscored material = new
[bracketed material] = delete
Amendments: new = → bold, blue, highlight ←
delete = → bold, red, highlight, strikethrough ←

money received from the sale of surplus property by the bureau. The bureau shall administer the fund, and money in the fund is subject to appropriation by the legislature to carry out activities relating to the acquisition, transfer and sale of surplus government property. Money in the fund shall be disbursed pursuant to vouchers signed by the chief of the bureau or the chief's authorized representative upon warrants signed by the director of the transportation services division of the general services department or the director's authorized representative.

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

SECTION 13. [NEW MATERIAL] DISPOSITION OF STATE PROPERTY.--The bureau may dispose of tangible personal property, except property acquired from the United States government, by advertising the availability of the property as follows:

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

B. for the second forty-five-day period, to any government agency or Indian tribe or to a tax-exempt

.211960.2

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

organization that has filed its written certificate of tax exemption with the bureau;

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

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

SECTION 14. REPEAL.--Sections 13-6-1 through 13-6-8 NMSA 1978 (being Laws 1961, Chapter 100, Section 1, Laws 1979, Chapter 195, Section 3, Laws 1989, Chapter 380, Section 1, Laws 1961, Chapter 41, Section 1, Laws 1979, Chapter 195, Section 5, Laws 2005, Chapter 251, Section 1 and Laws 2007, Chapter 57, Sections 1 through 3, as amended) are repealed.