

counties could receive donations of public property from state or other agencies.”

DFA notes:

The bill exempts counties from established disposal processes set out by law. Such steps are established to ensure accountability and compliance with the law, and specifically the anti-donation clause of the State Constitution. DFA’s Local Government Division (LGD) and Board of Finance (BOF) provide oversight to ensure public property is not disposed of below fair market value, thus violating that clause and resulting in local entities not receiving fair compensation for public property. Beyond such accountability and compliance, however, local entities benefit greatly from such oversight. For example, BOF conducts detailed reviews of sale and lease contracts and frequently identifies other legal concerns of real property transactions, such as future liabilities, contractual compliance concerns, and indemnification clause issues, including the obtainment of required local governing body approvals. The BOF guides the local entities in revising contracts so they are not subject to legal ambiguities and future challenges.

While additional oversight takes time, review and approval by LGD and BOF occurs quickly, within 21 to 30 days. Requirements are laid out in advance through checklists. And, while municipalities are not currently required to seek the same approvals as counties, they are required to seek approval of intergovernmental transactions through LGD. The Legislature may want to consider imposing equivalent requirements across local public bodies.

GSD Reports:

The bill exempts counties from the definition of “local public bodies” which would exempt them from established disposal processes set out by law requiring them to follow specific steps to ensure accountability. These include designating a disposal committee to approve and oversee the disposition of the property; providing at least thirty days’ notice of the official disposition to the State Auditor’s Office; retaining a copy of the notice in the official record; and obtaining prior approval from the Local Government Division of the Department of Finance or Administration or the State Board of Finance. The bill would also remove any limitation on how and to whom the county could dispose of the property.

ALTERNATIVES

DFA suggests that Section 13-6-2.1 NMSA 1978 could be amended to increase the threshold at which DFA oversight is required. The current threshold for BOF approval is \$25 thousand. This could easily be increased to a larger amount, as the amount has not been adjusted for inflation since it was established. The current threshold for LGD approval is \$5,000 and could possibly be increased to \$25,000. Such an alternative would ensure oversight and accountability for dispositions for monetarily significant public properties while eliminating unnecessary burden of smaller property transactions.

CJ/rl