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HOUSE BILL 138

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Rick Miera

AN ACT

RELATING TO PUBLIC PROPERTY; RAISING MONETARY LIMITS FOR THE
DISPOSITION OR SALE OF PROPERTY; RECONCILING MULTIPLE
AMENDMENTS TO THE SAME SECTION OF LAWS IN LAWS 2003.

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

SECTION 1. Section 13-6-1 NMSA 1978 (being Laws 1961,
Chapter 100, Section 1, as amended) is amended to read:

"13-6-1. DISPOSITION OF OBSOLETE, WORN-OUT OR UNUSABLE
TANGIBLE PERSONAL PROPERTY.--

A. The governing authority of each state agency,
local public body, school district and state educational
institution may dispose of any item of tangible personal
property belonging to that authority and delete the item from
its public inventory upon a specific finding by the authority
that the item of property is:

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1 (1) of a current resale value of [~~five~~
2 ~~thousand dollars (\$5,000)] fifty thousand dollars (\$50,000) or
3 less; and~~

4 (2) worn-out, unusable or obsolete to the
5 extent that the item is no longer economical or safe for
6 continued use by the body.

7 B. The governing authority shall, as a prerequisite
8 to the disposition of any items of tangible personal property:

9 (1) designate a committee of at least three
10 officials of the governing authority to approve and oversee the
11 disposition; and

12 (2) give notification at least thirty days
13 prior to its action making the deletion by sending a copy of
14 its official finding and the proposed disposition of the
15 property to the state auditor and the appropriate approval
16 authority designated in Section 13-6-2 NMSA 1978, duly sworn
17 and subscribed under oath by each member of the authority
18 approving the action.

19 C. A copy of the official finding and proposed
20 disposition of the property sought to be disposed of shall be
21 made a permanent part of the official minutes of the governing
22 authority and maintained as a public record subject to the
23 Inspection of Public Records Act.

24 D. The governing authority shall dispose of the
25 tangible personal property by negotiated sale to any

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1 governmental unit of an Indian nation, tribe or pueblo in New
2 Mexico or by negotiated sale or donation to other state
3 agencies, local public bodies, school districts, state
4 educational institutions or municipalities or through the
5 central purchasing office of the governing authority by means
6 of competitive sealed bid or public auction or, if a state
7 agency, through the surplus property bureau of the
8 transportation services division of the general services
9 department.

10 E. A state agency shall give the surplus property
11 bureau of the transportation services division of the general
12 services department the right of first refusal when disposing
13 of obsolete, worn-out or unusable tangible personal property of
14 the state agency.

15 F. If the governing authority is unable to dispose
16 of the tangible personal property pursuant to Subsection D or E
17 of this section, the governing authority may sell or, if the
18 property has no value, donate the property to any organization
19 described in Section 501(c)(3) of the Internal Revenue Code of
20 1986.

21 G. If the governing authority is unable to dispose
22 of the tangible personal property pursuant to Subsection D, E
23 or F of this section, it may order that the property be
24 destroyed or otherwise permanently disposed of in accordance
25 with applicable laws.

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1 H. If the governing authority determines that the
2 tangible personal property is hazardous or contains hazardous
3 materials and may not be used safely under any circumstances,
4 the property shall be destroyed and disposed of pursuant to
5 Subsection G of this section.

6 I. No tangible personal property shall be donated
7 to an employee or relative of an employee of a state agency,
8 local public body, school district or state educational
9 institution; provided that nothing in this subsection precludes
10 an employee from participating and bidding for public property
11 at a public auction.

12 J. This section shall not apply to any property
13 acquired by a museum through abandonment procedures pursuant to
14 the Abandoned Cultural Properties Act."

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

17 "13-6-2. SALE OF PROPERTY BY STATE AGENCIES OR LOCAL
18 PUBLIC BODIES--AUTHORITY TO SELL OR DISPOSE OF PROPERTY--
19 APPROVAL OF APPROPRIATE APPROVAL AUTHORITY.--

20 A. Providing a written determination has been made,
21 a state agency, local public body, school district or state
22 educational institution may sell or otherwise dispose of real
23 or tangible personal property belonging to the state agency,
24 local public body, school district or state educational
25 institution.

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1 B. A state agency, local public body, school
2 district or state educational institution may sell or otherwise
3 dispose of real property:

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

11 (2) by negotiated sale or donation to other
12 state agencies, local public bodies, school districts or state
13 educational institutions;

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

19 (4) if a state agency, through the surplus
20 property bureau of the transportation services division of the
21 general services department.

22 C. A state agency shall give the surplus property
23 bureau of the transportation services division of the general
24 services department the right of first refusal to dispose of
25 tangible personal property of the state agency. A school

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1 district may give the surplus property bureau the right of
2 first refusal to dispose of tangible personal property of the
3 school district.

4 D. Except as provided in Section 13-6-2.1 NMSA 1978
5 requiring state board of finance approval for certain
6 transactions, sale or disposition of real or tangible personal
7 property having a current resale value of more than [~~five~~
8 ~~thousand dollars (\$5,000)] fifty thousand dollars (\$50,000) may
9 be made by a state agency, local public body, school district
10 or state educational institution if the sale or disposition has
11 been approved by the state budget division of the department of
12 finance and administration for state agencies, the local
13 government division of the department of finance and
14 administration for local public bodies, the public education
15 department for school districts and the higher education
16 department for state educational institutions.~~

17 E. Prior approval of the appropriate approval
18 authority is not required if the tangible personal property is
19 to be used as a trade-in or exchange pursuant to the provisions
20 of the Procurement Code.

21 F. The appropriate approval authority may condition
22 the approval of the sale or other disposition of real or
23 tangible personal property upon the property being offered for
24 sale or donation to a state agency, local public body, school
25 district or state educational institution.

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1 G. The appropriate approval authority may credit a
2 payment received from the sale of such real or tangible
3 personal property to the governmental body making the sale.
4 The state agency, local public body, school district or state
5 educational institution may convey all or any interest in the
6 real or tangible personal property without warranty.

7 H. This section does not apply to:

- 8 (1) computer software of a state agency;
9 (2) those institutions specifically enumerated
10 in Article 12, Section 11 of the constitution of New Mexico;
11 (3) the New Mexico state police division of
12 the department of public safety;
13 (4) the state land office or the department of
14 transportation;
15 (5) property acquired by a museum through
16 abandonment procedures pursuant to the Abandoned Cultural
17 Properties Act;
18 (6) leases of county hospitals with any person
19 pursuant to the Hospital Funding Act;
20 (7) property acquired by the economic
21 development department pursuant to the Statewide Economic
22 Development Finance Act; and
23 (8) the state parks division of the energy,
24 minerals and natural resources department."

25 **SECTION 3.** Section 13-6-2.1 NMSA 1978 (being Laws 1989,

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1 Chapter 380, Section 1, as amended by Laws 2003, Chapter 142,
2 Section 3 and by Laws 2003, Chapter 349, Section 22) is amended
3 to read:

4 "13-6-2.1. SALES, TRADES OR LEASES--STATE BOARD OF
5 FINANCE APPROVAL.--

6 A. Except as provided in Section 13-6-3 NMSA 1978,
7 for state agencies, any sale, trade or lease for a period of
8 more than five years of real property belonging to a state
9 agency, local public body or school district or any sale, trade
10 or lease of such real property for a consideration of more than
11 [~~twenty-five thousand dollars (\$25,000)~~] fifty thousand dollars
12 (\$50,000) shall not be valid unless it is approved prior to its
13 effective date by the state board of finance.

14 B. The provisions of this section shall not be
15 applicable as to those institutions specifically enumerated in
16 Article 12, Section 11 of the constitution of New Mexico, the
17 state land office, the state transportation commission or the
18 economic development department when disposing of property
19 acquired pursuant to the Statewide Economic Development Finance
20 Act."

21 **SECTION 4. EFFECTIVE DATE.**--The effective date of the
22 provisions of this act is July 1, 2011.