

LFC Requester:	Caroline Malone
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**AGENCY BILL ANALYSIS
2015 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

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{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

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

Check all that apply: **Date** 23 February 2015
Original **Amendment** **Bill No:** SB 642
Correction **Substitute**

Sponsor: Sen. William F. Burt **Agency Code:** Attorney General's Office
Short Disposal of Property by State **Person Writing** Luis Carrasco, AAG.
Title: Agencies **Phone:** 827-6040 **Email** LCarrasco@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Senate Bill 629 and House Bill 516 are related to, and may conflict with SB642

Duplicates/Relates to Appropriation in the General Appropriation Act:

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

BILL SUMMARY

Synopsis:

Senate Bill 642 (“SB642”) is an act that proposes to amend several sections of Chapter 13 of the New Mexico statutes dealing with disposition of real and tangible property by public entities. Section 1 of SB642 would amend NMSA 1978, Section 13-6-2 (2007) by adding language that clarifies that the dispositions contemplated by this section include sales, trades, leases or other dispositions; would require that a state agency, local public body, school district or state educational institution make a written determination that the transaction is in the best interest of such entity before such transactions may occur; clarifies that such entities may convey all or any interest in the property without warranty; includes language explicitly permitting such entities to sell, trade, lease or otherwise dispose of such property to municipalities, which was previously not included; increases the threshold consideration amount triggering review and approval of dispositions of real or tangible property by the state budget division or the local government division of the Department of Finance and Administration (“DFA”) from \$5,000 to \$10,000, and limits the exception to the requirements of this section for the state parks division of the energy, minerals and natural resources department from all dispositions of real and tangible property to only dispositions of tangible personal property.

Section 2 of SB642 would amend NMSA 1978, Section 13-6-2.1 (2011) by increasing the threshold consideration amount that triggers the requirement that state agencies, local public bodies and school districts first obtain the approval of the State Board of Finance for sales, trades, leases exceeding five years and other dispositions (new language) of real property from \$25,000 to \$60,000.

Section 3 of SB642 would amend NMSA 1978, Section 13-6-3 (2003) by increasing the threshold consideration amount that triggers the requirement that state agencies first obtain legislative approval of sales, trades, leases exceeding 25 years from \$100,000 to \$200,000; adds language making transactions not having first been approved by the legislature retractable; and would require the State Board of Finance to first review such transactions and make a recommendation that such transaction be approved by the legislature, and makes other changes clarifying the scope and intent of the Section 13-6-3.

Section 4 of SB642 proposed to amend NMSA 1978, Section 13-6-4 (2001) which provides certain definitions for use in NMSA Chapter 13, Article 6. SB642 would add a definition for the term “consideration” (includes cash, other property, services or another form of compensation that is of equal or greater value as the property interest being conveyed); maintains a definition of the term “local public body” that excludes municipalities and school districts; and makes other non-substantive changes.

FISCAL IMPLICATIONS

Because the Attorney General’s Office (“AGO”) represents and advises the State Board of Finance, to the extent that SB642’s changes increase the amount of time and resources dedicated to providing such advice and representation, an appropriation to the AGO to compensate for the additional staff time and resources expended is appropriate and necessary.

SIGNIFICANT ISSUES

It appears that this enactment would limit the legislature’s ability to approve property dispositions by state agencies. Specifically, the legislature would not be able to approve a disposition that did not receive a positive recommendation from the State Board of Finance – no such limitation currently exists. In addition, because the definition of “local public body” excludes municipalities, SB642 appears to permit property dispositions to municipalities, but not by municipalities. To the extent that is an unintended consequence, the legislature may wish to consider explicitly providing such authority to municipalities. The intent behind SB642’s proposed amendment that would limit the exception to Section 13-6-2 for the state parks division so that said entity is exempt only for dispositions of tangible personal property is not clear.

PERFORMANCE IMPLICATIONS

As noted above, if the AGO will be called upon to increase resources dedicated to advising and representing the State Board of Finance in connection with dispositions of real and personal property, additional resources will be expended by the AGO.

ADMINISTRATIVE IMPLICATIONS

As noted above, additional AGO staff time and other expenditures will likely be dedicated to assist the State Board of Finance in meeting its new obligations under SB642.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 629 and House Bill 516 are related to, and may conflict with SB642.

TECHNICAL ISSUES

To avoid some of the potential unintended consequences described above, the legislature may wish to alter the definition of “local public body” to include municipalities in Section 13-6-4 and provide language not restricting the legislature’s ability to approve property dispositions even where they have not received a positive recommendation from the State Board of Finance.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

The legislature could delegate authority to review the transactions contemplated by Section 13-6-3 to the Capitol Buildings Planning Commission, as contemplated by SB629. However, it should be noted that the State Board of Finance has extensive experience in reviewing similar transactions and may be better situated and equipped for the task.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The status quo will remain. There will be no requirement that a state agency, local public body, school district or state educational institution first make a written determination that a property disposition be in the best interests of that entity. It will remain unclear whether the legislature intends for donations and “other dispositions” to be included in those transactions requiring review by DFA, the State Board of Finance or the legislature. Municipalities will be excluded from Section 13-6-4’s definition of “local public body” and therefore municipalities will not appear to be able to dispose of or receive real or personal property to or from other local public bodies. The thresholds consideration amounts triggering DFA, State Board of Finance and legislative approval prior to effectiveness of a property disposition will remain at \$5,000, \$25,000 and \$100,000, respectively. There will be no explicit provision making property dispositions by state agencies that require legislative approval retractable. The State Board of Finance will have no authority to first review and approve property dispositions by state agencies and which require legislative approval and the legislature will not be constrained to approve only property dispositions by state agencies that have been approved and recommended by the State Board of Finance. No definition of “consideration” will be added to Section 13-6-4’s definitions for use in Chapter 13, Article 6 NMSA 1978.

AMENDMENTS

See SIGNIFICANT ISSUES and TECHNICAL ISSUES above.