

1 SENATE BILL 154

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 Mary Kay Papen

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10 AN ACT

11 RELATING TO PUBLIC PROPERTY; ENACTING THE PUBLIC PROPERTY
12 DISPOSITION ACT; PROVIDING POWERS AND DUTIES; REQUIRING
13 APPROVALS FOR CERTAIN DISPOSITIONS; REQUIRING LEGISLATIVE
14 ACTION FOR CERTAIN DISPOSITIONS; REPEALING SECTIONS OF THE NMSA
15 1978 PERTAINING TO THE DISPOSITION OF PUBLIC PROPERTY.

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
19 cited as the "Public Property Disposition Act".

20 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
21 Public Property Disposition Act:

22 A. "bureau" means the surplus property bureau of
23 the transportation services division of the general services
24 department;

25 B. "disposition" means the sale, trade, lease,

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1 exchange or donation of tangible personal property or real
2 property; provided that "sale", "trade", "lease" or "exchange"
3 does not include "donation";

4 C. "division" means the facilities management
5 division of the general services department;

6 D. "governing authority" means the head or
7 policymaking body of a state agency, the appropriate governing
8 authority of a legislative or judicial agency or local public
9 body, the local school board of a school district or the
10 governing body of a charter school;

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

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

19 G. "local public body" means a political
20 subdivision of the state and the political subdivision's
21 agencies, institutions and instrumentalities, excluding
22 municipalities and school districts;

23 H. "school district" means a political subdivision
24 of the state established for the administration of public
25 schools, segregated geographically for taxation and bonding

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1 purposes and governed by the Public School Code;

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

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

8 K. "state oversight agency" means the:

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

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

14 (3) New Mexico legislative council for
15 legislative agencies;

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

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

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

23 L. "tax-exempt organization" means a nonprofit
24 organization that has been granted tax-exempt status by the
25 internal revenue service pursuant to Section 501(c)(3) of the

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1 Internal Revenue Code of 1986, as amended.

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

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

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

8 (2) the New Mexico state police division of
9 the department of public safety as to the disposition of
10 property received through forfeitures;

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

14 (4) the cultural affairs department or any of
15 its museums as to the disposition of tangible personal property
16 acquired through abandonment procedures pursuant to the
17 Abandoned Cultural Properties Act;

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

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

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1 (7) municipalities, except that a municipality
2 may donate tangible personal or real property to a governmental
3 entity.

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

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

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

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

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

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

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

24 (2) surplus, obsolete, worn-out or unusable to
25 the extent that the item is no longer economical for continued

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1 use by the governmental entity.

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

4 C. As a prerequisite to the disposition of an item
5 of tangible personal property, the governing authority shall
6 designate a committee of at least three officials of the
7 governmental entity to oversee the disposition. The governing
8 authority may condition the disposition of property upon it
9 being offered for sale or donation to another governmental
10 entity, a state educational institution, a municipality or an
11 Indian tribe before other means of disposition are considered.
12 The committee shall report its findings and proposed
13 disposition to the governing authority, which shall make the
14 final decision regarding disposition of the tangible personal
15 property. If the governing authority deviates from the
16 recommendations of the committee, it shall include its findings
17 and reasons for deviation in the public record of the action.

18 D. The governing authority shall give public
19 notification of its findings and approved disposition of the
20 property at least thirty days prior to its action, deleting the
21 tangible personal property from the public inventory by posting
22 a notice on its website and sending a copy of its official
23 finding and the proposed disposition of the property to the
24 state auditor in all cases and, in addition, to the local
25 government division of the department of finance and

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1 administration in the case of a local public body and the
2 public education department in the case of a school district or
3 charter school.

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

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

- 13 (1) through the bureau;
- 14 (2) by negotiated sale or donation to another
15 governmental entity, a state educational institution, a
16 municipality or an Indian tribe;
- 17 (3) through the central purchasing office of
18 the governmental entity by means of competitive sealed bid or
19 public auction;
- 20 (4) by using the property as a trade-in or
21 exchange pursuant to the provisions of the Procurement Code; or
- 22 (5) by sale or donation of the property to a
23 tax-exempt organization only if the governing authority has
24 been unable to dispose of it under the provisions of Paragraphs
25 (1) through (4) of this subsection.

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1 G. A state agency of the executive branch shall
2 give the bureau the right of first refusal when disposing of
3 surplus, obsolete, worn-out or unusable tangible personal
4 property of the state agency. Other state agencies, school
5 districts, charter schools and state educational institutions
6 may give the bureau the right of first refusal when disposing
7 of surplus, obsolete, worn-out or unusable tangible personal
8 property. Local public bodies and municipalities may also give
9 the bureau the right of first refusal when disposing of
10 surplus, obsolete, worn-out or unusable tangible personal
11 property.

12 H. Proceeds from the sale of tangible personal
13 property may be retained by a state agency, except by the
14 department of transportation and the state land office.
15 Proceeds from the sale of tangible personal property of the
16 department of transportation shall be deposited in the state
17 road fund, and property of the state land office shall be
18 deposited in the state lands maintenance fund. Other governing
19 authorities shall determine where proceeds from sales are
20 deposited or retained.

21 I. If a governing authority is unable to dispose of
22 the tangible personal property as provided in Subsection F of
23 this section, the governing authority shall order that the
24 property be destroyed or otherwise permanently disposed of in
25 accordance with applicable laws. If the governing authority

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1 determines that the tangible personal property is hazardous or
2 contains hazardous materials or may not be used safely, the
3 property shall be destroyed and disposed of in accordance with
4 applicable laws.

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

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

17 A. A governmental entity may dispose of tangible
18 personal property that has a current resale value of more than
19 ten thousand dollars (\$10,000) after a determination that the
20 property is surplus or otherwise not needed by the governmental
21 entity and that the sale, trade or donation of the property is
22 in the best interests of the governmental entity, the public
23 and, for state agencies, the state. The procedures for
24 disposition and deletion of the tangible personal property from
25 the inventory of the governmental entity shall be substantively

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1 as provided in Section 4 of the Public Property Disposition
2 Act, except that a disposition pursuant to this section shall
3 require the approval of the governmental entity's state
4 oversight agency. After giving the bureau the right of first
5 refusal, if required, the disposition shall be by negotiated
6 sale, competitive sealed bid, public auction or allowable
7 donation.

8 B. The state oversight agency shall consider the
9 determination by the governmental entity that the proposed
10 sale, trade or donation of tangible personal property is in the
11 best interest of the governmental entity and the public and,
12 for state agencies, the state. The state oversight agency may
13 condition its approval of the governmental entity's
14 determination of public interest on the disposition of the item
15 of tangible personal property first being offered for sale or
16 donation to another governmental entity, a state educational
17 institution, a municipality or an Indian tribe.

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

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

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

25 (3) the state land office shall be deposited

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1 in the state lands maintenance fund;

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

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

8 SECTION 6. [NEW MATERIAL] K-9 DOGS--DISPOSITION.--If the
9 secretary of public safety finds that a K-9 dog presents no
10 threat to public safety, the K-9 dog may be released from
11 public ownership as provided in this section. The K-9 dog
12 shall first be offered to its trainer or handler free of
13 charge. If the trainer or handler does not want to accept
14 ownership of the K-9 dog, the K-9 dog shall be offered to a
15 tax-exempt organization free of charge. If both of the above
16 fail, the K-9 dog shall only be sold to a qualified person
17 found capable of providing a good home to the animal.

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

21 A. Except as provided in Subsection B of this
22 section, when a governmental entity makes a written
23 determination that particular real property having a value up
24 to sixty thousand dollars (\$60,000) is not needed to fulfill
25 the statutory responsibility or the mission of the governmental

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1 entity, it may sell, trade or, under certain circumstances,
2 donate the real property to another governmental entity, a
3 state educational institution, a municipality, an Indian tribe
4 or a tax-exempt organization as provided in this section. The
5 determination to sell shall set out the reasons why the
6 property is no longer needed and shall include:

- 7 (1) an appraisal, if selling the real
8 property;
- 9 (2) a market analysis, as appropriate;
- 10 (3) the purchase price;
- 11 (4) the form of quitclaim deed and a legal
12 description of the property;
- 13 (5) a sale agreement, if applicable;
- 14 (6) the governing authority's authorization;
- 15 (7) the state engineer's approval of any
16 transfer of water rights;
- 17 (8) for a school district or charter school,
18 information that the building does not meet public school
19 capital outlay council occupancy standards or that all public
20 schools located in the school district have declined use of the
21 real property; and
- 22 (9) a proposal for the method of disposition.

23 B. A governmental entity may sell real property:

- 24 (1) through the bureau;
- 25 (2) by negotiated sale without an appraisal to

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1 another governmental entity, state educational institution,
2 municipality or Indian tribe; or

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

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

14 D. Approval of a sale, trade or donation of real
15 property may be conditioned on the property first being offered
16 for sale, trade or donation to another governmental entity,
17 state educational institution or municipality before other
18 buyers or donees are considered.

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

23 (1) between sixty thousand one dollars
24 (\$60,001) and two hundred thousand dollars (\$200,000), the
25 state oversight agency; and

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1 (2) over two hundred thousand dollars

2 (\$200,000):

3 (a) approval of the state oversight
4 agency;

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

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

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

16 F. Real property with a fair market value over two
17 hundred thousand dollars (\$200,000) that is proposed to be
18 sold, traded or donated by a state agency shall be ratified by
19 joint resolution of the legislature after prior review and
20 approvals have been granted and the findings and
21 recommendations of the state oversight agency and the state
22 board of finance and, if required, review by the capitol
23 buildings planning commission, have been provided to the
24 legislature, along with the information required for the
25 determination to sell, trade or donate the real property by the

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1 state agency.

2 G. Real property belonging to a state agency by
3 virtue of legislative action, either by bill or resolution,
4 shall remain under the control, maintenance and administration
5 of that state agency and the state agency shall not attempt to
6 change the ownership or management of that property to another
7 state agency or other governmental entity without legislative
8 approval.

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

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

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

25 C. The provisions of this section do not apply to

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1 lands held in trust pursuant to the Enabling Act for New Mexico
2 and for which that act prescribes how that land may be disposed
3 of.

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

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

8 A. When a state agency proposes to lease its real
9 property for a period of between five years and twenty-five
10 years, the lease shall not be valid unless it is approved by
11 the state oversight agency; reviewed by the capitol buildings
12 planning commission if the real property is located in the
13 greater metropolitan areas of Santa Fe, Las Cruces and
14 Albuquerque to determine if the proposed lease comports with
15 the respective master plan and is in the best interest of the
16 state and the state agency; and approved by the state board of
17 finance prior to its effective date.

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

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1 state agency within the time frame of the proposed lease; and
2 approved by the state board of finance.

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

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

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

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1 donation of property to the state.

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

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

13 B. The bureau shall:

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

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

24 (3) dispose of unusable federal surplus
25 property in accordance with Subdivision (j) of Section 203 of

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1 the Federal Property and Administrative Services Act of 1949;
2 and

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

7 C. The bureau may:

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

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

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

17 (c) the delivery of purchases before
18 payment;

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

22 (3) enter into contracts with governmental
23 entities, state educational institutions and municipalities for
24 the purpose of acquiring or disposing of tangible personal
25 property originally purchased with public money as specified by

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1 rule of the transportation services division of the general
2 services department; and

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

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

10 A. The "surplus property fund" is created as a
11 nonreverting fund in the state treasury. The fund consists of
12 money received from the sale of surplus property by the bureau.
13 The bureau shall administer the fund, and money in the fund is
14 subject to appropriation by the legislature to carry out
15 activities relating to the acquisition, transfer and sale of
16 surplus government property. Money in the fund shall be
17 disbursed pursuant to vouchers signed by the chief of the
18 bureau or the chief's authorized representative upon warrants
19 signed by the director of the transportation services division
20 of the general services department or the director's authorized
21 representative.

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

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1 **SECTION 13. [NEW MATERIAL] DISPOSITION OF STATE**

2 PROPERTY.--The bureau may dispose of tangible personal
3 property, except property acquired from the United States
4 government, by advertising the availability of the property as
5 follows:

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

10 B. for the second forty-five-day period, to any
11 government agency or Indian tribe or to a tax-exempt
12 organization that has filed its written certificate of tax
13 exemption with the bureau;

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

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

22 **SECTION 14. REPEAL.--Sections 13-6-1 through 13-6-8 NMSA**
23 1978 (being Laws 1961, Chapter 100, Section 1, Laws 1979,
24 Chapter 195, Section 3, Laws 1989, Chapter 380, Section 1, Laws
25 1961, Chapter 41, Section 1, Laws 1979, Chapter 195, Section 5,
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1 Laws 2005, Chapter 251, Section 1 and Laws 2007, Chapter 57,
2 Sections 1 through 3, as amended) are repealed.

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