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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/21/15

SPONSOR Papen LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Legislative Review of Property Disposals SB 629

ANALYST Hanika-Ortiz

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>			NFI			

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Finance and Administration (DFA)  
 General Services Department (GSD)  
 Attorney General’s Office (AGO)  
 Economic Development Department  
 Children, Youth and Families Department

### SUMMARY

#### Synopsis of Bill

Senate Bill 629 amends Section 13-6-3 NMSA 1978 relating to disposition of state agency real property valued at \$100,000 or more. Under current law, the Legislature must approve these state agency property dispositions. The bill proposes to require that the Capitol Buildings Planning Commission (CBPC) review the proposed disposition, make findings of fact, and report those findings to the legislature. Then, the Legislature shall review the CBPC findings and ratify and approve the proposed disposition, if it is in the best interest of the State.

### FISCAL IMPLICATIONS

Vetting property dispositions became an issue last year when the Legislature, through HJR 8, approved the sale of a historic property in the capital to a private entity. HJR 8 required that the property not be sold until the sale had been “reviewed” by the Capital Buildings Planning Commission. This prompted much discussion about whether or not the term “reviewed” implied an approval process. In the end, CBPC reviewed the sale, showing concerns and objections to the sale. The sale highlighted the need to clarify roles in the disposition of state-owned real property.

The AGO notes it does not regularly provide legal advice and representation to the CBPC and may need additional resources if that relationship changed.

**SIGNIFICANT ISSUES**

Under current law, a state agency (other than the state land office and certain exempted agencies and institutions) must obtain legislative approval before selling or trading any real property, or issuing a lease for 25 years or more, where the consideration exceeds \$100,000.

The bill requires that the CBPC, which meets on average four to five times after each legislative session, review and make findings of fact on property dispositions before the Legislature.

GSD is concerned if considerable time passes between an additional review, legislative approval, and the closing or executing of the agreements, fair market values may change.

DFA notes that the level of review by State Board of Finance (BOF) to approve lesser-valued state agency property exceeds the level of review by the Legislature for higher-valued property.

**PERFORMANCE IMPLICATIONS**

The table provided by DFA compares the approvals required to dispose of real property under current law versus the requirements proposed in the bill.

Current Law: Approval Authority by Type of Entity Disposing of Real Property					
Real Property Value	School District	Local Public Body*	State Agency	Higher Educational Institution**	Statute
\$0-\$5,000	na	na	na	na	13-6-2
\$5,000-\$25,000	Public Education Department	Local Government Division	State Budget Division	Higher Education Department	13-6-2
\$25,000-\$100,000	State Board of Finance	State Board of Finance	State Board of Finance (leases over \$100,000 but less than 25 years)		13-6-2.1
\$100,000 +			Legislature (leases over \$100,000 and 25 years)		13-6-3

SB629: Approval Authority by Type of Entity Disposing of Real Property					
Real Property Value	School District	Local Public Body*	State Agency	Higher Educational Institution**	Statute
\$0-\$5,000	na	na	na	na	13-6-2
\$5,000-\$25,000	Public Education Department	Local Government Division	State Budget Division	Higher Education Department	13-6-2
\$25,000-\$100,000	State Board of Finance	State Board of Finance	State Board of Finance (leases over \$100,000 but less than 25 years)		13-6-2.1
\$100,000 +			Capitol Buildings Planning Commission review and findings of fact, then Legislature (leases over \$100,000 and 25 years)		13-6-3

\*Local public bodies include counties, special districts, community colleges, but exclude municipalities

\*\*Higher educational institutions include the universities and special schools created in Article VII, Section 11 of the State Constitution

## **ADMINISTRATIVE IMPLICATIONS**

DFA reports the BOF reviews and approves about 40 requests each year for real property dispositions between \$20,000 and \$100,000. In contrast, on average, about four joint resolutions are introduced each legislative session to dispose of real property valued at \$100,000 or more.

DFA further notes that submission requirements to seek BOF approval are established by rule and include the form of quitclaim deed that will convey the property, the purchase agreement or lease signed by both parties, evidence that the governing body that owns the property has approved the transaction, and a current appraisal and review thereof by the Property Tax Division of the Taxation and Revenue Department (except for sales between two public bodies).

## **OTHER SUBSTANTIVE ISSUES**

The CBPC was created by the legislature in 1997 to plan for long-range facilities needs of state government. With these additional duties, the CBPC may be required to meet more frequently.

The CBPC includes four members of the legislature, two from each house appointed by the New Mexico Legislative Council; the secretary of general services; the State Treasurer; the secretary of transportation; the secretary of cultural affairs; the secretary of finance and administration; the chair of the Supreme Court building commission; and the commissioner of public lands.

BOF members include the governor, lieutenant governor, state treasurer and four members appointed by the Governor with no more than two members from the same political party.

## **ALTERNATIVES**

DFA supports duplicate bills HB 516 and SB 642 which require the BOF, rather than the CBPC, review these types of property dispositions and recommend approval to the Legislature.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

State agency real property dispositions may not always receive the same due diligence.

## **AMENDMENTS**

DFA suggested amendments included the following:

- change references to “sale, trade or lease” to “sale, trade, lease, or other disposition” (to match language currently found in Section 13-6-2) to reflect property donations; and
- amend Section 13-6-4 to add a definition of “consideration” to make clear that the \$100,000 threshold is based on fair market value, not the purchase price, if different.

AHO/bb