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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/05/18

SPONSOR Ingle LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Property Control Reserve Fund & Approval SB 237

ANALYST Hanika-Ortiz

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

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		See Fiscal Implications				Property Control Reserve Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

General Services Department (GSD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 237 (SB 237) amends Section 15-3B-20 NMSA 1978 to allow the Facilities Management Division (FMD) in GSD to encumber and expend the property control reserve fund to acquire real property once approved by the Capitol Building Planning Commission (CBPC).

This bill also amends Section 15-10-1 NMSA 1978 to authorize the CBPC to review and if warranted, 1) approve the acquisition of real property by FMD using the property control reserve fund and, 2) give prior authorization to dispose of real property belonging to a state agency before the state agency submits the transaction to the State Board of Finance or Legislature for final approval.

The bill defines a “state agency” as any one of the State’s branches, agencies, departments, boards, instrumentalities or institutions other than state educational institutions.

### FISCAL IMPLICATIONS

GSD reports the bill allows FMD to act faster in order to procure real property at the best price.

The property control reserve fund is subject to appropriation by the Legislature. However, the

bill allows the FMD to use this fund to acquire real property if approved by the CBPC which consists of 4 members from the legislative branch and 7 non-legislative public members.

The fund's purpose is to provide a reserve account so FMD can purchase or construct state office buildings to alleviate reliance on leased space. The fund consists of money from the sale of real property and money in the fund does not revert to the general fund at the end of each fiscal year.

This bill provides for continuing appropriations from the property control reserve fund. The LFC has concerns with including continuing appropriation language in statutory provisions for state funds, as earmarking reduces the ability of the Legislature to establish spending priorities.

Section 13-6-3 NMSA 1978 requires any proposed sale, trade or lease of state real property worth \$100 thousand or more to be approved by the Legislature in advance. In practice, however, this has resulted in the Legislature delegating the authority to complete the transaction to the property-owning agency, which has not always been sufficient to protect the State's interest.

### **SIGNIFICANT ISSUES**

The criteria the CBPC will use to approve the use of the property control reserve fund and disposition of real property by state agencies will need to be in place by July 1, 2018. The CBPC meets during the legislative interim and in 2017 met 2 times, which was 2 fewer than expected. The timing and frequency of these meetings will be critical for ensuring property transactions are not delayed. Otherwise, opportunities may be missed which could increase costs for the State.

Vetting property dispositions became an issue when the Legislature, in HJR 8 during the 2014 regular session, approved the sale of a historic property in the capital complex to a private person. HJR 8 required the property not be sold until the sale had been "reviewed" by the CBPC. This prompted much discussion whether the term "reviewed" implied an approval process. In the end, the CBPC only reviewed the sale, showing concerns and objections to the sale. The sale highlighted the need to clarify the various roles involved in the disposition of real property.

### **OTHER SUBSTANTIVE ISSUES**

The SBOF meets monthly, reviews real property dispositions between \$20 thousand and \$100 thousand and has requirements that could serve as a model for CBPC's new prior authorization process. Those requirements require an entity disposing of real property to submit: 1) a quitclaim deed transferring title containing the legal description of the property, 2) a current appraisal and report of its review by the Taxation and Revenue Department, 3) a description of the reason for the sale or trade, 4) the selection process used to determine the purchaser, 5) purchase price, 6) sale agreements, if applicable, 7) resolution or minutes of the governing body, if applicable, authorizing the sale or trade and containing a provision making the sale or trade subject to approval by the SBOF, and 8) approval by the state engineer of any transfer of water rights.

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

The property control reserve fund will continue to be subject to appropriation by the Legislature and the current processes in place relating to vetting state real property dispositions will continue to be inadequate at times to ensure legal sufficiency and protection of the State's interests.

**AHO/sb**