

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 5 PUBLIC PROPERTY MANAGEMENT
PART 23 REAL PROPERTY ACQUISITIONS, SALES, TRADES, OR LEASES

1.5.23.1 ISSUING AGENCY: State Board of Finance, 181 Bataan Memorial Building, Santa Fe, NM.

[1.5.23.1 NMAC - N, 2-14-2001]

1.5.23.2 SCOPE: Any transfer of funds, capital outlay project, or acquisition, donation to, or purchase, sale, trade or lease or other disposition of real property by public bodies that by law requires state board of finance approval, except as otherwise indicated, or unless already addressed in a separate board rule.

[1.5.23.2 NMAC - N, 2-14-2001; A, 3-15-2010]

1.5.23.3 STATUTORY AUTHORITY:

A. Section **13-6-2.1** NMSA 1978 provides generally, with certain exceptions, that any state agency, local public body, or school district that sells, trades or leases real property belonging to that public entity requires state board of finance approval prior to the effective date of such sale, trade or lease. Section 16-6-15, NMSA 1978, makes Section **13-6-2.1** expressly applicable to the state fair.

B. Sections 15-3B-8 NMSA 1978 provide that the property control division is authorized to acquire land by purchase, gift or donation subject to prior approval by the state board of finance.

C. Section 15-3B-7(B) NMSA 1978 provides that the property control division, subject to the approval of the state board of finance and after following the bidding procedures required by the Procurement Code for the purchase of personal tangible property, is authorized to enter into long-term leases not exceeding ten years of vacant lands when the lessor contracts with the state to construct and complete buildings, subject to approval of the state architect, as a condition precedent to the start of the rental term.

D. Section 17-1-22.1 NMSA 1978 provides that the state game commission, upon approval from the state board of finance, may transfer money from the game and fish bond retirement fund to the game and fish capital outlay fund. Money in the game and fish capital outlay fund may be expended for fish hatcheries and rearing facilities, habitat acquisition, development and improvements and other similar capital projects. All projects funded by the game and fish capital outlay fund shall be approved by the state board of finance.

E. Section 3-46-34(B) NMSA 1978 provides that a municipality may dispose of real property in an urban renewal or land development area to private persons only under reasonably competitive bidding procedures as it shall prescribe or as provided in this subsection. The municipality may accept any proposal it deems to be in the best interest and in furtherance of the purposes of the urban renewal law; provided, that a notification of intention to accept the proposal shall be filed with the governing body not less than thirty days prior to any acceptance. Thereafter, the municipality may execute a contract in accordance with the provisions of the urban renewal law, and deliver deeds, leases and other instruments and take all steps necessary to effectuate the contract; provided that if the municipality accepts other than the highest bid, the acceptance must be approved by the state board of finance before the municipality may proceed.

F. Section 16-2-11(J) NMSA 1978 provides that any acquisition of lands adjacent or contiguous to existing state parks or recreational areas or necessary for successful park or recreational area protection and development and will become part of the park or recreational area may be acquired by the state following consultation with local government entities on the acquisition and approval of the acquisition by the state board of finance, and funds for acquisition is available to state parks division or land is being donated to the division.

[1.5.23.3 NMAC - N, 2-14-2001; A, 9-30-2004; A, 3-15-2010]

1.5.23.4 DURATION: Permanent.

[1.5.23.4 NMAC - N, 2-14-2001]

1.5.23.5 EFFECTIVE DATE: February 14, 2001, unless a later date is cited at the end of a section.

[1.5.23.5 NMAC - N, 2-14-2001]

1.5.23.6 OBJECTIVE: This rule provides general guidance regarding the financial and legal requirements for state board of finance approval of certain real property transactions as required by state statute. This rule is not applicable to the acquisition of real estate by Article XII, Section 11 educational institutions, whose expenditures regarding acquisitions are governed by a separate board rule. The rule is intended to benefit the state and its agencies and political subdivisions in their real property dealings by describing which transactions require state board of finance approval and listing materials that must be submitted to the state board of finance for approval. State board of finance approval is based solely on information provided by the public body. The state board of finance has no duty to independently investigate, and does not independently investigate, the merits and risks involved in the real property transaction.

[1.5.23.6 NMAC - N, 2-14-2001; A, 7-15-2003]

1.5.23.7 DEFINITIONS:

- A. "Acquisition" means, unless usage indicates otherwise, obtaining title in fee simple absolute to real estate by purchase, trade, gift or donation.
- B. "Board" means state board of finance.
- C. "Consideration" means something which is of a value at least equal to the value of the real property interest being conveyed, including but not limited to cash, another piece of real estate, services, or other form of compensation.
- D. "Current" means:
 - (1) in the context of an appraisal, dated within one year of the date of submission of the proposed transaction to the board for approval, and
 - (2) in the context of a title binder, dated within six months of the proposed closing date.
- E. "General certified appraiser" means a person who holds a valid, current general certificate as a state certified real estate appraiser issued by the real estate appraisers board pursuant to the Real Estate Appraisers Act (who has met the qualifications required in section 61-30-12 (D) NMSA 1978 and 16.62.5.8 NMAC).
- F. "Local public body" means all political subdivisions, but not including municipalities except for those transactions where board approval is required by law and school districts, of the state and their agencies, instrumentalities and institutions.
- G. "Private entity" means any non-public entity, including but not limited to persons, associations, and both for-profit and non-profit corporations. It does not include Indian nations, tribes and pueblos.
- H. "Public body" means a local public body, a state agency, a school district or state educational institution.
- I. "Real property" means any interest in real estate, including but not limited to estates in fee simple, leaseholds (including subleaseholds and any leases entered into pursuant to section 4-38-13.1 NMSA 1978), water rights and permanent easements.
- J. "Residential certified appraiser" means a person who holds a valid, current residential certificate as a state certified real estate appraiser issued by the real estate appraisers board pursuant to the Real Estate Appraisers Act (who has met the qualification required in sections 60-30-12 (C) NMSA 1978 and 16.62.4.8 NMAC).
- K. "Sale, trade or lease" means any disposition of real property, including but not limited to donations by one governmental entity to another governmental entity, but disposition does not include demolition of buildings or other improvements on real property owned by the public body.
- L. "State agency" means the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities, or institutions other than state educational institutions.
- M. "School districts" means those political subdivisions of the state established for the administration of public schools.
- N. "State educational institution" means Article XII, Section 11 educational institutions.
- O. "Term" means the period of time during which a lease is in effect, and includes all renewal options or extensions.

[1.5.23.7 NMAC - N, 2-14-2001; A, 6-28-2002; A, 9-30-2004; A, 3-15-2010]

1.5.23.8 ACQUISITION OF REAL PROPERTY:

- A. Public bodies requiring board approval before acquiring real property include, but are not limited to, the following:
 - (1) general services department;

- (2) department of game and fish for expenditures from the game and fish capital outlay fund;
- (3) the state for state parks or recreational areas pursuant to section 16-11(J) NMSA 1978.

B. In order to attain approval for acquisition of real property, the board requires that the following information be provided at the time of submission to the board:

- (1) the form of general warranty deed by which the public entity will take title in fee simple absolute containing legal description of the property and warranty covenants; reversions or other forfeiture provisions in the deed shall be accepted only under extraordinary circumstances; special warranty deeds will be accepted only under extraordinary circumstances; when the seller is a public body, transfer of title shall be by quitclaim deed;
- (2) a copy of a current appraisal completed by a general certified appraiser for commercial property or a general certified appraiser or a residential certified appraiser for residential property and report of review from the property tax division of the taxation and revenue department if appraisal was not done by the division; the public entity seeking division review must submit necessary information to division within time frame specified by division; when the seller is another governmental entity, neither an appraisal nor department review is required;
- (3) site improvement survey plat to verify legal description and to identify the existence of recorded easements and encroachments, if applicable;
- (4) a description of the proposed use;
- (5) sources of funds used for the purchase;
- (6) current title binder evidencing clear title with no non-standard exceptions, and agreement by the title company that it will delete general exceptions 1 through 6, and the first two-thirds of 7 and, to the extent that special exceptions are listed, an explanation of each special exception shown in Schedule B Section II and a statement of impact on intended use as to each;
- (7) purchase agreement, if applicable;
- (8) phase I environmental assessment for all properties, and a phase II environmental assessment if recommended by the phase I assessment;
- (9) resolution or minutes of the governing body, if applicable, authorizing the purchase and containing a provision making the acquisition subject to approval by the board; and
- (10) approval of the disposition by the local government division of the department of finance and administration pursuant to section 3-54-2(D) NMSA 1978 if the entity selling, exchanging or donating the real property is a municipality.

C. Acquisition of real property for more than fair market value, as determined by the requirements of Paragraph (2) of Subsection B of 1.5.23.8 NMAC, is not permitted.
[1.5.23.8 NMAC - N, 2-14-2001; A, 6-28-2002; A, 9-30-2004; A, 3-15-2010]

1.5.23.9 SALE OR TRADE OF REAL PROPERTY:

A. If the sale or trade of real property is for a consideration of more than twenty-five thousand dollars (\$25,000), then prior board approval is necessary for:

- (1) state agencies (unless the consideration is one hundred thousand dollars (\$100,000) or more, in which case require approval by the legislature is required);
- (2) school districts; and
- (3) local public bodies, including, but not limited to:
 - (a) counties;
 - (b) community colleges (but not including branch community colleges) and technical vocational institutes;
 - (c) conservancy districts; and
 - (d) flood control authorities.

B. In order to obtain approval for the sale or trade of real property, the board requires that the following information be provided at the time of submission to the board:

- (1) the form of quitclaim deed from the public body transferring title to purchaser containing the legal description of the property;
- (2) a copy of a current appraisal completed by a general certified appraiser for commercial property or a general certified appraiser or a residential certified appraiser for residential property and report of review by the property tax division of the taxation and revenue department if the appraisal was not done by the division (for both properties if trade); the public entity seeking division review must submit necessary information to division within time frame specified by division; when the buyer is another governmental entity, neither an appraisal nor department review is required;
- (3) a description of the reason for the sale or trade;

- (4) selection process used to determine purchaser; competitive sealed bid, public auction, or negotiation;
- (5) purchase price and if applicable, cost per square foot, cost per acre, or cost per acre foot of water rights, etc. (for both properties if trade);
- (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 board;
- (8) approval by the state engineer of any transfer of water rights; and
- (9) if a school district is seeking approval of a disposition of real property that includes a building, it must submit evidence that the building does not meet public school capital outlay council occupancy standards or that all charter schools located in the district have declined within a reasonable period of time set by the school district, use of the building pursuant to Section 22-8B-4(F) NMSA 1978.

C. Transfer for less than fair market value, as determined by the requirements of Paragraph (2) of Subsection B of 1.5.23.9 NMAC, of real property owned by a public entity to any private entity is not permitted, except as authorized by legislation implementing the economic development and affordable housing exceptions to the Anti-donation Clause of Article IX, Section 14 of the New Mexico constitution [1.5.23.9 NMAC - N, 2-14-2001; A, 6-28-2002; A, 7-15-2003; A, 9-30-2004; A, 3-15-2010]

1.5.23.10 LEASE OF REAL PROPERTY:

A. Board approval is required whenever certain public bodies wish to lease (or sub-lease) properties they own (or are leasing): if (1) the term of the lease or sublease is for a period of more than five years, OR (2) the consideration over the lease term is more than twenty-five thousand dollars (\$25,000). Prior board approval is necessary for:

- (1) state agencies (unless consideration is one hundred thousand dollars (\$100,000) or more and the term is for a period of more than twenty-five years, in which case approval by the legislature is required);
- (2) counties;
- (3) school districts; and
- (4) local public bodies, which include, but are not limited to, the following:
 - (a) community colleges (but not including branch community colleges) and technical vocational institutes;
 - (b) conservancy districts;
 - (c) flood control authorities; and
 - (d) special hospital districts and county hospitals pursuant to the Hospital Funding Act.

B. In order to obtain approval for leases of real property, the board requires that at least the following information be provided:

- (1) current appraisal completed by a general certified appraiser for commercial property or a general certified appraiser or a residential certified appraiser for residential property or other evidence of fair market value and report of review from the property tax division of the taxation and revenue department if appraisal was not done by the division; the public entity seeking division review must submit necessary information to division within time frame specified by division; when the lessee/tenant is another public body, neither an appraisal nor department review is required;
- (2) copy of the lease;
- (3) resolution from the governing body, if applicable, approving the lease, and containing a provision making the lease subject to board approval;
- (4) the reason for leasing;
- (5) description of the selection process used to determine lessee: competitive sealed bid, public auction, or negotiation;
- (6) if consideration is being provided by the lessee (or sub-lessee), partially or completely, in the form of services, tangible personal property or construction, evidence that the selection of the lessee (or sub-lessee) complied with the procurement code or is expressly exempted and the term of the lease complies with, section 13-1-150 NMSA 1978, as it may be amended from time to time; and
- (7) if a school district is seeking approval of a lease of real property that includes a building, evidence the building does not meet public school capital outlay council occupancy standards or that all charter schools located in the district have declined within a reasonable period of time set by the school district use of the building pursuant to section 22-8B-4(F) NMSA 1978.

C. Rent or other consideration at less than fair market value, as determined by the requirements of Paragraph (1) of Subsection B of 1.5.23.10 NMAC, from a private entity is not permitted,

except as authorized by legislation implementing the economic development and affordable housing exceptions to the Anti-donation Clause of Article IX, Section 14 of the New Mexico constitution. [1.5.23.10 NMAC - N, 2-14-2001; A, 6-28-2002; A, 7-15-2003; A, 9-30-2004; A, 3-15-2010]

1.5.23.11 SUBMISSION OF REQUESTS TO THE STATE BOARD OF FINANCE:

A. Real property transaction requests submitted to the board should address each of the specific items in this policy, if applicable. One hard copy and one identical electronic version should be submitted to the board. The hard copy should be tabbed for easy reference and the electronic version should be bookmarked.

B. Completed packages, in their entirety, must be submitted on or before the board's meeting deadline, as published on the board's website, and must meet application-formatting criteria. The hard copy must be standard letter size, 8 1/2 inches by 11 inches.

C. Upon request, the board, in its discretion, may waive provision of any information otherwise required by this rule provided that the requesting party can demonstrate that other documents that are provided are equivalent to or satisfy the rationale for submitting the item and that the state's interest still will be sufficiently protected.

D. The board, in its discretion, may require additional information be provided as may be relevant to a specific transaction.

[1.5.23.11 NMAC -N, 2-14-2001; A, 3-15-2010]

HISTORY OF 1.5.23 NMAC

Pre-NMAC History: none.