

NOTICE OF RULEMAKING

The State Board of Finance (the Board) has extended the comment period and rescheduled the public hearing for the proposed repeal and replacement of New Mexico Administrative Code (NMAC) rule 1.5.23 NMAC, *Real Property Acquisitions, Sales, Trades, or Leases*. The proposed replacement seeks to: update and add definitions, clarify the meaning of definitions, update requirements for title in acquisition of property, add clarification and requirements to materials needed for review and approval by the Board, and clarify and simplify the existing language with grammatical and syntax edits.

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, NMSA 1978 expressly applicable to the state fair.

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.

Subsection B of Section 15-3B-7, 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.

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.

Subsection B of Section 3-46-34 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.

Subsection J of Section 16-2-11, 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.

Notice Date: September 24, 2024

Hearing Date: November 1, 2024

Adoption Date: Proposed as November 19, 2024

Technical Citations: 13.14.5.10 NMAC and 13-6-5 NMSA 1978

The Department is proposing to amend the rule as follows:

Throughout the rule:

1. Language is updated to reflect the addition of the definitional term “Appraisal Report” to mean a report of an opinion of value conducted by a general certified appraiser and that meets all requirements under the Uniform Standards of Professional Appraisal Practice (USPAP).
2. Language is updated to reflect the addition of the definitional term “School District” to mean those political subdivisions of the state established for the administration of public schools.
3. Language is updated to change the term “Public Body” and replace with “Public Entity”
4. Language is updated to reflect requirements when real property disposition falls within the boundaries of a community land grant.
5. Language is updated to provide greater guidance and clarity on the requirements for submission to the Board for consideration.
6. Several sections have been renumbered due to new sections being added into the NMAC.

Section 7

This section is updated to add new definitions.

This section is renumbered due to new definitions and subsections added to the NMAC.

Subsection B - is added to define the term “Appraisal Report”.

Subsequent Subsections - are adjusted by one letter, such that B becomes C, C becomes D, etc., until Subsection M addition, because of the addition of Subsection B.

Subsection D - part 1 - is updated by adding to define the term “Appraisal Report” to the language.

Subsection E - removes language and citation to specific requirements.

Subsection H - is updated to change the term “Public Body” and replace with “Public Entity”.

Subsection K - removes language and citation to donations by one governmental entity to another governmental entity.

Subsection M - is added to define the term “School District”.

Subsequent Subsections - are adjusted by one letter, such that L becomes N, M becomes O, N becomes P, O becomes Q, because of the addition of Subsection M.

Section 8

This section is updated to clarify the requirements and rules regarding title binder requirements.

Subsection B - is added to define the term “Appraisal Report”.

Subsection B - part 6a - is updated by adding to subparts a and b to explain and simplify the language need for title binders. The language added requires the inclusion of exceptions listed in 13.14.5.10 NMAC.

Subsection B - part 6b - is updated by adding to subparts a and b to explain and simplify the language need for title binders. The language added requires explanation of any special exceptions listed in Schedule B.

Subsection B - part 7 - is updated by adding requirements that purchase agreements include language that the agreement and any amendments be subject to Board approval.

Section 9

This section is updated to clarify and simplify the requirements for Board submissions for the approval of sale or trade of real property.

This section is renumbered due to new definitions and subsections added to the NMAC.

Subsection B - part 1 - is changed to require summary information, forms, checklists as required by Board staff.

Subsection B - part 2 - is added to require a cover letter providing details of the request.

Subsection B - part 3 - is added with the original language of part 1.

Subsequent Subsection B parts - are adjusted by number, such that 2 becomes 4, 3 becomes 5, 4 becomes 6, 5 becomes 7, 6 becomes 8, 7 becomes 9, 8 becomes 10, 9 becomes 11, because of the addition of Subsection B part 2 and 3.

Subsection B - part 4 - is updated by adding the term “Appraisal Report” to the language.

Subsection B - part 7 - is updated by removing the citation.

Subsection B - part 8 - is updated by adding requirements that sale or trade agreements include language that the agreement and any amendments be subject to Board approval.

Subsection B - part 10 - is updated by removing the word “and” at the end.

Subsection B - part 11 - is updated by adding the word “and” at the end.

Subsection B - part 12 - is added and requires that when a state agency is requesting approval of the disposition of real property where the boundaries are within the community land grant, that the submission shall require a resolution or meeting minutes showing that the board of trustees of the community land grant intent is not to

purchase the real property in accordance with NMSA 13-6-5. If there is no action, the state agency shall document the lack of action to the Board.

Section 10

This section is updated to clarify and simplify the requirements for Board submissions for the approval of lease of real property.

This section is renumbered due to new definitions and subsections added to the NMAC.

Subsection C - part 1 - is added to require summary information, forms, checklists as required by Board staff.

Subsection B - part 2 - is added to require a cover letter providing details of the request.

Subsection B - part 3 - part 3 is renumbered from part 1 and is updated by adding the term “Appraisal Report” to the language and other grammatical changes.

Subsequent Subsection B parts - are adjusted by number, such that 1 becomes 3, 2 becomes 4, 3 becomes 5, 4 becomes 6, 5 becomes 7, 6 becomes 8, 7 becomes 9, because of the addition of Subsection C part 1 and 2.

Subsection B - part 4 - is updated by adding requirements that lease agreements include language that the agreement and any amendments be subject to Board approval.

Subsection B - part 8 - is updated by removing the word “and” at the end.

Subsection B - part 9 - is updated by adding the word “and” at the end.

Subsection D - is updated by removing the citation.

Section 11

This section is updated to clarify the requirements and rules regarding title binder requirements.

Subsection A - is simplified by changing the language of policy to rule and requiring electronic submissions in the form of PDF packets instead of hard copies.

Subsection B - strikes language in reference to the hard copy submissions.

Subsection C - is updated with clarification language, syntax, and clarification language.

These proposed rule changes will be contained in 1.5.23 NMAC. The register and the proposed rule are available on the SBOF website at: <https://www.nmdfa.state.nm.us/board-of-finance/rules-and-policies/>. If you do not have internet access, a copy of the proposed register and rule may be requested by contacting SBOF at bof.administrator@dfa.nm.gov and (505) 827-3985.

The SBOF plans to adopt this rule November 19, 2024.

A public hearing to receive testimony on this proposed rule will be held on November 1, at 9:30 a.m. The hearing will be held at the New Mexico Public Education Department, Marbry Hall Auditorium, 300 Don Gaspar Avenue, Santa Fe, New Mexico, 87501, and via Microsoft Teams.

Join Microsoft Teams Meeting

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If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact our staff to discuss your accessibility needs at least one week prior, or as soon as possible, by emailing the State Board of Finance administrator at: bof.administrator@dfa.nm.gov or calling 505-827-3985.

Copies of all comments will be made available by SBOF upon request by providing copies directly to a requestor or by making them available on the SBOF website or at a location within the county of the requestor.

Interested persons may address written comments to:

State Board of Finance
ATTN: SBOF 1.5.23 NMAC Public Comments
407 Galisteo St.
Bataan Memorial Building, Room 181
Santa Fe, NM 87501

Recorded comments may be left at (505) 827-3985. Interested persons may also address comments via electronic mail to: bof.administrator@dfa.nm.gov. Written mail, electronic mail and recorded comments must be received no later than 5:00 p.m. MT on October 28, 2024. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing. All written comments received will be posted as they are received on the SBOF website at <https://www.nmdfa.state.nm.us/board-of-finance/rules-and-policies/> along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter.