

SB0122S01 compared with SB0122

~~text~~ shows text that was in SB0122 but was deleted in SB0122S01.

text shows text that was not in SB0122 but was inserted into SB0122S01.

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Senator Todd Weiler proposes the following substitute bill:

STATE SURPLUS PROPERTY AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies ~~a provision~~ provisions relating to state surplus property.

Highlighted Provisions:

This bill:

- ▶ modifies definitions applicable to the Division of Purchasing and General Services and state surplus property;
- ▶ modifies provisions relating to the administration of the state surplus property program;
- ▶ modifies property that is included within the definition of state surplus property ~~to exclude a firearm or ammunition~~; and
- ▶ modifies provisions relating to the disposition of state surplus property with a minimal value.

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Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63A-2-101.5, as last amended by Laws of Utah 2013, Chapter 151

63A-2-102, as last amended by Laws of Utah 1997, Chapter 252

63A-2-103, as last amended by Laws of Utah 2013, Chapter 151

63A-2-104, as last amended by Laws of Utah 1997, Chapter 252

63A-2-105, as last amended by Laws of Utah 1997, Chapter 252

63A-2-401, as last amended by Laws of Utah 2013, Chapters 49 and 151

63A-2-405, as last amended by Laws of Utah 2013, Chapter 151

63A-2-408, as last amended by Laws of Utah 2013, Chapter 151

63A-2-409, as last amended by Laws of Utah 2013, Chapters 15 and 151

63A-2-410, as enacted by Laws of Utah 2013, Chapter 151

REPEALS AND REENACTS:

63A-2-411, as enacted by Laws of Utah 2013, Chapter 151

REPEALS:

63A-2-406, as renumbered and amended by Laws of Utah 2011, Chapter 207

63A-2-407, as renumbered and amended by Laws of Utah 2011, Chapter 207

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **63A-2-101.5** is amended to read:

63A-2-101.5. Definitions.

As used in this chapter:

(1) "Division" means the Division of Purchasing and General Services created under Section 63A-2-101.

(2) "Federal surplus property" means surplus property of the federal government of the United States.

(3) "Information technology equipment" means equipment ~~that is designed to~~

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electronically manipulate, store, or transfer a form of data.†

†] capable of downloading, accessing, manipulating, storing, or transferring electronic data, including:

[(4) "Inventory property" means property in the possession of the division that is available for purchase by an agency or the public.†

†]

[(5) "Judicial district" means a geographic district established by Section 78A-1-102.†

— (6)†]

(a) a computer;

(b) a smart phone, electronic tablet, personal digital assistant, or other portable

electronic device;

(c) a digital copier or multifunction printer;

(d) a flash drive or other portable electronic data storage device;

(e) a server; and

(f) any other similar device.

[(6)] (4) "Person with a disability" means a person with a severe, chronic disability that:

(a) is attributable to a mental or physical impairment or a combination of mental and physical impairments; and

(b) is likely to continue indefinitely.

[(7) "Personal handheld electronic device":]

[(a) means an electronic device that is designed for handheld use and permits the user to store or access information, the primary value of which is specific to the user of the device; and]

[(b) includes a mobile phone, pocket personal computer, personal digital assistant, or similar device.†

†]

[(8)] (5) "Property act" means the Federal Property and Administrative Services Act of 1949, 40 U.S.C. Sec. 549.

(6) "Purchasing director" means the director of the division appointed under Section 63A-2-102.

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(7) "Smart phone" means an electronic device that combines a cell phone with a hand-held computer, typically offering Internet access, data storage, and text and email capabilities.

(8) "State agency" means any executive branch department, division, or other agency of the state.

(9) "State surplus property" ~~means surplus property that is not~~ ~~{: }~~]:

(a) means state-owned property, whether acquired by purchase, seizure, donation, or otherwise:

~~[(a) a vehicle; { } or] { } (b) a firearm or ammunition; or }~~

~~[(b) { } (c) federal surplus property. { }~~

~~_____ (10) "State surplus property contractor" means the person described in Section 63A-2-410;]~~

(i) that is no longer being used by the state or no longer usable by the state;

(ii) that is out of date;

(iii) that is damaged and cannot be repaired or cannot be repaired at a cost that is less than the property's value;

(iv) whose useful life span has expired; or

(v) that the state ~~contracts with to administer the state's program for the disposition of state surplus property.~~

~~_____ (11) (a) "Surplus property" means property that an agency: _____ (i) intends to divest itself of; and (ii) has acquired by purchase, seizure, or donation.~~

~~_____ (b) "Surplus property" } agency possessing the property determines is not required to meet the needs or responsibilities of the state agency;~~

(b) includes:

(i) a motor vehicle;

(ii) equipment;

(iii) furniture;

(iv) information technology equipment; and

(v) a supply; and

(c) does not include:

(i) real property; { } _____ }

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(ii) an asset of the School and Institutional Trust Lands Administration, established in Section 53C-1-201;

(iii) a firearm or ammunition; or

(iv) an office or household item made of aluminum, paper, plastic, cardboard, or other recyclable material, without any meaningful value except for recycling purposes.

(10) "State surplus property contractor" means [the] a person [described in Section 63A-2-410 that the state contracts with to administer the state's program for the disposition of] in the private sector under contract with the state to provide one or more services related to the division's program for the management and disposition of state surplus property.

[(11) (a) "Surplus property" means property that an agency:]

[(i) intends to divest itself of; and]

[(ii) has acquired by purchase, seizure, or donation.]

[(b) "Surplus property" does not include:]

[(i) real property;]

[(ii) assets of the School and Institutional Trust Lands Administration; or]

[(iii) an aluminum can or an item made primarily of paper, plastic, or cardboard that is:]

[(A) discarded; and]

[(B) recyclable.]

Legislative Review Note — as of 1-16-15 9:55 AM

Office of Legislative Research and General Counsel]

Section 2. Section 63A-2-102 is amended to read:

63A-2-102. Director of division -- Appointment.

(1) The executive director [of the department] shall appoint the director of the Division of Purchasing and General Services with the approval of the governor.

(2) The purchasing director [of the Division of Purchasing and General Services] is also the state's chief procurement officer.

Section 3. Section 63A-2-103 is amended to read:

63A-2-103. General services provided -- Subscription by state departments, state

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agencies, and certain local governmental entities -- Fee schedule.

(1) The purchasing director [of the division]:

(a) shall operate, manage, and maintain:

(i) a central mailing service; and

(ii) an electronic central store system for procuring goods and services;

(b) shall, except when a state surplus property contractor administers the state's program for disposition of state surplus property, operate, manage, and maintain the state surplus property program;

(c) shall, when a state surplus property contractor administers the state's program for disposition of state surplus property, oversee the state surplus property contractor's administration of the state surplus property program in accordance with Part 4, Surplus Property Services; and

(d) may establish microfilming, duplicating, printing, addressograph, and other central services.

(2) (a) Each state [department and] agency shall subscribe to all of the services described in [Subsections] Subsection (1)(a)[(i) and (ii)], unless the director delegates the director's authority to a [department or] state agency under Section 63A-2-104.

(b) An institution of higher education, school district, or political subdivision of the state may subscribe to one or more of the services described in [Subsections] Subsection (1)(a)[(i) and (ii)].

(3) (a) The purchasing director shall:

[a) except as provided in Part 4, Surplus Property Services;]

(i) prescribe a schedule of fees to be charged for all services provided by the division [to any department or agency] after the purchasing director:

[(i)] (A) submits the proposed rate, fees, or other amounts for services provided by the division's internal service fund to the Rate Committee established in Section [63A-1-114] 63J-1-410; and

[(ii)] (B) obtains the approval of the Legislature, as required by [Sections 63J-1-410 and] Section 63J-1-504;

[(b) when practicable;] (ii) ensure that the fees are approximately equal to the cost of providing the services; and

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~~[(c) periodically]~~ (iii) annually conduct a market analysis of fees~~[- which analysis].~~

(b) A market analysis under Subsection (3)(a)(iii) shall include a comparison of the division's rates with the fees of other public or private sector providers ~~[where]~~ if comparable services and rates are reasonably available.

Section 4. Section 63A-2-104 is amended to read:

63A-2-104. Delegation of general services to departments or agencies -- Writing required -- Contents -- Termination.

(1) The purchasing director ~~[of the Division of Purchasing and General Services]~~, with the approval of the executive director, may delegate, in writing, ~~[his]~~ the purchasing director's authority to perform or control any general services function to ~~[other]~~ another state ~~[agencies and institutions]~~ agency by contract or other means authorized by law, if:

(a) in the judgment of the executive director, the state ~~[department or]~~ agency has requested the authority; and

(b) the state ~~[department or]~~ agency has the necessary resources and skills to perform or control the functions.

(2) The purchasing director may delegate ~~[his]~~ the purchasing director's authority only when the delegation would result in net cost savings or improved service delivery to the state as a whole.

(3) The written delegation shall contain ~~[the following]~~:

(a) a precise definition of each function to be delegated;

(b) a clear description of the standards to be met in performing each function delegated;

(c) a provision for periodic administrative audits by the department; and

(d) a date on which the agreement shall terminate if not previously terminated or renewed.

(4) An agreement to delegate functions to a state agency ~~[or institution]~~ may be terminated by the department if the results of an administrative ~~[audits]~~ audit conducted by the department ~~[reveal]~~ reveals lack of compliance with the terms of the agreement.

Section 5. Section 63A-2-105 is amended to read:

63A-2-105. Director to approve certain purchases.

(1) ~~[Each]~~ A state agency that intends to purchase any mail-related equipment or copy

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machine shall submit a purchase request to the purchasing director [of the Division of General Services].

(2) The purchasing director shall review [those requests] a request under Subsection (1) to ensure that:

(a) the authority to perform those functions has been appropriately delegated to the state agency under this part;

(b) the equipment meets proper specifications; and

(c) the benefits from the state agency's purchase of the equipment outweigh the benefits of having the same functions performed by the [Division of Purchasing and General Services] division.

Section 6. Section 63A-2-401 is amended to read:

63A-2-401. Utah surplus property program -- Definitions -- Administration.

[(1) As used in this part, "agency" means:]

[(a) the Utah Departments of Administrative Services, Agriculture and Food, Alcoholic Beverage Control, Commerce, Heritage and Arts, Corrections, Workforce Services, Health, Human Resource Management, Human Services, Insurance, Natural Resources, Public Safety, Technology Services, and Transportation and the Labor Commission;]

[(b) the Utah Offices of the Auditor, Attorney General, Court Administrator, Utah Office for Victims of Crime, Rehabilitation, and Treasurer;]

[(c) the Public Service Commission and State Tax Commission;]

[(d) the State Boards of Education, Pardons and Parole, and Regents;]

[(e) the Career Service Review Office;]

[(f) other state agencies designated by the governor;]

[(g) the legislative branch, the judicial branch, and the State Board of Regents; and]

[(h) an institution of higher education, its president, and its board of trustees for purposes of Section 63A-2-402.]

(1) The division shall determine the appropriate method for disposing of state surplus property.

(2) In accordance with Title 63G, Chapter 6a, Utah Procurement Code, the division may contract with one or more state surplus property contractors to assist with the disposition of state surplus property by:

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(a) online auction;

(b) live auction;

(c) pick up, sale, and disposal;

(d) disposal;

(e) destruction; or

(f) another method approved by the purchasing director.

(3) (a) A state agency shall use the services of the state surplus property contractors under contract with the division for the disposition of state surplus property unless the purchasing director authorizes an exception in writing.

(b) Justification for an exception under Subsection (3)(a) includes:

(i) a security issue;

(ii) the need for restricted public access to the state surplus property;

(iii) a lack of adequate storage space; and

(iv) an issue specific to the state agency, as approved by the purchasing director.

~~[(2)(a) The]~~ (4) (a) By following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules establishing a surplus property program that meets the requirements of this chapter by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(b) The rules under Subsection (4)(a) shall include:

(i) procedures and requirements for transferring state surplus property directly from one state agency to another [agency];

(ii) procedures and requirements governing division administration requirements that [an agency must] a state agency is required to follow;

(iii) requirements governing purchase priorities;

(iv) requirements governing accounting, reimbursement, and payment procedures;

(v) [except as provided in Subsection (2)(d);] procedures for collecting bad debts;

(vi) requirements and procedures for the disposition of firearms;

(vii) [except as provided in Subsection (2)(d);] the elements of the rates or other charges assessed by the division for services and handling;

(viii) [except as provided in Subsection (2)(d);] procedures governing the timing and location of public sales of state surplus property; [and]

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(ix) procedures governing the [transfer] disposition of information technology equipment; and

(x) procedures governing the transfer of information technology equipment by state agencies directly to public schools.

(c) Except as it relates to a vehicle or federal surplus property, the rules described in Subsection [(2)] (4)(b)(i) may not require approval by the division, the purchasing director [of the division], or any other person, for [an] a state agency to transfer state surplus property directly to another state agency.

[(d) When a state surplus property contractor administers the state's program for disposition of state surplus property:]

[(i) rules made under the rulemaking authority described in Subsections (2)(b)(v) and (vii) apply only to surplus vehicles; and]

[(ii) rules made under the rulemaking authority described in Subsection (2)(b)(viii) apply only to surplus vehicles and federal surplus property.]

[(3) In creating and administering the program, as it relates to surplus vehicles and federal surplus property only, the division shall, when conditions, inventory, and demand permit:]

(5) The division may:

(a) establish facilities to store [inventory] state surplus property at [geographically dispersed] appropriate locations throughout the state; [and]

(b) hold public sales of state surplus property at geographically dispersed locations throughout the state;

[(c) except as provided in Subsection (3)(d):]

[(i) establish;] (c) after consultation with the state agency requesting the sale of state surplus property, establish the price at which the surplus property shall be sold; and

[(ii)] (d) as provided in Title 63J, Chapter 1, Budgetary Procedures Act, transfer proceeds [arising from] generated by the sale of state surplus property to the state agency requesting the sale [in accordance with Title 63J, Chapter 1, Budgetary Procedures Act, less], reduced by a fee approved in accordance with [Sections 63A-1-114 and 63J-1-410;] Subsection 63A-2-103(3) to pay the division's costs of administering the state surplus property program.

[(d) When a state surplus property contractor administers the state's program for

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~~disposition of state surplus property, the provisions on Subsection (3)(c) only apply to surplus vehicles.]~~

~~[(4)] (6) Except as otherwise expressly provided in this part, or by explicit reference to this part, each state agency shall divest and acquire state surplus property only by participating in the division's program.~~

~~(7) A state agency may declare property owned by the state agency to be state surplus property by making a written determination that the property:~~

~~(a) is excess property that is no longer being used;~~

~~(b) has exceeded its useful life;~~

~~(c) is no longer usable;~~

~~(d) (i) is damaged; and~~

~~(ii) (A) cannot be repaired; or~~

~~(B) cannot be repaired at a cost that is less than the property's value; or~~

~~(e) is no longer required to meet the state agency's needs or responsibilities.~~

~~Section 7. Section 63A-2-405 is amended to read:~~

~~63A-2-405. Charges and fees assessed for surplus property.~~

~~[(1)] If approved in accordance with Sections [63A-1-114 and] 63J-1-410[;] and 63J-1-504, the division may:~~

~~[(a) may] (1) assess charges and fees for the acquisition, warehousing, distribution, or transfer of state surplus property or of federal surplus property [for educational, public health, or civil defense purposes, including research, only if those charges and fees are reasonably] [related] to cover the division's [care and] costs of handling [costs of], acquiring, receipting, warehousing, distributing, or transferring [the] state surplus property or federal surplus property; and~~

~~[(b) may] (2) reduce or eliminate charges on state surplus property or federal surplus property that is found not to be usable for the purpose for which it was procured.~~

~~[(2) When there is a state surplus property contractor:]~~

~~[(a) the division may not assess charges or fees to an agency for the acquisition, warehousing, distribution, sale, transfer, or handling of state surplus property; and]~~

~~[(b) unless expressly provided otherwise in the contract between the division and the state surplus contractor, the state surplus contractor may not assess charges or fees to an agency]~~

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for the acquisition, warehousing, distribution, sale, transfer, or handling of state surplus property.]

Section 8. Section 63A-2-408 is amended to read:

63A-2-408. Authority of state or local subdivision to receive property --

Revocation of authority of officer.

(1) Notwithstanding any other provision of law, the governing board or the executive director of any state department, instrumentality, or agency that is not a state agency, or the legislative body of any city, county, school district, or other political subdivision may by order or resolution give any officer or employee the authority to:

[(a) as it relates to federal surplus property:]

[(i)] (a) secure the transfer [to it] of state surplus property or federal surplus property through the division under the property act; and

[(ii)] (b) obligate the state or political subdivision and its funds to the extent necessary to comply with the terms and conditions of those transfers[; and].

[(b) as it relates to surplus property other than federal surplus property:]

[(i) secure the direct transfer of surplus property to it; and]

[(ii) obligate the state or political subdivision and its funds to the extent necessary to comply with the terms and conditions of those transfers:]

(2) The authority conferred upon any officer or employee by an order or resolution remains in effect until:

(a) the order or resolution is revoked; and

(b) the division has received written notice of the revocation.

Section 9. Section 63A-2-409 is amended to read:

63A-2-409. Disposal of certain surplus property.

This part does not apply to disposition by:

(1) the legislative branch of surplus property that is information technology equipment [or a personal handheld electronic device], if the Legislative Management Committee, by rule, establishes its own policy for disposition, by the legislative branch, of surplus property that is information technology equipment [or a personal handheld electronic device]; or

(2) the Department of Transportation of surplus personal property that was acquired as part of a transaction or legal action by the Department of Transportation acquiring real property

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for a state transportation purpose.

Section 10. Section 63A-2-410 is amended to read:

63A-2-410. State surplus property contractor -- Deposit of proceeds.

(1) [(a)] The division [shall, after issuing a request for proposals,] may, as the purchasing director determines, issue a solicitation under Title 63G, Chapter 6a, Utah Procurement Code, and award a contract to a person in the private sector to provide services necessary to administer the state's program for disposition of state surplus property.

[(b) The request for proposals shall seek:]

[(i) proposals that provide that the sole source of payment to the contractor will be a percentage of the amount for which the contractor sells state surplus property; and]

[(ii) proposals that provide for alternative methods of payment.]

[(2) The contract shall:]

[(a) provide that the contractor may sell state surplus property by auction, bid, or other manner designed to get the best price available for the state surplus property;]

[(b) prohibit the contractor from engaging in the sale of state surplus property in a manner that would constitute a conflict of interest;]

[(c) require regular and detailed accounting to the division of:]

[(i) the receipt and sale of state surplus property; and]

[(ii) the receipt and payment of funds by the contractor; and]

[(d) ensure public transparency regarding the sale of state surplus property by requiring that the contractor:]

[(i) post online information related to a sale or attempted sale of state surplus property, including:]

[(A) a description of the state surplus property;]

[(B) the agency that requested sale of the surplus property;]

[(C) the price at which the surplus property was sold; and]

[(D) the date that the surplus property was sold; and]

[(ii) post the information described in Subsection (2)(c)(i):]

[(A) within a time frame described in the contract; and]

[(B) for a period of time described in the contract.]

[(3) The contractor may not:]

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~~[(a) unless expressly provided otherwise in the contract between the division and the contractor:]~~

~~[(i) be required to store state surplus property; or]~~

~~[(ii) charge for the storage of state surplus property:]~~

~~[(b) administer the direct transfer of state surplus property from one agency to another agency:]~~

~~[(c) administer the disposal or destruction, by an agency, of state surplus property as waste:]~~

~~[(d) administer the donation by an agency of state surplus property to a charity; or]~~

~~[(e) administer the disposition of state surplus property under Section 63A-2-406, 63A-2-407, 63A-2-408, or 63A-2-409:]~~

~~[(4) The division shall, after paying the amount owed to the state surplus property contractor, transfer the remaining money received for the sale of a particular item of state surplus property to the agency that requested the sale of the particular item of state surplus property, in accordance with Title 63J, Chapter 1, Budgetary Procedures Act.]~~

~~[(5) The division shall:]~~

~~[(a) on or before August 31, 2013, give an oral report to the Government Operations Interim Committee regarding:]~~

~~[(i) the division's progress and plans in relation to issuing the request for proposals described in this section; and]~~

~~[(ii) rules passed or proposed, on or after May 14, 2013, in relation to the state surplus property program; and]~~

~~[(b) (i) issue the request for proposals described in this section on or before September 30, 2013; or]~~

~~[(ii) in November 2013, give an oral report to the Government Operations Interim Committee, explaining why the request for proposals was not issued on or before September 30, 2013:]~~

~~(2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules pertaining to the process and procedures relating to services provided by a person awarded a contract under Subsection (1).~~

~~Section 11. Section 63A-2-411 is repealed and reenacted to read:~~

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63A-2-411. Disposal of state surplus property with minimal value.

(1) As used in this section, "minimal value" means a value of less than \$100.

(2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules that permit a state agency to dispose of property with a minimal value that the state agency has declared to be state surplus property as provided in Subsection 63A-2-401(7).

(3) The division's rules under Subsection (1) shall permit a state agency to dispose of state surplus property with a minimal value by:

(a) destroying the property;

(b) disposing of the property as waste; or

(c) donating the property to:

(i) a charitable organization; or

(ii) an employee of the state agency.

(4) Property of a state agency is presumed to have a minimal value if the property is not purchased after the state agency offers the property for sale to the public at a price above \$100 for at least seven days:

(a) through an online auction;

(b) through a live auction;

(c) at a retail location managed by the division; or

(d) through another sale method approved by the director.

Section 12. Repealer.

This bill repeals:

Section 63A-2-406, Rulemaking on giving priority to state and local agencies in purchasing surplus property -- Rulemaking on the sale or use of a personal handheld electronic device.

Section 63A-2-407, Transfer of information technology equipment for persons with a disability.