

1 **SALE, EXCHANGE, OR DONATION OF REAL**
2 **PROPERTY BY STATE AGENCIES**

3 2004 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: David Ure**

7 **LONG TITLE**

8 **General Description:**

9 This bill enacts provisions governing the sale, exchange, or donation of real property by
10 certain state agencies.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ requires that certain agencies seeking to sell, exchange, or donate property obtain an
14 appraisal to determine the fair market value of the property;

15 ▶ requires that certain agencies seeking to sell property publish notice of the sale;

16 ▶ prohibits the sale, exchange, or donation of state property unless the state receives
17 value equal to 95% of the appraisal or unless certain other requirements are met;

18 ▶ establishes requirements for the disposition of proceeds from the sale of state
19 property; and

20 ▶ establishes requirements for gubernatorial and legislative approval of the sale,
21 exchange, or donation of certain state property.

22 **Monies Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 None

26 **Utah Code Sections Affected:**

27 ENACTS:



- 28 **63-38e-101**, Utah Code Annotated 1953
- 29 **63-38e-201**, Utah Code Annotated 1953
- 30 **63-38e-202**, Utah Code Annotated 1953
- 31 **63-38e-203**, Utah Code Annotated 1953
- 32 **63-38e-204**, Utah Code Annotated 1953
- 33 **63-38e-301**, Utah Code Annotated 1953
- 34 **63-38e-302**, Utah Code Annotated 1953

35 REPEALS:

36 **63A-5-215**, as renumbered and amended by Chapter 212, Laws of Utah 1993



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

39 Section 1. Section **63-38e-101** is enacted to read:

40 **CHAPTER 38e. SALE, EXCHANGE, OR DONATION OF STATE PROPERTY**

41 **Part 1. General Provisions**

42 **63-38e-101. Definitions.**

43 As used in this chapter:

44 (1) "Appraisal" means an unbiased analysis, opinion, or conclusion relating to the
45 nature, quality, value, or utility of specified interests in, or aspects of, identified property.

46 (2) " Division" means the Division of Facilities Construction and Management created
47 in Section 63A-5-201.

48 (3) "Property" means real property, buildings, fixtures, and appurtenances.

49 (4) "Property disposition proposal" means:

50 (a) for sales of property, a valid offer from a willing buyer to purchase property;

51 (b) for exchanges of property, the details of the proposed exchange, including the
52 appraised value of all of the properties or other assets involved in the exchange; and

53 (c) for donations of property, the details of the proposed donation, including the fair
54 market value of any benefit received by the state as a result of the donation.

55 (5) (a) "Title agency" means the following entities that are authorized to hold title to
56 real property under Section 63A-5-204:

57 (i) the Department of Transportation;

58 (ii) the Department of Natural Resources; and

- 59 (iii) the Utah National Guard;
- 60 (b) "Title agency" does not mean the State Armory Board.

61 Section 2. Section **63-38e-201** is enacted to read:

62 **Part 2. Process for Sale, Exchange, or Donation of State Property**

63 **63-38e-201. Appraisal.**

64 (1) Except as provided in Subsection (2), before advertising or offering property for
65 sale, exchange, or donation, the division or title agency shall obtain an impartial appraisal of
66 the fair market value of the property from a person holding an appraiser's certificate or license
67 issued by the Division of Real Estate under Title 61, Chapter 2b, Real Estate Appraiser
68 Licensing and Certification Act.

69 (2) The division or title agency need not obtain an appraisal if:

70 (a) the property has an appraisal that was completed within the last six months by a
71 person holding an appraiser's certificate or license issued by the Division of Real Estate under
72 Title 61, Chapter 2b, Real Estate Appraiser Licensing and Certification Act; and

73 (b) the division or title agency has no knowledge of any circumstances that would or
74 could result in a substantial change to the value of the property since the date of that appraisal.

75 Section 3. Section **63-38e-202** is enacted to read:

76 **63-38e-202. Notice of sale -- Publication -- Contents.**

77 (1) After obtaining the appraisal required by this part, if the division or title agency is
78 selling the property, it shall publish notice that the property is being offered for sale in:

79 (a) a newspaper of general circulation in the county where the property is located, if
80 one exists;

81 (b) in another newspaper of general circulation in Utah; and

82 (c) in any other place or manner that the division or title agency determines might
83 inform prospective buyers that the property is available for sale.

84 (2) The notice shall include:

85 (a) information about the conditions, time, place, and terms of the sale, if applicable;

86 (b) the location of the property by legal description and either by street address, if
87 available, or by general description; and

88 (c) a person to contact to find out more about the property or about the conditions or
89 process for purchasing the property.

90 Section 4. Section **63-38e-203** is enacted to read:

91 **63-38e-203. Requirements governing sale, exchange, or donation.**

92 (1) (a) Except as provided in Subsection (1)(b), the division or a title agency may not
93 sell, exchange, or donate property unless the value received for the property is at least 95% of
94 the appraised value of the property.

95 (b) If the agency is unable to find a buyer who will pay at least 95% of the appraised
96 value of the property, but has one or more buyers willing to purchase the property for less than
97 95% of its appraised value, the division or title agency shall submit the proposed transaction to
98 the State Building Board for its approval.

99 (2) The division and each title agency shall make rules establishing processes and
100 procedures for offering and selling property.

101 (3) (a) If the state donates land to a local government entity, the state may not grant the
102 property in fee simple absolute, but must grant the property in fee simple determinable.

103 (b) The state shall grant the property in fee simple determinable to the local
104 government entity so long as the property is used for a governmental purpose.

105 Section 5. Section **63-38e-204** is enacted to read:

106 **63-38e-204. Sale of state property -- Disposition of proceeds.**

107 (1) The division shall deposit money received from the sale or other disposition of
108 property into the General Fund.

109 (2) The title agency shall, subject to legislative appropriation, expend the proceeds
110 from the sale of property for the construction of buildings or in the performance of other work
111 for the benefit of the title agency.

112 Section 6. Section **63-38e-301** is enacted to read:

113 **Part 3. Review and Approval of Sale, Exchange, or Donation of Property**

114 **63-38e-301. Governor to approve real property sales.**

115 (1) Before legally binding the state by executing a document committing the state to
116 sell, exchange, or donate property with an appraised value of more than \$100,000, the division
117 or a title agency shall submit the property disposition proposal to the governor for his approval
118 or rejection.

119 (2) The governor shall approve or reject each property disposition proposal.

120 (3) (a) If the governor approves the property disposition proposal, the agency may

121 complete the sale, exchange, or donation.

122 (b) If the governor rejects the property disposition proposal, the agency may not
123 complete the sale, exchange, or donation.

124 (4) If an agency binds the state to sell property without obtaining the governor's
125 approval under this section, the governor may issue an executive order declaring the sale,
126 exchange, or donation void.

127 (5) The governor shall provide notice to the Legislature of his approval or rejection of
128 the sale, exchange, or donation of state properties under this section by providing the
129 Legislative Fiscal Analyst with a list identifying:

130 (a) the division or title agency selling the property;

131 (b) the purpose for which the property is currently being used;

132 (c) the reason the division or title agency proposes to sell, exchange, or donate the
133 property;

134 (d) the proposed sales price, if the property is being sold;

135 (e) the location and appraised value of the other properties or assets that the state will
136 receive in exchange, if the property is being exchanged;

137 (f) the reason for the donation and the value that the state will receive from the
138 donation, if any, if the property is being donated; and

139 (g) deadlines and any other relevant information of use in evaluating the property
140 disposition proposal.

141 Section 7. Section **63-38e-302** is enacted to read:

142 **63-38e-302. Legislative review and approval of property sales proposals.**

143 (1) (a) Before legally binding the state by executing a document committing the state to
144 sell, exchange, or donate property with an appraised value of more than \$500,000, the division
145 or title agency shall:

146 (i) submit the property disposition proposal to the governor for his approval or
147 rejection as required by Section 63-38e-301; and

148 (ii) if the governor approves the property disposition proposal, submit the property
149 disposition proposal to the Legislative Management Committee for its review and
150 recommendations.

151 (b) The Legislative Management Committee shall review the property disposition

152 proposal and may:

153 (i) recommend that the agency complete the sale, exchange, or donation;

154 (ii) recommend that the agency reject the property disposition proposal; or

155 (iii) recommend to the governor that he call a special session of the Legislature to

156 review and approve or reject the property disposition proposal.

157 (2) (a) Before legally binding the state by executing a document committing the state to

158 sell, exchange, or donate property with an appraised value of more than \$1,000,000, the

159 division or title agency shall:

160 (i) submit the property disposition proposal to the governor for his approval or

161 rejection as required by Section 63-38b-301; and

162 (ii) if the governor approves the property disposition proposal, submit the property

163 disposition proposal to the Legislature for its approval in an annual general session or a special

164 session.

165 (b) (i) If the Legislature approves the property disposition proposal, the agency may

166 complete the sale, exchange, or donation.

167 (ii) If the Legislature rejects the property disposition proposal, the agency may not

168 complete the sale, exchange, or donation.

169 (c) If an agency binds the state to sell property without obtaining the Legislature's

170 approval under this Subsection (2):

171 (i) the governor may issue an executive order declaring the sale, exchange, or donation

172 void; or

173 (ii) the Legislature may pass a joint resolution declaring the sale void.

174 **Section 8. Repealer.**

175 This bill repeals:

176 **Section 63A-5-215, Disposition of proceeds received by division from sale of**

177 **property.**

Legislative Review Note

as of 1-20-04 9:41 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0228

Sale, Exchange, or Donation of Real Property by State Agencies

27-Jan-04

2:29 PM

State Impact

Costs associated with this bill can be managed within agency budgets.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst