

Representative David Ure proposes the following substitute bill:

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

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: David Ure

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ requires that certain agencies seeking to sell, exchange, or donate property obtain an appraisal to determine the fair market value of the property;
- ▶ requires that certain agencies seeking to sell property publish notice of the sale;
- ▶ prohibits the sale, exchange, or donation of state property unless the state receives value equal to 95% of the appraisal or unless certain other requirements are met;
- ▶ establishes requirements for the disposition of proceeds from the sale of state property; and
- ▶ establishes requirements for gubernatorial and legislative approval of the sale, exchange, or donation of certain state property.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **63A-5-204**, as last amended by Chapters 23 and 231, Laws of Utah 2000

29 **63A-5-220**, as last amended by Chapter 226, Laws of Utah 2002

30 ENACTS:

31 **63-38e-101**, Utah Code Annotated 1953

32 **63-38e-102**, Utah Code Annotated 1953

33 **63-38e-201**, Utah Code Annotated 1953

34 **63-38e-202**, Utah Code Annotated 1953

35 **63-38e-203**, Utah Code Annotated 1953

36 **63-38e-301**, Utah Code Annotated 1953

37 **63-38e-302**, Utah Code Annotated 1953

38 **63-38e-303**, Utah Code Annotated 1953

39 REPEALS:

40 **63A-5-215**, as renumbered and amended by Chapter 212, Laws of Utah 1993



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

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

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

45 **Part 1. General Provisions**

46 **63-38e-101. Definitions.**

47 As used in this chapter:

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

50 (2) "Net proceeds" means the price for which the property was sold less the cost of
51 selling the property.

52 (3) "Property" means real property, buildings, fixtures, and appurtenances and includes
53 only property held in fee.

54 (4) "Property disposition proposal" means:

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

56 (b) for exchanges of property, the details of the proposed exchange, including the

57 appraised value of all of the properties or other assets involved in the exchange; and

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

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

62 (i) the Division of Facilities Construction and Management;

63 (ii) the Department of Transportation; and

64 (iii) the Department of Natural Resources.

65 (b) "Title agency" does not mean the State Armory Board.

66 (6) "Uneconomic remnant" means property that has little or no value or utility to the
67 owner and that is:

68 (a) landlocked; or

69 (b) has value only to one or more adjacent property owners.

70 Section 2. Section **63-38e-102** is enacted to read:

71 **63-38e-102. Scope and application of chapter.**

72 (1) The approval requirements of this chapter do not apply to exchanges of property
73 between one state agency and another or between one or more state agencies and the School
74 and Institutional Trust Lands Administration.

75 (2) Except as provided in Section 63-38e-201, the provisions of this chapter do not
76 apply to property that is an uneconomic remnant.

77 (3) Nothing in this chapter may be construed to authorize a title agency to fail to
78 comply with stricter requirements contained in other federal or state statutes.

79 Section 3. Section **63-38e-201** is enacted to read:

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

81 **63-38e-201. Division and title agencies to make rules governing appraisals and**
82 **notice of sale.**

83 (1) Each title agency shall make rules governing the appraisal requirements and the
84 processes that the title agency will use to give notice of the availability of state property for
85 sale.

86 (2) Each title agency shall ensure that the rules include:

87 (a) provisions governing when an appraisal of property is required, who must conduct

88 the appraisal, the qualifications of the person conducting the appraisal, and any exceptions to
89 the appraisal requirements;

90 (b) provisions establishing notice requirements to inform potential buyers of the
91 availability of the property for sale, including, if necessary, different notice requirements for
92 different classes or types of property;

93 (c) provisions establishing reasonable exceptions to the notice requirements, if
94 exceptions are necessary;

95 (d) provisions detailing the specific process for offering and selling property, including
96 reasonable review and approval requirements by persons within the title agency;

97 (e) provisions governing processes for disposing of uneconomic remnants; and

98 (f) provisions establishing procedures and requirements for review and approval of
99 property sales with an appraised value of less than \$500,000.

100 (3) (a) The Division of Facilities Construction and Management shall submit its draft
101 rules to the Legislature's Government Operations Interim Committee by September 1, 2004.

102 (b) The Department of Transportation shall submit its draft rules to the Legislature's
103 Transportation Interim Committee by September 1, 2004.

104 (c) The Department of Natural Resources shall submit its draft rules to the Legislature's
105 Energy and Natural Resources Interim Committee by September 1, 2004.

106 Section 4. Section **63-38e-202** is enacted to read:

107 **63-38e-202. Requirements governing sale or donation of state property.**

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

111 (b) If the title agency is unable to find a buyer who will pay at least 95% of the
112 appraised value of the property, but has one or more buyers willing to purchase the property for
113 less than 95% of its appraised value:

114 (i) the Division of Facilities Construction and Management shall submit the proposed
115 transaction to the State Building Board for its approval;

116 (ii) the Department of Transportation shall submit the proposed transaction to the
117 Transportation Commission for its approval; and

118 (iii) the Department of Natural Resources shall submit the proposed transaction to the

119 State Building Board for its approval.

120 (2) (a) If the state or a title agency donates land to a local government entity, the state
121 or the title agency may not grant the property in fee simple absolute, but must grant the
122 property in fee simple subject to a condition subsequent.

123 (b) The state or the title agency shall grant the property in fee simple subject to a
124 condition subsequent to the local government entity, but if the property ceases to be used for a
125 governmental or for the intended purpose, the state or the title agency has the right to re-enter
126 and take title to the property.

127 Section 5. Section **63-38e-203** is enacted to read:

128 **63-38e-203. Sale of state property -- Disposition of proceeds.**

129 Unless otherwise required by federal or state law, each title agency shall deposit the net
130 proceeds received from the sale or other disposition of property into the General Fund.

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

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

133 **63-38e-301. Agencies to approve certain real property sales, exchanges, and**
134 **donations.**

135 A title agency may legally sell or donate property with an appraised value of less than
136 \$500,000 by following the procedures and requirements established by the title agency's rules.

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

138 **63-38e-302. Governor to approve real property sales, exchanges, and donations.**

139 (1) Before legally binding the state by executing a document committing the state to
140 sell, exchange, or donate property with an appraised value of \$500,000 or more but less than
141 \$1,000,000, the title agency shall submit the property disposition proposal to the governor for
142 his approval or rejection.

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

144 (3) (a) If the governor approves the property disposition proposal, the title agency may
145 complete the sale, exchange, or donation.

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

148 (4) If a title agency binds the state to sell property without obtaining the governor's
149 approval under this section, the governor may issue an executive order declaring the sale.

150 exchange, or donation void.

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

154 (a) the title agency that is selling the property;

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

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

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

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

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

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

164 Section 8. Section **63-38e-303** is enacted to read:

165 **63-38e-303. Legislative review and approval of property sales proposals.**

166 (1) (a) Before legally binding the state by executing a document committing the state to
167 sell, exchange, or donate property with an appraised value of \$1,000,000 or more but less than
168 \$2,000,000, the title agency shall:

169 (i) submit the property disposition proposal to the governor for his approval or
170 rejection according to the procedures and requirements contained in Section 63-38e-301; and

171 (ii) if the governor approves the property disposition proposal, submit the property
172 disposition proposal to the Legislative Management Committee for its review and
173 recommendations.

174 (b) The Legislative Management Committee shall review the property disposition
175 proposal and may:

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

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

178 (iii) recommend to the governor that the governor call a special session of the
179 Legislature to review and approve or reject the property disposition proposal.

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

181 sell, exchange, or donate property with an appraised value of \$2,000,000 or more, the title
182 agency shall:

183 (i) submit the property disposition proposal to the governor for his approval or
184 rejection according to the procedures and requirements contained in Section 63-38b-301; and

185 (ii) if the governor approves the property disposition proposal, submit the property
186 disposition proposal to the Legislature for its approval in an annual general session or a special
187 session.

188 (b) (i) If the Legislature approves the property disposition proposal, the title agency
189 may complete the sale, exchange, or donation.

190 (ii) If the Legislature rejects the property disposition proposal, the title agency may not
191 complete the sale, exchange, or donation.

192 (c) If a title agency binds the state to sell property without obtaining the Legislature's
193 approval under this Subsection (2):

194 (i) the governor may issue an executive order declaring the sale, exchange, or donation
195 void; or

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

197 Section 9. Section **63A-5-204** is amended to read:

198 **63A-5-204. Specific powers and duties of director.**

199 (1) As used in this section, "capitol hill facilities" and "capitol hill grounds" have the
200 same meaning as provided in Section 63C-9-102.

201 (2) (a) The director shall:

202 (i) recommend rules to the executive director for the use and management of facilities
203 and grounds owned or occupied by the state for the use of its departments and agencies;

204 (ii) supervise and control the allocation of space, in accordance with legislative
205 directive through annual appropriations acts or other specific legislation, to the various
206 departments, commissions, institutions, and agencies in all buildings or space owned, leased, or
207 rented by or to the state, except capitol hill facilities and capitol hill grounds and except as
208 otherwise provided by law;

209 (iii) comply with the procedures and requirements of Title 63A, Chapter 5, Part 3,
210 Division of Facilities Construction and Management Leasing;

211 (iv) except as provided in Subsection (2)(b), acquire, as authorized by the Legislature

212 through the appropriations act or other specific legislation, and hold title to, in the name of the
213 division, all real property, buildings, fixtures, or appurtenances owned by the state or any of its
214 agencies;

215 (v) adopt and use a common seal, of a form and design determined by the director, and
216 of which courts shall take judicial notice;

217 (vi) file a description and impression of the seal with the Division of Archives;

218 (vii) collect and maintain all deeds, abstracts of title, and all other documents
219 evidencing title to or interest in property belonging to the state or any of its departments, except
220 institutions of higher education and the School and Institutional Trust Lands Administration;

221 (viii) report all properties acquired by the state, except those acquired by institutions of
222 higher education, to the director of the Division of Finance for inclusion in the state's financial
223 records; and

224 (ix) take all other action necessary for carrying out the purposes of this chapter.

225 (b) Legislative approval is not required for acquisitions by the division that cost less
226 than \$250,000.

227 (3) (a) The director shall direct or delegate maintenance and operations, preventive
228 maintenance, and facilities inspection programs and activities for any department, commission,
229 institution, or agency, except:

230 (i) the State Capitol Preservation Board; and

231 (ii) state institutions of higher education.

232 (b) The director may choose to delegate responsibility for these functions only when
233 the director determines that:

234 (i) the department or agency has requested the responsibility;

235 (ii) the department or agency has the necessary resources and skills to comply with
236 facility maintenance standards approved by the State Building Board; and

237 (iii) the delegation would result in net cost savings to the state as a whole.

238 (c) The State Capitol Preservation Board and state institutions of higher education are
239 exempt from Division of Facilities Construction and Management oversight.

240 (d) Each state institution of higher education shall comply with the facility
241 maintenance standards approved by the State Building Board.

242 (e) Except for the State Capitol Preservation Board, agencies and institutions that are

243 exempt from division oversight shall annually report their compliance with the facility
244 maintenance standards to the division in the format required by the division.

245 (f) The division shall:

246 (i) prescribe a standard format for reporting compliance with the facility maintenance
247 standards;

248 (ii) report agency and institution compliance or noncompliance with the standards to
249 the Legislature; and

250 (iii) conduct periodic audits of exempt agencies and institutions to ensure that they are
251 complying with the standards.

252 (4) (a) In making any allocations of space under Subsection (2), the director shall:

253 (i) conduct studies to determine the actual needs of each department, commission,
254 institution, or agency; and

255 (ii) comply with the restrictions contained in this Subsection (4).

256 (b) The supervision and control of the legislative area is reserved to the Legislature.

257 (c) The supervision and control of the judicial area is reserved to the judiciary for trial
258 courts only.

259 (d) The director may not supervise or control the allocation of space for entities in the
260 public and higher education systems.

261 (e) The supervision and control of capitol hill facilities and capitol hill grounds is
262 reserved to the State Capitol Preservation Board.

263 (5) The director may:

264 (a) hire or otherwise procure assistance and services, professional, skilled, or
265 otherwise, that are necessary to carry out the director's responsibilities, and may expend funds
266 provided for that purpose either through annual operating budget appropriations or from
267 nonlapsing project funds;

268 (b) sue and be sued in the name of the division; and

269 (c) hold, buy, lease, and acquire by exchange or otherwise, as authorized by the
270 Legislature, whatever real or personal property that is necessary for the discharge of the
271 director's duties.

272 (6) Notwithstanding the provisions of Subsection (2) (a)(iv), the following entities may
273 hold title to any real property, buildings, fixtures, and appurtenances held by them for purposes

274 other than administration that are under their control and management:

275 (a) the Office of Trust Administrator;

276 (b) the Department of Transportation;

277 (c) the Division of Forestry, Fire and State Lands;

278 (d) the Department of Natural Resources;

279 (e) the [~~Utah National Guard~~] State Armory Board;

280 (f) any area vocational center or other institution administered by the State Board of
281 Education; and

282 (g) any institution of higher education.

283 (7) The director shall ensure that any firm performing testing and inspection work
284 governed by the American Society for Testing Materials Standard E-329 on public buildings
285 under the director's supervision shall:

286 (a) fully comply with the American Society for Testing Materials standard
287 specifications for agencies engaged in the testing and inspection of materials known as ASTM
288 E-329; and

289 (b) carry a minimum of \$1,000,000 of errors and omissions insurance.

290 (8) Notwithstanding Subsections (2)(a)(iii) and (iv), the School and Institutional Trust
291 Lands Administration may hold title to any real property, buildings, fixtures, and appurtenances
292 held by it that are under its control.

293 Section 10. Section **63A-5-220** is amended to read:

294 **63A-5-220. Definitions -- Creation of Trust Fund for People with Disabilities --**
295 **Use of trust fund monies.**

296 (1) As used in this section:

297 (a) "Developmental center" means the Utah State Developmental Center described in
298 Section 62A-5-201.

299 (b) "DSPD" means the Division of Services for People with Disabilities within the
300 Department of Human Services.

301 (c) "Fund" means the Trust Fund for People with Disabilities created by this section.

302 (d) "Long-term lease" means:

303 (i) a lease with a term of five years or more; or

304 (ii) a lease with a term of less than five years that may be unilaterally renewed by the

305 lessee.

306 (2) Notwithstanding the provisions of Section [~~63A-5-215~~] 63-38e-203, any monies
307 received by the division or DSPD from the sale, lease, except any lease existing on May 1,
308 1995, or other disposition of real property associated with the developmental center shall be
309 deposited in the fund.

310 (3) (a) There is created a restricted account within the General Fund entitled the "Trust
311 Fund for People with Disabilities."

312 (b) The Division of Finance shall deposit the following revenues into the fund:

313 (i) revenue from the sale, lease, except any lease existing on May 1, 1995, or other
314 disposition of real property associated with the developmental center;

315 (ii) revenue from the sale, lease, or other disposition of water rights associated with the
316 developmental center; and

317 (iii) revenue from voluntary contributions made to the fund.

318 (c) The state treasurer shall invest monies contained in the fund according to the
319 procedures and requirements of Title 51, Chapter 7, State Money Management Act, and all
320 interest shall remain with the fund.

321 (d) (i) Except as provided in Subsection (3)(d)(ii), no expenditure or appropriation may
322 be made from the fund.

323 (ii) (A) The Legislature may appropriate interest earned on fund monies invested
324 pursuant to Subsection (3)(d), leases from real property and improvements, leases from water,
325 rents, and fees to DSPD for programs described in Title 62A, Chapter 5, Services to People
326 with Disabilities.

327 (B) Fund monies appropriated each year under Subsection (3)(d)(ii)(A) may not be
328 expended unless approved by the Board of Services for People with Disabilities within the
329 Department of Human Services.

330 (4) (a) Notwithstanding the provisions of Section 65A-4-1, any sale or disposition of
331 real property or water rights associated with the developmental center shall be conducted as
332 provided in this Subsection (4).

333 (b) The division shall secure the concurrence of DSPD and the approval of the governor
334 before making the sale or other disposition of land or water rights.

335 (c) In addition to the concurrences required by Subsection (4)(b), the division shall

336 secure the approval of the Legislature before offering the land or water rights for sale,
337 exchange, or long-term lease.

338 (d) The division shall sell or otherwise dispose of the land or water rights as directed by
339 the governor.

340 (e) The division may not sell, exchange, or enter into a long-term lease of the land or
341 water rights for a price or estimated value below the average of two appraisals conducted by an
342 appraiser who holds an appraiser's certificate or license issued by the Division of Real Estate
343 under Title 61, Chapter 2b, Real Estate Appraiser Licensing and Certification Act.

344 **Section 11. Repealer.**

345 This bill repeals:

346 **Section 63A-5-215, Disposition of proceeds received by division from sale of**
347 **property.**