

Representative Kevin S. Garn proposes the following substitute bill:

GOVERNMENT PROCUREMENT - PRIVATE

PROPOSALS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kevin S. Garn

Senate Sponsor: Wayne L. Niederhauser

LONG TITLE

General Description:

This bill creates a program allowing a private entity to submit proposals to provide certain products or services to the Department of Technology Services or the Board of Education.

Highlighted Provisions:

This bill:

- ▶ creates a program allowing the submission of a proposal to provide a product or service to the Department of Technology Services or the Board of Education;
- ▶ requires the Board of Business and Economic Development to appoint a committee to evaluate a proposal under the program;
- ▶ defines terms;
- ▶ addresses the requirements of an initial proposal submitted to the committee;
- ▶ provides for review of an initial proposal by the committee and the affected department;
- ▶ addresses the issuance of an invitation for detailed proposals if the initial proposal is accepted by the committee;
- ▶ provides requirements for a detailed proposal;



- 26 ▶ makes an initial proposal a protected record under Title 63, Chapter 2, Government
- 27 Records Access and Management Act;
- 28 ▶ allows the committee, by rule, to maintain certain portions of an initial proposal as a
- 29 protected record;
- 30 ▶ addresses cooperation between a private entity submitting a detailed proposal and
- 31 the affected department;
- 32 ▶ requires the Governor's Office of Planning and Budget to prepare an economic
- 33 feasibility report concerning a detailed proposal;
- 34 ▶ provides for the acceptance of a detailed proposal and the preparation and execution
- 35 of a project agreement;
- 36 ▶ creates a restricted account, comprised of monies collected from fees for submitting
- 37 a proposal;
- 38 ▶ establishes uses for which monies may be expended from the restricted account;
- 39 ▶ requires the establishment of fees for proposals and project agreements;
- 40 ▶ allows for the appointment of an advisory committee to assist the committee in
- 41 evaluating proposals and preparing project agreements; and
- 42 ▶ makes technical changes.

43 Monies Appropriated in this Bill:

44 None

45 Other Special Clauses:

46 None

47 Utah Code Sections Affected:

48 AMENDS:

49 **63-2-304**, as last amended by Laws of Utah 2008, Chapter 3

50 **63-38f-203**, as renumbered and amended by Laws of Utah 2005, Chapter 148

51 **63-56-102**, as last amended by Laws of Utah 2007, Chapter 329

52 **63F-1-205**, as last amended by Laws of Utah 2007, Chapter 306

53 ENACTS:

54 **63G-6-408.5**, Utah Code Annotated 1953

55 **63M-1-2401**, Utah Code Annotated 1953

56 **63M-1-2402**, Utah Code Annotated 1953

- 57 **63M-1-2403**, Utah Code Annotated 1953
- 58 **63M-1-2404**, Utah Code Annotated 1953
- 59 **63M-1-2405**, Utah Code Annotated 1953
- 60 **63M-1-2406**, Utah Code Annotated 1953
- 61 **63M-1-2407**, Utah Code Annotated 1953
- 62 **63M-1-2408**, Utah Code Annotated 1953
- 63 **63M-1-2409**, Utah Code Annotated 1953
- 64 **63M-1-2410**, Utah Code Annotated 1953
- 65 **63M-1-2411**, Utah Code Annotated 1953
- 66 **63M-1-2412**, Utah Code Annotated 1953



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

69 Section 1. Section **63-2-304** is amended to read:

70 **63-2-304. Protected records.**

71 The following records are protected if properly classified by a governmental entity:

72 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret
73 has provided the governmental entity with the information specified in Section 63-2-308;

74 (2) commercial information or nonindividual financial information obtained from a
75 person if:

76 (a) disclosure of the information could reasonably be expected to result in unfair
77 competitive injury to the person submitting the information or would impair the ability of the
78 governmental entity to obtain necessary information in the future;

79 (b) the person submitting the information has a greater interest in prohibiting access
80 than the public in obtaining access; and

81 (c) the person submitting the information has provided the governmental entity with
82 the information specified in Section 63-2-308;

83 (3) commercial or financial information acquired or prepared by a governmental entity
84 to the extent that disclosure would lead to financial speculations in currencies, securities, or
85 commodities that will interfere with a planned transaction by the governmental entity or cause
86 substantial financial injury to the governmental entity or state economy;

87 (4) records the disclosure of which could cause commercial injury to, or confer a

88 competitive advantage upon a potential or actual competitor of, a commercial project entity as
89 defined in Subsection 11-13-103(4);

90 (5) test questions and answers to be used in future license, certification, registration,
91 employment, or academic examinations;

92 (6) records the disclosure of which would impair governmental procurement
93 proceedings or give an unfair advantage to any person proposing to enter into a contract or
94 agreement with a governmental entity, except that this Subsection (6) does not restrict the right
95 of a person to see bids submitted to or by a governmental entity after bidding has closed;

96 (7) records that would identify real property or the appraisal or estimated value of real
97 or personal property, including intellectual property, under consideration for public acquisition
98 before any rights to the property are acquired unless:

99 (a) public interest in obtaining access to the information outweighs the governmental
100 entity's need to acquire the property on the best terms possible;

101 (b) the information has already been disclosed to persons not employed by or under a
102 duty of confidentiality to the entity;

103 (c) in the case of records that would identify property, potential sellers of the described
104 property have already learned of the governmental entity's plans to acquire the property;

105 (d) in the case of records that would identify the appraisal or estimated value of
106 property, the potential sellers have already learned of the governmental entity's estimated value
107 of the property; or

108 (e) the property under consideration for public acquisition is a single family residence
109 and the governmental entity seeking to acquire the property has initiated negotiations to acquire
110 the property as required under Section 78B-6-505;

111 (8) records prepared in contemplation of sale, exchange, lease, rental, or other
112 compensated transaction of real or personal property including intellectual property, which, if
113 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value
114 of the subject property, unless:

115 (a) the public interest in access outweighs the interests in restricting access, including
116 the governmental entity's interest in maximizing the financial benefit of the transaction; or

117 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of
118 the value of the subject property have already been disclosed to persons not employed by or

119 under a duty of confidentiality to the entity;

120 (9) records created or maintained for civil, criminal, or administrative enforcement
121 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if
122 release of the records:

123 (a) reasonably could be expected to interfere with investigations undertaken for
124 enforcement, discipline, licensing, certification, or registration purposes;

125 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement
126 proceedings;

127 (c) would create a danger of depriving a person of a right to a fair trial or impartial
128 hearing;

129 (d) reasonably could be expected to disclose the identity of a source who is not
130 generally known outside of government and, in the case of a record compiled in the course of
131 an investigation, disclose information furnished by a source not generally known outside of
132 government if disclosure would compromise the source; or

133 (e) reasonably could be expected to disclose investigative or audit techniques,
134 procedures, policies, or orders not generally known outside of government if disclosure would
135 interfere with enforcement or audit efforts;

136 (10) records the disclosure of which would jeopardize the life or safety of an
137 individual;

138 (11) records the disclosure of which would jeopardize the security of governmental
139 property, governmental programs, or governmental recordkeeping systems from damage, theft,
140 or other appropriation or use contrary to law or public policy;

141 (12) records that, if disclosed, would jeopardize the security or safety of a correctional
142 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere
143 with the control and supervision of an offender's incarceration, treatment, probation, or parole;

144 (13) records that, if disclosed, would reveal recommendations made to the Board of
145 Pardons and Parole by an employee of or contractor for the Department of Corrections, the
146 Board of Pardons and Parole, or the Department of Human Services that are based on the
147 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's
148 jurisdiction;

149 (14) records and audit workpapers that identify audit, collection, and operational

150 procedures and methods used by the State Tax Commission, if disclosure would interfere with
151 audits or collections;

152 (15) records of a governmental audit agency relating to an ongoing or planned audit
153 until the final audit is released;

154 (16) records prepared by or on behalf of a governmental entity solely in anticipation of
155 litigation that are not available under the rules of discovery;

156 (17) records disclosing an attorney's work product, including the mental impressions or
157 legal theories of an attorney or other representative of a governmental entity concerning
158 litigation;

159 (18) records of communications between a governmental entity and an attorney
160 representing, retained, or employed by the governmental entity if the communications would be
161 privileged as provided in Section 78B-1-137;

162 (19) (a) (i) personal files of a state legislator, including personal correspondence to or
163 from a member of the Legislature; and

164 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of
165 legislative action or policy may not be classified as protected under this section; and

166 (b) (i) an internal communication that is part of the deliberative process in connection
167 with the preparation of legislation between:

168 (A) members of a legislative body;

169 (B) a member of a legislative body and a member of the legislative body's staff; or

170 (C) members of a legislative body's staff; and

171 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of
172 legislative action or policy may not be classified as protected under this section;

173 (20) (a) records in the custody or control of the Office of Legislative Research and
174 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated
175 legislation or contemplated course of action before the legislator has elected to support the
176 legislation or course of action, or made the legislation or course of action public; and

177 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the
178 Office of Legislative Research and General Counsel is a public document unless a legislator
179 asks that the records requesting the legislation be maintained as protected records until such
180 time as the legislator elects to make the legislation or course of action public;

181 (21) research requests from legislators to the Office of Legislative Research and
182 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared
183 in response to these requests;

184 (22) drafts, unless otherwise classified as public;

185 (23) records concerning a governmental entity's strategy about collective bargaining or
186 pending litigation;

187 (24) records of investigations of loss occurrences and analyses of loss occurrences that
188 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the
189 Uninsured Employers' Fund, or similar divisions in other governmental entities;

190 (25) records, other than personnel evaluations, that contain a personal recommendation
191 concerning an individual if disclosure would constitute a clearly unwarranted invasion of
192 personal privacy, or disclosure is not in the public interest;

193 (26) records that reveal the location of historic, prehistoric, paleontological, or
194 biological resources that if known would jeopardize the security of those resources or of
195 valuable historic, scientific, educational, or cultural information;

196 (27) records of independent state agencies if the disclosure of the records would
197 conflict with the fiduciary obligations of the agency;

198 (28) records of an institution within the state system of higher education defined in
199 Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions,
200 retention decisions, and promotions, which could be properly discussed in a meeting closed in
201 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of
202 the final decisions about tenure, appointments, retention, promotions, or those students
203 admitted, may not be classified as protected under this section;

204 (29) records of the governor's office, including budget recommendations, legislative
205 proposals, and policy statements, that if disclosed would reveal the governor's contemplated
206 policies or contemplated courses of action before the governor has implemented or rejected
207 those policies or courses of action or made them public;

208 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,
209 revenue estimates, and fiscal notes of proposed legislation before issuance of the final
210 recommendations in these areas;

211 (31) records provided by the United States or by a government entity outside the state

212 that are given to the governmental entity with a requirement that they be managed as protected
213 records if the providing entity certifies that the record would not be subject to public disclosure
214 if retained by it;

215 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body
216 except as provided in Section 52-4-206;

217 (33) records that would reveal the contents of settlement negotiations but not including
218 final settlements or empirical data to the extent that they are not otherwise exempt from
219 disclosure;

220 (34) memoranda prepared by staff and used in the decision-making process by an
221 administrative law judge, a member of the Board of Pardons and Parole, or a member of any
222 other body charged by law with performing a quasi-judicial function;

223 (35) records that would reveal negotiations regarding assistance or incentives offered
224 by or requested from a governmental entity for the purpose of encouraging a person to expand
225 or locate a business in Utah, but only if disclosure would result in actual economic harm to the
226 person or place the governmental entity at a competitive disadvantage, but this section may not
227 be used to restrict access to a record evidencing a final contract;

228 (36) materials to which access must be limited for purposes of securing or maintaining
229 the governmental entity's proprietary protection of intellectual property rights including patents,
230 copyrights, and trade secrets;

231 (37) the name of a donor or a prospective donor to a governmental entity, including an
232 institution within the state system of higher education defined in Section 53B-1-102, and other
233 information concerning the donation that could reasonably be expected to reveal the identity of
234 the donor, provided that:

235 (a) the donor requests anonymity in writing;

236 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be
237 classified protected by the governmental entity under this Subsection (37); and

238 (c) except for an institution within the state system of higher education defined in
239 Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged
240 in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority
241 over the donor, a member of the donor's immediate family, or any entity owned or controlled
242 by the donor or the donor's immediate family;

243 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
244 73-18-13;

245 (39) a notification of workers' compensation insurance coverage described in Section
246 34A-2-205;

247 (40) (a) the following records of an institution within the state system of higher
248 education defined in Section 53B-1-102, which have been developed, discovered, disclosed to,
249 or received by or on behalf of faculty, staff, employees, or students of the institution:

250 (i) unpublished lecture notes;

251 (ii) unpublished notes, data, and information:

252 (A) relating to research; and

253 (B) of:

254 (I) the institution within the state system of higher education defined in Section
255 53B-1-102; or

256 (II) a sponsor of sponsored research;

257 (iii) unpublished manuscripts;

258 (iv) creative works in process;

259 (v) scholarly correspondence; and

260 (vi) confidential information contained in research proposals;

261 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public
262 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

263 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;

264 (41) (a) records in the custody or control of the Office of Legislative Auditor General
265 that would reveal the name of a particular legislator who requests a legislative audit prior to the
266 date that audit is completed and made public; and

267 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
268 Office of the Legislative Auditor General is a public document unless the legislator asks that
269 the records in the custody or control of the Office of Legislative Auditor General that would
270 reveal the name of a particular legislator who requests a legislative audit be maintained as
271 protected records until the audit is completed and made public;

272 (42) records that provide detail as to the location of an explosive, including a map or
273 other document that indicates the location of:

- 274 (a) a production facility; or
- 275 (b) a magazine;
- 276 (43) information contained in the database described in Section 62A-3-311.1;
- 277 (44) information contained in the Management Information System and Licensing
- 278 Information System described in Title 62A, Chapter 4a, Child and Family Services;
- 279 (45) information regarding National Guard operations or activities in support of the
- 280 National Guard's federal mission;
- 281 (46) records provided by any pawn or secondhand business to a law enforcement
- 282 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and
- 283 Secondhand Merchandise Transaction Information Act;
- 284 (47) information regarding food security, risk, and vulnerability assessments performed
- 285 by the Department of Agriculture and Food;
- 286 (48) except to the extent that the record is exempt from this chapter pursuant to Section
- 287 63-2-106, records related to an emergency plan or program prepared or maintained by the
- 288 Division of Homeland Security the disclosure of which would jeopardize:
 - 289 (a) the safety of the general public; or
 - 290 (b) the security of:
 - 291 (i) governmental property;
 - 292 (ii) governmental programs; or
 - 293 (iii) the property of a private person who provides the Division of Homeland Security
 - 294 information;
 - 295 (49) records of the Department of Agriculture and Food relating to the National
 - 296 Animal Identification System or any other program that provides for the identification, tracing,
 - 297 or control of livestock diseases, including any program established under Title 4, Chapter 24,
 - 298 Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Livestock Inspection and
 - 299 Quarantine;
 - 300 (50) as provided in Section 26-39-109:
 - 301 (a) information or records held by the Department of Health related to a complaint
 - 302 regarding a child care program or residential child care which the department is unable to
 - 303 substantiate; and
 - 304 (b) information or records related to a complaint received by the Department of Health

305 from an anonymous complainant regarding a child care program or residential child care; [~~and~~]

306 (51) unless otherwise classified as public under Section 63-2-301 and except as
307 provided under Section 41-1a-116, an individual's home address, home telephone number, or
308 personal mobile phone number, if:

309 (a) the individual is required to provide the information in order to comply with a law,
310 ordinance, rule, or order of a government entity; and

311 (b) the subject of the record has a reasonable expectation that this information will be
312 kept confidential due to:

313 (i) the nature of the law, ordinance, rule, or order; and

314 (ii) the individual complying with the law, ordinance, rule, or order[~~;~~]; and

315 (52) an initial proposal under Title 63M, Chapter 1, Part 24, Government Procurement
316 Private Proposal Program, to the extent not made public by rules made under that chapter.

317 Section 2. Section **63-38f-203** is amended to read:

318 **63-38f-203. Powers and duties of director.**

319 (1) The director, with the approval of the governor, may:

320 (a) by following the procedures and requirements of Title 63, Chapter 38e, Federal
321 Funds Procedures, seek federal grants, loans, or participation in federal programs;

322 (b) enter into lawful contracts or agreements with other states, any chamber of
323 commerce organization, [~~and~~] any service club[~~;~~~~and~~], and a private entity pursuant to Section
324 63M-1-2410; and

325 (c) annually prepare and submit to the governor a budget of the office's financial
326 requirements.

327 (2) If any federal program requires the expenditure of state funds as a condition to
328 participation by the state in any fund, property, or service, with the governor's approval, the
329 director shall expend whatever funds are necessary out of the money provided by the
330 Legislature for the use of the office.

331 Section 3. Section **63-56-102** is amended to read:

332 **63-56-102. Application of chapter.**

333 (1) This chapter applies only to contracts solicited or entered into after the effective
334 date of this chapter unless the parties agree to its application to a contract solicited or entered
335 into prior to the effective date.

336 (2) Except as provided in [~~Section~~] Sections 63-56-103 and 63G-6-408.5, this chapter
337 shall apply to every expenditure of public funds irrespective of their source, including federal
338 assistance, by any state agency under any contract.

339 (3) (a) Only the following sections shall apply to local public procurement units:
340 Sections 63-56-103, 63-56-105, 63-56-301, 63-56-303 through 63-56-420, 63-56-422,
341 63-56-501 through 63-56-602, 63-56-801 through 63-56-806, and 63-56-815 through
342 63-56-819; provided, however, that, except as provided in Sections 63-56-906 and 63-56-907,
343 the jurisdiction of the procurement appeals board is limited to matters involving state agencies.

344 (b) Subsections 63-56-208(1)(b), 63-56-503(4), and 63-56-504(2) also apply to local
345 public procurement units.

346 (c) For the purpose of application of those sections and subsections to a local public
347 procurement unit, "state" shall mean "local public procurement unit," "chief procurement
348 officer" or "head of a purchasing agency" shall mean any person conducting procurement for a
349 local public procurement unit, and "rules and regulations" shall mean ordinances and rules and
350 regulations promulgated by a local public procurement unit to implement or supplement those
351 sections.

352 (d) In addition to the sections and subsections listed above and except as provided in
353 Subsection 17B-1-108(3) relating to local districts, each local public procurement unit shall
354 adopt ordinances relating to the procurement of architect-engineer services not inconsistent
355 with the provisions of Part 7, Architect-Engineer Services.

356 (e) Any other section of this chapter, or its implementing regulations, may be adopted
357 by any local public procurement unit.

358 (f) Any other implementing regulations adopted by local public procurement units may
359 not be inconsistent with the provisions of this chapter.

360 (4) Unless otherwise provided by statute, this chapter does not apply to procurement of
361 real property.

362 Section 4. Section **63F-1-205** is amended to read:

363 **63F-1-205. Approval of acquisitions of information technology.**

364 (1) (a) [~~It~~] Except as provided in Title 63M, Chapter 1, Part 24, Government
365 Procurement Private Proposal Program, in accordance with Subsection (2), the chief
366 information officer shall approve the acquisition by an executive branch agency of:

- 367 (i) information technology equipment;
- 368 (ii) telecommunications equipment;
- 369 (iii) software;
- 370 (iv) services related to the items listed in Subsections (1)(a)(i) through (iii); and
- 371 (v) data acquisition.
- 372 (b) The chief information officer may negotiate the purchase, lease, or rental of private
- 373 or public information technology or telecommunication services or facilities in accordance with
- 374 this section.
- 375 (c) Where practical, efficient, and economically beneficial, the chief information
- 376 officer shall use existing private and public information technology or telecommunication
- 377 resources.
- 378 (2) Before negotiating a purchase, lease, or rental under Subsection (1) for an amount
- 379 that exceeds the value established by the chief information officer by rule in accordance with
- 380 Section 63F-1-206, the chief information officer shall:
- 381 (a) conduct an analysis of the needs of executive branch agencies and subscribers of
- 382 services and the ability of the proposed information technology or telecommunications services
- 383 or supplies to meet those needs; and
- 384 (b) for purchases, leases, or rentals not covered by an existing statewide contract,
- 385 provide in writing to the chief procurement officer in the Division of Purchasing and General
- 386 Services that:
- 387 (i) the analysis required in Subsection (2)(a) was completed; and
- 388 (ii) based on the analysis, the proposed purchase, lease, rental, or master contract of
- 389 services, products, or supplies is practical, efficient, and economically beneficial to the state
- 390 and the executive branch agency or subscriber of services.
- 391 (3) In approving an acquisition described in Subsections (1) and (2), the chief
- 392 information officer shall:
- 393 (a) establish by administrative rule, in accordance with Section 63F-1-206, standards
- 394 under which an agency must obtain approval from the chief information officer before
- 395 acquiring the items listed in Subsections (1) and (2);
- 396 (b) for those acquisitions requiring approval, determine whether the acquisition is in
- 397 compliance with:

398 (i) the executive branch strategic plan;
399 (ii) the applicable agency information technology plan;
400 (iii) the budget for the executive branch agency or department as adopted by the
401 Legislature; and
402 (iv) Title 63, Chapter 56, Utah Procurement Code; and
403 (c) in accordance with Section 63F-1-207, require coordination of acquisitions between
404 two or more executive branch agencies if it is in the best interests of the state.
405 (4) (a) Each executive branch agency shall provide the chief information officer with
406 complete access to all information technology records, documents, and reports:
407 (i) at the request of the chief information officer; and
408 (ii) related to the executive branch agency's acquisition of any item listed in Subsection
409 (1).
410 (b) Beginning July 1, 2006 and in accordance with administrative rules established by
411 the department under Section 63F-1-206, no new technology projects may be initiated by an
412 executive branch agency or the department unless the technology project is described in a
413 formal project plan and the business case analysis has been approved by the chief information
414 officer and agency head. The project plan and business case analysis required by this
415 Subsection (4) shall be in the form required by the chief information officer, and shall include:
416 (i) a statement of work to be done and existing work to be modified or displaced;
417 (ii) total cost of system development and conversion effort, including system analysis
418 and programming costs, establishment of master files, testing, documentation, special
419 equipment cost and all other costs, including overhead;
420 (iii) savings or added operating costs that will result after conversion;
421 (iv) other advantages or reasons that justify the work;
422 (v) source of funding of the work, including ongoing costs;
423 (vi) consistency with budget submissions and planning components of budgets; and
424 (vii) whether the work is within the scope of projects or initiatives envisioned when the
425 current fiscal year budget was approved.
426 (5) (a) The chief information officer and the Division of Purchasing and General
427 Services shall work cooperatively to establish procedures under which the chief information
428 officer shall monitor and approve acquisitions as provided in this section.

429 (b) The procedures established under this section shall include at least the written
430 certification required by Subsection 63-56-204(8).

431 Section 5. Section **63G-6-408.5** is enacted to read:

432 **63G-6-408.5. Procurement for submitted proposal.**

433 (1) As used in this section:

434 (a) "Affected department" is as defined in Section 63M-1-2402.

435 (b) "Board of Education" means the Utah State Board of Education.

436 (c) "Committee" is as defined in Section 63M-1-2402.

437 (d) "Initial proposal" is a proposal submitted by a private entity under Section
438 63M-1-2405.

439 (e) "Private entity" is as defined in Section 63M-1-2402.

440 (f) "Project" is as defined in Section 63M-1-2402.

441 (g) "Project agreement" is the final, signed agreement for a project, as described in
442 Section 63M-1-2410.

443 (2) Within 30 days following receipt by the chief procurement officer of a copy of an
444 initial proposal from the committee in accordance with Subsection 63M-1-2406(5), including
445 any comment, suggestion, or modification adopted by the committee and incorporated into the
446 initial proposal, the chief procurement officer shall issue an invitation for detailed proposals
447 that includes:

448 (a) a description of the project, including the portions of the initial proposal that are not
449 protected records under Title 63, Chapter 2, Government Records Access and Management
450 Act;

451 (b) submittal requirements;

452 (c) reasonable criteria to be used to evaluate each detailed proposal;

453 (d) the relative weight given to the criteria; and

454 (e) the deadline by which a detailed proposal may be submitted, which may not be
455 more than 60 days after the invitation is issued.

456 (3) The board shall make rules providing for:

457 (a) public notice of the invitation for detailed proposals;

458 (b) amendments to the invitation for detailed proposals; and

459 (c) the preparation of a register of detailed proposals received in response to an

460 invitation for detailed proposals under this section.

461 (4) The chief procurement officer may amend a public notice and invitation for detailed
462 proposals following its issuance to include any comments, suggestions, or modifications to the
463 project that the chief procurement officer and the committee consider beneficial to the
464 invitation for detailed proposals or the project.

465 (5) A qualified private entity that submits a detailed proposal shall acknowledge receipt
466 of an amendment issued under Subsection (4).

467 (6) The register of detailed proposals shall be made available for public inspection after
468 the detailed proposals have been submitted to the committee in accordance with Subsection (9).

469 (7) (a) A private entity shall be accorded fair and equal treatment with respect to any
470 opportunity for discussion and revision of detailed proposals.

471 (b) In conducting discussion under Subsection (7)(a), there shall be no disclosure of
472 any information derived from detailed proposals submitted by competing private entities.

473 (8) Revisions to a detailed proposal may be permitted after submission of the detailed
474 proposal if they occur before the chief procurement officer submits the detailed proposals to the
475 committee under Subsection (9).

476 (9) The chief procurement officer shall:

477 (a) review each detailed proposal; and

478 (b) submit all detailed proposals that meet the guidelines established under Subsection
479 63M-1-2408(1) to the committee for review under Section 63M-1-2409.

480 Section 6. Section **63M-1-2401** is enacted to read:

481 **Part 24. Government Procurement Private Proposal Program**

482 **63M-1-2401. Title.**

483 This part is known as "Government Procurement Private Proposal Program."

484 Section 7. Section **63M-1-2402** is enacted to read:

485 **63M-1-2402. Definitions.**

486 As used in this part:

487 (1) "Affected department" means, as applicable, the Board of Education or the
488 Department of Technology Services.

489 (2) "Board" means the Board of Business and Economic Development created under
490 Section 63M-1-301.

- 491 (3) "Board of Education" means the Utah State Board of Education.
- 492 (4) "Chief procurement officer" means the chief procurement officer appointed under
493 Section 63-56-203.
- 494 (5) "Committee" means the proposal review committee created under Section
495 63M-1-2404.
- 496 (6) "Day" means a calendar day.
- 497 (7) "Director" is as defined in Section 63-38f-102.
- 498 (8) "Executive Appropriations Committee" means the Legislature's Executive
499 Appropriations Committee.
- 500 (9) "Information technology" is as defined in Section 63F-1-102.
- 501 (10) "Office" means the Governor's Office of Economic Development created under
502 Section 63-38f-201.
- 503 (11) "Private entity" means a person submitting a proposal under this part for the
504 purpose of entering into a project.
- 505 (12) "Project" means the subject of a proposal or an agreement for the procurement or
506 disposal of:
- 507 (a) information technology or telecommunications products or services; or
508 (b) supplies or services for or on behalf of the Department of Technology Services or
509 the Board of Education.
- 510 (13) "Proposal" means an unsolicited offer by a private entity to undertake a project,
511 including an initial proposal under Section 63M-1-2405 and a detailed proposal under Section
512 63M-1-2408.
- 513 (14) "Services" is as defined in Section 63-56-105.
- 514 (15) "Supplies" is as defined in Section 63-56-105.
- 515 (16) "Telecommunications" is as defined in Section 63F-1-102.
- 516 Section 8. Section **63M-1-2403** is enacted to read:
- 517 **63M-1-2403. Government Procurement Private Proposal Program -- Proposals --**
518 **Rulemaking.**
- 519 (1) There is created within the office the Government Procurement Private Proposal
520 Program.
- 521 (2) In accordance with this part, the board may:

522 (a) accept a proposal for a project;
523 (b) solicit comments, suggestions, and modifications to a project in accordance with
524 Section 63G-6-408.5; and

525 (c) make rules in accordance with Title 63, Chapter 46a, Utah Administrative
526 Rulemaking Act, establishing requirements for the procurement of a project.

527 Section 9. Section **63M-1-2404** is enacted to read:

528 **63M-1-2404. Committee for reviewing proposals -- Appointment -- Accepting or**
529 **rejecting proposal.**

530 (1) The director shall appoint a committee composed of members of the board to
531 review and evaluate a proposal submitted in accordance with this part.

532 (2) The director shall determine the number of board members that constitute a
533 committee.

534 (3) The committee shall, at all times, consist of less than a quorum of the members of
535 the board, as established under Section 63M-1-302.

536 (4) A committee member shall serve on the committee until:

537 (a) replaced by the director; or

538 (b) the committee member ceases to be a member of the board.

539 (5) The director may fill a vacancy among voting members on the committee.

540 (6) The committee shall include the following nonvoting members in addition to the
541 members appointed under Subsection (1):

542 (a) a member of the Senate, appointed by the president of the Senate; and

543 (b) a member of the House of Representatives, appointed by the speaker of the House
544 of Representatives, who may not be from the same political party as the member of the Senate
545 appointed under Subsection (6)(a).

546 (7) (a) A vacancy among legislative members appointed under Subsection (6) shall be
547 filled by the president of the Senate or the speaker of the House of Representatives,
548 respectively.

549 (b) At the time of appointment or reappointment, the president of the Senate and the
550 speaker of the House of Representatives shall consult to ensure that the legislative members
551 appointed under Subsection (6) are not members of the same political party.

552 (8) A committee member is subject to Title 67, Chapter 16, Utah Public Officers' and

553 Employees' Ethics Act, and any additional requirement established by the board in accordance
554 with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

555 (9) The committee shall inform a private entity of the committee's decision to approve
556 or reject a proposal in writing.

557 (10) If the committee, in its sole discretion, accepts a proposal, the proposal shall be
558 evaluated under this part.

559 (11) If the committee, in its sole discretion, rejects a proposal, the committee shall
560 notify the private entity of the reason for the rejection and shall return any remaining portion of
561 the fee required under Section 63M-1-2412.

562 Section 10. Section **63M-1-2405** is enacted to read:

563 **63M-1-2405. Initial proposal -- Requirements.**

564 (1) In accordance with this part, a private entity may at any time submit to the
565 committee an initial proposal for a project.

566 (2) An initial proposal shall include:

567 (a) a conceptual description of the project;

568 (b) a description of the economic benefit of the project to the state and the affected
569 department;

570 (c) information concerning the information technology and telecommunications
571 products and services, currently being provided by the state, that are similar to the project, if
572 applicable;

573 (d) an estimate of the following costs associated with the project:

574 (i) design;

575 (ii) implementation;

576 (iii) operation and maintenance; and

577 (iv) any other related project cost; and

578 (e) the name and address of a person who may be contacted for further information
579 concerning the initial proposal.

580 (3) A private entity submitting an initial proposal under this section shall pay the fee
581 required by Section 63M-1-2412 when the initial proposal is submitted.

582 (4) An initial proposal submitted under this section is a protected record under Title 63,
583 Chapter 2, Government Records Access and Management Act, until the chief procurement

584 officer issues an invitation for detailed proposals in accordance with Section 63G-6-408.5.

585 (5) The committee shall make rules in accordance with Title 63, Chapter 46a, Utah
586 Administrative Rulemaking Act, detailing the portions of an initial proposal that remain
587 protected after the chief procurement officer issues an invitation for detailed proposals.

588 Section 11. Section **63M-1-2406** is enacted to read:

589 **63M-1-2406. Review of initial proposal -- Affected department review.**

590 (1) The committee shall review and evaluate an initial proposal submitted in
591 accordance with:

592 (a) this part; and

593 (b) any rule established by the board under Subsection 63M-1-2403(2)(c).

594 (2) If, within 15 days after receipt of an initial proposal, the committee, in its sole
595 discretion, determines to proceed with the initial proposal, the committee shall submit a copy
596 of the initial proposal to the affected department.

597 (3) An affected department receiving a copy of the initial proposal under Subsection
598 (2) shall review the initial proposal and provide the committee with any comment, suggestion,
599 or modification to the project no later than 15 days after the day on which the committee
600 submits the initial proposal to the affected department.

601 (4) In reviewing an initial proposal, the affected department may share portions of the
602 initial proposal with any other state entity that will be directly affected if the proposal is
603 ultimately adopted, if the confidentiality of the initial proposal is maintained.

604 (5) If, within 30 days after receipt of the affected department's review of the initial
605 proposal under Subsection (3), the committee determines to accept an initial proposal, the
606 committee shall submit a copy of the initial proposal, including any comment, suggestion, or
607 modification adopted by the committee and incorporated into the initial proposal, to:

608 (a) the chief procurement officer in accordance with Section 63G-6-408.5; and

609 (b) the Executive Appropriations Committee, for informational purposes.

610 (6) Before taking any action under Subsection (5), the committee shall consider:

611 (a) any comment, suggestion, or modification to the initial proposal submitted by the
612 affected department in accordance with Subsection (3);

613 (b) the extent to which the project is practical, efficient, and economically beneficial to
614 the state and the affected department; and

615 (c) any other reasonable factor identified by the committee or required by the board by
616 rule.

617 Section 12. Section **63M-1-2407** is enacted to read:

618 **63M-1-2407. Acceptance of initial proposal -- Invitation for detailed proposals.**

619 If an initial proposal is accepted under Section 63M-1-2406, the chief procurement
620 officer shall:

621 (1) take action under Section 63G-6-408.5 to issue an invitation for detailed proposals
622 that includes the portions of the initial proposal that are not protected records under Title 63,
623 Chapter 2, Government Records and Access Management Act; and

624 (2) submit all detailed proposals that meet the guidelines established under Subsection
625 63M-1-2408(1) to:

626 (a) the committee; and

627 (b) the Governor's Office of Planning and Budget.

628 Section 13. Section **63M-1-2408** is enacted to read:

629 **63M-1-2408. Detailed proposal -- Requirements -- Cooperation of affected**
630 **department.**

631 (1) A detailed proposal submitted in response to an invitation for detailed proposals
632 under Section 63M-1-2407 shall include:

633 (a) a conceptual description of the project, including the scope of the work;

634 (b) a description of the economic benefit of the project to the state and the affected
635 department;

636 (c) an estimate of the design, implementation, operation, maintenance, or other costs
637 associated with the project;

638 (d) information concerning the information technology or telecommunication product
639 and service or other supply or service currently provided by the state that is similar to the
640 project being proposed, if applicable;

641 (e) a statement setting forth the private entity's general plan for financing the project,
642 including any appropriation by the Legislature or other public monies and, if applicable, the
643 sources of the private entity's funds and identification of any dedicated revenue source or
644 proposed debt or equity investment on behalf of the private entity;

645 (f) the name and address of the person who may be contacted for further information

646 concerning the detailed proposal;

647 (g) a statement describing the private entity's experience with other similar projects and
648 a description of why the public entity is best qualified for the project; and

649 (h) any other information:

650 (i) reasonably requested by the affected department or the committee, or required by
651 the board by rule; or

652 (ii) that the private entity considers necessary or appropriate to complete or describe
653 the detailed proposal.

654 (2) To assist each private entity in preparing a detailed proposal:

655 (a) the affected department shall provide each private entity with access to all
656 information, records, documents, and reports related to the proposal and the project that are
657 designated public records under Title 63, Chapter 2, Government Records Access and
658 Management Act; and

659 (b) the affected department and the committee shall cooperate with each private entity
660 to assist the private entity in the development of a detailed proposal that is:

661 (i) practical;

662 (ii) efficient; and

663 (iii) economically beneficial to the state and the affected department.

664 (3) The committee or any private entity may choose to terminate the development of
665 the detailed proposal at any time before the submission of the detailed proposal to the chief
666 procurement officer under Section 63G-6-408.5.

667 Section 14. Section **63M-1-2409** is enacted to read:

668 **63M-1-2409. Receipt of detailed proposals -- Economic feasibility report --**
669 **Acceptance of a detailed proposal.**

670 (1) If the committee, in its sole discretion, determines that the detailed proposal does
671 not substantially meet the guidelines established under Subsection 63M-1-2408(1), the
672 committee may elect not to review a detailed proposal.

673 (2) Within 30 days after the day on which it receives a detailed proposal, the
674 Governor's Office of Planning and Budget shall prepare an economic feasibility report
675 containing:

676 (a) information concerning the economic feasibility and effectiveness of the project

677 based upon competent evidence;

678 (b) a dollar amount representing the total estimated fiscal impact of the project to the
679 affected department and the state; and

680 (c) any other matter the committee requests or is required by the board by rule.

681 (3) In determining whether to reject or accept a detailed proposal, the committee shall
682 consider the following factors:

683 (a) any comment, suggestion, or modification offered by the affected department in
684 accordance with Subsection 63M-1-2406(3);

685 (b) the economic feasibility report prepared in accordance with Subsection (2)(a);

686 (c) the source of funding and any resulting constraint necessitated by the funding
687 source;

688 (d) any alternative funding proposal;

689 (e) the extent to which the project is practical, efficient, and economically beneficial to
690 the state and the affected department; and

691 (f) any other reasonable factor identified by the committee or required by the board by
692 rule.

693 (4) If, within 30 days after the day on which the committee receives the economic
694 feasibility report prepared under Subsection (2), the committee accepts a detailed proposal, the
695 accepted detailed proposal shall be submitted to the board for approval.

696 (5) If a private entity who submitted an initial proposal on which an invitation for
697 detailed proposals is based submits a detailed proposal, the committee may not reject the
698 private entity's detailed proposal solely because of cost if the cost of the private entity's detailed
699 proposal is within the amount of the fee the private entity paid for review of the initial proposal
700 above the cost of any other detailed proposal.

701 Section 15. Section **63M-1-2410** is enacted to read:

702 **63M-1-2410. Project agreement.**

703 (1) If, within 30 days after the day on which the committee accepts a detailed proposal
704 under Section 63M-1-2409, the board accepts the detailed proposal, the director shall:

705 (a) prepare a project agreement in consultation with the affected department; and

706 (b) enter into the project agreement with the private entity.

707 (2) A project agreement shall be signed by the director, the affected department, and

708 the private entity within 30 days after the day on which the board approves the detailed
709 proposal under Subsection (1).

710 (3) A project agreement shall include provisions concerning:

711 (a) the scope of the project;

712 (b) the pricing method of the project;

713 (c) the director's or the state's ability to terminate for convenience or for default, and
714 any termination compensation to be paid to the private entity, if applicable;

715 (d) the ability to monitor performance under the contract;

716 (e) the appropriate limits of liability;

717 (f) the appropriate transition of services, if applicable;

718 (g) the exceptions from applicable rules and procedures for the implementation and
719 administration of the project by the affected department, if any;

720 (h) the clauses and remedies applicable to state contracts under Title 63, Chapter 56,
721 Part 6, Contract Clauses; and

722 (i) any other matter reasonably requested by the committee or required by the board by
723 rule.

724 (4) A copy of the signed project agreement shall be submitted to:

725 (a) the affected department; and

726 (b) the Executive Appropriations Committee.

727 (5) The affected department shall implement and administer the project agreement in
728 accordance with rules made under Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
729 except as modified by the project agreement under Subsection (3)(g).

730 Section 16. Section **63M-1-2411** is enacted to read:

731 **63M-1-2411. Advisory committee.**

732 (1) The director may appoint an advisory committee comprised of:

733 (a) representatives of:

734 (i) the affected department for the proposal;

735 (ii) the Department of Human Resource Management; and

736 (iii) the Division of Risk Management;

737 (b) members of the public; and

738 (c) other members.

739 (2) Members of an advisory committee shall receive no compensation or benefits for
740 their services, but may receive per diem and expenses incurred in the performance of the
741 members' official duties at the rates established by the Division of Finance under Sections
742 63A-3-106 and 63A-3-107.

743 (3) Members of an advisory committee may decline to receive per diem and expenses
744 for their service.

745 (4) An advisory committee appointed in accordance with Subsection (1) may not
746 participate in the final decision-making of the committee or the board.

747 (5) The staff, any outside consultant, and any advisory subcommittee shall:

748 (a) provide the committee and the board with professional services, including
749 architectural, engineering, legal, and financial services, to develop rules and guidelines to
750 implement the program described in this part; and

751 (b) assist the committee and the board in:

752 (i) reviewing and commenting on initial proposals;

753 (ii) reviewing and commenting on detailed proposals; and

754 (iii) preparing and negotiating the terms of any project agreement.

755 Section 17. Section **63M-1-2412** is enacted to read:

756 **63M-1-2412. Private Proposal Restricted Account -- Fees.**

757 (1) There is created a restricted account within the General Fund called the Private
758 Proposal Restricted Account.

759 (2) Monies collected from the payment of a fee required by this part shall be deposited
760 in the Private Proposal Restricted Account.

761 (3) Subject to appropriation by the Legislature, the board or the committee may use the
762 monies in the Private Proposal Restricted Account to offset:

763 (a) the expense of hiring staff and engaging any outside consultant; and

764 (b) any expense incurred by the Governor's Office of Planning and Budget in the
765 fulfillment of its duties under this part.

766 (4) The board shall establish a fee in accordance with Section 63-38-3.2 for:

767 (a) reviewing an initial proposal;

768 (b) reviewing any detailed proposal; and

769 (c) preparing any project agreement.

770 (5) The board may waive the fee established under Subsection (4) if the board
771 determines that it is:
772 (a) reasonable; and
773 (b) in the best interest of the state.

H.B. 426 2nd Sub. (Gray) - Government Procurement - Private Proposals

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will require \$20,000 for a 0.25 FTE economist position for the Governor's Office of Planning and Budget and \$100,000 to staff the committee and to hire outside consultants. Revenue generated by fees set by the committee for private entities wishing to submit proposals will cover these costs of implementation. Actual costs and revenues associated with this bill will depend on the number of proposals submitted to the committee and the level to which the committee sets the fees.

	<u>FY 2008 Approp.</u>	<u>FY 2009 Approp.</u>	<u>FY 2010 Approp.</u>	<u>FY 2008 Revenue</u>	<u>FY 2009 Revenue</u>	<u>FY 2010 Revenue</u>
Restricted Funds	\$0	\$120,000	\$120,000	\$0	\$120,000	\$120,000
Total	\$0	\$120,000	\$120,000	\$0	\$120,000	\$120,000

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs for individuals, businesses, or local governments; though businesses and individuals may benefit from increased opportunities to provide services to the State.
