

Senator Wayne L. Niederhauser 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 and allows comments by various entities;
- ▶ addresses the procurement process 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 proposal;
- 34 ▶ provides for the acceptance of a detailed proposal and the preparation and execution
- 35 of a project agreement;
- 36 ▶ creates a restricted special revenue fund, comprised of monies collected from fees
- 37 for submitting 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 **63-56-204**, as last amended by Laws of Utah 2005, Chapter 169 and renumbered and

52 amended by Laws of Utah 2005, Chapter 25

53 **63-56-205**, as renumbered and amended by Laws of Utah 2005, Chapter 25

54 **63-56-302**, as renumbered and amended by Laws of Utah 2005, Chapter 25

55 **63F-1-205**, as last amended by Laws of Utah 2007, Chapter 306

56 ENACTS:

- 57 **63G-6-408.5**, Utah Code Annotated 1953
- 58 **63M-1-2401**, Utah Code Annotated 1953
- 59 **63M-1-2402**, Utah Code Annotated 1953
- 60 **63M-1-2403**, Utah Code Annotated 1953
- 61 **63M-1-2404**, Utah Code Annotated 1953
- 62 **63M-1-2405**, Utah Code Annotated 1953
- 63 **63M-1-2406**, Utah Code Annotated 1953
- 64 **63M-1-2407**, Utah Code Annotated 1953
- 65 **63M-1-2408**, Utah Code Annotated 1953
- 66 **63M-1-2409**, Utah Code Annotated 1953
- 67 **63M-1-2410**, Utah Code Annotated 1953
- 68 **63M-1-2411**, Utah Code Annotated 1953
- 69 **63M-1-2412**, Utah Code Annotated 1953



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

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

73 **63-2-304. Protected records.**

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

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

77 (2) commercial information or nonindividual financial information obtained from a
78 person if:

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

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

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

86 (3) commercial or financial information acquired or prepared by a governmental entity
87 to the extent that disclosure would lead to financial speculations in currencies, securities, or

88 commodities that will interfere with a planned transaction by the governmental entity or cause
89 substantial financial injury to the governmental entity or state economy;

90 (4) records the disclosure of which could cause commercial injury to, or confer a
91 competitive advantage upon a potential or actual competitor of, a commercial project entity as
92 defined in Subsection 11-13-103(4);

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

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

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

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

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

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

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

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

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

118 (a) the public interest in access outweighs the interests in restricting access, including

119 the governmental entity's interest in maximizing the financial benefit of the transaction; or

120 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of
121 the value of the subject property have already been disclosed to persons not employed by or
122 under a duty of confidentiality to the entity;

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

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

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

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

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

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

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

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

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

147 (13) records that, if disclosed, would reveal recommendations made to the Board of
148 Pardons and Parole by an employee of or contractor for the Department of Corrections, the
149 Board of Pardons and Parole, or the Department of Human Services that are based on the

150 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's
151 jurisdiction;

152 (14) records and audit workpapers that identify audit, collection, and operational
153 procedures and methods used by the State Tax Commission, if disclosure would interfere with
154 audits or collections;

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

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

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

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

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

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

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

171 (A) members of a legislative body;

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

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

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

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

180 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the

181 Office of Legislative Research and General Counsel is a public document unless a legislator
182 asks that the records requesting the legislation be maintained as protected records until such
183 time as the legislator elects to make the legislation or course of action public;

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

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

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

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

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

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

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

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

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

211 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,

212 revenue estimates, and fiscal notes of proposed legislation before issuance of the final
213 recommendations in these areas;

214 (31) records provided by the United States or by a government entity outside the state
215 that are given to the governmental entity with a requirement that they be managed as protected
216 records if the providing entity certifies that the record would not be subject to public disclosure
217 if retained by it;

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

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

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

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

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

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

238 (a) the donor requests anonymity in writing;

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

241 (c) except for an institution within the state system of higher education defined in
242 Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged

243 in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority
244 over the donor, a member of the donor's immediate family, or any entity owned or controlled
245 by the donor or the donor's immediate family;

246 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
247 73-18-13;

248 (39) a notification of workers' compensation insurance coverage described in Section
249 34A-2-205;

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

253 (i) unpublished lecture notes;

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

255 (A) relating to research; and

256 (B) of:

257 (I) the institution within the state system of higher education defined in Section
258 53B-1-102; or

259 (II) a sponsor of sponsored research;

260 (iii) unpublished manuscripts;

261 (iv) creative works in process;

262 (v) scholarly correspondence; and

263 (vi) confidential information contained in research proposals;

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

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

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

270 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
271 Office of the Legislative Auditor General is a public document unless the legislator asks that
272 the records in the custody or control of the Office of Legislative Auditor General that would
273 reveal the name of a particular legislator who requests a legislative audit be maintained as

274 protected records until the audit is completed and made public;

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

277 (a) a production facility; or
278 (b) a magazine;

279 (43) information contained in the database described in Section 62A-3-311.1;

280 (44) information contained in the Management Information System and Licensing
281 Information System described in Title 62A, Chapter 4a, Child and Family Services;

282 (45) information regarding National Guard operations or activities in support of the
283 National Guard's federal mission;

284 (46) records provided by any pawn or secondhand business to a law enforcement
285 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and
286 Secondhand Merchandise Transaction Information Act;

287 (47) information regarding food security, risk, and vulnerability assessments performed
288 by the Department of Agriculture and Food;

289 (48) except to the extent that the record is exempt from this chapter pursuant to Section
290 63-2-106, records related to an emergency plan or program prepared or maintained by the
291 Division of Homeland Security the disclosure of which would jeopardize:

292 (a) the safety of the general public; or
293 (b) the security of:

294 (i) governmental property;
295 (ii) governmental programs; or
296 (iii) the property of a private person who provides the Division of Homeland Security
297 information;

298 (49) records of the Department of Agriculture and Food relating to the National
299 Animal Identification System or any other program that provides for the identification, tracing,
300 or control of livestock diseases, including any program established under Title 4, Chapter 24,
301 Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Livestock Inspection and
302 Quarantine;

303 (50) as provided in Section 26-39-109:

304 (a) information or records held by the Department of Health related to a complaint

305 regarding a child care program or residential child care which the department is unable to
306 substantiate; and

307 (b) information or records related to a complaint received by the Department of Health
308 from an anonymous complainant regarding a child care program or residential child care; ~~and~~

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

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

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

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

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

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

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

321 **63-38f-203. Powers and duties of director.**

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

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

325 (b) enter into lawful contracts or agreements with other states, any chamber of
326 commerce organization, ~~and~~ any service club~~[-and]~~, and a private entity pursuant to Section
327 63M-1-2410; and

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

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

334 Section 3. Section **63-56-204** is amended to read:

335 **63-56-204. Duties of chief procurement officer.**

336 Except as otherwise specifically provided in this chapter, the chief procurement officer
337 serves as the central procurement officer of the state and shall:

338 (1) adopt office policies governing the internal functions of the Division of Purchasing
339 and General Services;

340 (2) procure or supervise the procurement of all supplies, services, and construction
341 needed by the state;

342 (3) exercise general supervision and control over all inventories or supplies belonging
343 to the state;

344 (4) establish and maintain programs for the inspection, testing, and acceptance of
345 supplies, services, and construction;

346 (5) prepare statistical data concerning the procurement and usage of all supplies,
347 services, and construction;

348 (6) before June 1, 1990, notify all public procurement units of the requirements of
349 Section 63-56-406 regarding purchases of recycled paper and recycled paper products,
350 recycling requirements, and provide guidelines on the availability of recycled paper and paper
351 products, including the sources of supply and the potential uses of various grades of recycled
352 paper;

353 (7) before July 1, 1992:

354 (a) establish standards and specifications for determining which supplies are
355 considered recycled, based upon his review of current definitions and standards employed by
356 national procurement, product recycling, and other relevant organizations and the federal
357 Environmental Protection Agency;

358 (b) compile and update as necessary the specifications, a list of recycled supplies
359 available on state contract, and sources where the supplies may be obtained;

360 (c) make the compiled information under Subsection (7)(b) available to:

361 (i) all local government entities under Section 11-37-101;

362 (ii) all local health departments under Section 26A-1-108.7;

363 (iii) all procurement officers or other persons responsible for purchasing supplies
364 within the public school system under Title 53A, State System of Public Education;

365 (iv) all procurement officers or other persons responsible for purchasing supplies
366 within the state system of higher education under Title 53B, State System of Higher Education;

367 and

368 (v) all procurement officers or other persons responsible for purchasing supplies for all
369 public procurement units as defined in Section 63-56-105; and

370 (d) present a written report to the Natural Resources, Agriculture, and Environment
371 Interim Committee annually prior to November 30 regarding the purchases of recycled goods
372 on state contracts during the prior fiscal year; and

373 (8) ensure that:

374 (a) before approving a purchase, lease, or rental not covered by an existing statewide
375 contract for information technology or telecommunications supplies or services, the chief
376 information officer and the agency have provided in writing to the division, that the needs
377 analysis required in Section 63F-1-205 was completed, unless the purchase, lease, or rental is
378 approved in accordance with Title 63M, Chapter 1, Part 24, Government Procurement Private
379 Proposal Program; and

380 (b) the oversight authority required by Subsection (8)(a) is not delegated outside the
381 Division of Purchasing and General Services.

382 Section 4. Section **63-56-205** is amended to read:

383 **63-56-205. Delegation of authority.**

384 Subject to rules and regulations, the chief procurement officer may delegate authority to
385 designees or to any department, agency, or official. For a procurement process under Title
386 63M, Chapter 1, Part 24, Government Procurement Private Proposal Program, any delegation
387 by the chief procurement officer under this section shall be made to the Governor's Office of
388 Economic Development.

389 Section 5. Section **63-56-302** is amended to read:

390 **63-56-302. Duty of chief procurement officer in maintaining specifications of**
391 **supplies.**

392 The chief procurement officer shall prepare, issue, revise, maintain, and monitor the use
393 of specifications for supplies, services, and construction required by the state. The chief
394 procurement officer shall obtain expert advice and assistance from personnel of using agencies
395 in the development of specifications and may delegate in writing to a using agency the
396 authority to prepare and utilize its own specifications. For a procurement process under Title
397 63M, Chapter 1, Part 24, Government Procurement Private Proposal Program, any delegation

398 by the chief procurement officer under this section shall be made to the Governor's Office of
399 Economic Development.

400 Section 6. Section **63F-1-205** is amended to read:

401 **63F-1-205. Approval of acquisitions of information technology.**

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

- 405 (i) information technology equipment;
- 406 (ii) telecommunications equipment;
- 407 (iii) software;
- 408 (iv) services related to the items listed in Subsections (1)(a)(i) through (iii); and
- 409 (v) data acquisition.

410 (b) The chief information officer may negotiate the purchase, lease, or rental of private
411 or public information technology or telecommunication services or facilities in accordance with
412 this section.

413 (c) Where practical, efficient, and economically beneficial, the chief information
414 officer shall use existing private and public information technology or telecommunication
415 resources.

416 (2) Before negotiating a purchase, lease, or rental under Subsection (1) for an amount
417 that exceeds the value established by the chief information officer by rule in accordance with
418 Section 63F-1-206, the chief information officer shall:

419 (a) conduct an analysis of the needs of executive branch agencies and subscribers of
420 services and the ability of the proposed information technology or telecommunications services
421 or supplies to meet those needs; and

422 (b) for purchases, leases, or rentals not covered by an existing statewide contract,
423 provide in writing to the chief procurement officer in the Division of Purchasing and General
424 Services that:

- 425 (i) the analysis required in Subsection (2)(a) was completed; and
- 426 (ii) based on the analysis, the proposed purchase, lease, rental, or master contract of
427 services, products, or supplies is practical, efficient, and economically beneficial to the state
428 and the executive branch agency or subscriber of services.

429 (3) In approving an acquisition described in Subsections (1) and (2), the chief
430 information officer shall:

431 (a) establish by administrative rule, in accordance with Section 63F-1-206, standards
432 under which an agency must obtain approval from the chief information officer before
433 acquiring the items listed in Subsections (1) and (2);

434 (b) for those acquisitions requiring approval, determine whether the acquisition is in
435 compliance with:

436 (i) the executive branch strategic plan;

437 (ii) the applicable agency information technology plan;

438 (iii) the budget for the executive branch agency or department as adopted by the
439 Legislature; and

440 (iv) Title 63, Chapter 56, Utah Procurement Code; and

441 (c) in accordance with Section 63F-1-207, require coordination of acquisitions between
442 two or more executive branch agencies if it is in the best interests of the state.

443 (4) (a) Each executive branch agency shall provide the chief information officer with
444 complete access to all information technology records, documents, and reports:

445 (i) at the request of the chief information officer; and

446 (ii) related to the executive branch agency's acquisition of any item listed in Subsection
447 (1).

448 (b) Beginning July 1, 2006 and in accordance with administrative rules established by
449 the department under Section 63F-1-206, no new technology projects may be initiated by an
450 executive branch agency or the department unless the technology project is described in a
451 formal project plan and the business case analysis has been approved by the chief information
452 officer and agency head. The project plan and business case analysis required by this
453 Subsection (4) shall be in the form required by the chief information officer, and shall include:

454 (i) a statement of work to be done and existing work to be modified or displaced;

455 (ii) total cost of system development and conversion effort, including system analysis
456 and programming costs, establishment of master files, testing, documentation, special
457 equipment cost and all other costs, including overhead;

458 (iii) savings or added operating costs that will result after conversion;

459 (iv) other advantages or reasons that justify the work;

460 (v) source of funding of the work, including ongoing costs;
461 (vi) consistency with budget submissions and planning components of budgets; and
462 (vii) whether the work is within the scope of projects or initiatives envisioned when the
463 current fiscal year budget was approved.

464 (5) (a) The chief information officer and the Division of Purchasing and General
465 Services shall work cooperatively to establish procedures under which the chief information
466 officer shall monitor and approve acquisitions as provided in this section.

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

469 Section 7. Section **63G-6-408.5** is enacted to read:

470 **63G-6-408.5. Procurement for submitted proposal.**

471 (1) As used in this section:

472 (a) "Committee" is as defined in Section 63M-1-2402.

473 (b) "Initial proposal" is a proposal submitted by a private entity under Section
474 63M-1-2405.

475 (2) After receipt by the chief procurement officer of a copy of an initial proposal from
476 the committee in accordance with Subsection 63M-1-2406(5), including any comment,
477 suggestion, or modification to the initial proposal, the chief procurement officer shall initiate a
478 procurement process in compliance with Title 63, Chapter 56, Utah Procurement Code.

479 (3) The chief procurement officer or designee shall:

480 (a) review each detailed proposal received in accordance with Title 63M, Chapter 1,
481 Part 24, Government Procurement Private Proposal Program; and

482 (b) submit all detailed proposals that meet the guidelines established under Subsection
483 63M-1-2408(1) to the committee for review under Section 63M-1-2409.

484 (4) For purposes of this chapter, the Governor's Office of Economic Development is
485 considered the purchasing agency for a procurement process under Title 63M, Chapter 1, Part
486 24, Government Procurement Private Proposal Program.

487 Section 8. Section **63M-1-2401** is enacted to read:

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

489 **63M-1-2401. Title.**

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

491 Section 9. Section **63M-1-2402** is enacted to read:

492 **63M-1-2402. Definitions.**

493 As used in this part:

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

496 (2) "Board" means the Board of Business and Economic Development created under
497 Section 63-38f-301.

498 (3) "Board of Education" means the Utah State Board of Education.

499 (4) "Chief procurement officer" means the chief procurement officer appointed under
500 Section 63-56-203.

501 (5) "Committee" means the proposal review committee created under Section
502 63M-1-2404.

503 (6) "Day" means a calendar day.

504 (7) "Director" is as defined in Section 63-38f-102.

505 (8) "Executive Appropriations Committee" means the Legislature's Executive
506 Appropriations Committee.

507 (9) "Information technology" is as defined in Section 63F-1-102.

508 (10) "Office" means the Governor's Office of Economic Development created under
509 Section 63-38f-201.

510 (11) "Private entity" means a person submitting a proposal under this part for the
511 purpose of entering into a project.

512 (12) "Project" means the subject of a proposal or an agreement for the procurement or
513 disposal of:

514 (a) information technology or telecommunications products or services; or

515 (b) supplies or services for or on behalf of the Department of Technology Services or
516 the Board of Education.

517 (13) "Proposal" means an unsolicited offer by a private entity to undertake a project,
518 including an initial proposal under Section 63M-1-2405 and a detailed proposal under Section
519 63M-1-2408.

520 (14) "Services" is as defined in Section 63-56-105.

521 (15) "Supplies" is as defined in Section 63-56-105.

522 (16) "Telecommunications" is as defined in Section 63F-1-102.

523 Section 10. Section **63M-1-2403** is enacted to read:

524 **63M-1-2403. Government Procurement Private Proposal Program -- Proposals --**
525 **Rulemaking.**

526 (1) There is created within the office the Government Procurement Private Proposal
527 Program.

528 (2) In accordance with this part, the board may:

529 (a) accept a proposal for a project;

530 (b) solicit comments, suggestions, and modifications to a project in accordance with
531 Section 63G-6-408.5; and

532 (c) make rules in accordance with Title 63, Chapter 46a, Utah Administrative
533 Rulemaking Act, establishing requirements, including time limits for any action required by the
534 affected department, a directly affected state entity or school district, or the Governor's Office
535 of Planning and Budget, for the procurement of a project to the extent not governed by Title 63,
536 Chapter 56, Utah Procurement Code.

537 Section 11. Section **63M-1-2404** is enacted to read:

538 **63M-1-2404. Committee for reviewing proposals -- Appointment -- Accepting or**
539 **rejecting proposal.**

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

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

544 (3) The committee shall, at all times, consist of less than a quorum of the members of
545 the board, as established under Section 63-38f-301.

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

547 (a) replaced by the director; or

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

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

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

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

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

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

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

562 (8) A committee member is subject to Title 67, Chapter 16, Utah Public Officers' and
563 Employees' Ethics Act, and any additional requirement established by the board in accordance
564 with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

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

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

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

572 Section 12. Section **63M-1-2405** is enacted to read:

573 **63M-1-2405. Initial proposal -- Requirements.**

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

576 (2) An initial proposal shall include:

577 (a) a conceptual description of the project;

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

580 (c) information concerning the products, services, and supplies currently being
581 provided by the state, that are similar to the project;

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

583 (i) design;

584 (ii) implementation;
585 (iii) operation and maintenance; and
586 (iv) any other related project cost; and
587 (e) the name and address of a person who may be contacted for further information
588 concerning the initial proposal.

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

591 (4) An initial proposal submitted under this section is a protected record under Title 63,
592 Chapter 2, Government Records Access and Management Act, until the chief procurement
593 officer initiates a procurement process in accordance with Section 63G-6-408.5.

594 (5) The board shall make rules in accordance with Title 63, Chapter 46a, Utah
595 Administrative Rulemaking Act, detailing the portions of an initial proposal that remain
596 protected after the chief procurement officer initiates a procurement process.

597 Section 13. Section **63M-1-2406** is enacted to read:

598 **63M-1-2406. Review of initial proposal -- Affected department review.**

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

601 (a) this part; and

602 (b) any rule established by the board under Section 63M-1-2403.

603 (2) If the committee, in its sole discretion, determines to proceed with the project, the
604 committee shall submit a copy of the initial proposal to:

605 (a) the affected department; and

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

607 (3) (a) An affected department, directly affected state entity, and school district
608 receiving a copy of the initial proposal under Subsection (2) or (4) shall review the initial
609 proposal and provide the committee with any comment, suggestion, or modification to the
610 project.

611 (b) After receiving an initial proposal, the Governor's Office of Planning and Budget
612 shall prepare an economic feasibility report containing:

613 (i) information concerning the economic feasibility and effectiveness of the project
614 based upon competent evidence;

615 (ii) a dollar amount representing the total estimated fiscal impact of the project to the
616 affected department and the state; and

617 (iii) any other matter the committee requests or is required by the board by rule.

618 (4) In reviewing an initial proposal, the affected department shall share the initial
619 proposal with any other state entity or school district that will be directly affected if the
620 proposal is ultimately adopted, if the confidentiality of the initial proposal is maintained.

621 (5) If the committee determines to proceed with the project, the committee shall submit
622 a copy of the initial proposal, including any comment, suggestion, or modification to the initial
623 proposal, to:

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

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

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

627 (a) any comment, suggestion, or modification to the initial proposal submitted in
628 accordance with Subsection (3);

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

631 (c) the economic feasibility report prepared by the Governor's Office of Planning and
632 Budget; and

633 (d) any other reasonable factor identified by the committee or required by the board by
634 rule.

635 Section 14. Section **63M-1-2407** is enacted to read:

636 **63M-1-2407. Acceptance of initial proposal -- Obtaining detailed proposals.**

637 (1) If an initial proposal is accepted under Section 63M-1-2406, the chief procurement
638 officer shall:

639 (a) take action under Section 63G-6-408.5 to initiate a procurement process to obtain
640 one or more detailed proposals using information from portions of the initial proposal that are
641 not protected records under Title 63, Chapter 2, Government Records and Access Management
642 Act;

643 (b) consult with the committee during the procurement process; and

644 (c) submit all detailed proposals that meet the guidelines established under Subsection
645 63M-1-2408(1), including the detailed proposal submitted by the private entity that submitted

646 the initial proposal for the project, to:

647 (i) the committee; and

648 (ii) the Governor's Office of Planning and Budget.

649 (2) The office is considered the purchasing agency for a procurement process initiated

650 under this part.

651 Section 15. Section **63M-1-2408** is enacted to read:

652 **63M-1-2408. Detailed proposal -- Requirements -- Cooperation of affected**

653 **department.**

654 (1) A detailed proposal submitted in response to a procurement process initiated under
655 Section 63M-1-2407 shall include:

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

657 (b) a description of the economic benefit of the project to the state and the affected

658 department;

659 (c) an estimate of the design, implementation, operation, maintenance, or other costs

660 associated with the project;

661 (d) information concerning the information technology or telecommunication product

662 and service or other supply or service currently provided by the state that is similar to the

663 project being proposed, if applicable;

664 (e) a statement setting forth the private entity's general plan for financing the project,

665 including any appropriation by the Legislature or other public monies and, if applicable, the

666 sources of the private entity's funds and identification of any dedicated revenue source or

667 proposed debt or equity investment on behalf of the private entity;

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

669 concerning the detailed proposal;

670 (g) a statement describing the private entity's experience with other similar projects and

671 a description of why the private entity is best qualified for the project; and

672 (h) any other information:

673 (i) reasonably requested by the affected department or the committee, or required by

674 the board by rule; or

675 (ii) that the private entity considers necessary or appropriate to complete or describe

676 the detailed proposal.

- 677 (2) To assist each private entity in preparing a detailed proposal:
678 (a) the affected department shall provide each private entity with access to all
679 information, records, documents, and reports related to the proposal and the project that are
680 designated public records under Title 63, Chapter 2, Government Records Access and
681 Management Act; and
682 (b) the affected department and the committee shall cooperate with each private entity
683 to assist the private entity in the development of a detailed proposal that is:
684 (i) practical;
685 (ii) efficient; and
686 (iii) economically beneficial to the state and the affected department.
687 (3) The committee or any private entity may choose to terminate the development of
688 the detailed proposal at any time before the submission of the detailed proposal to the chief
689 procurement officer under Section 63G-6-408.5.

690 Section 16. Section **63M-1-2409** is enacted to read:

691 **63M-1-2409. Receipt of detailed proposals -- Economic feasibility report --**
692 **Acceptance of a detailed proposal.**

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

696 (2) (a) After receiving a detailed proposal, the Governor's Office of Planning and
697 Budget shall update the economic feasibility report prepared under Section 63M-1-2406.

698 (b) A detailed proposal that is to be review by the committee shall be submitted to the
699 affected department, a directly affected state entity, and a directly affected school district for
700 comment or suggestion.

701 (3) In determining which, if any, of the detailed proposals to accept, in addition to the
702 proposal evaluation criteria, the committee shall consider the following factors:

703 (a) any comment, suggestion, or modification offered in accordance with Subsection
704 63M-1-2406(3) or Subsection (2)(b);

705 (b) the economic feasibility report updated in accordance with Subsection (2)(a);

706 (c) the source of funding and any resulting constraint necessitated by the funding
707 source;

708 (d) any alternative funding proposal;

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

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

713 (4) (a) If the committee accepts a detailed proposal, the accepted detailed proposal
714 shall be submitted to the board for approval.

715 (b) If the affected department or a directly affected state entity or school district
716 disputes the detailed proposal approved by the board, the Governor's Office of Planning and
717 Budget shall consider the detailed proposal and any comment, suggestion, or modification and
718 determine whether to proceed with a project agreement.

719 (c) If there is no funding for a project that is the subject of a detailed proposal and the
720 committee determines to proceed with the project, the office shall submit a report to the
721 Governor's Office of Planning and Budget and the Executive Appropriations Committee
722 detailing the position of the board, the affected department, a directly affected state entity or
723 school district.

724 (5) A detailed proposal received from a private entity other than the private entity that
725 submitted the initial proposal may not be accepted in place of the detailed proposal offered by
726 the private entity that submitted the initial proposal solely because of a lower cost if the lower
727 cost is within the amount of the fee paid by the private entity that submitted the initial proposal
728 for review of the initial proposal.

729 Section 17. Section **63M-1-2410** is enacted to read:

730 **63M-1-2410. Project agreement.**

731 (1) If the board accepts the detailed proposal, the director shall:

732 (a) prepare a project agreement in consultation with the affected department and any
733 other state entity directly impacted by the detailed proposal; and

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

735 (2) A project agreement shall be signed by the director, the affected department, a
736 directly affected state entity or school district, and the private entity.

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

738 (a) the scope of the project;

- 739 (b) the pricing method of the project;
740 (c) the director's or the state's ability to terminate for convenience or for default, and
741 any termination compensation to be paid to the private entity, if applicable;
742 (d) the ability to monitor performance under the project agreement;
743 (e) the appropriate limits of liability;
744 (f) the appropriate transition of services, if applicable;
745 (g) the exceptions from applicable rules and procedures for the implementation and
746 administration of the project by the affected department, if any;
747 (h) the clauses and remedies applicable to state contracts under Title 63, Chapter 56,
748 Part 6, Contract Clauses; and
749 (i) any other matter reasonably requested by the committee or required by the board by
750 rule.
- 751 (4) A copy of the signed project agreement shall be submitted to:
752 (a) the affected department; and
753 (b) the Executive Appropriations Committee.
- 754 (5) A project agreement is considered a contract under Title 63, Chapter 56, Utah
755 Procurement Code.
- 756 (6) The affected department shall implement and administer the project agreement in
757 accordance with rules made under Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
758 except as modified by the project agreement under Subsection (3)(g).
- 759 Section 18. Section **63M-1-2411** is enacted to read:
760 **63M-1-2411. Advisory committee.**
- 761 (1) The director may appoint an advisory committee comprised of:
762 (a) representatives of:
763 (i) the affected department for the proposal;
764 (ii) a directly affected state entity or school district;
765 (iii) the Department of Human Resource Management; and
766 (iv) the Division of Risk Management;
767 (b) members of the public; and
768 (c) other members.
- 769 (2) Members of an advisory committee shall receive no compensation or benefits for

770 their services, but may receive per diem and expenses incurred in the performance of the
771 members' official duties at the rates established by the Division of Finance under Sections
772 63A-3-106 and 63A-3-107.

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

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

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

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

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

782 (i) reviewing and commenting on initial proposals;

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

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

785 Section 19. Section **63M-1-2412** is enacted to read:

786 **63M-1-2412. Private Proposal Restricted Account -- Fees.**

787 (1) There is created a restricted special revenue fund within the office called the Private
788 Proposal Restricted Special Revenue Fund.

789 (2) Monies collected from the payment of a fee required by this part shall be deposited
790 in the Private Proposal Restricted Special Revenue Fund.

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

793 (a) the expense of hiring staff and engaging any outside consultant to review a
794 proposal under this part; and

795 (b) any expense incurred by the Governor's Office of Planning and Budget or the
796 affected department in the fulfillment of its duties under this part.

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

798 (a) reviewing an initial proposal;

799 (b) reviewing any detailed proposal; and

800 (c) preparing any project agreement.

801 (5) The board may waive the fee established under Subsection (4) if the board
802 determines that it is:
803 (a) reasonable; and
804 (b) in the best interest of the state.

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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</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>	<u>FY 2010</u> <u>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.
