

SURPLUS PROPERTY AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stuart C. Reid

House Sponsor: Ryan D. Wilcox

LONG TITLE

General Description:

This bill modifies the Utah Administrative Services Code by moving the state surplus property program to the Division of Purchasing and General Services.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ moves the state surplus property program from the Division of Fleet Operations of the Department of Administrative Services to the Division of Purchasing and General Services in the same department; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26-1-21, as last amended by Laws of Utah 2008, Chapter 382

63A-2-103, as last amended by Laws of Utah 2009, Chapter 183

ENACTS:

63A-2-101.5, Utah Code Annotated 1953



28 RENUMBERS AND AMENDS:

29 **63A-2-401**, (Renumbered from 63A-9-801, as last amended by Laws of Utah 2008,
30 Chapters 3 and 382)

31 **63A-2-402**, (Renumbered from 63A-9-802, as renumbered and amended by Laws of
32 Utah 1997, Chapter 252)

33 **63A-2-403**, (Renumbered from 63A-9-803, as renumbered and amended by Laws of
34 Utah 1997, Chapter 252)

35 **63A-2-404**, (Renumbered from 63A-9-805, as last amended by Laws of Utah 2001,
36 Chapter 9)

37 **63A-2-405**, (Renumbered from 63A-9-807, as renumbered and amended by Laws of
38 Utah 1997, Chapter 252)

39 **63A-2-406**, (Renumbered from 63A-9-808, as last amended by Laws of Utah 2008,
40 Chapter 382)

41 **63A-2-407**, (Renumbered from 63A-9-808.1, as last amended by Laws of Utah 2005,
42 Chapters 60 and 61)

43 **63A-2-408**, (Renumbered from 63A-9-809, as renumbered and amended by Laws of
44 Utah 1997, Chapter 252)

45 **63A-2-409**, (Renumbered from 63A-9-806, as renumbered and amended by Laws of
46 Utah 1997, Chapter 252)



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

49 Section 1. Section **26-1-21** is amended to read:

50 **26-1-21. Disposal of property by department.**

51 (1) The department may dispose of any personal property owned by it or any of the
52 entities created under Section 26-1-13, in the manner provided in Title 63A, Chapter [9] 2, Part
53 [8] 4, Surplus Property Service.

54 (2) The department may dispose of any real property owned by it or any of the entities
55 created under Section 26-1-13, in the manner provided in Title 65A, Chapter 4 Acquisition and
56 Disposition of Land by State Agencies.

57 Section 2. Section **63A-2-101.5** is enacted to read:

58 **63A-2-101.5. Definitions.**

59 As used in this chapter:

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

62 (2) "Information technology equipment" means equipment that is designed to
63 electronically manipulate, store, or transfer a form of data.

64 (3) "Inventory property" means property in the possession of the division that is
65 available for purchase by an agency or the public.

66 (4) "Judicial district" means a geographic district established by Section 78A-1-102.

67 (5) "Person with a disability" means a person with a severe, chronic disability that:

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

70 (b) is likely to continue indefinitely.

71 (6) "Personal handheld electronic device":

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

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

76 (7) "Property act" means the Federal Property and Administrative Services Act of
77 1949, 40 U.S.C. Sec. 549.

78 (8) (a) "Surplus property" means property that an agency:

79 (i) intends for disposal; and

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

81 (b) "Surplus property" does not include real property.

82 (9) "Transfer" means transfer of surplus property without cash consideration except for
83 a fee described in Subsection 63A-2-401(3)(c).

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

85 **63A-2-103. General services provided -- Subscription by state departments, state**
86 **agencies, and certain local governmental entities -- Fee schedule.**

87 (1) (a) The director of the Division of Purchasing and General Services shall operate,
88 manage, and maintain:

89 (i) a central mailing service; [~~and~~]

90 (ii) an electronic central store system for procuring goods and services[-]; and
 91 (iii) the state surplus property program in accordance with Title 63A, Chapter 2, Part 4,
 92 Surplus Property Services.

93 (b) The director may establish microfilming, duplicating, printing, addressograph, and
 94 other central services.

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

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

101 (3) The director shall:

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

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

106 (ii) obtains the approval of the Legislature, as required by Sections 63J-1-410 and
 107 63J-1-504;

108 (b) when practicable, ensure that the fees are approximately equal to the cost of
 109 providing the services; and

110 (c) periodically conduct a market analysis [~~by July 1, 2005, and periodically thereafter~~]
 111 of fees, which analysis shall include comparison of the division's rates with the fees of other
 112 public or private sector providers where comparable services and rates are reasonably available.

113 Section 4. Section ~~63A-2-401~~, which is renumbered from Section 63A-9-801 is
 114 renumbered and amended to read:

115 **Part 4. Surplus Property Service**

116 [~~63A-9-801~~]. **63A-2-401. State surplus property program -- Definitions --**

117 **Administration.**

118 (1) As used in this [~~section: (a)] part, "agency" means:~~

119 [(†)] (a) the Utah Departments of Administrative Services, Agriculture[-]; and Food,
 120 Alcoholic Beverage Control, Commerce, Community and Culture, Corrections, Workforce

121 Services, Health, Human Resource Management, Human Services, Insurance, Natural
 122 Resources, Public Safety, Technology Services, and Transportation and the Labor
 123 Commission;

124 [(~~ii~~)] (b) the Utah Offices of the Auditor, Attorney General, Court Administrator,
 125 Crime Victim Reparations, Rehabilitation, and Treasurer;

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

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

128 [(~~v~~)] (e) the Career Service Review [~~Board~~] Office;

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

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

131 and

132 [(~~viii~~)] (h) an institution of higher education, its president, and its board of trustees for
 133 purposes of Section [~~63A-9-802~~] 63A-2-402.

134 [(~~b~~)] "~~Division~~" means the Division of Fleet Operations;

135 [(~~c~~)] "~~Information technology equipment~~" means any equipment that is designed to
 136 electronically manipulate, store, or transfer any form of data.];

137 [(~~d~~)] "~~Inventory property~~" means property in the possession of the division that is
 138 available for purchase by an agency or the public.];

139 [(~~e~~)] "~~Judicial district~~" means the geographic districts established by Section
 140 78A-1-102.];

141 [(~~f~~)] (i) "~~Surplus property~~" means property purchased by, seized by, or donated to, an
 142 agency that the agency wishes to dispose of.];

143 [(~~ii~~)] "~~Surplus property~~" does not mean real property.];

144 [(~~g~~)] "~~Transfer~~" means transfer of surplus property without cash consideration.];

145 (2) (a) The division shall make rules establishing a state surplus property program that
 146 meets the requirements of this chapter by following the procedures and requirements of Title
 147 63G, Chapter 3, Utah Administrative Rulemaking Act.

148 (b) [~~Those~~] The rules shall include:

149 (i) a requirement prohibiting the transfer of surplus property from one agency to
 150 another agency without written approval from the division;

151 (ii) procedures and requirements governing division administration requirements that

152 an agency must follow;

153 (iii) requirements governing purchase priorities;

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

155 (v) procedures for collecting bad debts;

156 (vi) requirements and procedures for disposing of firearms;

157 (vii) the elements of the rates or other charges assessed by the division for services and
158 handling;

159 (viii) procedures governing the timing and location of public sales of inventory

160 property; and

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

163 (c) The division shall report all transfers of information technology equipment by state
164 agencies to public schools to the Utah Technology Commission and to the Legislative Interim
165 Education Committee at the end of each fiscal year.

166 (3) In creating and administering the program, the division shall:

167 (a) when conditions, inventory, and demand permit:

168 (i) establish facilities to store inventory property at geographically dispersed locations
169 throughout the state; and

170 (ii) hold public sales of property at geographically dispersed locations throughout the
171 state;

172 (b) establish, after consultation with the agency requesting the sale of surplus property,
173 the price at which the surplus property shall be sold; and

174 (c) transfer proceeds arising from the sale of state surplus property to the agency
175 requesting the sale in accordance with Title 63J, Chapter 1, Budgetary Procedures Act, less [~~an~~
176 ~~amount established by the division by rule~~] a fee approved in accordance with Sections
177 63A-1-114 and 63J-1-410, to pay the costs of administering the surplus property program.

178 (4) Unless specifically exempted from this [~~chapter~~] part by explicit reference to this
179 [~~chapter~~] part, each state agency shall dispose of and acquire surplus property only by
180 participating in the division's program.

181 Section 5. Section **63A-2-402**, which is renumbered from Section 63A-9-802 is
182 renumbered and amended to read:

183 ~~[63A-9-802].~~ **63A-2-402. State surplus property program -- Participation**
 184 **by institutions of higher education.**

185 The Board of Regents shall:

186 (1) implement a policy requiring each institution of higher education to submit to the
 187 division a listing of surplus property available for sale outside the institution, at least 15 days
 188 prior to the intended sale date;

189 (2) supervise and assist compliance by the institutions of higher education with the
 190 requirement of this part; and

191 (3) encourage institutions of higher education to acquire federal surplus property from
 192 the division to reduce expenditures.

193 Section 6. Section **63A-2-403**, which is renumbered from Section 63A-9-803 is
 194 renumbered and amended to read:

195 ~~[63A-9-803].~~ **63A-2-403. Methods of disposition of surplus authorized.**

196 The division may dispose of state surplus property by public auction, sealed bids, or by
 197 other means established by rule in accordance with Title 63G, Chapter 3, Utah Administrative
 198 Rulemaking Act.

199 Section 7. Section **63A-2-404**, which is renumbered from Section 63A-9-805 is
 200 renumbered and amended to read:

201 ~~[63A-9-805].~~ **63A-2-404. Acquisition of federal surplus property -- Powers**
 202 **and duties -- Advisory boards and committees -- Expenditures and contracts --**
 203 **Clearinghouse of information -- Reports.**

204 [~~(1) As used in this section:~~]

205 [~~(a) "Property" includes equipment, materials, books, and other supplies.~~]

206 [~~(b) "Property act" means Section 203(j) of the Federal Property and Administrative~~
 207 ~~Services Act of 1949.]~~

208 [~~(2)~~] (1) The division may:

209 (a) acquire from the United States [~~of America~~] under and in conformance with the
 210 property act any property under the control of any department or agency of the United States
 211 that is usable and necessary for any purposes authorized by federal law;

212 (b) warehouse that property if it is not real property; and

213 (c) distribute that property within [~~Utah~~] this state to:

- 214 (i) tax-supported medical institutions, hospitals, clinics, and health centers;
- 215 (ii) school systems, schools, colleges, and universities;
- 216 (iii) other nonprofit medical institutions, hospitals, clinics, health centers, schools,
217 colleges, and universities that are exempt from taxation under Section 501(c)(3) of the United
218 States Internal Revenue Code of 1954;
- 219 (iv) civil defense organizations;
- 220 (v) political subdivisions; and
- 221 (vi) any other types of institutions or activities that are eligible to acquire the property
222 under federal law.

223 [~~3~~] (2) The division may:

- 224 (a) receive applications from eligible health and educational institutions for the
225 acquisition of federal surplus real property;
- 226 (b) investigate the applications;
- 227 (c) obtain opinions about those applications from the appropriate health or educational
228 authorities of [~~Utah~~] this state;
- 229 (d) make recommendations about the need of the applicant for the property, the merits
230 of the applicant's proposed use of the property, and the suitability of the property for those
231 purposes; and
- 232 (e) otherwise assist in the processing of those applications for acquisition of real and
233 related personal property of the United States under the property act.

234 [~~4~~] (3) The division may appoint advisory boards or committees.

235 [~~5~~] (4) If required by law or regulation of the United States in connection with the
236 disposal of surplus real property and the receipt, warehousing, and distribution of surplus
237 personal property received by the division from the United States, the division may:

- 238 (a) make certifications, take action, and make expenditures;
- 239 (b) enter into contracts, agreements, and undertakings for and in the name of the state
240 including cooperative agreements with the federal agencies providing for use by and exchange
241 between them of the property, facilities, personnel, and services of each by the other;
- 242 (c) require reports; and
- 243 (d) make investigations.

244 [~~6~~] (5) The division shall act as the clearinghouse of information for public and

245 private nonprofit institutions, organizations, and agencies eligible to acquire federal surplus
246 real property to:

247 (a) locate both real and personal property available for acquisition from the United
248 States;

249 (b) ascertain the terms and conditions under which that property may be obtained;

250 (c) receive requests from those institutions, organizations, and agencies and transmit to
251 them all available information in reference to that property; and

252 (d) aid and assist those institutions, organizations, and agencies in every way possible
253 in those acquisitions or transactions.

254 [~~7~~] (6) The division shall:

255 (a) cooperate with the departments or agencies of the United States;

256 (b) file a state plan of operation;

257 (c) operate according to that plan;

258 (d) take the actions necessary to meet the minimum standards prescribed by the
259 property act;

260 (e) make any reports required by the United States or any of its departments or
261 agencies; and

262 (f) comply with the laws of the United States and the regulations of any of the
263 departments or agencies of the United States governing the allocation of, transfer of, use of, or
264 accounting for any property donated to the state.

265 Section 8. Section **63A-2-405**, which is renumbered from Section 63A-9-807 is
266 renumbered and amended to read:

267 ~~[63A-9-807]~~. **63A-2-405. Charges and fees assessed for surplus property.**

268 If approved in accordance with Sections 63A-1-114 and 63J-1-410, the division:

269 (1) [~~The division~~] may assess charges and fees for the acquisition, warehousing,
270 distribution, or transfer of any property of the United States for educational, public health, or
271 civil defense purposes, including research, only if those charges and fees are reasonably related
272 to the division's care and handling costs of acquiring, receipting, warehousing, distributing, or
273 transferring the property[-];

274 (2) [~~The division~~] may reduce or eliminate charges on property that is found not to be
275 usable for the purpose for which it was procured[-]; and

276 (3) ~~[The division]~~ shall limit the charges and fees assessed against real property to the
277 reasonable administrative costs that the division incurred in effecting transfer.

278 Section 9. Section **63A-2-406**, which is renumbered from Section 63A-9-808 is
279 renumbered and amended to read:

280 ~~[63A-9-808].~~ **63A-2-406. Rulemaking on giving priority to state and local**
281 **agencies in purchasing surplus property -- Rulemaking on the sale or use of a personal**
282 **handheld electronic device.**

283 ~~[(1) As used in this section, "personal handheld electronic device":]~~

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

287 ~~[(b) includes a mobile phone, pocket personal computer, personal digital assistant,~~
288 ~~wireless, or similar device.]~~

289 ~~[(2)]~~ In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
290 the division shall make rules:

291 ~~[(a)]~~ (1) giving state and local agencies priority to purchase surplus property for a
292 30-day period except for personal handheld electronic devices under Subsection (2)~~[(b)]~~; and

293 ~~[(b)]~~ (2) allowing the sale of a personal handheld electronic device to a user who:

294 ~~[(i)]~~ (a) is provided the device as part of the user's employment; and

295 ~~[(ii)]~~ (b) subsequently makes a change in employment status including, departure,
296 retirement, or transfer to another agency within state government.

297 Section 10. Section **63A-2-407**, which is renumbered from Section 63A-9-808.1 is
298 renumbered and amended to read:

299 ~~[63A-9-808.1].~~ **63A-2-407. Transfer of information technology equipment**
300 **for persons with a disability.**

301 ~~[(1) As used in this section, "a person with a disability" means a person with a severe,~~
302 ~~chronic disability that:]~~

303 ~~[(a) is attributable to a mental or physical impairment or a combination of mental and~~
304 ~~physical impairments; and]~~

305 ~~[(b) is likely to continue indefinitely.]~~

306 ~~[(2)]~~ (1) The division may transfer information technology equipment, or authorize the

307 transfer of technology equipment by an agency, to a nonprofit entity for distribution to and use
308 by a person with a disability.

309 ~~[(3)]~~ (2) Interagency transfers and sales of surplus property to state and local agencies
310 within the 30-day period under Section ~~[63A-9-808]~~ 63A-2-406 shall have priority over
311 transfers under Subsection ~~[(2)]~~ (1).

312 ~~[(4)]~~ (3) The division shall annually report to the Division of Services for People With
313 Disabilities the:

314 (a) names of the nonprofit entities receiving transfers under Subsection ~~[(2)]~~ (1); and

315 (b) types and amounts of equipment received.

316 Section 11. Section **63A-2-408**, which is renumbered from Section 63A-9-809 is
317 renumbered and amended to read:

318 ~~[63A-9-809]~~. **63A-2-408. Authority of state or local subdivision to receive**
319 **property -- Revocation of authority of officer.**

320 (1) Notwithstanding any other provision of law, the governing board or the executive
321 director of any state department, instrumentality, or agency or the legislative body of any city,
322 county, school district, or other political subdivision may by order or resolution give any officer
323 or employee the authority to:

324 (a) secure the transfer to it of surplus property through the division under the
325 ~~[provisions of Section 203(j) of the Federal Property and Administrative Services Act of 1949,~~
326 ~~as amended]~~ the property act; and

327 (b) obligate the state or political subdivision and its funds to the extent necessary to
328 comply with the terms and conditions of those transfers.

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

331 (a) the order or resolution is revoked; and

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

333 Section 12. Section **63A-2-409**, which is renumbered from Section 63A-9-806 is
334 renumbered and amended to read:

335 ~~[63A-9-806]~~. **63A-2-409. Bonds.**

336 The executive director of the Department of Administrative Services may bond any
337 person employed by the division who handles money, signs checks, or receives or distributes

338 surplus property.

Legislative Review Note
as of 1-26-11 9:03 AM

Office of Legislative Research and General Counsel