

1 **STATE SURPLUS PROPERTY PROGRAM AMENDMENTS**

2 2013 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Todd Weiler**

5 House Sponsor: Brad R. Wilson

7 **LONG TITLE**

8 **General Description:**

9 This bill amends Title 63A, Chapter 2, Part 4, Surplus Property Service, by providing
10 for the administration of the majority of the state surplus property program by a person
11 in the private sector, modifying other aspects of the state surplus property program, and
12 granting an agency permission to directly divest itself of state surplus property under
13 certain circumstances.

14 **Highlighted Provisions:**

15 This bill:

- 16 ▶ defines terms;
- 17 ▶ modifies, and places limitations on, rulemaking authority of the Division of
18 Purchasing and General Services;
- 19 ▶ permits an agency to directly transfer surplus property to another agency without
20 obtaining approval from the division;
- 21 ▶ requires the division to contract with a person in the private sector to administer the
22 majority of the state surplus property program;
- 23 ▶ except for the percentage of a sale that the contractor is entitled to keep, prohibits
24 the division and the state surplus property contractor from assessing charges or fees
25 to an agency for the acquisition, warehousing, distribution, sale, transfer, or
26 handling of state surplus property;
- 27 ▶ describes the duties of, and the requirements imposed on, the state surplus property



28 contractor;

29 ▶ permits an agency to donate state surplus property to a charitable organization under
30 certain circumstances;

31 ▶ provides for disposal or destruction by an agency of state surplus property as waste;

32 and

33 ▶ makes technical changes.

34 **Money Appropriated in this Bill:**

35 None

36 **Other Special Clauses:**

37 None

38 **Utah Code Sections Affected:**

39 AMENDS:

40 **63A-2-101.5**, as enacted by Laws of Utah 2011, Chapter 207

41 **63A-2-103**, as last amended by Laws of Utah 2011, Chapter 207

42 **63A-2-401**, as last amended by Laws of Utah 2012, Chapters 212 and 369

43 **63A-2-402**, as renumbered and amended by Laws of Utah 2011, Chapter 207

44 **63A-2-404**, as renumbered and amended by Laws of Utah 2011, Chapter 207

45 **63A-2-405**, as renumbered and amended by Laws of Utah 2011, Chapter 207

46 **63A-2-408**, as renumbered and amended by Laws of Utah 2011, Chapter 207

47 **63A-2-409**, as enacted by Laws of Utah 2012, Chapter 427

48 ENACTS:

49 **63A-2-410**, Utah Code Annotated 1953

50 **63A-2-411**, Utah Code Annotated 1953

51 REPEALS:

52 **63A-2-403**, as renumbered and amended by Laws of Utah 2011, Chapter 207



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

55 Section 1. Section **63A-2-101.5** is amended to read:

56 **63A-2-101.5. Definitions.**

57 As used in this chapter:

58 (1) "Division" means the Division of Purchasing and General Services created under

59 Section 63A-2-101.

60 (2) "Federal surplus property" means surplus property of the federal government of the
61 United States.

62 [~~2~~] (3) "Information technology equipment" means equipment that is designed to
63 electronically manipulate, store, or transfer a form of data.

64 [~~3~~] (4) "Inventory property" means property in the possession of the division that is
65 available for purchase by an agency or the public.

66 [~~4~~] (5) "Judicial district" means a geographic district established by Section
67 78A-1-102.

68 [~~5~~] (6) "Person with a disability" means a person with a severe, chronic disability
69 that:

70 (a) is attributable to a mental or physical impairment or a combination of mental and
71 physical impairments; and

72 (b) is likely to continue indefinitely.

73 [~~6~~] (7) "Personal handheld electronic device":

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

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

78 [~~7~~] (8) "Property act" means the Federal Property and Administrative Services Act of
79 1949, 40 U.S.C. Sec. 549.

80 (9) "State surplus property" means surplus property that is not federal surplus property.

81 (10) "State surplus property contractor" means the person described in Section
82 63A-2-410 that the state contracts with to administer the state's program for the disposition of
83 state surplus property.

84 [~~8~~] (11) (a) "Surplus property" means property that an agency:

85 (i) intends [~~for disposal~~] to divest itself of; and

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

87 (b) "Surplus property" does not include:

88 (i) real property; or

89 (ii) an aluminum can or an item made primarily of paper, plastic, or cardboard that is:

- 90 (A) discarded; and
- 91 (B) recyclable.

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

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

95 **63A-2-103. General services provided -- Subscription by state departments, state**
 96 **agencies, and certain local governmental entities -- Fee schedule.**

97 (1) ~~[(a)]~~ The director of the division:

98 (a) shall operate, manage, and maintain:

99 (i) a central mailing service; and

100 (ii) an electronic central store system for procuring goods and services; ~~[and]~~

101 ~~[(iii) the state]~~

102 (b) shall manage the Utah surplus property program in accordance with Part 4, Surplus
 103 Property Services[-]; and

104 ~~[(b) The director]~~

105 (c) may establish microfilming, duplicating, printing, addressograph, and other central
 106 services.

107 (2) (a) Each state department and agency shall subscribe to all of the services described
 108 in Subsections (1)(a)(i) and (ii), unless the director delegates the director's authority to a
 109 department or agency under Section 63A-2-104.

110 (b) An institution of higher education, school district, or political subdivision of the
 111 state may subscribe to one or more of the services described in Subsections (1)(a)(i) and (ii).

112 (3) The director shall:

113 (a) except as provided in Part 4, Surplus Property Services, prescribe a schedule of fees
 114 to be charged for all services provided by the division to any department or agency after the
 115 director:

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

118 (ii) obtains the approval of the Legislature, as required by Sections 63J-1-410 and
 119 63J-1-504;

120 (b) when practicable, ensure that the fees are approximately equal to the cost of

121 providing the services; and

122 (c) periodically conduct a market analysis of fees, which analysis shall include
123 comparison of the division's rates with the fees of other public or private sector providers
124 where comparable services and rates are reasonably available.

125 Section 3. Section **63A-2-401** is amended to read:

126 **63A-2-401. Utah surplus property program -- Definitions -- Administration.**

127 (1) As used in this part, "agency" means:

128 (a) the Utah Departments of Administrative Services, Agriculture and Food, Alcoholic
129 Beverage Control, Commerce, Heritage and Arts, Corrections, Workforce Services, Health,
130 Human Resource Management, Human Services, Insurance, Natural Resources, Public Safety,
131 Technology Services, and Transportation and the Labor Commission;

132 (b) the Utah Offices of the Auditor, Attorney General, Court Administrator, Utah
133 Office for Victims of Crime, Rehabilitation, and Treasurer;

134 (c) the Public Service Commission and State Tax Commission;

135 (d) the State Boards of Education, Pardons and Parole, and Regents;

136 (e) the Career Service Review Office;

137 (f) other state agencies designated by the governor;

138 (g) the legislative branch, the judicial branch, and the State Board of Regents; and

139 (h) an institution of higher education, its president, and its board of trustees for
140 purposes of Section 63A-2-402.

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

144 (b) The rules shall include:

145 ~~[(i) a requirement prohibiting the transfer of surplus property from one agency to
146 another agency without written approval from the division;]~~

147 (i) procedures and requirements for transferring surplus property directly from one
148 agency to another agency;

149 (ii) procedures and requirements governing division administration requirements that
150 an agency must follow;

151 (iii) requirements governing purchase priorities;

152 (iv) requirements governing accounting, reimbursement, and payment procedures;
 153 [~~(v) procedures for collecting bad debts;~~]
 154 [~~(vi)~~ (v) requirements and procedures for [~~disposing~~] the disposition of firearms;
 155 [~~(vii) the elements of the rates or other charges assessed by the division for services~~
 156 ~~and handling;~~]
 157 [~~(viii)~~ (vi) procedures governing the timing and location of public sales of [~~inventory~~]
 158 federal surplus property; and
 159 [~~(ix)~~ (vii) procedures governing the transfer of information technology equipment by
 160 state agencies directly to public schools.
 161 (c) Except as it relates to federal surplus property, the rules described in Subsection
 162 (2)(b)(i) may not require approval by the division, the director of the division, or any other
 163 person, for an agency to transfer surplus property directly to another agency.
 164 [~~(e)~~ (d) The division shall report all transfers of information technology equipment by
 165 state agencies to public schools to the Legislative Education Interim Committee at the end of
 166 each fiscal year.
 167 (3) In creating and administering the program, as it relates to federal surplus property
 168 only, the division shall [~~(a)~~], when conditions, inventory, and demand permit:
 169 [(i) (a) establish facilities to store inventory property at geographically dispersed
 170 locations throughout the state; and
 171 [(ii) (b) hold public sales of property at geographically dispersed locations throughout
 172 the state[;].
 173 [~~(b) establish, after consultation with the agency requesting the sale of surplus~~
 174 ~~property, the price at which the surplus property shall be sold; and]~~
 175 [~~(c) transfer proceeds arising from the sale of state surplus property to the agency~~
 176 ~~requesting the sale in accordance with Title 63J, Chapter 1, Budgetary Procedures Act, less a~~
 177 ~~fee approved in accordance with Sections 63A-1-114 and 63J-1-410, to pay the costs of~~
 178 ~~administering the surplus property program.]
 179 (4) [~~Unless specifically exempted from~~] Except as otherwise expressly provided in this
 180 part, or by explicit reference to this part, each state agency shall [~~dispose of~~] divest and acquire
 181 surplus property only by participating in the division's program.
 182 Section 4. Section **63A-2-402** is amended to read:~~

183 **63A-2-402. Utah surplus property program -- Participation by institutions of**
184 **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~~] state surplus property contractor a listing of surplus property available for sale
188 outside the institution, at least 15 days 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 5. Section **63A-2-404** is amended to read:

194 **63A-2-404. Acquisition of federal surplus property -- Powers and duties --**
195 **Advisory boards and committees -- Expenditures and contracts -- Clearinghouse of**
196 **information -- Reports.**

197 (1) The division may:

198 (a) acquire from the United States under and in conformance with the property act any
199 federal surplus property under the control of any department or agency of the United States that
200 is usable and necessary for any purposes authorized by federal law;

201 (b) warehouse [~~that~~] federal surplus property if it is not real property; and

202 (c) distribute [~~that~~] federal surplus property within this state to:

203 (i) tax-supported medical institutions, hospitals, clinics, and health centers;

204 (ii) school systems, schools, colleges, and universities;

205 (iii) other nonprofit medical institutions, hospitals, clinics, health centers, schools,
206 colleges, and universities that are exempt from taxation under Section 501(c)(3) of the United
207 States Internal Revenue Code of 1954;

208 (iv) civil defense organizations;

209 (v) political subdivisions; and

210 (vi) any other types of institutions or activities that are eligible to acquire the federal
211 surplus property under federal law.

212 (2) The division may:

213 (a) receive applications from eligible health and educational institutions for the

214 acquisition of federal surplus real property;

215 (b) investigate the applications;

216 (c) obtain opinions about those applications from the appropriate health or educational

217 authorities of this state;

218 (d) make recommendations about the need of the applicant for the property, the merits

219 of the applicant's proposed use of the property, and the suitability of the property for those

220 purposes; and

221 (e) otherwise assist in the processing of those applications for acquisition of real and

222 related personal property of the United States under the property act.

223 (3) The division may appoint advisory boards or committees.

224 (4) If required by law or regulation of the United States in connection with the

225 [~~disposal~~] disposition of surplus real property and the receipt, warehousing, and distribution of

226 surplus personal property received by the division from the United States, the division may:

227 (a) make certifications, take action, and make expenditures;

228 (b) enter into contracts, agreements, and undertakings for and in the name of the state

229 including cooperative agreements with the federal agencies providing for use by and exchange

230 between them of the property, facilities, personnel, and services of each by the other;

231 (c) require reports; and

232 (d) make investigations.

233 (5) The division shall act as the clearinghouse of information for public and private

234 nonprofit institutions, organizations, and agencies eligible to acquire federal surplus real

235 property to:

236 (a) locate both real and personal property available for acquisition from the United

237 States;

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

239 (c) receive requests from those institutions, organizations, and agencies and transmit to

240 them all available information in reference to that property; and

241 (d) aid and assist those institutions, organizations, and agencies in every way possible

242 in those acquisitions or transactions.

243 (6) The division shall:

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

- 245 (b) file a state plan of operation;
- 246 (c) operate according to that plan;
- 247 (d) take the actions necessary to meet the minimum standards prescribed by the
- 248 property act;
- 249 (e) make any reports required by the United States or any of its departments or
- 250 agencies; and
- 251 (f) comply with the laws of the United States and the regulations of any of the
- 252 departments or agencies of the United States governing the allocation of, transfer of, use of, or
- 253 accounting for any property donated to the state.

254 Section 6. Section **63A-2-405** is amended to read:

255 **63A-2-405. Charges and fees assessed for surplus property.**

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

257 ~~[(1)]~~ (a) may assess charges and fees for the acquisition, warehousing, distribution, or

258 transfer of ~~[any property of the United States]~~ federal surplus property for educational, public

259 health, or civil defense purposes, including research, only if those charges and fees are

260 reasonably related to the division's care and handling costs of acquiring, receipting,

261 warehousing, distributing, or transferring the federal surplus property; and

262 ~~[(2)]~~ (b) may reduce or eliminate charges on federal surplus property that is found not

263 to be usable for the purpose for which it was procured~~[-; and]~~.

264 ~~[(3)] shall limit the charges and fees assessed against real property to the reasonable~~

265 ~~administrative costs that the division incurred in effecting transfer.]~~

266 (2) Except as provided in Subsection 63A-2-410(2)(a), neither the division nor the

267 state surplus property contractor may assess charges or fees to an agency for the acquisition,

268 warehousing, distribution, sale, transfer, or handling of state surplus property.

269 Section 7. Section **63A-2-408** is amended to read:

270 **63A-2-408. Authority of state or local subdivision to receive property --**

271 **Revocation of authority of officer.**

272 (1) Notwithstanding any other provision of law, the governing board or the executive

273 director of any state department, instrumentality, or agency or the legislative body of any city,

274 county, school district, or other political subdivision may by order or resolution give any officer

275 or employee the authority to:

276 (a) as it relates to federal surplus property;
 277 ~~[(a)]~~ (i) secure the transfer to it of federal surplus property through the division under
 278 ~~[the]~~ the property act; and
 279 ~~[(b)]~~ (ii) obligate the state or political subdivision and its funds to the extent necessary
 280 to comply with the terms and conditions of those transfers[-]; and
 281 (b) as it relates to state surplus property;
 282 (i) secure the direct transfer of surplus property to it; and
 283 (ii) obligate the state or political subdivision and its funds to the extent necessary to
 284 comply with the terms and conditions of those transfers.

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

- 287 (a) the order or resolution is revoked; and
- 288 (b) the division has received written notice of the revocation.

289 Section 8. Section **63A-2-409** is amended to read:

290 **63A-2-409. Disposition of certain surplus property by the legislative branch.**

291 This part does not apply to ~~[disposal]~~ disposition by the legislative branch of surplus
 292 property that is information technology equipment or a personal handheld electronic device, if
 293 the Legislative Management Committee, by rule, establishes its own policy for ~~[disposal]~~
 294 disposition, by the legislative branch, of surplus property that is information technology
 295 equipment or a personal handheld electronic device.

296 Section 9. Section **63A-2-410** is enacted to read:

297 **63A-2-410. State surplus property contractor -- Deposit of proceeds.**

298 (1) The division shall, after issuing a request for proposals, award a contract to a
 299 person in the private sector to administer the state's program for disposition of state surplus
 300 property.

301 (2) The contract shall:

302 (a) provide that the sole source of payment to the contractor shall be a percentage of
 303 the amount for which the contractor sells state surplus property;

304 (b) require the contractor to pay the amount remaining from the sale of an item of state
 305 surplus property, after deducting the percentage described in Subsection (2)(a), to the division;

306 (c) provide that the contractor may sell state surplus property by auction, bid, or other

- 307 manner designed to get the best price available for the state surplus property;
308 (d) prohibit the contractor from engaging in the sale of state surplus property in a
309 manner that would constitute a conflict of interest; and
310 (e) require regular and detailed accounting to the division of:
311 (i) the receipt and sale of state surplus property; and
312 (ii) the receipt and payment of funds by the contractor.
313 (3) The contractor may not:
314 (a) charge for the storage of state surplus property;
315 (b) administer the direct transfer of state surplus property from one agency to another
316 agency;
317 (c) administer the disposal or destruction, by an agency, of state surplus property as
318 waste;
319 (d) administer the donation by an agency of state surplus property to a charity; or
320 (e) administer the disposition of state surplus property under Section 63A-2-406,
321 63A-2-407, 63A-2-408, or 63A-2-409.
322 (4) The division shall transfer the money received under Subsection (2)(b), with
323 respect to the sale of a particular item of state surplus property, to the agency that requested the
324 sale of the particular item of state surplus property, in accordance with Title 63J, Chapter 1,
325 Budgetary Procedures Act.
326 Section 10. Section **63A-2-411** is enacted to read:
327 **63A-2-411. Donation of state surplus property -- Disposal or destruction of state**
328 **surplus property as waste.**
329 (1) An agency may, without obtaining approval by the division, the director of the
330 division, or any other person, donate state surplus property to a charitable organization, or
331 dispose of or destroy state surplus property as waste, if:
332 (a) the state surplus property has no value;
333 (b) the state surplus property fails to sell at auction;
334 (c) the cost of selling the state surplus property is greater than or equal to the value of
335 the state surplus property;
336 (d) the state surplus property is no longer usable;
337 (e) the state surplus property is damaged and cannot be repaired;

338 (f) the state surplus property is damaged and the cost of repair is greater than or equal
339 to the value of the state surplus property in a repaired state; or

340 (g) the state surplus property can be replaced for less than the cost of repairing the state
341 surplus property.

342 (2) If the value of state surplus property disposed of or destroyed as waste exceeded
343 \$100 when the state surplus property was acquired by the agency, the agency shall, within 10
344 business days after the day on which the state surplus property is disposed of or destroyed,
345 provide documentation to the division that includes:

346 (a) a description of the state surplus property;

347 (b) the value of the state surplus property at the time it was acquired by the agency; and

348 (c) the reasons, described in Subsection (1), for which the state surplus property was
349 disposed of as waste or destroyed as waste.

350 **Section 11. Repealer.**

351 This bill repeals:

352 **Section 63A-2-403, Methods of disposition of surplus authorized.**

Legislative Review Note
as of 2-8-13 4:28 PM

Office of Legislative Research and General Counsel