

SB0068S01 compared with SB0068

~~{deleted text}~~ shows text that was in SB0068 but was deleted in SB0068S01.

inserted text shows text that was not in SB0068 but was inserted into SB0068S01.

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Senator Todd Weiler proposes the following substitute bill:

STATE SURPLUS PROPERTY PROGRAM AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: ~~{_____}~~ Michael S. Kennedy

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ modifies, and places limitations on, rulemaking authority of the Division of Purchasing and General Services;
- ▶ permits an agency to directly transfer surplus property to another agency without

SB0068S01 compared with SB0068

obtaining approval from the division;

- ▶ requires the division to contract with a person in the private sector to administer the majority of the state surplus property program;
- ▶ ~~{except for the percentage of a sale that the contractor is entitled to keep, prohibits the division and the state surplus property contractor from}~~ modifies provisions relating to assessing charges or fees to an agency for the acquisition, warehousing, distribution, sale, transfer, or handling of state surplus property;
- ▶ describes the duties of, and the requirements imposed on, the state surplus property contractor;
- ▶ ~~{permits}~~ grants rulemaking authority to the division to permit an agency to donate state surplus property to a charitable organization under certain circumstances ~~{~~
→ ~~provides for disposal}~~ or to dispose of, or ~~{destruction by an agency of state}~~ destroy surplus property as waste; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

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

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

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

ENACTS:

63A-2-410, Utah Code Annotated 1953

63A-2-411, Utah Code Annotated 1953

SB0068S01 compared with SB0068

REPEALS:

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

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

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

63A-2-101.5. Definitions.

As used in this chapter:

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

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

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

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

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

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

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

(b) is likely to continue indefinitely.

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

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

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

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

(9) "State surplus property" means surplus property that is not:

(a) a vehicle; or

SB0068S01 compared with SB0068

(b) federal surplus property.

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

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

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

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

(b) "Surplus property" does not include:

(i) real property; or

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

(A) discarded; and

(B) recyclable.

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

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

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

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

(a) shall operate, manage, and maintain:

(i) a central mailing service; and

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

~~[(iii) the state]~~

(b) shall ~~manage the Utah~~, except when a state surplus property contractor administers the state's program for disposition of state surplus property, operate, manage, and maintain the state surplus property program;

(c) shall, when a state surplus property contractor administers the state's program for disposition of state surplus property, oversee the state surplus property contractor's administration of the state surplus property program in accordance with Part 4, Surplus Property Services~~[-];~~ and

~~[(b) The director]~~

~~[(c) d]~~ may establish microfilming, duplicating, printing, addressograph, and other

SB0068S01 compared with SB0068

central services.

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

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

(3) The director shall:

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

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

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

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

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

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

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

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

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

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

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

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

(e) the Career Service Review Office;

SB0068S01 compared with SB0068

(f) other state agencies designated by the governor;
(g) the legislative branch, the judicial branch, and the State Board of Regents; and
(h) an institution of higher education, its president, and its board of trustees for purposes of Section 63A-2-402.

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

(b) The rules shall include:

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

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

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

(iii) requirements governing purchase priorities;

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

~~[(v)]~~ except as provided in Subsection (2)(e), procedures for collecting bad debts; ~~[(v)]~~

~~[(vi)]~~ ~~[(v)]~~ requirements and procedures for ~~[disposing]~~ the disposition of firearms;

~~[(vii)]~~ except as provided in Subsection (2)(e), the elements of the rates or other charges assessed by the division for services and handling; ~~[(vii)]~~

~~[(viii)]~~ ~~[(vii)]~~ except as provided in Subsection (2)(e), ~~[(vii)]~~ procedures governing the timing and location of public sales of ~~[inventory]~~ surplus property; and

~~[(ix)]~~ ~~[(viii)]~~ procedures governing the transfer of information technology equipment by state agencies directly to public schools.

(c) Except as it relates to a vehicle or federal surplus property, the rules described in Subsection (2)(b)(i) may not require approval by the division, the director of the division, or any other person, for an agency to transfer surplus property directly to another agency.

~~[(c)]~~ (d) The division shall report all transfers of information technology equipment by state agencies to public schools to the Legislative Education Interim Committee at the end of each fiscal year.

(e) When a state surplus property contractor administers the state's program for

SB0068S01 compared with SB0068

disposition of state surplus property:

(i) rules made under the rulemaking authority described in Subsections (2)(b)(v) and (vii) apply only to surplus vehicles; and

(ii) rules made under the rulemaking authority described in Subsection (2)(b)(viii) apply only to surplus vehicles and federal surplus property.

(3) In creating and administering the program, as it relates to surplus vehicles and federal surplus property only, the division shall~~[-(a)]~~, when conditions, inventory, and demand permit:

~~[(+)]~~ (a) establish facilities to store inventory property at geographically dispersed locations throughout the state; and

~~[(+)]~~ (b) hold public sales of property at geographically dispersed locations throughout the state~~{+};{+}~~

~~{+}~~(c) except as provided in Subsection (3)(d):

~~[(b)]~~ (i) establish, after consultation with the agency requesting the sale of surplus property, the price at which the surplus property shall be sold; and~~{+}~~

~~[(e)]~~ (ii) transfer proceeds arising from the sale of state surplus property to the agency requesting the sale in accordance with Title 63J, Chapter 1, Budgetary Procedures Act, less a fee approved in accordance with Sections 63A-1-114 and 63J-1-410, to pay the costs of administering the surplus property program.~~{+}~~

(d) When a state surplus property contractor administers the state's program for disposition of state surplus property, the provisions on Subsection (3)(c) only apply to surplus vehicles.

(4) ~~[Unless specifically exempted from]~~ Except as otherwise expressly provided in this part, or by explicit reference to this part, each state agency shall ~~[dispose of]~~ divest and acquire surplus property only by participating in the division's program.

Section 4. Section ~~{63A-2-402}~~ 63A-2-404 is amended to read:

~~{~~ 63A-2-402. Utah surplus property program -- Participation by institutions of higher education:

~~_____~~ The Board of Regents shall:

~~_____~~ (1) implement a policy requiring each institution of higher education to submit to the [division] state surplus property contractor a listing of surplus property available for sale

SB0068S01 compared with SB0068

~~outside the institution, at least 15 days prior to the intended sale date;~~

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

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

~~— Section 5. Section ~~63A-2-404~~ is amended to read:~~

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

(1) The division may:

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

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

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

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

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

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

(iv) civil defense organizations;

(v) political subdivisions; and

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

(2) The division may:

(a) receive applications from eligible health and educational institutions for the acquisition of federal surplus real property;

(b) investigate the applications;

(c) obtain opinions about those applications from the appropriate health or educational authorities of this state;

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

SB0068S01 compared with SB0068

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

(e) otherwise assist in the processing of those applications for acquisition of real and related personal property of the United States under the property act.

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

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

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

(b) enter into contracts, agreements, and undertakings for and in the name of the state including cooperative agreements with the federal agencies providing for use by and exchange between them of the property, facilities, personnel, and services of each by the other;

(c) require reports; and

(d) make investigations.

(5) The division shall act as the clearinghouse of information for public and private nonprofit institutions, organizations, and agencies eligible to acquire federal surplus real property to:

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

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

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

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

(6) The division shall:

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

(b) file a state plan of operation;

(c) operate according to that plan;

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

(e) make any reports required by the United States or any of its departments or

SB0068S01 compared with SB0068

agencies; and

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

Section ~~{6}~~5. Section **63A-2-405** is amended to read:

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

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

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

~~[(2)]~~ (b) may reduce or eliminate charges on federal surplus property that is found not to be usable for the purpose for which it was procured~~[-and]~~.

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

(2) ~~{Except as provided in Subsection 63A-2-410(2)(a), neither the division nor}~~ When there is a state surplus property contractor:

(a) the division may not assess charges or fees to an agency for the acquisition, warehousing, distribution, sale, transfer, or handling of state surplus property; and

(b) unless expressly provided otherwise in the contract between the division and the state surplus ~~{property}~~ contractor, the state surplus contractor may not assess charges or fees to an agency for the acquisition, warehousing, distribution, sale, transfer, or handling of state surplus property.

Section ~~{7}~~6. Section **63A-2-408** is amended to read:

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

Revocation of authority of officer.

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

SB0068S01 compared with SB0068

(a) as it relates to federal surplus property;

~~[(a)]~~ (i) secure the transfer to it of federal surplus property through the division under [the] the property act; and

~~[(b)]~~ (ii) obligate the state or political subdivision and its funds to the extent necessary to comply with the terms and conditions of those transfers[-]; and

(b) as it relates to ~~{state}~~ surplus property other than federal surplus property:

(i) secure the direct transfer of surplus property to it; and

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

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

(a) the order or resolution is revoked; and

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

Section ~~{8}~~7. Section **63A-2-409** is amended to read:

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

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

Section ~~{9}~~8. Section **63A-2-410** is enacted to read:

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

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

~~{2}~~b) The ~~{contract}~~ request for proposals shall seek:

~~{a}~~i) proposals that provide that the sole source of payment to the contractor ~~{shall}~~ will be a percentage of the amount for which the contractor sells state surplus property; and

~~{b}~~ require the contractor to pay the amount remaining from the sale of an item of state surplus property, after deducting the percentage described in Subsection (2)(a), to the

SB0068S01 compared with SB0068

division:

~~(c)ii~~ proposals that provide for alternative methods of payment.

(2) The contract shall:

(a) provide that the contractor may sell state surplus property by auction, bid, or other manner designed to get the best price available for the state surplus property;

~~(f)d~~b) prohibit the contractor from engaging in the sale of state surplus property in a manner that would constitute a conflict of interest;~~and~~

~~(f)e~~c) require regular and detailed accounting to the division of:

(i) the receipt and sale of state surplus property; and

(ii) the receipt and payment of funds by the contractor;

~~;~~ and

(d) ensure public transparency regarding the sale of state surplus property by requiring that the contractor:

(i) post online information related to a sale or attempted sale of state surplus property,

including:

(A) a description of the state surplus property;

(B) the agency that requested sale of the surplus property;

(C) the price at which the surplus property was sold; and

(D) the date that the surplus property was sold; and

(ii) post the information described in Subsection (2)(c)(i):

(A) within a time frame described in the contract; and

(B) for a period of time described in the contract.

(3) The contractor may not:

(a) unless expressly provided otherwise in the contract between the division and the contractor:

(i) be required to store state surplus property; or

~~(f)a~~ii) charge for the storage of state surplus property;

(b) administer the direct transfer of state surplus property from one agency to another agency;

(c) administer the disposal or destruction, by an agency, of state surplus property as waste;

SB0068S01 compared with SB0068

(d) administer the donation by an agency of state surplus property to a charity; or

(e) administer the disposition of state surplus property under Section 63A-2-406, 63A-2-407, 63A-2-408, or 63A-2-409.

(4) The division shall, ~~after paying the amount owed to the state surplus property contractor,~~ transfer the ~~remaining~~ money received ~~{under Subsection (2)(b), with respect to}~~ ~~for~~ the sale of a particular item of state surplus property ~~{,}~~ to the agency that requested the sale of the particular item of state surplus property, in accordance with Title 63J, Chapter 1, Budgetary Procedures Act.

(5) The division shall:

(a) on or before August 31, 2013, give an oral report to the Government Operations Interim Committee regarding:

(i) the division's progress and plans in relation to issuing the request for proposals described in this section; and

(ii) rules passed or proposed, on or after May 14, 2013, in relation to the state surplus property program; and

(a) (i) issue the request for proposals described in this section on or before September 30, 2013; or

(ii) in November 2013, give an oral report to the Government Operations Interim Committee, explaining why the request for proposals was not issued on or before September 30, 2013.

Section ~~{10}9~~. Section **63A-2-411** is enacted to read:

63A-2-411. Donation of state surplus property -- Disposal or destruction of state surplus property as waste.

~~{(1) An agency may, without obtaining approval by the division, the director of the division, or any other person, donate state surplus property}~~ The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that permit an agency to destroy, dispose of as waste, or donate to a charitable organization ~~{, or dispose of or destroy}~~ state surplus property ~~{ as waste}~~, if:

(~~{a}~~1) the state surplus property ~~{has no value}~~ is worth less than \$30;

(~~{b}~~2) the state surplus property fails to sell at auction;

(~~{c}~~3) the cost of selling the state surplus property is greater than or equal to the value

SB0068S01 compared with SB0068

of the state surplus property:

~~(fd)4~~ the state surplus property is no longer usable;

~~(fe)5~~ the state surplus property is damaged and cannot be repaired;

~~(ff)6~~ the state surplus property is damaged and the cost of repair is greater than or equal to the value of the state surplus property in a repaired state; or

~~(fg)7~~ the state surplus property can be replaced for less than the cost of repairing the state surplus property.

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

~~—— (a) a description of the state surplus property;~~

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

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

‡ Section ~~{11}~~10. **Repealer.**

This bill repeals:

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}~~