

**DIVISION OF FACILITIES CONSTRUCTION AND
MANAGEMENT PROPERTY AMENDMENTS**

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Walt Brooks

Senate Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill modifies and enacts provisions relating to real property owned by the Division of Facilities Construction and Management.

Highlighted Provisions:

This bill:

- ▶ provides a process for the Division of Facilities Construction and Management to change the occupancy or use of, transfer the ownership of, or lease vacant division-owned real property;
- ▶ modifies a provision relating to the application of division rules on determining the value of real property under certain circumstances;
- ▶ provides a process for a person to submit to the division a written proposal for the use of vacant division-owned property;
- ▶ requires the division to provide notice relating to vacant division-owned property if the division receives a qualified proposal;
- ▶ provides for priority among competing applicants for vacant division-owned property;
- ▶ provides for the approval of the State Building Board or the director of the Department of Administrative Services, with the recommendation of the Executive Appropriations Committee, under certain circumstances, relating to vacant division-owned property;
- ▶ authorizes the Division of Facilities Construction and Management to refer vacant

30 division-owned property to the Department of Transportation for public auction, under certain
31 circumstances;

32 ▶ modifies a provision relating to the compliance agency role of the director of the
33 Division of Facilities Construction and Management; and

34 ▶ makes technical and conforming changes.

35 **Money Appropriated in this Bill:**

36 None

37 **Other Special Clauses:**

38 None

39 **Utah Code Sections Affected:**

40 AMENDS:

41 **63A-5-103**, as last amended by Laws of Utah 2017, Chapter 355

42 **63A-5-204**, as last amended by Laws of Utah 2018, Chapter 401

43 **63A-5-206**, as last amended by Laws of Utah 2017, Chapter 463

44 **63A-5-401**, as last amended by Laws of Utah 2011, Chapter 289

45 **65A-4-1**, as enacted by Laws of Utah 1988, Chapter 121

46 ENACTS:

47 **63A-5a-101**, Utah Code Annotated 1953

48 **63A-5a-102**, Utah Code Annotated 1953

49 **63A-5a-103**, Utah Code Annotated 1953

50 **63A-5a-104**, Utah Code Annotated 1953

51 **63A-5a-201**, Utah Code Annotated 1953

52 **63A-5a-202**, Utah Code Annotated 1953

53 **63A-5a-203**, Utah Code Annotated 1953

54 **63A-5a-204**, Utah Code Annotated 1953

55 **63A-5a-205**, Utah Code Annotated 1953

56 **63A-5a-206**, Utah Code Annotated 1953

57

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

59 Section 1. Section **63A-5-103** is amended to read:

60 **63A-5-103. Board -- Powers.**

61 (1) The State Building Board shall:

62 (a) in cooperation with agencies, prepare a master plan of structures built or
63 contemplated;

64 (b) submit to the governor and the Legislature a comprehensive five-year building plan
65 for the state containing the information required by Subsection (6);

66 (c) amend and keep current the five-year building program that complies with the
67 requirements described in Subsection (6), for submission to the governor and subsequent
68 legislatures; [~~and~~]

69 (d) as a part of the long-range plan, recommend to the governor and Legislature any
70 changes in the law that are necessary to ensure an effective, well-coordinated building program
71 for all agencies[~~;~~]; and

72 (e) fulfill the duties given to the board under Chapter 5a, Division-Owned Real
73 Property Act.

74 (2) The board shall, in accordance with Title 63G, Chapter 3, Utah Administrative
75 Rulemaking Act, make rules:

76 (a) that are necessary to discharge its duties and the duties of the Division of Facilities
77 Construction and Management;

78 (b) that establish standards and requirements for life cycle cost-effectiveness of state
79 facility projects;

80 (c) that govern the disposition of real property by the division and establish factors,
81 including appraised value and historical significance, in evaluating the disposition;

82 (d) that establish standards and requirements for a capital development project request
83 and feasibility study described in Subsection **63A-5-104(2)(b)**, including:

84 (i) a deadline by which a state agency is required to submit a capital development
85 project request; and

86 (ii) conditions and requirements by which a state agency may modify the state agency's
87 capital development project request after the agency submits the request;

88 (e) for the monitoring of a state agency's operations and maintenance expenditures for a
89 state-owned facility, that:

90 (i) establish standards and requirements for utility metering;

91 (ii) create an operations and maintenance program for a state agency's facilities;

92 (iii) establish a methodology for determining reasonably anticipated inflationary costs
93 for each operation and maintenance program described in Subsection (2)(e)(ii); and

94 (iv) require an agency to report the amount the agency receives and expends on
95 operations and maintenance; and

96 (f) determining the actual cost for operations and management requests for a new
97 facility.

98 (3) The board shall:

99 (a) with support from the Division of Facilities Construction and Management,
100 establish design criteria, standards, and procedures for planning, design, and construction of
101 new state facilities and for improvements to existing state facilities, including life-cycle
102 costing, cost-effectiveness studies, and other methods and procedures that address:

103 (i) the need for the building or facility;

104 (ii) the effectiveness of its design;

105 (iii) the efficiency of energy use; and

106 (iv) the usefulness of the building or facility over its lifetime;

107 (b) prepare and submit a yearly request to the governor and the Legislature for a
108 designated amount of square footage by type of space to be leased by the Division of Facilities
109 Construction and Management in that fiscal year;

110 (c) assure the efficient use of all building space; and

111 (d) conduct ongoing facilities maintenance audits for state-owned facilities.

112 (4) (a) An agency shall comply with the rules made under Subsection (2)(f) for new
113 facility requests submitted to the Legislature for the 2017 General Session or any session of the

114 Legislature after the 2017 General Session.

115 ~~[(b) On or before September 1, 2016, each agency shall revise the agency's budget to~~
116 ~~comply with the rules made under Subsection (2)(e)(ii).]~~

117 ~~[(e)]~~ (b) Beginning on December 1, 2016, the Office of the Legislative Fiscal Analyst
118 and the Governor's Office of Management and Budget shall, for each agency with operating
119 and maintenance expenses, ensure that each required budget for that agency is adjusted in
120 accordance with the rules described in Subsection (2)(e)(iii).

121 (5) In order to provide adequate information upon which the State Building Board may
122 make a recommendation described in Subsection (1), any state agency requesting new full-time
123 employees for the next fiscal year shall report those anticipated requests to the building board
124 at least 90 days before the annual general session in which the request is made.

125 (6) (a) The State Building Board shall ensure that the five-year building plan required
126 by Subsection (1)(c) includes:

127 (i) a list that prioritizes construction of new buildings for all structures built or
128 contemplated based upon each agency's present and future needs;

129 (ii) information, and space use data for all state-owned and leased facilities;

130 (iii) substantiating data to support the adequacy of any projected plans;

131 (iv) a summary of all statewide contingency reserve and project reserve balances as of
132 the end of the most recent fiscal year;

133 (v) a list of buildings that have completed a comprehensive facility evaluation by an
134 architect/engineer or are scheduled to have an evaluation;

135 (vi) for those buildings that have completed the evaluation, the estimated costs of
136 needed improvements; and

137 (vii) for projects recommended in the first two years of the five-year building plan:

138 (A) detailed estimates of the cost of each project;

139 (B) the estimated cost to operate and maintain the building or facility on an annual
140 basis;

141 (C) the cost of capital improvements to the building or facility, estimated at 1.1% of

142 the replacement cost of the building or facility, on an annual basis;

143 (D) the estimated number of new agency full-time employees expected to be housed in
144 the building or facility;

145 (E) the estimated cost of new or expanded programs and personnel expected to be
146 housed in the building or facility;

147 (F) the estimated lifespan of the building with associated costs for major component
148 replacement over the life of the building; and

149 (G) the estimated cost of any required support facilities.

150 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
151 State Building Board may make rules prescribing the format for submitting the information
152 required by this Subsection (6).

153 (7) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
154 the State Building Board may make rules establishing circumstances under which bids may be
155 modified when all bids for a construction project exceed available funds as certified by the
156 director.

157 (b) In making the rules described in Subsection (7)(a), the State Building Board shall
158 provide for the fair and equitable treatment of bidders.

159 (8) (a) A person who violates a rule that the board makes under Subsection (2) is
160 subject to a civil penalty not to exceed \$2,500 for each violation plus the amount of any actual
161 damages, expenses, and costs related to the violation of the rule that are incurred by the state.

162 (b) The board may take any other action allowed by law.

163 (c) If any violation of a rule that the board makes is also an offense under Title 76,
164 Utah Criminal Code, the violation is subject to the civil penalty, damages, expenses, and costs
165 allowed under Subsection (2) in addition to any criminal prosecution.

166 Section 2. Section **63A-5-204** is amended to read:

167 **63A-5-204. Specific powers and duties of director.**

168 (1) As used in this section~~[, "capitol hill facilities" and "capitol hill grounds" have the~~
169 ~~same meaning as provided in Section [63C-9-102](#)];~~

170 (a) "Capitol hill facilities" means the same as that term is defined in Section
171 63C-9-102.

172 (b) "Capitol hill grounds" means the same as that term is defined in Section 63C-9-102.

173 (2) (a) The director shall:

174 (i) recommend rules to the executive director for the use and management of facilities
175 and grounds owned or occupied by the state for the use of its departments and agencies;

176 (ii) subject to Chapter 5a, Division-Owned Real Property Act, supervise and control
177 the allocation of space, in accordance with legislative directive through annual appropriations
178 acts or other specific legislation, to the various departments, commissions, institutions, and
179 agencies in all buildings or space owned, leased, or rented by or to the state, except capitol hill
180 facilities and capitol hill grounds and except as otherwise provided by law;

181 (iii) comply with the procedures and requirements of Title 63A, Chapter 5, Part 3,
182 Division of Facilities Construction and Management Leasing;

183 (iv) except as provided in Subsection (2)(b), acquire, as authorized by the Legislature
184 through the appropriations act or other specific legislation, and hold title to, in the name of the
185 division, all real property, buildings, fixtures, or appurtenances owned by the state or any of its
186 agencies;

187 (v) collect and maintain all deeds, abstracts of title, and all other documents evidencing
188 title to or interest in property belonging to the state or any of its departments, except
189 institutions of higher education and the School and Institutional Trust Lands Administration;

190 (vi) report all properties acquired by the state, except those acquired by institutions of
191 higher education, to the director of the Division of Finance for inclusion in the state's financial
192 records;

193 (vii) before charging a rate, fee, or other amount for services provided by the division's
194 internal service fund to an executive branch agency, or to a subscriber of services other than an
195 executive branch agency:

196 (A) submit the proposed rates, fees, and cost analysis to the Rate Committee
197 established in Section 63A-1-114; and

198 (B) obtain the approval of the Legislature as required by Section [63J-1-410](#);

199 (viii) conduct a market analysis by July 1, 2005, and periodically thereafter, of
200 proposed rates and fees, which analysis shall include a comparison of the division's rates and
201 fees with the fees of other public or private sector providers where comparable services and
202 rates are reasonably available;

203 (ix) implement the State Building Energy Efficiency Program under Section
204 [63A-5-701](#);

205 (x) convey, lease, or dispose of the real property or water rights associated with the
206 Utah State Developmental Center according to the Utah State Developmental Center Board's
207 determination, as described in [~~Subsection [62A-5-206.6\(5\)](#)] Section [62A-5-206.6](#);~~

208 (xi) after receiving the notice required under Subsection [10-2-419\(2\)\(d\)](#), file a written
209 protest at or before the public hearing required under Subsection [10-2-419\(2\)\(b\)](#), if:

210 (A) it is in the best interest of the state to protest the boundary adjustment; or
211 (B) the Legislature instructs the director to protest the boundary adjustment; and
212 (xii) take all other action necessary for carrying out the purposes of this chapter.

213 (b) Legislative approval is not required for acquisitions by the division that cost less
214 than \$250,000.

215 (3) (a) The director shall direct or delegate maintenance and operations, preventive
216 maintenance, and facilities inspection programs and activities for any agency, except:

217 (i) the State Capitol Preservation Board; and
218 (ii) state institutions of higher education.

219 (b) The director may choose to delegate responsibility for these functions only when
220 the director determines that:

221 (i) the agency has requested the responsibility;
222 (ii) the agency has the necessary resources and skills to comply with facility
223 maintenance standards approved by the State Building Board; and
224 (iii) the delegation would result in net cost savings to the state as a whole.

225 (c) The State Capitol Preservation Board and state institutions of higher education are

226 exempt from Division of Facilities Construction and Management oversight.

227 (d) Each state institution of higher education shall comply with the facility
228 maintenance standards approved by the State Building Board.

229 (e) Except for the State Capitol Preservation Board, agencies and institutions that are
230 exempt from division oversight shall annually report their compliance with the facility
231 maintenance standards to the division in the format required by the division.

232 (f) The division shall:

233 (i) prescribe a standard format for reporting compliance with the facility maintenance
234 standards;

235 (ii) report agency compliance or noncompliance with the standards to the Legislature;
236 and

237 (iii) conduct periodic audits of exempt agencies and institutions to ensure that they are
238 complying with the standards.

239 (4) (a) In making any allocations of space under Subsection (2), the director shall:

240 (i) conduct studies to determine the actual needs of each agency; and

241 (ii) comply with the restrictions contained in this Subsection (4).

242 (b) The supervision and control of the legislative area is reserved to the Legislature.

243 (c) The supervision and control of the judicial area is reserved to the judiciary for trial
244 courts only.

245 (d) The director may not supervise or control the allocation of space for entities in the
246 public and higher education systems.

247 (e) The supervision and control of capitol hill facilities and capitol hill grounds is
248 reserved to the State Capitol Preservation Board.

249 (5) The director may:

250 (a) hire or otherwise procure assistance and services, professional, skilled, or
251 otherwise, that are necessary to carry out the director's responsibilities, and may expend funds
252 provided for that purpose either through annual operating budget appropriations or from
253 nonlapsing project funds;

254 (b) sue and be sued in the name of the division; [~~and~~]
255 (c) hold, buy, lease, and acquire by exchange or otherwise, as authorized by the
256 Legislature, whatever real or personal property that is necessary for the discharge of the
257 director's duties[-]; and
258 (d) as provided in Chapter 5a, Division-Owned Real Property Act, fulfill duties and
259 exercise authority with respect to division-owned property, as defined in Section [63A-5a-102](#),
260 on behalf of the division.
261 (6) Notwithstanding the provisions of Subsection (2)(a)(iv), the following entities may
262 hold title to any real property, buildings, fixtures, and appurtenances held by them for purposes
263 other than administration that are under their control and management:
264 (a) the Office of Trust Administrator;
265 (b) the Department of Transportation;
266 (c) the Division of Forestry, Fire, and State Lands;
267 (d) the Department of Natural Resources;
268 (e) the Utah National Guard;
269 (f) any area vocational center or other institution administered by the State Board of
270 Education;
271 (g) any institution of higher education; and
272 (h) the Utah Science Technology and Research Governing Authority.
273 (7) The director shall ensure that any firm performing testing and inspection work
274 governed by the American Society for Testing Materials Standard E-329 on public buildings
275 under the director's supervision shall:
276 (a) fully comply with the American Society for Testing Materials standard
277 specifications for agencies engaged in the testing and inspection of materials known as ASTM
278 E-329; and
279 (b) carry a minimum of \$1,000,000 of errors and omissions insurance.
280 (8) Notwithstanding Subsections (2)(a)(iii) and (iv), the School and Institutional Trust
281 Lands Administration may hold title to any real property, buildings, fixtures, and appurtenances

282 held by it that are under its control.

283 Section 3. Section **63A-5-206** is amended to read:

284 **63A-5-206. Construction, alteration, and repair of state facilities -- Powers of**
285 **director -- Exceptions -- Expenditure of appropriations -- Notification to local**
286 **governments for construction or modification of certain facilities.**

287 (1) As used in this section:

288 (a) "Capital developments" and "capital improvements" have the same meaning as
289 provided in Section [63A-5-104](#).

290 (b) "Compliance agency" has the same meaning as provided in Section [15A-1-202](#).

291 (c) (i) "Facility" means any building, structure, or other improvement that is
292 constructed on property owned by the state, its departments, commissions, institutions, or
293 agencies.

294 (ii) "Facility" does not mean an unoccupied structure that is a component of the state
295 highway system.

296 (d) "Life cycle cost-effective" means, as provided for in rules adopted by the State
297 Building Board, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
298 Act, the most prudent cost of owning and operating a facility, including the initial cost, energy
299 costs, operation and maintenance costs, repair costs, and the costs of energy conservation and
300 renewable energy systems.

301 (e) "Local government" means the county, municipality, or local school district that
302 would have jurisdiction to act as the compliance agency if the property on which the project is
303 being constructed were not owned by the state.

304 (f) "Renewable energy system" means a system designed to use solar, wind, geothermal
305 power, wood, or other replenishable energy source to heat, cool, or provide electricity to a
306 building.

307 (2) (a) (i) Except as provided in Subsections (3) and (4), the director shall exercise
308 direct supervision over the design and construction of all new facilities, and all alterations,
309 repairs, and improvements to existing facilities if the total project construction cost, regardless

310 of the funding source, is greater than \$100,000, unless there is memorandum of understanding
311 between the director and an institution of higher education or the State Board of Education that
312 permits the institution of higher education or the State Board of Education to exercise direct
313 supervision for a project with a total project construction cost of not greater than \$250,000.

314 (ii) A state entity may exercise direct supervision over the design and construction of
315 all new facilities, and all alterations, repairs, and improvements to existing facilities if:

316 (A) the total project construction cost, regardless of the funding sources, is \$100,000 or
317 less; and

318 (B) the state entity assures compliance with the division's forms and contracts and the
319 division's design, construction, alteration, repair, improvements, and code inspection standards.

320 (b) The director shall prepare or have prepared by private firms or individuals designs,
321 plans, and specifications for the projects administered by the division.

322 (c) Before proceeding with construction, the director and the officials charged with the
323 administration of the affairs of the particular agency shall approve the location, design, plans,
324 and specifications.

325 (3) Projects for the construction of new facilities and alterations, repairs, and
326 improvements to existing facilities are not subject to Subsection (2) if the project:

327 (a) occurs on property under the jurisdiction of the State Capitol Preservation Board;

328 (b) is within a designated research park at the University of Utah or Utah State
329 University;

330 (c) occurs within the boundaries of This is the Place State Park and is administered by
331 This is the Place Foundation except that This is the Place Foundation may request the director
332 to administer the design and construction; or

333 (d) is for the creation and installation of art under Title 9, Chapter 6, Part 4, Utah
334 Percent-for-Art Act.

335 (4) (a) (i) The State Building Board may authorize the delegation of control over
336 design, construction, and all other aspects of any project to entities of state government on a
337 project-by-project basis or for projects within a particular dollar range and a particular project

338 type.

339 (ii) The state entity to whom control is delegated shall assume fiduciary control over
340 project finances, shall assume all responsibility for project budgets and expenditures, and shall
341 receive all funds appropriated for the project, including any contingency funds contained in the
342 appropriated project budget.

343 (iii) Delegation of project control does not exempt the state entity from complying with
344 the codes and guidelines for design and construction adopted by the division and the State
345 Building Board.

346 (iv) State entities that receive a delegated project may not access, for the delegated
347 project, the division's statewide contingency reserve and project reserve authorized in Section
348 [63A-5-209](#).

349 (b) For facilities that will be owned, operated, maintained, and repaired by an entity
350 that is not a state agency and that are located on state property, the State Building Board may
351 authorize the owner to administer the design and construction of the project instead of the
352 division.

353 (5) Notwithstanding any other provision of this section, if a donor donates land to an
354 eligible institution of higher education and commits to build a building or buildings on that
355 land, and the institution agrees to provide funds for the operations and maintenance costs from
356 sources other than state funds, and agrees that the building or buildings will not be eligible for
357 state capital improvement funding, the higher education institution may:

358 (a) oversee and manage the construction without involvement, oversight, or
359 management from the division; or

360 (b) arrange for management of the project by the division.

361 (6) (a) The role of compliance agency as provided in Title 15A, State Construction and
362 Fire Codes Act, shall be provided by:

363 (i) the director, for ~~[projects]~~ facilities administered by the division;

364 (ii) the entity designated by the State Capitol Preservation Board, for projects under
365 Subsection (3)(a);

366 (iii) the local government, for projects exempt from the division's administration under
367 Subsection (3)(b) or administered by This is the Place Foundation under Subsection (3)(c);

368 (iv) the state entity or local government designated by the State Building Board, for
369 projects under Subsection (4); or

370 (v) the institution, for projects exempt from the division's administration under
371 Subsection (5)(a).

372 (b) For the installation of art under Subsection (3)(d), the role of compliance agency
373 shall be provided by the entity that is acting in this capacity for the balance of the project as
374 provided in Subsection (6)(a).

375 (c) The local government acting as the compliance agency under Subsection (6)(a)(iii)
376 may:

377 (i) only review plans and inspect construction to enforce the State Construction Code
378 or an approved code under Title 15A, State Construction and Fire Codes Act; and

379 (ii) charge a building permit fee of no more than the amount it could have charged if
380 the land upon which the improvements are located were not owned by the state.

381 (d) (i) The use of state property and any improvements constructed on state property,
382 including improvements constructed by nonstate entities, is not subject to the zoning authority
383 of local governments as provided in Sections [10-9a-304](#) and [17-27a-304](#).

384 (ii) The state entity controlling the use of the state property shall consider any input
385 received from the local government in determining how the property shall be used.

386 (7) Before construction may begin, the director shall review the design of projects
387 exempted from the division's administration under Subsection (4) to determine if the design:

388 (a) complies with any restrictions placed on the project by the State Building Board;
389 and

390 (b) is appropriate for the purpose and setting of the project.

391 (8) The director shall ensure that state-owned facilities, except for facilities under the
392 control of the State Capitol Preservation Board, are life cycle cost-effective.

393 (9) The director may expend appropriations for statewide projects from funds provided

394 by the Legislature for those specific purposes and within guidelines established by the State
395 Building Board.

396 (10) (a) The director, with the approval of the Office of Legislative Fiscal Analyst,
397 shall develop standard forms to present capital development and capital improvement cost
398 summary data.

399 (b) The director shall:

400 (i) within 30 days after the completion of each capital development project, submit cost
401 summary data for the project on the standard form to the Office of Legislative Fiscal Analyst;
402 and

403 (ii) upon request, submit cost summary data for a capital improvement project to the
404 Office of Legislative Fiscal Analyst on the standard form.

405 (11) Notwithstanding the requirements of Title 63J, Chapter 1, Budgetary Procedures
406 Act, the director may:

407 (a) accelerate the design of projects funded by any appropriation act passed by the
408 Legislature in its annual general session;

409 (b) use any unencumbered existing account balances to fund that design work; and

410 (c) reimburse those account balances from the amount funded for those projects when
411 the appropriation act funding the project becomes effective.

412 (12) (a) The director, the director's designee, or the state entity to whom control has
413 been designated under Subsection (4), shall notify in writing the elected representatives of local
414 government entities directly and substantively affected by any diagnostic, treatment, parole,
415 probation, or other secured facility project exceeding \$250,000, if:

416 (i) the nature of the project has been significantly altered since prior notification;

417 (ii) the project would significantly change the nature of the functions presently
418 conducted at the location; or

419 (iii) the project is new construction.

420 (b) At the request of either the state entity or the local government entity,

421 representatives from the state entity and the affected local entity shall conduct or participate in

422 a local public hearing or hearings to discuss these issues.

423 (13) (a) (i) Before beginning the construction of student housing on property owned by
424 the state or a public institution of higher education, the director shall provide written notice of
425 the proposed construction, as provided in Subsection (13)(a)(ii), if any of the proposed student
426 housing buildings is within 300 feet of privately owned residential property.

427 (ii) Each notice under Subsection (13)(a)(i) shall be provided to the legislative body
428 and, if applicable, the mayor of:

429 (A) the county in whose unincorporated area the privately owned residential property is
430 located; or

431 (B) the municipality in whose boundaries the privately owned residential property is
432 located.

433 (b) (i) Within 21 days after receiving the notice required by Subsection (13)(a)(i), a
434 county or municipality entitled to the notice may submit a written request to the director for a
435 public hearing on the proposed student housing construction.

436 (ii) If a county or municipality requests a hearing under Subsection (13)(b)(i), the
437 director and the county or municipality shall jointly hold a public hearing to provide
438 information to the public and to allow the director and the county or municipality to receive
439 input from the public about the proposed student housing construction.

440 Section 4. Section **63A-5-401** is amended to read:

441 **63A-5-401. Division rules on the value of property bought, sold, or exchanged --**
442 **Exception.**

443 (1) [~~In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, if~~
444 If the division buys, sells, or exchanges real property, the division shall, in accordance with
445 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules to ensure that the value
446 of the real property is congruent with the proposed price and other terms of the purchase, sale,
447 or exchange.

448 (2) The rules:

449 (a) shall establish procedures for determining the value of the real property;

450 (b) may provide that an appraisal, as defined under Section 61-2g-102, demonstrates
451 the real property's value; and

452 (c) may require that the appraisal be completed by a state-certified general appraiser, as
453 defined under Section 61-2g-102.

454 (3) Subsection (1) does not apply to:

455 (a) the purchase, sale, or exchange of real property, or to an interest in real property[
456 ~~(a) that is under a contract or other written agreement before May 5, 2008; or (b)]~~ with a value
457 of less than \$100,000, as estimated by the ~~[state agency.]~~ division; or

458 (b) a transfer of ownership or lease of vacant division-owned property, as defined in
459 Section 63A-5a-102, at below fair market value under Chapter 5a, Division-Owned Real
460 Property Act.

461 Section 5. Section 63A-5a-101 is enacted to read:

462 **CHAPTER 5a. DIVISION-OWNED REAL PROPERTY ACT**

463 **Part 1. General Provisions**

464 **63A-5a-101. Title.**

465 This chapter is known as the "Division-Owned Real Property Act."

466 Section 6. Section 63A-5a-102 is enacted to read:

467 **63A-5a-102. Definitions.**

468 As used in this chapter:

469 (1) "Applicant" means a person who submits a timely, qualified proposal to the
470 division.

471 (2) "Board" means the State Building Board, created in Section 63A-5-101.

472 (3) "Condemnee" means the same as that term is defined in Section 78B-6-520.3.

473 (4) "Convey" means:

474 (a) to provide for a primary state agency's occupancy or use of vacant division-owned
475 property; or

476 (b) to effect a transfer of ownership or lease of vacant division-owned property to a
477 secondary state agency, local government entity, public purpose nonprofit entity, or private

478 party.

479 (5) "Director" means the division director, appointed under Section 63A-5-203.

480 (6) "Division" means the Division of Facilities Construction and Management, created
481 in Section 63A-5-201.

482 (7) "Division-owned property" means real property, including an interest in real
483 property, to which the division holds title, regardless of who occupies or uses the real property.

484 (8) "Local government entity" means a county, city, town, metro township, local
485 district, special service district, community development and renewal agency, conservation
486 district, school district, or other political subdivision of the state.

487 (9) "Primary state agency" means a state agency for which the division holds title to
488 real property that the state agency occupies or uses, as provided in Subsection
489 63A-5-204(2)(a)(iv).

490 (10) "Private party" means a person who is not a state agency, local government entity,
491 or public purpose nonprofit entity.

492 (11) "Public purpose nonprofit entity" means a corporation, association, organization,
493 or entity that:

494 (a) is located within the state;

495 (b) is not a state agency or local government entity;

496 (c) is exempt from federal income taxation under Section 501(c)(3), Internal Revenue
497 Code; and

498 (d) operates to fulfill a public purpose.

499 (12) "Qualified proposal" means a written proposal that:

500 (a) meets the criteria established by the division by rule;

501 (b) if submitted by a local government entity or public purpose nonprofit entity,
502 explains the public purpose for which the local government entity or public purpose nonprofit
503 entity seeks a transfer of ownership or lease of the vacant division-owned property; and

504 (c) the director determines will, if accepted and implemented, provide a material
505 benefit to the state.

- 506 (13) "Secondary state agency" means a state agency:
507 (a) that is authorized to hold title to real property that the state agency occupies or uses,
508 as provided in Subsection 63A-5-204(6); and
509 (b) for which the division does not hold title to real property that the state agency
510 occupies or uses.
- 511 (14) "State agency" means a department, division, office, entity, agency, or other unit
512 of state government.
- 513 (15) "Transfer of ownership" includes a transfer of the ownership of vacant
514 division-owned property that occurs as part of an exchange of the vacant division-owned
515 property for another property.
- 516 (16) "Vacant division-owned property" means division-owned property that:
517 (a) a primary state agency has discontinued to occupy or use; and
518 (b) the director has determined should be made available for:
519 (i) use or occupancy by a primary state agency; or
520 (ii) a transfer of ownership or lease to a secondary state agency, local government
521 entity, public purpose nonprofit entity, or private party.
- 522 (17) "Written proposal" means a brief statement in writing that explains:
523 (a) the proposed use or occupancy, transfer of ownership, or lease of vacant
524 division-owned property; and
525 (b) how the state will benefit from the proposed use or occupancy, transfer of
526 ownership, or lease.
- 527 Section 7. Section **63A-5a-103** is enacted to read:
528 **63A-5a-103. Application of chapter.**
529 (1) The provisions of this chapter, other than this section, do not apply to:
530 (a) a conveyance, lease, or disposal under Subsection 63A-5-204(2)(a)(x); or
531 (b) the division's disposal or lease of division-owned property with a value under
532 \$100,000, as estimated by the division.
533 (2) Nothing in Subsection (1)(b) may be construed to diminish or eliminate the

534 division's responsibility to manage division-owned property in the best interests of the state.

535 Section 8. Section **63A-5a-104** is enacted to read:

536 **63A-5a-104. Rules adopted by the division.**

537 The division may, in accordance with Title 63G, Chapter 3, Utah Administrative
538 Rulemaking Act, make rules to:

539 (1) establish criteria that a written proposal is required to satisfy in order to be a
540 qualified proposal, including, if applicable, a minimum acceptable purchase price; and

541 (2) define criteria that the director will consider in making a determination whether a
542 proposed use or occupancy, transfer of ownership, or lease of vacant division-owned property
543 provides a material benefit to the state.

544 Section 9. Section **63A-5a-201** is enacted to read:

545 **Part 2. Disposition of Vacant Division-Owned Property**

546 **63A-5a-201. Division authority with respect to vacant division-owned property --**
547 **Limitations.**

548 (1) Subject to Section [63A-5a-206](#), the division may, as provided in this chapter:

549 (a) provide for a primary state agency's occupancy or use of vacant division-owned
550 property;

551 (b) effect a transfer of ownership or lease of vacant division-owned property to a
552 secondary state agency, local government entity, public purpose nonprofit entity, or private
553 party; or

554 (c) refer vacant division-owned property to the Department of Transportation for sale
555 by auction, as provided in Section [63A-5a-205](#).

556 (2) The division may not effect a transfer of ownership or lease of vacant
557 division-owned property without receiving fair market value in return unless:

558 (a) the director determines that the transfer of ownership or lease is in the best interests
559 of the state;

560 (b) for a proposed transfer of ownership or lease to a local government entity, public
561 purpose nonprofit entity, or private party, the director determines that the local government

562 entity, public purpose nonprofit entity, or private party intends to use the property to fulfill a
563 public purpose;

564 (c) the director requests and receives a recommendation on the proposed transfer of
565 ownership or lease from the Legislative Executive Appropriations Committee;

566 (d) the director communicates the Executive Appropriations Committee's
567 recommendation to the executive director; and

568 (e) the executive director approves the transfer of ownership or lease.

569 (3) (a) If the division effects a transfer of ownership of vacant division-owned property
570 without receiving fair market value in return, as provided in this chapter, the division shall
571 require the documents memorializing the transfer of ownership to preserve to the division:

572 (i) in the case of a transfer of ownership of vacant division-owned property to a
573 secondary state agency, local government entity, or public purpose nonprofit entity for no or
574 nominal consideration, a right of reversion, providing for the ownership of the property to
575 revert to the division if the property ceases to be used for the public benefit; or

576 (ii) in the case of any other transfer of ownership of vacant division-owned property, a
577 right of first refusal allowing the division to purchase the property from the transferee for the
578 same price that the transferee paid to the division if the transferee wishes to transfer ownership
579 of the former vacant division-owned property.

580 (b) Subsection (3)(a) does not apply to the sale of vacant division-owned property at an
581 auction under Section [63A-5a-205](#).

582 Section 10. Section **63A-5a-202** is enacted to read:

583 **63A-5a-202. Notice required before division may convey division-owned property.**

584 (1) Before the division may convey vacant division-owned property, the division shall
585 give notice as provided in Subsection (2).

586 (2) A notice required under Subsection (1) shall:

587 (a) identify and describe the vacant division-owned property;

588 (b) indicate the availability of the vacant division-owned property;

589 (c) invite persons interested in the vacant division-owned property to submit a written

590 proposal to the division;

591 (d) indicate the deadline for submitting a written proposal;

592 (e) be posted on the division's website for at least 60 consecutive days before the
593 deadline for submitting a written proposal, in a location specifically designated for notices
594 dealing with vacant division-owned property;

595 (f) be posted on the Utah Public Notice Website created in Section [63F-1-701](#) for at
596 least 60 consecutive days before the deadline for submitting a written proposal; and

597 (g) be sent by email to each person who has previously submitted to the division a
598 written request to receive notices under this section.

599 Section 11. Section **63A-5a-203** is enacted to read:

600 **63A-5a-203. Submitting a written proposal for vacant division-owned property.**

601 (1) A person may submit to the division a written proposal:

602 (a) in response to the division's notice under Section [63A-5a-202](#); or

603 (b) with respect to vacant division-owned property as to which the division has not
604 given notice under Section [63A-5a-202](#).

605 (2) The division is not required to consider a written proposal or provide notice under
606 Section [63A-5a-202](#) if the director determines that the written proposal is not a qualified
607 proposal.

608 (3) If a person submits a qualified proposal to the division under Subsection (1)(b):

609 (a) the division shall:

610 (i) give notice as provided in Section [63A-5a-202](#); and

611 (ii) treat the qualified proposal as though it were submitted in response to the notice;

612 and

613 (b) the person may, within the time provided for the submission of written proposals,
614 modify the qualified proposal to the extent necessary to address matters raised in the notice that
615 were not addressed in the initial qualified proposal.

616 (4) A person who fails to submit a qualified proposal to the division within 60 days
617 after the date of the notice under Section [63A-5a-202](#) may not be considered for the vacant

618 division-owned property.

619 Section 12. Section **63A-5a-204** is enacted to read:

620 **63A-5a-204. Priorities for vacant division-owned property -- Division to convey**
621 **vacant division-owned property.**

622 (1) (a) A state agency has priority for vacant division-owned property over a local
623 government entity, a public purpose nonprofit entity, and a private party.

624 (b) A local government entity and a public purpose nonprofit entity have:

625 (i) priority for vacant division-owned property over a private party; and

626 (ii) between them the same priority for vacant division-owned property.

627 (2) If the division receives multiple timely qualified proposals from applicants with the
628 highest and same priority, the division shall:

629 (a) notify the board of:

630 (i) the availability of the vacant division-owned property; and

631 (ii) the applicants with the highest and same priority that have submitted qualified
632 proposals; and

633 (b) provide the board with a copy of the timely qualified proposals submitted by the
634 applicants with the highest and same priority.

635 (3) Within 30 days after being notified under Subsection (2), the board shall:

636 (a) determine which applicant's qualified proposal is most likely to result in the highest
637 and best public benefit; and

638 (b) notify the division of the board's decision under Subsection (3)(a).

639 (4) The division shall convey the vacant division-owned property to:

640 (a) the applicant with the highest priority under Subsection (1), if the division receives
641 a timely qualified proposal from a single applicant with the highest priority; or

642 (b) the applicant whose qualified proposal was determined by the board under
643 Subsection (3) to be most likely to result in the highest and best public benefit, if the division
644 receives multiple timely qualified proposals from applicants with the highest and same priority.

645 (5) (a) If the division leases vacant division-owned property to a private party, the

646 division shall, within 30 days after a lease agreement is executed, provide written notice of the
647 lease to:

648 (i) the municipality in which the vacant division-owned property is located, if the
649 vacant division-owned property is within a municipality; or

650 (ii) the county in whose unincorporated area the vacant division-owned property is
651 located, if the vacant division-owned property is not located within a municipality.

652 (b) Nothing in this chapter may be used by a private party leasing division-owned
653 property as a basis for not complying with applicable local land use ordinances and regulations.

654 Section 13. Section **63A-5a-205** is enacted to read:

655 **63A-5a-205. Referring vacant division-owned property to the Department of**
656 **Transportation for auction.**

657 (1) The division may refer vacant division-owned property to the Department of
658 Transportation for a public auction if:

659 (a) (i) the division has provided notice under Section [63A-5a-202](#) with respect to the
660 vacant division-owned property; and

661 (ii) the division receives no qualified proposals in response to the notice under Section
662 [63A-5a-202](#);

663 (b) the director determines that:

664 (i) there is no reasonable likelihood that within the foreseeable future:

665 (A) a primary state agency will use or occupy the vacant division-owned property; or

666 (B) a secondary state agency, local government entity, or public purpose nonprofit
667 entity will seek a transfer of ownership or lease of the vacant division-owned property; and

668 (ii) disposing of the vacant division-owned property through a public auction is in the
669 best interests of the state;

670 (c) the director requests and receives a recommendation on the proposed public auction
671 from the Legislative Executive Appropriations Committee;

672 (d) the director communicates the Executive Appropriations Committee's
673 recommendation to the executive director; and

674 (e) the executive director approves the public auction.
675 (2) If the division refers a vacant division-owned property to the Department of
676 Transportation for public auction, the Department of Transportation shall publicly auction the
677 vacant division-owned property under the same law and in the same manner that apply to a
678 public auction of Department of Transportation property.

679 (3) At a public auction conducted under Subsection (2), the Department of
680 Transportation may, on behalf of the division, accept an offer to purchase the vacant
681 division-owned property.

682 (4) The division and the Department of Transportation shall coordinate together to:

683 (a) manage the details of finalizing any sale of the vacant division-owned property at
684 public auction; and

685 (b) ensure that the buyer acquires proper title and that the division receives the net
686 proceeds of the sale.

687 (5) If a public auction under this section does not result in a sale of the vacant
688 division-owned property, the Department of Transportation shall notify the division and refer
689 the vacant division-owned property back to the division.

690 Section 14. Section **63A-5a-206** is enacted to read:

691 **63A-5a-206. State real property subject to right of first refusal.**

692 (1) (a) If Section [78B-6-520.3](#) applies to vacant division-owned property, the division
693 shall comply with Subsection [78B-6-520.3\(3\)](#).

694 (b) If a condemnee accepts the division's offer to sell the vacant division-owned
695 property as provided in Section [78B-6-520.3](#), the division shall:

696 (i) comply with the requirements of Section [78B-6-520.3](#); and

697 (ii) terminate any process under this chapter to convey the vacant division-owned
698 property.

699 (c) A condemnee may waive rights and benefits afforded under Section [78B-6-520.3](#)
700 and instead seek a transfer of ownership or lease of vacant division-owned property under the
701 provisions of this chapter in the same manner as any other person not entitled to the rights and

702 benefits of Section 78B-6-520.3.

703 (2) (a) If Section 78B-6-521 applies to the anticipated disposal of the vacant
704 division-owned property, the division shall comply with the limitations and requirements of
705 Subsection 78B-6-521(2).

706 (b) If the original grantor or the original grantor's assignee accepts an offer for sale as
707 provided in Subsection 78B-6-521(2)(a)(i), the division shall:

708 (i) sell the vacant division-owned property to the original grantor or the original
709 grantor's assignee, as provided in Section 78B-6-521; and

710 (ii) terminate any process under this chapter to convey the vacant division-owned
711 property.

712 (c) An original grantor or the original grantor's assignee may waive rights afforded
713 under Section 78B-6-521 and instead seek a transfer of ownership or lease of vacant
714 division-owned property under the provisions of this chapter in the same manner as any other
715 person seeking a transfer of ownership or lease of vacant division-owned property to which
716 Section 78B-6-521 does not apply.

717 Section 15. Section 65A-4-1 is amended to read:

718 **65A-4-1. Acquisition and disposition of land by state agencies.**

719 (1) All state agencies may acquire land by gift, devise, bequest, exchange,
720 compensation for public resource value loss, or in satisfaction of a debt and are authorized to
721 sell, lease, or otherwise dispose of land no longer needed for public purposes, unless otherwise
722 provided by law.

723 (2) The proceeds from the sale, lease, or other disposition of land shall go to the state
724 agency using or holding the land unless:

725 (a) the governor or the Legislature order its deposit in the fund from which the state
726 agency receives its appropriations; or

727 (b) the use or disposition of the proceeds is specified elsewhere in law.

728 (3) Subsections (1) and (2) do not apply to division-owned property, as defined in
729 Section 63A-5a-102.

