

HB0060S01 compared with HB0060

~~deleted text~~ shows text that was in HB0060 but was deleted in HB0060S01.

Inserted text shows text that was not in HB0060 but was inserted into HB0060S01.

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Representative Walt Brooks proposes the following substitute bill:

DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT PROPERTY AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Walt Brooks

Senate Sponsor: _____

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;

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- ▶ 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 division-owned property to the Department of Transportation for public auction, under certain circumstances;
- ▶ modifies a provision relating to the compliance agency role of the director of the Division of Facilities Construction and Management; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

ENACTS:

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The State Building Board shall:

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

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

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

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

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

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

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

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

(c) that govern the disposition of real property by the division and establish factors,

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including appraised value and historical significance, in evaluating the disposition;

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

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

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

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

(i) establish standards and requirements for utility metering;

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

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

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

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

(3) The board shall:

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

(i) the need for the building or facility;

(ii) the effectiveness of its design;

(iii) the efficiency of energy use; and

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

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

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

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

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

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

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

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

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

- (i) a list that prioritizes construction of new buildings for all structures built or contemplated based upon each agency's present and future needs;
- (ii) information, and space use data for all state-owned and leased facilities;
- (iii) substantiating data to support the adequacy of any projected plans;
- (iv) a summary of all statewide contingency reserve and project reserve balances as of the end of the most recent fiscal year;
- (v) a list of buildings that have completed a comprehensive facility evaluation by an architect/engineer or are scheduled to have an evaluation;
- (vi) for those buildings that have completed the evaluation, the estimated costs of needed improvements; and
- (vii) for projects recommended in the first two years of the five-year building plan:
 - (A) detailed estimates of the cost of each project;
 - (B) the estimated cost to operate and maintain the building or facility on an annual basis;
 - (C) the cost of capital improvements to the building or facility, estimated at 1.1% of the replacement cost of the building or facility, on an annual basis;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) (a) The director shall:

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

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

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

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

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

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

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

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

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

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

(ix) implement the State Building Energy Efficiency Program under Section 63A-5-701;

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

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

(A) it is in the best interest of the state to protest the boundary adjustment; or

(B) the Legislature instructs the director to protest the boundary adjustment; and

(xii) take all other action necessary for carrying out the purposes of this chapter.

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

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

(i) the State Capitol Preservation Board; and

(ii) state institutions of higher education.

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

(i) the agency has requested the responsibility;

(ii) the agency has the necessary resources and skills to comply with facility maintenance standards approved by the State Building Board; and

(iii) the delegation would result in net cost savings to the state as a whole.

(c) The State Capitol Preservation Board and state institutions of higher education are exempt from Division of Facilities Construction and Management oversight.

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

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

(f) The division shall:

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

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

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and

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

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

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

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

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

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

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

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

(5) The director may:

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

(b) sue and be sued in the name of the division; ~~and~~

(c) hold, buy, lease, and acquire by exchange or otherwise, as authorized by the Legislature, whatever real or personal property that is necessary for the discharge of the director's duties[-]; and

(d) as provided in Chapter 5a, Division-Owned Real Property Act, fulfill duties and exercise authority with respect to division-owned property, as defined in Section 63A-5a-102, on behalf of the division.

(6) Notwithstanding the provisions of Subsection (2)(a)(iv), the following entities may hold title to any real property, buildings, fixtures, and appurtenances held by them for purposes other than administration that are under their control and management:

(a) the Office of Trust Administrator;

(b) the Department of Transportation;

(c) the Division of Forestry, Fire, and State Lands;

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- (d) the Department of Natural Resources;
- (e) the Utah National Guard;
- (f) any area vocational center or other institution administered by the State Board of Education;
- (g) any institution of higher education; and
- (h) the Utah Science Technology and Research Governing Authority.

(7) The director shall ensure that any firm performing testing and inspection work governed by the American Society for Testing Materials Standard E-329 on public buildings under the director's supervision shall:

(a) fully comply with the American Society for Testing Materials standard specifications for agencies engaged in the testing and inspection of materials known as ASTM E-329; and

(b) carry a minimum of \$1,000,000 of errors and omissions insurance.

(8) Notwithstanding Subsections (2)(a)(iii) and (iv), the School and Institutional Trust Lands Administration may hold title to any real property, buildings, fixtures, and appurtenances held by it that are under its control.

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

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

(1) As used in this section:

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

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

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

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

(d) "Life cycle cost-effective" means, as provided for in rules adopted by the State Building Board, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking

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Act, the most prudent cost of owning and operating a facility, including the initial cost, energy costs, operation and maintenance costs, repair costs, and the costs of energy conservation and renewable energy systems.

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

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

(2) (a) (i) Except as provided in Subsections (3) and (4), the director shall exercise direct supervision over the design and construction of all new facilities, and all alterations, repairs, and improvements to existing facilities if the total project construction cost, regardless of the funding source, is greater than \$100,000, unless there is memorandum of understanding between the director and an institution of higher education or the State Board of Education that permits the institution of higher education or the State Board of Education to exercise direct supervision for a project with a total project construction cost of not greater than \$250,000.

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

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

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

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

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

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

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

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

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University;

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

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

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

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

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

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

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

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

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

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

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

(i) the director, for projects facilities administered by the division;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) The director may expend appropriations for statewide projects from funds provided by the Legislature for those specific purposes and within guidelines established by the State Building Board.

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

(b) The director shall:

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

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

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

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

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

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

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

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

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

(iii) the project is new construction.

(b) At the request of either the state entity or the local government entity, representatives from the state entity and the affected local entity shall conduct or participate in

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a local public hearing or hearings to discuss these issues.

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

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

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

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

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

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

Section ~~33~~4. Section **63A-5-401** is amended to read:

63A-5-401. Rulemaking for sale of real property -- Licensed or certified appraisers -- Exceptions.

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

(2) The rules:

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

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

(c) may require that the appraisal be completed by a state-certified general appraiser, as

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defined under Section 61-2g-102.

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

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

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

Section ~~{4}~~5. Section **63A-5a-101** is enacted to read:

CHAPTER 5a. DIVISION-OWNED REAL PROPERTY ACT

Part 1. General Provisions

63A-5a-101. Title.

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

Section ~~{5}~~6. Section **63A-5a-102** is enacted to read:

63A-5a-102. Definitions.

As used in this chapter:

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

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

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

(4) "Convey" means:

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

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

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

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

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

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

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

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

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

(a) is located within the state;

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

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

(d) operates to fulfill a public purpose.

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

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

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

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

(13) "Secondary state agency" means a state agency:

(a) that is authorized to hold title to real property that the state agency occupies or uses, as provided in Subsection 63A-5-204(6); and

(b) for which the division does not hold title to real property that the state agency occupies or uses.

(14) "State agency" means a department, division, office, entity, agency, or other unit of state government.

(15) "Transfer of ownership" includes a transfer of the ownership of vacant division-owned property that occurs as part of an exchange of the vacant division-owned

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property for another property.

(16) "Vacant division-owned property" means division-owned property that:

(a) a primary state agency has discontinued to occupy or use; and

(b) the director has determined should be made available for:

(i) use or occupancy by a primary state agency; or

(ii) a transfer of ownership or lease to a secondary state agency, local government entity, public purpose nonprofit entity, or private party.

(17) "Written proposal" means a brief statement in writing that explains:

(a) the proposed use or occupancy, transfer of ownership, or lease of vacant division-owned property; and

(b) how the state will benefit from the proposed use or occupancy, transfer of ownership, or lease.

Section ~~{6}~~7. Section **63A-5a-103** is enacted to read:

63A-5a-103. Application of chapter.

(1) The provisions of this chapter, other than this section, do not apply to:

(a) a conveyance, lease, or disposal under Subsection 63A-5-204(2)(a)(x); or

(b) the division's disposal or lease of division-owned property with a value under \$100,000, as estimated by the division.

(2) Nothing in Subsection (1)(b) may be construed to diminish or eliminate the division's responsibility to manage division-owned property in the best interests of the state.

Section ~~{7}~~8. Section **63A-5a-104** is enacted to read:

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

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

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

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

Section ~~{8}~~9. Section **63A-5a-201** is enacted to read:

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

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

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

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

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

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

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

(b) for a proposed transfer of ownership or lease to a local government entity, public purpose nonprofit entity, or private party, the director determines that the local government entity, public purpose nonprofit entity, or private party intends to use the property to fulfill a public purpose;

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

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

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

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

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

(ii) in the case of any other transfer of ownership of vacant division-owned property, a

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right of first refusal allowing the division to purchase the property from the transferee for the same price that the transferee paid to the division if the transferee wishes to transfer ownership of the former vacant division-owned property.

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

Section ~~9~~10. Section **63A-5a-202** is enacted to read:

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

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

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

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

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

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

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

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

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

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

Section ~~10~~11. Section **63A-5a-203** is enacted to read:

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

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

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

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

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

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

(a) the division shall:

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

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

and

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

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

Section ~~{11}~~12. Section **63A-5a-204** is enacted to read:

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

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

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

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

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

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

(a) notify the board of:

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

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

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

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

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

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

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

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

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

(5) (a) If the division leases vacant division-owned property to a private party, the division shall, within 30 days after a lease agreement is executed, provide written notice of the lease to:

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

(~~f~~b*ii*) the county in whose unincorporated area the vacant division-owned property is located, if the vacant division-owned property is not located within a municipality.

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

Section ~~{12}~~13. Section **63A-5a-205** is enacted to read:

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

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

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

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

(b) the director determines that:

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

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

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

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

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

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

(e) the executive director approves the public auction.

(2) If the division refers a vacant division-owned property to the Department of Transportation for public auction, the Department of Transportation shall publicly auction the vacant division-owned property under the same law and in the same manner that apply to a public auction of Department of Transportation property.

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

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

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

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

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

Section ~~{13}~~14. Section **63A-5a-206** is enacted to read:

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

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

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

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

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

(c) A condemnee may waive rights and benefits afforded under Section 78B-6-520.3 and instead seek a transfer of ownership or lease of vacant division-owned property under the

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provisions of this chapter in the same manner as any other person not entitled to the rights and benefits of Section 78B-6-520.3.

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

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

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

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

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

Section ~~{14}~~15. Section **65A-4-1** is amended to read:

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

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

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

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

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

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