

**OFFENSES AGAINST THE ADMINISTRATION OF  
GOVERNMENT AMENDMENTS**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Craig Hall**

Senate Sponsor: \_\_\_\_\_

---

---

**LONG TITLE**

**General Description:**

This bill amends criminal provisions relating to public property and public money.

**Highlighted Provisions:**

This bill:

- ▶ provides an exception for the de minimus use of public property by a public servant;
- ▶ makes it a crime for a public servant to:
  - willfully damage or dispose of public property without legal authority;
  - commit theft of public property or temporarily appropriate public property for personal use; or
  - willfully fail to keep and safeguard public property in the public servant's possession;
- ▶ establishes criminal penalties, based on the value of, or cost to repair, public property;
- ▶ addresses related penalties; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **76-8-402**, as last amended by Laws of Utah 2019, Chapter 211

31 **76-8-403**, as last amended by Laws of Utah 1995, Chapter 232

32 **76-8-404**, as last amended by Laws of Utah 2019, Chapter 211



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

35 Section 1. Section **76-8-402** is amended to read:

36 **76-8-402. Misusing public money or public property.**

37 (1) As used in this section, "authorized personal use" means:

38 (a) the use of public property, for a personal matter, by a public servant if:

39 (i) the public servant is authorized to use or possess the public property to fulfill the  
40 public servant's duties as a public servant;

41 (ii) the primary purpose of the public servant using or possessing the public property is  
42 to fulfill the public servant's duties as a public servant;

43 (iii) at the time the public servant uses the public property for a personal matter, a  
44 written policy of the public servant's public entity is in effect that authorizes the public servant  
45 to use or possess the public property for personal use in addition to the primary purpose of  
46 fulfilling the public servant's duties as a public servant; and

47 (iv) the public servant uses and possesses the public property in a lawful manner and in  
48 accordance with the policy described in Subsection (1)(a)(iii); or

49 (b) incidental or de minimus use of public property for a personal matter by a public  
50 servant, if:

51 (i) the value provided to the public servant's public entity by the public servant's use or  
52 possession of the public property for a public purpose substantially outweighs the personal  
53 benefit received by the employee from the incidental use of the public property for a personal  
54 matter; and

55 (ii) the incidental or de minimus use of the public property for a personal matter is not  
56 prohibited by law or by the public servant's public entity.

57 (2) It is unlawful for a public servant to:

58 (a) appropriate public money [~~or public property~~] to the public servant's own use or

- 59 benefit or to the use or benefit of another without authority of law;
- 60 (b) loan or transfer public money [~~or public property~~] without authority of law;
- 61 (c) fail to keep public money or public property in the public servant's possession until  
62 disbursed by authority of law;
- 63 (d) unlawfully deposit public money in a bank or with another person;
- 64 (e) knowingly keep a false account or make a false entry or erasure in an account of, or  
65 relating to, public money;
- 66 (f) fraudulently alter, falsify, conceal, or destroy an account described in Subsection  
67 (2)(e);
- 68 (g) willfully refuse or omit to pay over, on demand, any public money in the public  
69 servant's custody or control, upon the presentation of a draft, order, or warrant drawn upon the  
70 public money by competent authority;
- 71 (h) willfully omit to transfer public money when the transfer is required by law; [~~or~~]
- 72 (i) willfully omit or refuse to pay over, to any officer or person authorized by law to  
73 receive public money, public money received by the public servant under any duty imposed on  
74 the public servant by law[-];
- 75 (j) willfully damage or dispose of public property without legal authority;
- 76 (k) obtain or exercise unauthorized control of public property with the intent to deprive  
77 the owner of possession of the public property;
- 78 (l) obtain or exercise unauthorized control of public property with the intent to  
79 temporarily appropriate, possess, use, or deprive the owner of possession of the public  
80 property; or
- 81 (m) when the public servant is in lawful possession of public property, willfully fail to  
82 keep and safeguard the public property until returning the public property to the owner or  
83 disposing of the public property in accordance with the requirements of law.
- 84 (3) Except as provided in Subsection (4), a violation of [~~Subsection (2)~~] Subsections  
85 (2)(a) through (i) is a felony of the third degree.
- 86 (4) A violation of [~~Subsection (2)~~] Subsections (2)(a) through (i) is a felony of the  
87 second degree if:
- 88 (a) the value of the public money [~~or the value of the use of the public property~~]  
89 exceeds \$5,000;

- 90 (b) the amount of the false account exceeds \$5,000;
- 91 (c) the amount falsely entered exceeds \$5,000;
- 92 (d) the amount that is the difference between the original amount and the fraudulently
- 93 altered amount exceeds \$5,000; or
- 94 (e) the amount falsely erased, fraudulently concealed, destroyed, or falsified in the
- 95 account exceeds \$5,000.

96 (5) A violation of Subsection (2)(j) is:

- 97 (a) a class B misdemeanor, if the cost to repair or replace the public property is less
- 98 than \$500;
- 99 (b) a class A misdemeanor, if the cost to repair or replace the public property is \$500 or
- 100 more, but less than \$1,500;
- 101 (c) a felony of the third degree, if the cost to repair or replace the public property is
- 102 \$1,500 or more, but less than \$5,000; or
- 103 (d) a felony of the second degree, if the cost to repair or replace the public property is
- 104 \$5,000 or more.

105 (6) A violation of Subsection (2)(k) is:

- 106 (a) a class B misdemeanor, if the value of the public property is less than \$500;
- 107 (b) a class A misdemeanor, if the value of the public property is \$500 or more, but less
- 108 than \$1,500;
- 109 (c) a felony of the third degree, if the value of the public property is \$1,500 or more,
- 110 but less than \$5,000; or
- 111 (d) a felony of the second degree, if the value of the public property is \$5,000 or more.

112 (7) The penalty for violating Subsection (2)(l) is one degree lower than the penalty for

113 violating Subsection (2)(k).

114 (8) The penalty for violating Subsection (2)(m) is one degree lower than the penalty for

115 violating Subsection (2)(j).

116 ~~[(5)]~~ (9) In addition to the penalty described in [Subsection (3) or (4)] Subsections (3)

117 through (8), a public officer who [violates] is convicted of a felony under Subsection (2):

- 118 (a) is subject to the penalties described in Section 76-8-404; and
- 119 (b) may not disburse public funds or access public accounts.

120 ~~[(6)]~~ (10) (a) A public servant is not guilty of a violation of [this section] Subsections

121 (2)(j) through (m) for authorized personal use of public property.

122 (b) Subsection [~~(6)~~] (10)(a) does not apply if:

123 (i) the public servant's personal use of the public property does not constitute  
124 authorized personal use at the time of the personal use; and

125 (ii) a public entity modifies or adopts a policy or law, or takes other action, to  
126 retroactively authorize or approve the personal use of the public property by the public servant.

127 Section 2. Section **76-8-403** is amended to read:

128 **76-8-403. Failure to keep and pay over public money.**

129 [~~Every~~] Except as otherwise provided in Subsection [76-8-402](#)(4), a person who  
130 receives, safekeeps, transfers, or disburses public money who neglects or fails to keep and pay  
131 over the money in the manner prescribed by law is guilty of a felony of the third degree.

132 Section 3. Section **76-8-404** is amended to read:

133 **76-8-404. Making profit from or misusing public money or public property --**  
134 **Disqualification from office -- Criminal penalty.**

135 A public officer, regardless of whether the public officer receives, safekeeps, transfers,  
136 disburses, or has a fiduciary relationship with public money, who makes a profit from or out of  
137 public money or public property, or who uses public money or public property in a manner or  
138 for a purpose not authorized by law [~~is guilty~~] and is convicted of a felony [~~as provided in~~]  
139 under Section [76-8-402](#) [and] is, in addition to the punishment provided by law, disqualified  
140 from holding public office.