

HB0098S01 compared with HB0098

~~{deleted text}~~ shows text that was in HB0098 but was deleted in HB0098S01.

inserted text shows text that was not in HB0098 but was inserted into HB0098S01.

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Representative Craig Hall proposes the following substitute bill:

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;
- ▶ modifies the elements of the crime of misuse of public money;
- ▶ makes it a crime for a public servant to ~~{~~

~~willfully damage or dispose of}~~ knowingly engage in certain misconduct in
relation to public property ~~{ without legal authority;~~

~~commit theft of public property or temporarily appropriate public property for~~

HB0098S01 compared with HB0098

~~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

Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

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

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

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

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

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

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

(iv) the public servant uses and possesses the public property in a lawful manner and in

HB0098S01 compared with HB0098

accordance with the policy described in Subsection (1)(a)(iii); or

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

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

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

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

(a) appropriate public money [~~or public property~~] to the public servant's own use or benefit or to the use or benefit of another without authority of law;

(b) loan or transfer public money [~~or public property~~] without authority of law;

(c) fail to keep public money [~~or public property~~] in the public servant's possession until disbursed by authority of law;

(d) [~~unlawfully~~] deposit public money in a bank or with another person in violation of the written policy of the public servant's public entity or the requirements of law;

(e) [~~knowingly~~] keep a false account or make a false entry or erasure in an account of, or relating to, public money;

(f) fraudulently alter, falsify, conceal, or destroy an account described in Subsection (2)(e);

(g) [~~willfully~~] refuse or omit to pay over, on demand, any public money in the public servant's custody or control, upon the presentation of a draft, order, or warrant drawn upon the public money by competent authority;

(h) [~~willfully~~] omit to transfer public money when the transfer is required by law; ~~{ }~~ [or]

(i) [~~willfully~~] omit or refuse to pay over, to any officer or person authorized by law to receive public money, public money received by the public servant under any duty imposed on the public servant by law[-];

(j) ~~{ willfully }~~ damage or dispose of public property ~~{ without legal authority }~~ in violation of the written policy of the public servant's public entity or the requirements of law;

HB0098S01 compared with HB0098

(k) obtain or exercise unauthorized control of public property with the intent to deprive the owner of possession of the public property;

(l) obtain or exercise unauthorized control of public property with the intent to temporarily appropriate, possess, use, or deprive the owner of possession of the public property; ~~or~~

~~— (m) when the public servant is in lawful possession of public property, willfully fail to keep and safeguard the public property until returning the~~

(m) appropriate public property to the ~~owner or disposing of the~~ public servant's own use or benefit or to the use or benefit of another without authority of law;

(n) loan or transfer public property without authority of law; or

(o) fail to keep public property in the public servant's possession until returned to the property owner, or disposed of or relinquished, in accordance with the written policy of the public servant's public entity and the requirements of law.

(3) Except as provided in Subsection (4), a violation of [~~Subsection (2)~~] Subsections (2)(a) through (i) is a felony of the third degree.

(4) A violation of [~~Subsection (2)~~] Subsections (2)(a) through (i) is a felony of the second degree if:

(a) the value of the public money [~~or the value of the use of the public property~~] exceeds \$5,000;

(b) the amount of the false account exceeds \$5,000;

(c) the amount falsely entered exceeds \$5,000;

(d) the amount that is the difference between the original amount and the fraudulently altered amount exceeds \$5,000; or

(e) the amount falsely erased, fraudulently concealed, destroyed, or falsified in the account exceeds \$5,000.

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

(a) a class B misdemeanor, if the cost to repair or replace the public property is less than \$500;

(b) a class A misdemeanor, if the cost to repair or replace the public property is \$500 or more, but less than \$1,500;

(c) a felony of the third degree, if the cost to repair or replace the public property is

HB0098S01 compared with HB0098

\$1,500 or more, but less than \$5,000; or

(d) a felony of the second degree, if the cost to repair or replace the public property is \$5,000 or more.

(6) A violation of Subsection (2)(k), (m), (n), or (o) is:

(a) a class B misdemeanor, if the value of the public property is less than \$500;

(b) a class A misdemeanor, if the value of the public property is \$500 or more, but less than \$1,500;

(c) a felony of the third degree, if the value of the public property is \$1,500 or more, but less than \$5,000; or

(d) a felony of the second degree, if the value of the public property is \$5,000 or more.

(7) ~~The penalty for violating~~ A violation of Subsection (2)(l) is ~~one degree lower than the penalty for violating Subsection (2)(k).~~

~~— (8) The penalty for violating Subsection (2)(m) is one degree lower than the penalty for violating Subsection (2)(j).~~

~~— [(5)] (9):~~

(a) a class C misdemeanor, if the value of the public property is less than \$500;

(b) a class B misdemeanor, if the value of the public property is \$500 or more, but less than \$1,500;

(c) a class A misdemeanor, if the value of the public property is \$1,500 or more, but less than \$5,000; or

(d) a felony of the third degree, if the value of the public property is \$5,000 or more.

[(5)] (8) In addition to the penalty described in [Subsection (3) or (4)] Subsections (3) through ~~(8) (7)~~, a public officer who ~~[violates]~~ is convicted of a felony ~~under~~ violation of Subsection (2):

(a) is subject to the penalties described in Section 76-8-404; and

(b) may not disburse public funds or access public accounts.

[(6)] ~~(10) (9)~~ (a) A public servant is not guilty of a violation of [this section] Subsections (2)(j) through ~~(m) (o)~~ for authorized personal use of public property.

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

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

HB0098S01 compared with HB0098

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

(10) It is not a defense to a violation of Subsection (2) that:

(a) subsequent to the violation, a public entity modifies or adopts a policy or law, or takes other action, to retroactively authorize, approve, or ratify the conduct that constitutes a violation; or

(b) a written policy of the public servant's public entity permits private use of the public property if it is proven, beyond a reasonable doubt, that the public servant did not comply with the written policy.

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

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

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

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

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

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