

SURPLUS PROPERTY AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stuart C. Reid

House Sponsor: Ryan D. Wilcox

LONG TITLE

General Description:

This bill modifies the Utah Administrative Services Code by moving the state surplus property program to the Division of Purchasing and General Services.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ moves the state surplus property program from the Division of Fleet Operations of the Department of Administrative Services to the Division of Purchasing and General Services in the same department; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26-1-21, as last amended by Laws of Utah 2008, Chapter 382

63A-2-103, as last amended by Laws of Utah 2009, Chapter 183

ENACTS:

63A-2-101.5, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

63A-2-401, (Renumbered from 63A-9-801, as last amended by Laws of Utah 2008,

30 Chapters 3 and 382)

31 **63A-2-402**, (Renumbered from 63A-9-802, as renumbered and amended by Laws of
32 Utah 1997, Chapter 252)

33 **63A-2-403**, (Renumbered from 63A-9-803, as renumbered and amended by Laws of
34 Utah 1997, Chapter 252)

35 **63A-2-404**, (Renumbered from 63A-9-805, as last amended by Laws of Utah 2001,
36 Chapter 9)

37 **63A-2-405**, (Renumbered from 63A-9-807, as renumbered and amended by Laws of
38 Utah 1997, Chapter 252)

39 **63A-2-406**, (Renumbered from 63A-9-808, as last amended by Laws of Utah 2008,
40 Chapter 382)

41 **63A-2-407**, (Renumbered from 63A-9-808.1, as last amended by Laws of Utah 2005,
42 Chapters 60 and 61)

43 **63A-2-408**, (Renumbered from 63A-9-809, as renumbered and amended by Laws of
44 Utah 1997, Chapter 252)

45 **63A-2-409**, (Renumbered from 63A-9-806, as renumbered and amended by Laws of
46 Utah 1997, Chapter 252)

47

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

49 Section 1. Section **26-1-21** is amended to read:

50 **26-1-21. Disposal of property by department.**

51 (1) The department may dispose of any personal property owned by it or any of the
52 entities created under Section 26-1-13, in the manner provided in Title 63A, Chapter [9] 2, Part
53 [8] 4, Surplus Property Service.

54 (2) The department may dispose of any real property owned by it or any of the entities
55 created under Section 26-1-13, in the manner provided in Title 65A, Chapter 4, Acquisition
56 and Disposition of Land by State Agencies.

57 Section 2. Section **63A-2-101.5** is enacted to read:

58 **63A-2-101.5. Definitions.**

59 As used in this chapter:

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

62 (2) "Information technology equipment" means equipment that is designed to
63 electronically manipulate, store, or transfer a form of data.

64 (3) "Inventory property" means property in the possession of the division that is
65 available for purchase by an agency or the public.

66 (4) "Judicial district" means a geographic district established by Section 78A-1-102.

67 (5) "Person with a disability" means a person with a severe, chronic disability that:

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

70 (b) is likely to continue indefinitely.

71 (6) "Personal handheld electronic device":

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

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

76 (7) "Property act" means the Federal Property and Administrative Services Act of
77 1949, 40 U.S.C. Sec. 549.

78 (8) (a) "Surplus property" means property that an agency:

79 (i) intends for disposal; and

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

81 (b) "Surplus property" does not include:

82 (i) real property; or

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

84 (A) discarded; and

85 (B) recyclable.

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

88 Section 3. Section **63A-2-103** is amended to read:

89 **63A-2-103. General services provided -- Subscription by state departments, state**
90 **agencies, and certain local governmental entities -- Fee schedule.**

91 (1) (a) The director of the division [~~of Purchasing and General Services~~] shall operate,
92 manage, and maintain:

93 (i) a central mailing service; [~~and~~]

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

95 (iii) the state surplus property program in accordance with Part 4, Surplus Property
96 Services.

97 (b) The director may establish microfilming, duplicating, printing, addressograph, and
98 other central services.

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

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

105 (3) The director shall:

106 (a) prescribe a schedule of fees to be charged for all services provided by the division
107 to any department or agency after the director:

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

110 (ii) obtains the approval of the Legislature, as required by Sections 63J-1-410 and
111 63J-1-504;

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

114 (c) periodically conduct a market analysis [~~by July 1, 2005, and periodically thereafter~~]
115 of fees, which analysis shall include comparison of the division's rates with the fees of other
116 public or private sector providers where comparable services and rates are reasonably available.

117 Section 4. Section **63A-2-401**, which is renumbered from Section 63A-9-801 is
118 renumbered and amended to read:

119 **Part 4. Surplus Property Service**

120 ~~[63A-9-801].~~ **63A-2-401. State surplus property program -- Definitions --**

121 **Administration.**

122 (1) As used in this [~~section: (a)~~] part, "agency" means:

123 [(i)] (a) the Utah Departments of Administrative Services, Agriculture[;] and Food,
124 Alcoholic Beverage Control, Commerce, Community and Culture, Corrections, Workforce
125 Services, Health, Human Resource Management, Human Services, Insurance, Natural
126 Resources, Public Safety, Technology Services, and Transportation and the Labor
127 Commission;

128 [(ii)] (b) the Utah Offices of the Auditor, Attorney General, Court Administrator,
129 Crime Victim Reparations, Rehabilitation, and Treasurer;

130 [(iii)] (c) the Public Service Commission and State Tax Commission;

131 [(iv)] (d) the State Boards of Education, Pardons and Parole, and Regents;

132 [(v)] (e) the Career Service Review [~~Board~~] Office;

133 [(vi)] (f) other state agencies designated by the governor;

134 [(vii)] (g) the legislative branch, the judicial branch, and the State Board of Regents;

135 and

136 [(viii)] (h) an institution of higher education, its president, and its board of trustees for
137 purposes of Section [~~63A-9-802~~] 63A-2-402.

138 [~~(b) "Division" means the Division of Fleet Operations.~~]

139 [~~(c) "Information technology equipment" means any equipment that is designed to~~
140 ~~electronically manipulate, store, or transfer any form of data.~~]

141 [~~(d) "Inventory property" means property in the possession of the division that is~~

142 ~~available for purchase by an agency or the public.]~~

143 ~~[(e) "Judicial district" means the geographic districts established by Section~~
144 ~~78A-1-102.]~~

145 ~~[(f) (i) "Surplus property" means property purchased by, seized by, or donated to, an~~
146 ~~agency that the agency wishes to dispose of.]~~

147 ~~[(ii) "Surplus property" does not mean real property.]~~

148 ~~[(g) "Transfer" means transfer of surplus property without cash consideration.]~~

149 (2) (a) The division shall make rules establishing a state surplus property program that
150 meets the requirements of this chapter by following the procedures and requirements of Title
151 63G, Chapter 3, Utah Administrative Rulemaking Act.

152 (b) ~~[Those]~~ The rules shall include:

153 (i) a requirement prohibiting the transfer of surplus property from one agency to
154 another agency without written approval from the division;

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

157 (iii) requirements governing purchase priorities;

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

159 (v) procedures for collecting bad debts;

160 (vi) requirements and procedures for disposing of firearms;

161 (vii) the elements of the rates or other charges assessed by the division for services and
162 handling;

163 (viii) procedures governing the timing and location of public sales of inventory
164 property; and

165 (ix) procedures governing the transfer of information technology equipment by state
166 agencies directly to public schools.

167 (c) The division shall report all transfers of information technology equipment by state
168 agencies to public schools to the Utah Technology Commission and to the Legislative Interim
169 Education Committee at the end of each fiscal year.

- 170 (3) In creating and administering the program, the division shall:
- 171 (a) when conditions, inventory, and demand permit:
- 172 (i) establish facilities to store inventory property at geographically dispersed locations
- 173 throughout the state; and
- 174 (ii) hold public sales of property at geographically dispersed locations throughout the
- 175 state;
- 176 (b) establish, after consultation with the agency requesting the sale of surplus property,
- 177 the price at which the surplus property shall be sold; and
- 178 (c) transfer proceeds arising from the sale of state surplus property to the agency
- 179 requesting the sale in accordance with Title 63J, Chapter 1, Budgetary Procedures Act, less [~~an~~
- 180 ~~amount established by the division by rule~~] a fee approved in accordance with Sections
- 181 63A-1-114 and 63J-1-410, to pay the costs of administering the surplus property program.

182 (4) Unless specifically exempted from this [~~chapter~~] part by explicit reference to this

183 [~~chapter~~] part, each state agency shall dispose of and acquire surplus property only by

184 participating in the division's program.

185 Section 5. Section **63A-2-402**, which is renumbered from Section 63A-9-802 is

186 renumbered and amended to read:

187 ~~[63A-9-802].~~ **63A-2-402. State surplus property program -- Participation**

188 **by institutions of higher education.**

189 The Board of Regents shall:

- 190 (1) implement a policy requiring each institution of higher education to submit to the
- 191 division a listing of surplus property available for sale outside the institution, at least 15 days
- 192 prior to the intended sale date;
- 193 (2) supervise and assist compliance by the institutions of higher education with the
- 194 requirement of this part; and
- 195 (3) encourage institutions of higher education to acquire federal surplus property from
- 196 the division to reduce expenditures.

197 Section 6. Section **63A-2-403**, which is renumbered from Section 63A-9-803 is

198 renumbered and amended to read:

199 ~~[63A-9-803].~~ **63A-2-403. Methods of disposition of surplus authorized.**

200 The division may dispose of state surplus property by public auction, sealed bids, or by
201 other means established by rule in accordance with Title 63G, Chapter 3, Utah Administrative
202 Rulemaking Act.

203 Section 7. Section **63A-2-404**, which is renumbered from Section 63A-9-805 is
204 renumbered and amended to read:

205 ~~[63A-9-805].~~ **63A-2-404. Acquisition of federal surplus property -- Powers**
206 **and duties -- Advisory boards and committees -- Expenditures and contracts --**
207 **Clearinghouse of information -- Reports.**

208 [~~(1)~~ As used in this section:]

209 [~~(a)~~ "Property" includes equipment, materials, books, and other supplies.]

210 [~~(b)~~ "Property act" means Section 203(j) of the Federal Property and Administrative
211 Services Act of 1949.]

212 [~~(2)~~] (1) The division may:

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

216 (b) warehouse that property if it is not real property; and

217 (c) distribute that property within [~~Utah~~] this state to:

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

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

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

223 (iv) civil defense organizations;

224 (v) political subdivisions; and

225 (vi) any other types of institutions or activities that are eligible to acquire the property

226 under federal law.

227 ~~[(3)]~~ (2) The division may:

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

230 (b) investigate the applications;

231 (c) obtain opinions about those applications from the appropriate health or educational
232 authorities of ~~[Utah]~~ this state;

233 (d) make recommendations about the need of the applicant for the property, the merits
234 of the applicant's proposed use of the property, and the suitability of the property for those
235 purposes; and

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

238 ~~[(4)]~~ (3) The division may appoint advisory boards or committees.

239 ~~[(5)]~~ (4) If required by law or regulation of the United States in connection with the
240 disposal of surplus real property and the receipt, warehousing, and distribution of surplus
241 personal property received by the division from the United States, the division may:

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

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

246 (c) require reports; and

247 (d) make investigations.

248 ~~[(6)]~~ (5) The division shall act as the clearinghouse of information for public and
249 private nonprofit institutions, organizations, and agencies eligible to acquire federal surplus
250 real property to:

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

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

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

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

258 [~~(7)~~] (6) The division shall:

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

260 (b) file a state plan of operation;

261 (c) operate according to that plan;

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

264 (e) make any reports required by the United States or any of its departments or
265 agencies; and

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

269 Section 8. Section **63A-2-405**, which is renumbered from Section 63A-9-807 is
270 renumbered and amended to read:

271 ~~[63A-9-807]~~. **63A-2-405. Charges and fees assessed for surplus property.**

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

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

278 (2) [~~The division~~] may reduce or eliminate charges on property that is found not to be
279 usable for the purpose for which it was procured[-]; and

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

282 Section 9. Section **63A-2-406**, which is renumbered from Section 63A-9-808 is
283 renumbered and amended to read:

284 ~~[63A-9-808].~~ **63A-2-406. Rulemaking on giving priority to state and local**
285 **agencies in purchasing surplus property -- Rulemaking on the sale or use of a personal**
286 **handheld electronic device.**

287 [~~(1) As used in this section, "personal handheld electronic device":~~]

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

291 [~~(b) includes a mobile phone, pocket personal computer, personal digital assistant,~~
292 ~~wireless, or similar device.;~~]

293 [~~(2)~~] In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
294 the division shall make rules:

295 [~~(a)~~] ~~(1)~~ giving state and local agencies priority to purchase surplus property for a
296 30-day period except for personal handheld electronic devices under Subsection (2)[~~(b)~~]; and
297 [~~(b)~~] ~~(2)~~ allowing the sale of a personal handheld electronic device to a user who:
298 [~~(i)~~] ~~(a)~~ is provided the device as part of the user's employment; and
299 [~~(ii)~~] ~~(b)~~ subsequently makes a change in employment status including, departure,
300 retirement, or transfer to another agency within state government.

301 Section 10. Section **63A-2-407**, which is renumbered from Section 63A-9-808.1 is
302 renumbered and amended to read:

303 ~~[63A-9-808.1].~~ **63A-2-407. Transfer of information technology equipment**
304 **for persons with a disability.**

305 [~~(1) As used in this section, "a person with a disability" means a person with a severe,~~
306 ~~chronic disability that:~~]

307 [~~(a) is attributable to a mental or physical impairment or a combination of mental and~~
308 ~~physical impairments; and]~~

309 [~~(b) is likely to continue indefinitely.;~~]

310 [(2)] (1) The division may transfer information technology equipment, or authorize the
311 transfer of technology equipment by an agency, to a nonprofit entity for distribution to and use
312 by a person with a disability.

313 [(3)] (2) Interagency transfers and sales of surplus property to state and local agencies
314 within the 30-day period under Section [63A-9-808] 63A-2-406 shall have priority over
315 transfers under Subsection [(2)] (1).

316 [(4)] (3) The division shall annually report to the Division of Services for People With
317 Disabilities the:

- 318 (a) names of the nonprofit entities receiving transfers under Subsection [(2)] (1); and
- 319 (b) types and amounts of equipment received.

320 Section 11. Section 63A-2-408, which is renumbered from Section 63A-9-809 is
321 renumbered and amended to read:

322 [~~63A-9-809~~]. **63A-2-408. Authority of state or local subdivision to receive**
323 **property -- Revocation of authority of officer.**

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

- 328 (a) secure the transfer to it of surplus property through the division under the
329 [~~provisions of Section 203(j) of the Federal Property and Administrative Services Act of 1949,~~
330 ~~as amended~~] the property act; and

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

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

- 335 (a) the order or resolution is revoked; and
- 336 (b) the division has received written notice of the revocation.

337 Section 12. Section 63A-2-409, which is renumbered from Section 63A-9-806 is

338 renumbered and amended to read:

339 ~~[63A-9-806].~~ 63A-2-409. **Bonds.**

340 The executive director of the Department of Administrative Services may bond any
341 person employed by the division who handles money, signs checks, or receives or distributes
342 surplus property.