

Senator Todd Weiler proposes the following substitute bill:

STATE SURPLUS PROPERTY PROGRAM AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: Brad R. Wilson

LONG TITLE

General Description:

This bill amends Title 63A, Chapter 2, Part 4, Surplus Property Service.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ modifies, and places limitations on, rulemaking authority of the Division of Purchasing and General Services;
- ▶ permits an agency to directly transfer surplus property to another agency without obtaining approval from the division;
- ▶ requires the division to contract with a person in the private sector to administer the majority of the state surplus property program;
- ▶ modifies provisions relating to assessing charges or fees to an agency for the acquisition, warehousing, distribution, sale, transfer, or handling of state surplus property;
- ▶ describes the duties of, and the requirements imposed on, the state surplus property contractor;
- ▶ grants rulemaking authority to the division to permit an agency to donate state surplus property to a charitable organization under certain circumstances or to



26 dispose of, or destroy surplus property as waste; and
27 ▶ makes technical changes.

28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **63A-2-101.5**, as enacted by Laws of Utah 2011, Chapter 207

35 **63A-2-103**, as last amended by Laws of Utah 2011, Chapter 207

36 **63A-2-401**, as last amended by Laws of Utah 2012, Chapters 212 and 369

37 **63A-2-404**, as renumbered and amended by Laws of Utah 2011, Chapter 207

38 **63A-2-405**, as renumbered and amended by Laws of Utah 2011, Chapter 207

39 **63A-2-408**, as renumbered and amended by Laws of Utah 2011, Chapter 207

40 **63A-2-409**, as enacted by Laws of Utah 2012, Chapter 427

41 ENACTS:

42 **63A-2-410**, Utah Code Annotated 1953

43 **63A-2-411**, Utah Code Annotated 1953

44 REPEALS:

45 **63A-2-403**, as renumbered and amended by Laws of Utah 2011, Chapter 207



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

48 Section 1. Section **63A-2-101.5** is amended to read:

49 **63A-2-101.5. Definitions.**

50 As used in this chapter:

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

53 (2) "Federal surplus property" means surplus property of the federal government of the
54 United States.

55 [(2)] (3) "Information technology equipment" means equipment that is designed to
56 electronically manipulate, store, or transfer a form of data.

57 ~~[(3)]~~ (4) "Inventory property" means property in the possession of the division that is
58 available for purchase by an agency or the public.

59 ~~[(4)]~~ (5) "Judicial district" means a geographic district established by Section
60 78A-1-102.

61 ~~[(5)]~~ (6) "Person with a disability" means a person with a severe, chronic disability
62 that:

63 (a) is attributable to a mental or physical impairment or a combination of mental and
64 physical impairments; and

65 (b) is likely to continue indefinitely.

66 ~~[(6)]~~ (7) "Personal handheld electronic device":

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

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

71 ~~[(7)]~~ (8) "Property act" means the Federal Property and Administrative Services Act of
72 1949, 40 U.S.C. Sec. 549.

73 (9) "State surplus property" means surplus property that is not:

74 (a) a vehicle; or

75 (b) federal surplus property.

76 (10) "State surplus property contractor" means the person described in Section
77 63A-2-410 that the state contracts with to administer the state's program for the disposition of
78 state surplus property.

79 ~~[(8)]~~ (11) (a) "Surplus property" means property that an agency:

80 (i) intends ~~[for disposal]~~ to divest itself of; and

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

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

83 (i) real property; or

84 (ii) an aluminum can or an item made primarily of paper, plastic, or cardboard that is:

85 (A) discarded; and

86 (B) recyclable.

87 ~~[(9)] "Transfer" means transfer of surplus property without cash consideration except~~

88 for a fee described in Subsection ~~63A-2-401(3)(c).~~]

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

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

92 (1) ~~(a)~~ The director of the division;

93 (a) shall operate, manage, and maintain:

94 (i) a central mailing service; and

95 (ii) an electronic central store system for procuring goods and services; ~~and~~

96 ~~[(iii) the state]~~

97 (b) shall, except when a state surplus property contractor administers the state's
98 program for disposition of state surplus property, operate, manage, and maintain the state
99 surplus property program;

100 (c) shall, when a state surplus property contractor administers the state's program for
101 disposition of state surplus property, oversee the state surplus property contractor's
102 administration of the state surplus property program in accordance with Part 4, Surplus
103 Property Services[-]; and

104 ~~[(b) The director]~~

105 (d) may establish microfilming, duplicating, printing, addressograph, and other central
106 services.

107 (2) (a) Each state department and agency shall subscribe to all of the services described
108 in Subsections (1)(a)(i) and (ii), unless the director delegates the director's authority to a
109 department or agency under Section 63A-2-104.

110 (b) An institution of higher education, school district, or political subdivision of the
111 state may subscribe to one or more of the services described in Subsections (1)(a)(i) and (ii).

112 (3) The director shall:

113 (a) except as provided in Part 4, Surplus Property Services, prescribe a schedule of fees
114 to be charged for all services provided by the division to any department or agency after the
115 director:

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

118 (ii) obtains the approval of the Legislature, as required by Sections 63J-1-410 and

119 63J-1-504;

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

122 (c) periodically conduct a market analysis of fees, which analysis shall include
123 comparison of the division's rates with the fees of other public or private sector providers
124 where comparable services and rates are reasonably available.

125 Section 3. Section **63A-2-401** is amended to read:

126 **63A-2-401. Utah surplus property program -- Definitions -- Administration.**

127 (1) As used in this part, "agency" means:

128 (a) the Utah Departments of Administrative Services, Agriculture and Food, Alcoholic
129 Beverage Control, Commerce, Heritage and Arts, Corrections, Workforce Services, Health,
130 Human Resource Management, Human Services, Insurance, Natural Resources, Public Safety,
131 Technology Services, and Transportation and the Labor Commission;

132 (b) the Utah Offices of the Auditor, Attorney General, Court Administrator, Utah
133 Office for Victims of Crime, Rehabilitation, and Treasurer;

134 (c) the Public Service Commission and State Tax Commission;

135 (d) the State Boards of Education, Pardons and Parole, and Regents;

136 (e) the Career Service Review Office;

137 (f) other state agencies designated by the governor;

138 (g) the legislative branch, the judicial branch, and the State Board of Regents; and

139 (h) an institution of higher education, its president, and its board of trustees for
140 purposes of Section 63A-2-402.

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

144 (b) The rules shall include:

145 [~~(i) a requirement prohibiting the transfer of surplus property from one agency to
146 another agency without written approval from the division;~~]

147 (i) procedures and requirements for transferring surplus property directly from one
148 agency to another agency;

149 (ii) procedures and requirements governing division administration requirements that

150 an agency must follow;

151 (iii) requirements governing purchase priorities;

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

153 (v) except as provided in Subsection (2)(e), procedures for collecting bad debts;

154 (vi) requirements and procedures for [~~disposing~~] the disposition of firearms;

155 (vii) except as provided in Subsection (2)(e), the elements of the rates or other charges
156 assessed by the division for services and handling;

157 (viii) except as provided in Subsection (2)(e), procedures governing the timing and
158 location of public sales of [~~inventory~~] surplus property; and

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

161 (c) Except as it relates to a vehicle or federal surplus property, the rules described in
162 Subsection (2)(b)(i) may not require approval by the division, the director of the division, or
163 any other person, for an agency to transfer surplus property directly to another agency.

164 [~~(c)~~] (d) The division shall report all transfers of information technology equipment by
165 state agencies to public schools to the Legislative Education Interim Committee at the end of
166 each fiscal year.

167 (e) When a state surplus property contractor administers the state's program for
168 disposition of state surplus property:

169 (i) rules made under the rulemaking authority described in Subsections (2)(b)(v) and

170 (vii) apply only to surplus vehicles; and

171 (ii) rules made under the rulemaking authority described in Subsection (2)(b)(viii)

172 apply only to surplus vehicles and federal surplus property.

173 (3) In creating and administering the program, as it relates to surplus vehicles and
174 federal surplus property only, the division shall[~~-(a)~~], when conditions, inventory, and demand
175 permit:

176 [(i)] (a) establish facilities to store inventory property at geographically dispersed
177 locations throughout the state; and

178 [(ii)] (b) hold public sales of property at geographically dispersed locations throughout
179 the state;

180 (c) except as provided in Subsection (3)(d):

181 ~~[(b)]~~ (i) establish, after consultation with the agency requesting the sale of surplus
182 property, the price at which the surplus property shall be sold; and

183 ~~[(c)]~~ (ii) transfer proceeds arising from the sale of state surplus property to the agency
184 requesting the sale in accordance with Title 63J, Chapter 1, Budgetary Procedures Act, less a
185 fee approved in accordance with Sections 63A-1-114 and 63J-1-410, to pay the costs of
186 administering the surplus property program.

187 (d) When a state surplus property contractor administers the state's program for
188 disposition of state surplus property, the provisions on Subsection (3)(c) only apply to surplus
189 vehicles.

190 (4) ~~[Unless specifically exempted from]~~ Except as otherwise expressly provided in this
191 part, or by explicit reference to this part, each state agency shall ~~[dispose of]~~ divest and acquire
192 surplus property only by participating in the division's program.

193 Section 4. Section **63A-2-404** is amended to read:

194 **63A-2-404. Acquisition of federal surplus property -- Powers and duties --**
195 **Advisory boards and committees -- Expenditures and contracts -- Clearinghouse of**
196 **information -- Reports.**

197 (1) The division may:

198 (a) acquire from the United States under and in conformance with the property act any
199 federal surplus property under the control of any department or agency of the United States that
200 is usable and necessary for any purposes authorized by federal law;

201 (b) warehouse ~~[that]~~ federal surplus property if it is not real property; and

202 (c) distribute ~~[that]~~ federal surplus property within this state to:

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

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

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

208 (iv) civil defense organizations;

209 (v) political subdivisions; and

210 (vi) any other types of institutions or activities that are eligible to acquire the federal
211 surplus property under federal law.

- 212 (2) The division may:
- 213 (a) receive applications from eligible health and educational institutions for the
- 214 acquisition of federal surplus real property;
- 215 (b) investigate the applications;
- 216 (c) obtain opinions about those applications from the appropriate health or educational
- 217 authorities of this state;
- 218 (d) make recommendations about the need of the applicant for the property, the merits
- 219 of the applicant's proposed use of the property, and the suitability of the property for those
- 220 purposes; and
- 221 (e) otherwise assist in the processing of those applications for acquisition of real and
- 222 related personal property of the United States under the property act.
- 223 (3) The division may appoint advisory boards or committees.
- 224 (4) If required by law or regulation of the United States in connection with the
- 225 ~~disposal~~ disposition of surplus real property and the receipt, warehousing, and distribution of
- 226 surplus personal property received by the division from the United States, the division may:
- 227 (a) make certifications, take action, and make expenditures;
- 228 (b) enter into contracts, agreements, and undertakings for and in the name of the state
- 229 including cooperative agreements with the federal agencies providing for use by and exchange
- 230 between them of the property, facilities, personnel, and services of each by the other;
- 231 (c) require reports; and
- 232 (d) make investigations.
- 233 (5) The division shall act as the clearinghouse of information for public and private
- 234 nonprofit institutions, organizations, and agencies eligible to acquire federal surplus real
- 235 property to:
- 236 (a) locate both real and personal property available for acquisition from the United
- 237 States;
- 238 (b) ascertain the terms and conditions under which that property may be obtained;
- 239 (c) receive requests from those institutions, organizations, and agencies and transmit to
- 240 them all available information in reference to that property; and
- 241 (d) aid and assist those institutions, organizations, and agencies in every way possible
- 242 in those acquisitions or transactions.

- 243 (6) The division shall:
- 244 (a) cooperate with the departments or agencies of the United States;
- 245 (b) file a state plan of operation;
- 246 (c) operate according to that plan;
- 247 (d) take the actions necessary to meet the minimum standards prescribed by the
- 248 property act;
- 249 (e) make any reports required by the United States or any of its departments or
- 250 agencies; and
- 251 (f) comply with the laws of the United States and the regulations of any of the
- 252 departments or agencies of the United States governing the allocation of, transfer of, use of, or
- 253 accounting for any property donated to the state.

254 Section 5. Section **63A-2-405** is amended to read:

255 **63A-2-405. Charges and fees assessed for surplus property.**

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

257 ~~[(+)]~~ (a) may assess charges and fees for the acquisition, warehousing, distribution, or

258 transfer of [any property of the United States] federal surplus property for educational, public

259 health, or civil defense purposes, including research, only if those charges and fees are

260 reasonably related to the division's care and handling costs of acquiring, receipting,

261 warehousing, distributing, or transferring the federal surplus property; and

262 ~~[(2)]~~ (b) may reduce or eliminate charges on federal surplus property that is found not

263 to be usable for the purpose for which it was procured[; and].

264 ~~[(3) shall limit the charges and fees assessed against real property to the reasonable~~

265 ~~administrative costs that the division incurred in effecting transfer.]~~

266 (2) When there is a state surplus property contractor:

267 (a) the division may not assess charges or fees to an agency for the acquisition,

268 warehousing, distribution, sale, transfer, or handling of state surplus property; and

269 (b) unless expressly provided otherwise in the contract between the division and the

270 state surplus contractor, the state surplus contractor may not assess charges or fees to an agency

271 for the acquisition, warehousing, distribution, sale, transfer, or handling of state surplus

272 property.

273 Section 6. Section **63A-2-408** is amended to read:

274 **63A-2-408. Authority of state or local subdivision to receive property --**
275 **Revocation of authority of officer.**

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

280 (a) as it relates to federal surplus property:

281 ~~[(a)]~~ (i) secure the transfer to it of federal surplus property through the division under
282 [the] the property act; and

283 ~~[(b)]~~ (ii) obligate the state or political subdivision and its funds to the extent necessary
284 to comply with the terms and conditions of those transfers[-]; and

285 (b) as it relates to surplus property other than federal surplus property:

286 (i) secure the direct transfer of surplus property to it; and

287 (ii) obligate the state or political subdivision and its funds to the extent necessary to
288 comply with the terms and conditions of those transfers.

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

291 (a) the order or resolution is revoked; and

292 (b) the division has received written notice of the revocation.

293 Section 7. Section **63A-2-409** is amended to read:

294 **63A-2-409. Disposition of certain surplus property by the legislative branch.**

295 This part does not apply to ~~[disposal]~~ disposition by the legislative branch of surplus
296 property that is information technology equipment or a personal handheld electronic device, if
297 the Legislative Management Committee, by rule, establishes its own policy for ~~[disposal]~~
298 disposition, by the legislative branch, of surplus property that is information technology
299 equipment or a personal handheld electronic device.

300 Section 8. Section **63A-2-410** is enacted to read:

301 **63A-2-410. State surplus property contractor -- Deposit of proceeds.**

302 (1) (a) The division shall, after issuing a request for proposals, award a contract to a
303 person in the private sector to administer the state's program for disposition of state surplus
304 property.

- 305 (b) The request for proposals shall seek:
- 306 (i) proposals that provide that the sole source of payment to the contractor will be a
- 307 percentage of the amount for which the contractor sells state surplus property; and
- 308 (ii) proposals that provide for alternative methods of payment.
- 309 (2) The contract shall:
- 310 (a) provide that the contractor may sell state surplus property by auction, bid, or other
- 311 manner designed to get the best price available for the state surplus property;
- 312 (b) prohibit the contractor from engaging in the sale of state surplus property in a
- 313 manner that would constitute a conflict of interest;
- 314 (c) require regular and detailed accounting to the division of:
- 315 (i) the receipt and sale of state surplus property; and
- 316 (ii) the receipt and payment of funds by the contractor; and
- 317 (d) ensure public transparency regarding the sale of state surplus property by requiring
- 318 that the contractor:
- 319 (i) post online information related to a sale or attempted sale of state surplus property,
- 320 including:
- 321 (A) a description of the state surplus property;
- 322 (B) the agency that requested sale of the surplus property;
- 323 (C) the price at which the surplus property was sold; and
- 324 (D) the date that the surplus property was sold; and
- 325 (ii) post the information described in Subsection (2)(c)(i):
- 326 (A) within a time frame described in the contract; and
- 327 (B) for a period of time described in the contract.
- 328 (3) The contractor may not:
- 329 (a) unless expressly provided otherwise in the contract between the division and the
- 330 contractor:
- 331 (i) be required to store state surplus property; or
- 332 (ii) charge for the storage of state surplus property;
- 333 (b) administer the direct transfer of state surplus property from one agency to another
- 334 agency;
- 335 (c) administer the disposal or destruction, by an agency, of state surplus property as

336 waste;

337 (d) administer the donation by an agency of state surplus property to a charity; or

338 (e) administer the disposition of state surplus property under Section 63A-2-406,
339 63A-2-407, 63A-2-408, or 63A-2-409.

340 (4) The division shall, after paying the amount owed to the state surplus property
341 contractor, transfer the remaining money received for the sale of a particular item of state
342 surplus property to the agency that requested the sale of the particular item of state surplus
343 property, in accordance with Title 63J, Chapter 1, Budgetary Procedures Act.

344 (5) The division shall:

345 (a) on or before August 31, 2013, give an oral report to the Government Operations
346 Interim Committee regarding:

347 (i) the division's progress and plans in relation to issuing the request for proposals
348 described in this section; and

349 (ii) rules passed or proposed, on or after May 14, 2013, in relation to the state surplus
350 property program; and

351 (a) (i) issue the request for proposals described in this section on or before September
352 30, 2013; or

353 (ii) in November 2013, give an oral report to the Government Operations Interim
354 Committee, explaining why the request for proposals was not issued on or before September
355 30, 2013.

356 Section 9. Section **63A-2-411** is enacted to read:

357 **63A-2-411. Donation of state surplus property -- Disposal or destruction of state**
358 **surplus property as waste.**

359 The division shall make rules, in accordance with Title 63G, Chapter 3, Utah
360 Administrative Rulemaking Act, that permit an agency to destroy, dispose of as waste, or
361 donate to a charitable organization state surplus property, if:

362 (1) the state surplus property is worth less than \$30;

363 (2) the state surplus property fails to sell at auction;

364 (3) the cost of selling the state surplus property is greater than or equal to the value of
365 the state surplus property;

366 (4) the state surplus property is no longer usable;

367 (5) the state surplus property is damaged and cannot be repaired;

368 (6) the state surplus property is damaged and the cost of repair is greater than or equal
369 to the value of the state surplus property in a repaired state; or

370 (7) the state surplus property can be replaced for less than the cost of repairing the state
371 surplus property.

372 Section 10. **Repealer.**

373 This bill repeals:

374 Section **63A-2-403, Methods of disposition of surplus authorized.**