

**DIVISION OF FACILITIES CONSTRUCTION AND
MANAGEMENT PROPERTY AMENDMENTS**

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Walt Brooks

Senate Sponsor: Wayne A. Harper

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;
- ▶ 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



28 division-owned property;

29 ▶ authorizes the Division of Facilities and Construction Management to refer vacant

30 division-owned property to the Department of Transportation for public auction,

31 under certain circumstances; and

32 ▶ makes technical and conforming changes.

33 **Money Appropriated in this Bill:**

34 None

35 **Other Special Clauses:**

36 None

37 **Utah Code Sections Affected:**

38 AMENDS:

- 39 **63A-5-103**, as last amended by Laws of Utah 2017, Chapter 355
- 40 **63A-5-204**, as last amended by Laws of Utah 2017, Chapter 56
- 41 **63A-5-401**, as last amended by Laws of Utah 2011, Chapter 289
- 42 **65A-4-1**, as enacted by Laws of Utah 1988, Chapter 121

43 ENACTS:

- 44 **63A-5a-101**, Utah Code Annotated 1953
- 45 **63A-5a-102**, Utah Code Annotated 1953
- 46 **63A-5a-103**, Utah Code Annotated 1953
- 47 **63A-5a-104**, Utah Code Annotated 1953
- 48 **63A-5a-201**, Utah Code Annotated 1953
- 49 **63A-5a-202**, Utah Code Annotated 1953
- 50 **63A-5a-203**, Utah Code Annotated 1953
- 51 **63A-5a-204**, Utah Code Annotated 1953
- 52 **63A-5a-205**, Utah Code Annotated 1953
- 53 **63A-5a-206**, Utah Code Annotated 1953



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

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

57 **63A-5-103. Board -- Powers.**

58 (1) The State Building Board shall:

- 59 (a) in cooperation with agencies, prepare a master plan of structures built or
60 contemplated;
- 61 (b) submit to the governor and the Legislature a comprehensive five-year building plan
62 for the state containing the information required by Subsection (6);
- 63 (c) amend and keep current the five-year building program that complies with the
64 requirements described in Subsection (6), for submission to the governor and subsequent
65 legislatures; ~~and~~
- 66 (d) as a part of the long-range plan, recommend to the governor and Legislature any
67 changes in the law that are necessary to ensure an effective, well-coordinated building program
68 for all agencies~~[-]~~; and
- 69 (e) fulfill the duties given to the board under Chapter 5a, Division-Owned Real
70 Property Act.
- 71 (2) The board shall, in accordance with Title 63G, Chapter 3, Utah Administrative
72 Rulemaking Act, make rules:
- 73 (a) that are necessary to discharge its duties and the duties of the Division of Facilities
74 Construction and Management;
- 75 (b) that establish standards and requirements for life cycle cost-effectiveness of state
76 facility projects;
- 77 (c) that govern the disposition of real property by the division and establish factors,
78 including appraised value and historical significance, in evaluating the disposition;
- 79 (d) that establish standards and requirements for a capital development project request
80 and feasibility study described in Subsection [63A-5-104\(2\)\(b\)](#), including:
- 81 (i) a deadline by which a state agency is required to submit a capital development
82 project request; and
- 83 (ii) conditions and requirements by which a state agency may modify the state agency's
84 capital development project request after the agency submits the request;
- 85 (e) for the monitoring of a state agency's operations and maintenance expenditures for a
86 state-owned facility, that:
- 87 (i) establish standards and requirements for utility metering;
- 88 (ii) create an operations and maintenance program for a state agency's facilities;
- 89 (iii) establish a methodology for determining reasonably anticipated inflationary costs

90 for each operation and maintenance program described in Subsection (2)(e)(ii); and

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

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

95 (3) The board shall:

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

100 (i) the need for the building or facility;

101 (ii) the effectiveness of its design;

102 (iii) the efficiency of energy use; and

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

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

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

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

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

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

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

118 (5) In order to provide adequate information upon which the State Building Board may
119 make a recommendation described in Subsection (1), any state agency requesting new full-time
120 employees for the next fiscal year shall report those anticipated requests to the building board

121 at least 90 days before the annual general session in which the request is made.

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

124 (i) a list that prioritizes construction of new buildings for all structures built or
125 contemplated based upon each agency's present and future needs;

126 (ii) information, and space use data for all state-owned and leased facilities;

127 (iii) substantiating data to support the adequacy of any projected plans;

128 (iv) a summary of all statewide contingency reserve and project reserve balances as of
129 the end of the most recent fiscal year;

130 (v) a list of buildings that have completed a comprehensive facility evaluation by an
131 architect/engineer or are scheduled to have an evaluation;

132 (vi) for those buildings that have completed the evaluation, the estimated costs of
133 needed improvements; and

134 (vii) for projects recommended in the first two years of the five-year building plan:

135 (A) detailed estimates of the cost of each project;

136 (B) the estimated cost to operate and maintain the building or facility on an annual
137 basis;

138 (C) the cost of capital improvements to the building or facility, estimated at 1.1% of
139 the replacement cost of the building or facility, on an annual basis;

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

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

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

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

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

150 (7) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
151 the State Building Board may make rules establishing circumstances under which bids may be

152 modified when all bids for a construction project exceed available funds as certified by the
153 director.

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

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

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

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

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

164 **63A-5-204. Specific powers and duties of director.**

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

167 (a) "Capitol hill facilities" means the same as that term is defined in Section
168 63C-9-102.

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

170 (2) (a) The director shall:

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

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

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

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

183 agencies;

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

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

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

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

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

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

200 (ix) implement the State Building Energy Efficiency Program under Section
201 [63A-5-701](#);

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

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

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

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

210 (i) the State Capitol Preservation Board; and

211 (ii) state institutions of higher education.

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

- 214 (i) the agency has requested the responsibility;
- 215 (ii) the agency has the necessary resources and skills to comply with facility
- 216 maintenance standards approved by the State Building Board; and
- 217 (iii) the delegation would result in net cost savings to the state as a whole.
- 218 (c) The State Capitol Preservation Board and state institutions of higher education are
- 219 exempt from Division of Facilities Construction and Management oversight.
- 220 (d) Each state institution of higher education shall comply with the facility
- 221 maintenance standards approved by the State Building Board.
- 222 (e) Except for the State Capitol Preservation Board, agencies and institutions that are
- 223 exempt from division oversight shall annually report their compliance with the facility
- 224 maintenance standards to the division in the format required by the division.
- 225 (f) The division shall:
- 226 (i) prescribe a standard format for reporting compliance with the facility maintenance
- 227 standards;
- 228 (ii) report agency compliance or noncompliance with the standards to the Legislature;
- 229 and
- 230 (iii) conduct periodic audits of exempt agencies and institutions to ensure that they are
- 231 complying with the standards.
- 232 (4) (a) In making any allocations of space under Subsection (2), the director shall:
- 233 (i) conduct studies to determine the actual needs of each agency; and
- 234 (ii) comply with the restrictions contained in this Subsection (4).
- 235 (b) The supervision and control of the legislative area is reserved to the Legislature.
- 236 (c) The supervision and control of the judicial area is reserved to the judiciary for trial
- 237 courts only.
- 238 (d) The director may not supervise or control the allocation of space for entities in the
- 239 public and higher education systems.
- 240 (e) The supervision and control of capitol hill facilities and capitol hill grounds is
- 241 reserved to the State Capitol Preservation Board.
- 242 (5) The director may:
- 243 (a) hire or otherwise procure assistance and services, professional, skilled, or
- 244 otherwise, that are necessary to carry out the director's responsibilities, and may expend funds

245 provided for that purpose either through annual operating budget appropriations or from
246 nonlapsing project funds;

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

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

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

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

257 (a) the Office of Trust Administrator;

258 (b) the Department of Transportation;

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

260 (d) the Department of Natural Resources;

261 (e) the Utah National Guard;

262 (f) any area vocational center or other institution administered by the State Board of
263 Education;

264 (g) any institution of higher education; and

265 (h) the Utah Science Technology and Research Governing Authority.

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

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

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

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

276 Section 3. Section 63A-5-401 is amended to read:

277 **63A-5-401. Rulemaking for sale of real property -- Licensed or certified**
278 **appraisers -- Exceptions.**

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

284 (2) The rules:

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

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

288 (c) may require that the appraisal be completed by a state-certified general appraiser, as
289 defined under Section 61-2g-102.

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

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

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

297 Section 4. Section 63A-5a-101 is enacted to read:

298 **CHAPTER 5a. DIVISION-OWNED REAL PROPERTY ACT**

299 **Part 1. General Provisions**

300 **63A-5a-101. Title.**

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

302 Section 5. Section 63A-5a-102 is enacted to read:

303 **63A-5a-102. Definitions.**

304 As used in this chapter:

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

- 307 (2) "Board" means the State Building Board, created in Section 63A-5-101.
- 308 (3) "Condemnee" means the same as that term is defined in Section 78B-6-520.3.
- 309 (4) "Convey" means:
- 310 (a) to provide for a primary state agency's occupancy or use of vacant division-owned
- 311 property; or
- 312 (b) to effect a transfer of ownership or lease of vacant division-owned property to a
- 313 secondary state agency, local government entity, public purpose nonprofit entity, or private
- 314 party.
- 315 (5) "Director" means the division director, appointed under Section 63A-5-203.
- 316 (6) "Division" means the Division of Facilities Construction and Management, created
- 317 in Section 63A-5-201.
- 318 (7) "Division-owned property" means real property, including an interest in real
- 319 property, to which the division holds title, regardless of who occupies or uses the real property.
- 320 (8) "Local government entity" means a county, city, town, metro township, local
- 321 district, special service district, community development and renewal agency, conservation
- 322 district, school district, or other political subdivision of the state.
- 323 (9) "Primary state agency" means a state agency for which the division holds title to
- 324 real property that the state agency occupies or uses, as provided in Subsection
- 325 63A-5-204(2)(a)(iv).
- 326 (10) "Private party" means a person who is not a state agency, local government entity,
- 327 or public purpose nonprofit entity.
- 328 (11) "Public purpose nonprofit entity" means a corporation, association, organization,
- 329 or entity that:
- 330 (a) is located within the state;
- 331 (b) is not a state agency or local government entity;
- 332 (c) is exempt from federal income taxation under Section 501(c)(3), Internal Revenue
- 333 Code; and
- 334 (d) operates to fulfill a public purpose.
- 335 (12) "Qualified proposal" means a written proposal that:
- 336 (a) meets the criteria established by the division by rule;
- 337 (b) if submitted by a local government entity or public purpose nonprofit entity,

338 explains the public purpose for which the local government entity or public purpose nonprofit
339 entity seeks a transfer of ownership or lease of the vacant division-owned property; and

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

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

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

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

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

349 (15) "Transfer of ownership" includes a transfer of the ownership of vacant
350 division-owned property that occurs as part of an exchange of the vacant division-owned
351 property for another property.

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

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

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

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

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

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

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

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

363 Section 6. Section **63A-5a-103** is enacted to read:

364 **63A-5a-103. Application of chapter.**

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

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

367 (b) the division's disposal or lease of division-owned property with a value under
368 \$100,000, as estimated by the division.

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

371 Section 7. Section **63A-5a-104** is enacted to read:

372 **63A-5a-104. Rules adopted by the division.**

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

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

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

380 Section 8. Section **63A-5a-201** is enacted to read:

381 **Part 2. Disposition of Vacant Division-Owned Property**

382 **63A-5a-201. Division authority with respect to vacant division-owned property --**

383 **Limitations.**

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

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

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

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

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

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

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

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

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

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

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

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

412 (ii) in the case of any other transfer of ownership of vacant division-owned property, a
413 right of first refusal allowing the division to purchase the property from the transferee for the
414 same price that the transferee paid to the division if the transferee wishes to transfer ownership
415 of the former vacant division-owned property.

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

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

419 **63A-5a-202. Notice required before division may convey division-owned property.**

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

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

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

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

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

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

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

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

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

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

436 **63A-5a-203. Submitting a written proposal for vacant division-owned property.**

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

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

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

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

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

445 (a) the division shall:

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

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

448 and

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

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

455 Section 11. Section **63A-5a-204** is enacted to read:

456 **63A-5a-204. Priorities for vacant division-owned property -- Division to convey**
457 **vacant division-owned property.**

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

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

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

- 462 (ii) between them the same priority for vacant division-owned property.
- 463 (2) If the division receives multiple timely qualified proposals from applicants with the
- 464 highest and same priority, the division shall:
- 465 (a) notify the board of:
- 466 (i) the availability of the vacant division-owned property; and
- 467 (ii) the applicants with the highest and same priority that have submitted qualified
- 468 proposals; and
- 469 (b) provide the board with a copy of the timely qualified proposals submitted by the
- 470 applicants with the highest and same priority.
- 471 (3) Within 30 days after being notified under Subsection (2), the board shall:
- 472 (a) determine which applicant's qualified proposal is most likely to result in the highest
- 473 and best public benefit; and
- 474 (b) notify the division of the board's decision under Subsection (3)(a).
- 475 (4) The division shall convey the vacant division-owned property to:
- 476 (a) the applicant with the highest priority under Subsection (1), if the division receives
- 477 a timely qualified proposal from a single applicant with the highest priority; or
- 478 (b) the applicant whose qualified proposal was determined by the board under
- 479 Subsection (3) to be most likely to result in the highest and best public benefit, if the division
- 480 receives multiple timely qualified proposals from applicants with the highest and same priority.
- 481 Section 12. Section **63A-5a-205** is enacted to read:
- 482 **63A-5a-205. Referring vacant division-owned property to the Department of**
- 483 **Transportation for auction.**
- 484 (1) The division may refer vacant division-owned property to the Department of
- 485 Transportation for a public auction if:
- 486 (a) (i) the division has provided notice under Section [63A-5a-202](#) with respect to the
- 487 vacant division-owned property; and
- 488 (ii) the division receives no qualified proposals in response to the notice under Section
- 489 [63A-5a-202](#);
- 490 (b) the director determines that:
- 491 (i) there is no reasonable likelihood that within the foreseeable future:
- 492 (A) a primary state agency will use or occupy the vacant division-owned property; or

- 493 (B) a secondary state agency, local government entity, or public purpose nonprofit
494 entity will seek a transfer of ownership or lease of the vacant division-owned property; and
495 (ii) disposing of the vacant division-owned property through a public auction is in the
496 best interests of the state;
497 (c) the director requests and receives a recommendation on the proposed public auction
498 from the Executive Appropriations Committee of the Legislature;
499 (d) the director communicates the Executive Appropriations Committee's
500 recommendation to the executive director; and
501 (e) the executive director approves the public auction.
502 (2) If the division refers a vacant division-owned property to the Department of
503 Transportation for public auction, the Department of Transportation shall publicly auction the
504 vacant division-owned property under the same law and in the same manner as apply to a
505 public auction of Department of Transportation property.
506 (3) At a public auction conducted under Subsection (2), the Department of
507 Transportation may, on behalf of the division, accept an offer to purchase the vacant
508 division-owned property.
509 (4) The division and the Department of Transportation shall coordinate together to:
510 (a) manage the details of finalizing any sale of the vacant division-owned property at
511 public auction; and
512 (b) ensure that the buyer acquires proper title and that the division receives the
513 proceeds of the sale.
514 (5) If a public auction under this section does not result in a sale of the vacant
515 division-owned property, the Department of Transportation shall notify the division and refer
516 the vacant division-owned property back to the division.
517 Section 13. Section **63A-5a-206** is enacted to read:
518 **63A-5a-206. State real property subject to right of first refusal.**
519 (1) (a) If Section [78B-6-520.3](#) applies to vacant division-owned property, the division
520 shall comply with Subsection [78B-6-520.3\(3\)](#).
521 (b) If a condemnee accepts the division's offer to sell the vacant division-owned
522 property as provided in Section [78B-6-520.3](#), the division shall:
523 (i) comply with the requirements of Section [78B-6-520.3](#); and

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

526 (c) A condemnee may waive rights and benefits afforded under Section 78B-6-520.3
527 and instead seek a transfer of ownership or lease of vacant division-owned property under the
528 provisions of this chapter in the same manner as any other person not entitled to the rights and
529 benefits of Section 78B-6-520.3.

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

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

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

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

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

544 Section 14. Section 65A-4-1 is amended to read:

545 **65A-4-1. Acquisition and disposition of land by state agencies.**

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

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

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

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

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

Legislative Review Note
Office of Legislative Research and General Counsel