

Representative Marda Dillree proposes the following substitute bill:

**TRANSPORTATION CORRIDOR
PRESERVATION AMENDMENTS**

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Marda Dillree

This act modifies the Transportation Code to extend the period for which real property may be acquired for the preservation of a future transportation corridor from 20 years to 30 years in advance. This act requires the Department of Transportation to give the original grantor first right of refusal of the highest offer for unused parcels of real property acquired for transportation corridors and provides for notification and 90 days to accept the offer. This act makes technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

72-5-111, as last amended by Chapters 34 and 216, Laws of Utah 2000

72-5-402, as enacted by Chapter 34, Laws of Utah 2000

72-5-403, as enacted by Chapter 34, Laws of Utah 2000

72-5-404, as enacted by Chapter 34, Laws of Utah 2000

78-34-20, as last amended by Chapter 269, Laws of Utah 1996

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

Section 1. Section **72-5-111** is amended to read:

72-5-111. Disposal of real property.

(1) (a) If the department determines that any real property or interest in real property, acquired for a highway purpose, is no longer necessary for the purpose, the department may lease, sell, exchange, or otherwise dispose of the real property or interest in the real property.

(b) (i) Real property may be sold at private or public sale.



26 (ii) Except as provided in Subsection (1)(c) related to exchanges, proceeds of any sale
27 shall be deposited with the state treasurer and credited to the Transportation Fund.

28 (c) If approved by the commission, real property or an interest in real property may be
29 exchanged by the department for other real property or interest in real property, including
30 improvements, for highway purposes.

31 (2) (a) In the disposition of [~~land~~] real property at any private sale, first consideration
32 shall be given to the original grantor or [~~his~~] the original grantor's heirs.

33 (b) **h [If] NOTWITHSTANDING THE PROVISIONS OF SECTION 78-34-20, IF h** no portion of a
33a parcel of real property acquired by the department is used for
34 transportation purposes, then the original grantor or the grantor's heirs shall be given the
35 opportunity to repurchase the parcel of real property at the department's original purchase price
36 from the grantor.

37 (c) In accordance with Section 72-5-404, this Subsection (2)[~~(b)~~] does not apply [~~if the~~
38 ~~department purchase was initially requested by the grantor~~] to property rights acquired in
39 proposed transportation corridors using funds from the Transportation Corridor Preservation
40 Revolving Loan Fund created in Section 72-2-117.

41 (3) (a) Any sale, exchange, or disposal of real property or interest in real property made
42 by the department under this section, is exempt from the mineral reservation provisions of Title
43 65A, Chapter 6, Mineral Leases.

44 (b) Any deed made and delivered by the department under this section without specific
45 reservations in the deed is a conveyance of all the state's right, title, and interest in the real
46 property or interest in the real property.

47 Section 2. Section **72-5-402** is amended to read:

48 **72-5-402. Public purpose.**

49 **h (1) h** The Legislature finds and declares that the planning and preservation of transportation
50 corridors is a public purpose, that the acquisition of public rights in private property for
51 possible use as a transportation corridor [~~up to 20~~] years in advance is a public purpose, and
52 that acquisition of public rights in private property for possible use as alternative transportation
53 corridors is a public purpose, even if one or more of the transportation corridors is eventually
54 not used for a public purpose, so long as reasonable evidence exists at the time of acquisition
55 that the [~~corridor~~] transportation facility will be developed within [~~20 years~~] the time period
56 established under this part.

56a **h (2) THE LEGISLATURE FINDS AND DECLARES THAT THE ACQUISITION OF PRIVATE**
56b **PROPERTY RIGHTS FOR THE PRESERVATION OF TRANSPORTATION CORRIDORS SHOULD BE**
56c **DONE ON A VOLUNTARY BASIS AND NOT BY THE USE OF EMINENT DOMAIN POWERS. h**

57 Section 3. Section **72-5-403** is amended to read:

58 **72-5-403. Transportation corridor preservation powers.**

59 (1) The department, counties, and municipalities may:

60 (a) act in cooperation with one another and other government entities to promote
61 planning for and enhance the preservation of transportation corridors and to more effectively
62 use the monies available in the Transportation Corridor Preservation Revolving Loan Fund
63 created in Section 72-2-117;

64 (b) undertake transportation corridor planning, review, and preservation processes; and

65 (c) acquire fee simple rights and other rights of less than fee simple, including
66 easement and development rights, or the rights to limit development, including rights in
67 alternative transportation corridors, and to make these acquisitions up to [20] a projected 30
68 years in advance of using those rights in actual transportation facility construction.

69 (2) In addition to the powers described under Subsection (1), counties and
70 municipalities may:

71 (a) limit development for transportation corridor preservation by land use regulation
72 and by official maps; and

73 (b) by ordinance prescribe procedures for approving limited development in
74 transportation corridors until the time transportation facility construction begins.

75 Section 4. Section **72-5-404** is amended to read:

76 **72-5-404. Disposition of excess property rights.**

77 If the department has acquired property rights in land in proposed transportation
78 corridors, and some or all of that land is eventually not used for the proposed transportation
79 corridors, the department shall dispose of the property rights in accordance with the provisions
80 of Section [~~72-5-111~~] 78-34-20.

81 Section 5. Section **78-34-20** is amended to read:

82 **78-34-20. Sale of property acquired by eminent domain.**

83 (1) As used in this section, "condemnation or threat of condemnation" means:

84 (a) acquisition through an eminent domain proceeding; or

85 (b) an official body of the state or a subdivision of the state, having the power of
86 eminent domain, has specifically authorized the use of eminent domain to acquire the real
87 property.

88 (2) If the state or one of its subdivisions, at its sole discretion, declares real property
89 that is acquired through condemnation or threat of condemnation to be surplus real property,
90 ~~[not developed for the intended use,]~~ it may not sell the real property on the open market unless
91 ~~[the following conditions are met]:~~

92 ~~[(1) the real property is not property acquired by condemnation, or by threat of~~
93 ~~condemnation, which, as used in this section, condemnation or threat of condemnation means~~
94 ~~acquisition through an eminent domain proceeding or that an official body of the state or a~~
95 ~~subdivision of the state, having the power of eminent domain, has specifically authorized the~~
96 ~~use of eminent domain to acquire the real property; or]~~

97 ~~[(2)]~~ (a) the real property has been offered for sale to the ~~[person or entity from whom~~
98 ~~the state or one of its subdivisions acquired it]~~ original grantor, at the highest offer made to the
99 state or one of its subdivisions with first right of refusal being given to the original grantor;

100 (b) the ~~[person or entity]~~ original grantor expressly waived in writing the first right of
101 refusal on the offer or failed to accept the offer within 90 days after notification by registered
102 mail to the last-known address; and

103 (c) neither the state nor the subdivision of the state selling the property is involved in
104 the rezoning of the property or the acquisition of additional property to enhance the value of the
105 real property to be sold.

106 (3) This section shall only apply to property acquired after July 1, 1983.