

LOCAL GOVERNMENT AUTHORITY

2005 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ann W. Hardy

Senate Sponsor: David L. Thomas

LONG TITLE

General Description:

This bill modifies certain local government provisions related to local government authority.

Highlighted Provisions:

This bill:

- ▶ authorizes municipalities to:
 - furnish necessary local public services;
 - purchase, hire, construct, own, maintain and operate, or lease, local public utilities; and
 - acquire by eminent domain or other means property that is inside or outside the municipality and that is necessary for those purposes, subject to certain restrictions;
- ▶ authorizes certain commercial project entities to acquire property by eminent domain;
- ▶ excludes water rights from the property that certain project entities may acquire by eminent domain;
- ▶ requires municipalities and commercial project entities that acquire certain property by eminent domain to provide property rights ombudsman materials on eminent domain to the property owner;
- ▶ limits the exercise of eminent domain by the state, counties, and municipalities for public transit purposes to property within their boundaries; and
- ▶ enacts legislative intent language.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-8-2, as last amended by Chapter 99, Laws of Utah 2004

17A-2-1016, as last amended by Chapter 167, Laws of Utah 2004

ENACTS:

11-13-314, Utah Code Annotated 1953

Uncodified Material Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 1. Section **10-8-2** is amended to read:

10-8-2. Appropriations -- Acquisition and disposal of property -- Municipal authority -- Corporate purpose -- Procedure -- Notice of intent to acquire real property.

(1) ~~(a)~~ A municipal legislative body may:

~~(a)~~ ~~(i)~~ appropriate money for corporate purposes only;

~~(b)~~ ~~(ii)~~ provide for payment of debts and expenses of the corporation;

~~(c)~~ ~~(iii)~~ subject to Subsections (4) and (5), purchase, receive, hold, sell, lease, convey, and dispose of real and personal property for the benefit of the municipality, whether the property is within or without the municipality's corporate boundaries;

~~(d)~~ ~~(iv)~~ improve, protect, and do any other thing in relation to this property that an individual could do; and

~~(e)~~ ~~(v)~~ subject to Subsection (2) and after first holding a public hearing, authorize municipal services or other nonmonetary assistance to be provided to or waive fees required to be paid by a nonprofit entity, whether or not the municipality receives consideration in return.

(b) A municipality may:

(i) furnish all necessary local public services within the municipality;

(ii) purchase, hire, construct, own, maintain and operate, or lease public utilities located and operating within and operated by the municipality; and

(iii) subject to Subsection (1)(c), acquire by eminent domain, or otherwise, property located inside or outside the corporate limits of the municipality and necessary for any of the purposes stated in Subsections (1)(b)(i) and (ii), subject to restrictions imposed by Title 78, Chapter 34, Eminent Domain, and general law for the protection of other communities.

(c) Each municipality that intends to acquire property by eminent domain under Subsection (1)(b) shall, upon the first contact with the owner of the property sought to be acquired, deliver to the owner a copy of a booklet or other materials provided by the property rights ombudsman, created under Section 63-34-13, dealing with the property owner's rights in an eminent domain proceeding.

(d) Subsection (1)(b) may not be construed to diminish any other authority a municipality may claim to have under the law to acquire by eminent domain property located inside or outside the municipality.

(2) Services or assistance provided pursuant to Subsection (1)~~(e)~~ (a)(v) is not subject to the provisions of Subsection (3). The total amount of services or other nonmonetary assistance provided or fees waived under Subsection (1)~~(e)~~ (a)(v) in any given fiscal year may not exceed 1% of the municipality's budget for that fiscal year.

(3) It is considered a corporate purpose to appropriate money for any purpose that, in the judgment of the municipal legislative body, provides for the safety, health, prosperity, moral well-being, peace, order, comfort, or convenience of the inhabitants of the municipality subject to the following:

(a) The net value received for any money appropriated shall be measured on a project-by-project basis over the life of the project.

(b) The criteria for a determination under this Subsection (3) shall be established by the municipality's legislative body. A determination of value received, made by the municipality's

legislative body, shall be presumed valid unless it can be shown that the determination was arbitrary, capricious, or illegal.

(c) The municipality may consider intangible benefits received by the municipality in determining net value received.

(d) Prior to the municipal legislative body making any decision to appropriate any funds for a corporate purpose under this section, a public hearing shall be held. Notice of the hearing shall be published in a newspaper of general circulation at least 14 days prior to the date of the hearing, or, if there is no newspaper of general circulation, by posting notice in at least three conspicuous places within the municipality for the same time period.

(e) A study shall be performed before notice of the public hearing is given and shall be made available at the municipality for review by interested parties at least 14 days immediately prior to the public hearing, setting forth an analysis and demonstrating the purpose for the appropriation. In making the study, the following factors shall be considered:

(i) what identified benefit the municipality will receive in return for any money or resources appropriated;

(ii) the municipality's purpose for the appropriation, including an analysis of the way the appropriation will be used to enhance the safety, health, prosperity, moral well-being, peace, order, comfort, or convenience of the inhabitants of the municipality; and

(iii) whether the appropriation is necessary and appropriate to accomplish the reasonable goals and objectives of the municipality in the area of economic development, job creation, affordable housing, blight elimination, job preservation, the preservation of historic structures and property, and any other public purpose.

(f) An appeal may be taken from a final decision of the municipal legislative body, to make an appropriation. The appeal shall be filed within 30 days after the date of that decision, to the district court. Any appeal shall be based on the record of the proceedings before the legislative body. A decision of the municipal legislative body shall be presumed to be valid unless the appealing party shows that the decision was arbitrary, capricious, or illegal.

(g) The provisions of this Subsection (3) apply only to those appropriations made after

May 6, 2002.

(h) This section shall only apply to appropriations not otherwise approved pursuant to Title 10, Chapter 5, Uniform Fiscal Procedures Act for Utah Towns, or Title 10, Chapter 6, Uniform Fiscal Procedures Act for Utah Cities.

(4) (a) Before a municipality may dispose of a significant parcel of real property, the municipality shall:

(i) provide reasonable notice of the proposed disposition at least 14 days before the opportunity for public comment under Subsection (4)(a)(ii); and

(ii) allow an opportunity for public comment on the proposed disposition.

(b) Each municipality shall, by ordinance, define what constitutes:

(i) a significant parcel of real property for purposes of Subsection (4)(a); and

(ii) reasonable notice for purposes of Subsection (4)(a)(i).

(5) (a) Except as provided in Subsection (5)(d), each municipality intending to acquire real property for the purpose of expanding the municipality's infrastructure or other facilities used for providing services that the municipality offers or intends to offer shall provide written notice, as provided in this Subsection (5), of its intent to acquire the property if:

(i) the property is located:

(A) outside the boundaries of the municipality; and

(B) in a county of the first or second class; and

(ii) the intended use of the property is contrary to:

(A) the anticipated use of the property under the general plan of the county in whose unincorporated area or the municipality in whose boundaries the property is located; or

(B) the property's current zoning designation.

(b) Each notice under Subsection (5)(a) shall:

(i) indicate that the municipality intends to acquire real property;

(ii) identify the real property; and

(iii) be sent to:

(A) each county in whose unincorporated area and each municipality in whose

boundaries the property is located; and

(B) each affected entity.

(c) A notice under this Subsection (5) is a protected record as provided in Subsection 63-2-304(7).

(d) (i) The notice requirement of Subsection (5)(a) does not apply if the municipality previously provided notice under Section 10-9-301.5 identifying the general location within the municipality or unincorporated part of the county where the property to be acquired is located.

(ii) If a municipality is not required to comply with the notice requirement of Subsection (5)(a) because of application of Subsection (5)(d)(i), the municipality shall provide the notice specified in Subsection (5)(a) as soon as practicable after its acquisition of the real property.

Section 2. Section **11-13-314** is enacted to read:

11-13-314. Eminent domain authority of certain commercial project entities.

(1) (a) Subject to Subsection (2), a commercial project entity that existed as a project entity before January 1, 1980 may, with respect to a project or facilities providing additional project capacity in which the commercial project entity has an interest, acquire property within the state through eminent domain, subject to restrictions imposed by Title 78, Chapter 34, Eminent Domain, and general law for the protection of other communities.

(b) Subsection (1)(a) may not be construed to:

(i) give a project entity the authority to acquire water rights by eminent domain; or

(ii) diminish any other authority a project entity may claim to have under the law to acquire property by eminent domain.

(2) Each project entity that intends to acquire property by eminent domain under Subsection (1)(a) shall, upon the first contact with the owner of the property sought to be acquired, deliver to the owner a copy of a booklet or other materials provided by the property rights ombudsman, created under Section 63-34-13, dealing with the property owner's rights in an eminent domain proceeding.

Section 3. Section **17A-2-1016** is amended to read:

17A-2-1016. Powers of incorporated district -- Bidding -- Eminent domain.

(1) As used in this section, "operator" means any city, public agency, person, firm, or private corporation engaged in the transportation of passengers for hire.

(2) Any district incorporated under this part may:

(a) have perpetual succession;

(b) sue and be sued in all actions and proceedings and in all courts and tribunals of competent jurisdiction;

(c) adopt a corporate seal and alter it at pleasure;

(d) levy and collect taxes only for paying:

(i) the principal and interest of bonded indebtedness of the district; or

(ii) any final judgment obtained against the district beyond the amount of any collectable insurance or indemnity policy if the district is required by final order of any court of competent jurisdiction to levy a tax to pay the judgment;

(e) take by grant, purchase, bequest, devise, or lease, and to hold, enjoy, lease, sell, encumber, alien, or otherwise dispose of real or personal property of every kind within the district;

(f) make contracts and enter into stipulations of any nature, including contracts and stipulations:

(i) to indemnify and save harmless;

(ii) to do all acts to exercise the powers granted in this part; and

(iii) with any department or agency of the United States of America, of the state, or with any public agency or private person, firm, or corporation upon terms and conditions the board of trustees finds are in the best interests of the district;

(g) (i) insure against:

(A) loss of revenues from accident or destruction of the system or any part of the system, from any cause whatsoever; or

(B) public liability or property damage, or against all other types of events, acts, or omissions; and

(ii) provide in the proceedings authorizing the issuance of any bonds for the carrying of

any other insurance, in an amount and of such character as may be specified, and for the payment of the premiums on the insurance;

(h) provide a public transit system for the transportation of passengers and their incidental baggage;

(i) purchase all supplies, equipment, and materials;

(j) construct facilities and works, but when the expenditure required exceeds \$25,000 construction shall be let in accordance with Title 63, Chapter 56, Utah Procurement Code;

(k) acquire, contract for, lease, construct, own, operate, control, or use rights-of-way, rail lines, monorails, bus lines, stations, platforms, switches, yards, terminals, parking lots, any facilities necessary or convenient for public transit service, and all structures necessary for access by persons and vehicles;

(l) hire, lease, or contract for the supplying of, or management of, any facilities, operations, equipment, services, employees, or management staff of any operator and provide for subleases or subcontracts by the operator upon terms that are in the public interest; and

(m) operate feeder bus lines and other feeder services as necessary.

(3) (a) Bids or proposals shall be advertised through public notice as determined by the board.

(b) The notice may include publication in a newspaper of general circulation in the district, trade journal, or other method determined by the board at least once and not less than ten days prior to the expiration of the period within which bids or proposals are received.

(c) The board may reject any and all bids or proposals and readvertise or give renounce at its discretion.

(d) If, after rejecting bids or proposals, the board determines and declares by vote of two-thirds of all its members present that in its opinion the supplies, equipment, and materials may be purchased at a lower price in the open market, the board may proceed to purchase the same in the open market without further observance of the provisions requiring contracts, bids or proposals, advertisement, or notice.

(e) Contracts, in writing or otherwise, may be let without advertising for or inviting bids

when any repairs, alterations, or other work or the purchase of materials, supplies, equipment, or other property is found by the board upon a two-thirds vote of its members present to be of urgent necessity, or where the general manager certifies by affidavit that there is only one source for the required supplies, equipment, and materials, or construction items.

(f) If any payment on a contract with a private contractor to construct facilities under this section is retained or withheld, it shall be retained or withheld and released as provided in Section 13-8-5.

(4) (a) Installations in state highways or freeways are subject to the approval of the Department of Transportation.

(b) It is presumed that the use of the streets, roads, highways, and other public places by the district for any of the purposes permitted in this section constitutes no greater burden on adjoining properties than the uses existing on July 9, 1969.

(c) If facilities, other than state highways or freeways referred to in Subsection (2), including streets, roads, highways, pipelines, sewers, water mains, storm drains, poles, and communications wires of another public agency of the state, or of a private owner must be relocated, replaced, or altered in order for the district to construct or operate its system, or to preserve and maintain already constructed district facilities, the facilities shall be relocated, replaced, or altered with reasonable promptness by the respective public corporation, state, or private owner and the district shall by prior agreement reimburse the public corporation, state, or private owner for the reasonable cost incurred in relocation, replacement, or alteration.

(d) The district may enter into an agreement with any city or county having jurisdiction over the street, road, or highway involved and, as may be provided by agreement, close any city street or county road at or near the point of its interception with any district facility or provide for carrying the city street or county road over or under or to a connection with the district facility and may do any and all work on the city street or county road as is necessary. A city street or county road may not be closed directly or indirectly by the construction of district facilities except:

(i) pursuant to agreement; or

(ii) while temporarily necessary during the construction of district facilities.

(5) The state, a municipality, or a county may acquire private property interests within its respective boundaries by eminent domain pursuant to Title 78, Chapter 34, Eminent Domain, including fee simple, easements, air rights, rights-of-way, and other private property interests necessary to the establishment and operation of a public transit district.

Section 4. Legislative intent.

It is the intent of the Legislature that the Water Issues Task Force study the issue of a governmental entity's acquisition by eminent domain of water rights outside the entity's boundaries and provide a recommendation or make a report to the Natural Resources, Agriculture, and Environment Interim Committee and the Political Subdivisions Interim Committee.