

1 **TRANSPORTATION CORRIDOR**
2 **PRESERVATION AMENDMENTS**

3 2003 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Marda Dillree**

6 **This act modifies the Transportation Code to extend the period for which real property**
7 **may be acquired for the preservation of a future transportation corridor from 20 years to**
8 **30 years in advance. This act requires the Department of Transportation to give the**
9 **original grantor first right of refusal of the highest offer for unused parcels of real**
10 **property and provides for notification and 90 days to accept the offer. This act repeals a**
11 **requirement that the original grantor be given the opportunity to repurchase the real**
12 **property at the department's original purchase price. This act makes technical changes.**

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

14 AMENDS:

15 **72-5-111**, as last amended by Chapters 34 and 216, Laws of Utah 2000

16 **72-5-402**, as enacted by Chapter 34, Laws of Utah 2000

17 **72-5-403**, as enacted by Chapter 34, Laws of Utah 2000

18 **78-34-20**, as last amended by Chapter 269, Laws of Utah 1996

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

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

21 **72-5-111. Disposal of real property.**

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

25 (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 heirs~~] the department shall offer the real property
33 for sale to the original grantor or the grantor's heirs, at the highest offer made to the department
34 with first right of refusal being given to the original grantor or the grantor's heirs if no portion
35 of the parcel of real property acquired by the department is used for transportation purposes.

36 (b) If the original grantor or the grantor's heirs waive the first right of refusal on the
37 offer or fail to accept the offer within 90 days after notification by registered mail to the
38 last-known address, the department may proceed with the private sale.

39 [~~(b) If no portion of a parcel of real property acquired by the department is used for~~
40 ~~transportation purposes, then the original grantor or the grantor's heirs shall be given the~~
41 ~~opportunity to repurchase the parcel of real property at the department's original purchase price~~
42 ~~from the grantor.]~~

43 (c) This Subsection (2)[~~(b)~~] does not apply if the department purchase was initially
44 requested by the grantor.

45 (3) (a) Any sale, exchange, or disposal of real property or interest in real property made
46 by the department under this section, is exempt from the mineral reservation provisions of Title
47 65A, Chapter 6, Mineral Leases.

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

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

52 **72-5-402. Public purpose.**

53 The Legislature finds and declares that the planning and preservation of transportation
54 corridors is a public purpose, that the acquisition of public rights in private property for
55 possible use as a transportation corridor [~~up to 20~~] years in advance is a public purpose, and
56 that acquisition of public rights in private property for possible use as alternative transportation
57 corridors is a public purpose, even if one or more of the transportation corridors is eventually
58 not used for a public purpose, so long as reasonable evidence exists at the time of acquisition

59 that the ~~[corridor]~~ transportation facility will be developed within ~~[20 years]~~ the time period
60 established under this part.

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

62 **72-5-403. Transportation corridor preservation powers.**

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

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

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

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

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

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

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

79 Section 4. Section **78-34-20** is amended to read:

80 **78-34-20. Sale of property acquired by eminent domain.**

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

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

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

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

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

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

99 (b) the ~~[person or entity]~~ original grantor **h** ~~[or the grantor's heirs]~~ **h** waived the first right of
100 refusal on the offer or failed to accept the offer within 90 days after notification by registered
101 mail to the last-known address; and

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

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

Legislative Review Note
as of 11-20-02 2:07 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Interim Committee Note
as of 12-12-02 3:20 PM

The Transportation Interim Committee recommended this bill.

Fiscal Note**Transportation Corridor Preservation Amendments***16-Jan-03***Bill Number HB0013***2:02 PM*

State Impact

Any fiscal impact required to enact provisions of this bill can be handled within existing budgets.

Individual and Business Impact

If an individual exercises the first right of refusal to purchase unused parcels of real property from the Department of Transportation a fiscal outlay will be required.

Office of the Legislative Fiscal Analyst