

LOCAL GOVERNMENT AMENDMENTS

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Ann W. Hardy

This act modifies municipal and county land use development and management provisions to eliminate the requirement of planning commission review of certain actions with respect to public lands or facilities. The act expands the kinds of municipal and county decisions that are subject to judicial review within a specified time. The act requires counties and municipalities to provide reasonable notice and an opportunity for public comment before disposing of a significant parcel of real property.

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

AMENDS:

10-8-2, as last amended by Chapter 233, Laws of Utah 2002

10-9-305, as enacted by Chapter 235, Laws of Utah 1991

10-9-1001, as last amended by Chapter 291, Laws of Utah 1999

17-27-305, as last amended by Chapter 179, Laws of Utah 1995

17-27-1001, as last amended by Chapter 241, Laws of Utah 2001

17-50-312, as renumbered and amended by Chapter 133, Laws of Utah 2000

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 -- Corporate purpose -- Procedure.

(1) A municipal legislative body may:

(a) appropriate money for corporate purposes only;

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

(c) subject to Subsection (4), 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) improve, protect, and do any other thing in relation to this property that an individual could do; and

(e) 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.

(2) Services or assistance provided pursuant to Subsection (1)(e) 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) 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).

Section 2. Section **10-9-305** is amended to read:

10-9-305. Public uses to conform to general plan.

[~~(f)~~] After the legislative body has adopted a general plan or any amendments to the

general plan, no street, park, or other public way, ground, place, or space, no publicly owned building or structure, and no public utility, whether publicly or privately owned, may be constructed or authorized until and unless:

~~[(a)]~~ (1) it conforms to the plan; or

~~[(b)]~~ (2) it has been considered by the planning commission and, after receiving the advice of the planning commission, ~~[approved by]~~ the legislative body approves it as an amendment to the general plan.

~~[(2) (a) Before accepting, widening, removing, extending, relocating, narrowing, vacating, abandoning, changing the use, acquiring land for, or selling or leasing any street or other public way, ground, place, property, or structure, the legislative body shall submit the proposal to the planning commission for its review and recommendations.]~~

~~[(b) If the legislative body approves any of the items contained in Subsection (a), it shall also amend the general plan.]~~

Section 3. Section **10-9-1001** is amended to read:

10-9-1001. Appeals.

(1) No person may challenge in district court a municipality's land use decisions made under this chapter or under the regulation made under authority of this chapter until that person has exhausted his administrative remedies.

(2) (a) Any person adversely affected by any decision made in the exercise of or in violation of the provisions of this chapter may file a petition for review of the decision with the district court within 30 days after the local decision is rendered.

(b) (i) The time under Subsection (2)(a) to file a petition is tolled from the date a property owner files a request for arbitration of a constitutional taking issue with the private property ombudsman under Section 63-34-13 until 30 days after:

(A) the arbitrator issues a final award; or

(B) the private property ombudsman issues a written statement under Subsection 63-34-13(4)(b) declining to arbitrate or to appoint an arbitrator.

(ii) A tolling under Subsection (2)(b)(i) operates only as to the specific constitutional

taking issues that are the subject of the request for arbitration filed with the private property ombudsman by a property owner.

(iii) A request for arbitration filed with the private property ombudsman after the time under Subsection (2)(a) to file a petition has expired does not affect the time to file a petition.

(3) The courts shall:

(a) presume that land use decisions and regulations are valid; and

(b) determine only whether or not the decision is arbitrary, capricious, or illegal.

Section 4. Section **17-27-305** is amended to read:

17-27-305. Public uses to conform to general plan.

[~~(1)~~] After the legislative body has adopted a general plan or any amendments to the general plan, no street, park, or other public way, ground, place, or space, no publicly owned building or structure, and no public utility, whether publicly or privately owned, may be constructed or authorized until and unless:

[~~(a)~~] (1) it conforms to the plan; or

[~~(b)~~] (2) it has been considered by the planning commission and, after receiving the advice of the planning commission, [~~approved by~~] the legislative body approves it as an amendment to the general plan.

[~~(2)(a) Before accepting, widening, removing, extending, relocating, narrowing, vacating, abandoning, changing the use, acquiring land for, or selling or leasing any street or other public way, ground, place, property, or structure, the legislative body shall submit the proposal to the planning commission for its review and recommendations.~~]

[~~(b) If the legislative body approves any of the items contained in Subsection (a), it shall also amend the general plan.~~]

Section 5. Section **17-27-1001** is amended to read:

17-27-1001. Appeals.

(1) No person may challenge in district court a county's land use decisions made under this chapter or under the regulation made under authority of this chapter until that person has exhausted all administrative remedies.

(2) (a) Any person adversely affected by any decision made in the exercise of or in violation of the provisions of this chapter may file a petition for review of the decision with the district court within 30 days after the local decision is rendered.

(b) (i) The time under Subsection (2)(a) to file a petition is tolled from the date a property owner files a request for arbitration of a constitutional taking issue with the private property ombudsman under Section 63-34-13 until 30 days after:

(A) the arbitrator issues a final award; or

(B) the private property ombudsman issues a written statement under Subsection 63-34-13(4)(b) declining to arbitrate or to appoint an arbitrator.

(ii) A tolling under Subsection (2)(b)(i) operates only as to the specific constitutional taking issues that are the subject of the request for arbitration filed with the private property ombudsman by a property owner.

(iii) A request for arbitration filed with the private property ombudsman after the time under Subsection (2)(a) to file a petition has expired does not affect the time to file a petition.

(3) (a) The courts shall:

(i) presume that land use decisions and regulations are valid; and

(ii) determine only whether or not the decision is arbitrary, capricious, or illegal.

(b) A determination of illegality requires a determination that the decision violates a statute, ordinance, or existing law.

Section 6. Section **17-50-312** is amended to read:

17-50-312. Acquisition, management, and disposal of property.

(1) [~~A~~] Subject to Subsection (4), a county may purchase, receive, hold, sell, lease, convey, or otherwise acquire and dispose of any real or personal property or any interest in such property that it determines to be in the public interest.

(2) Any property interest acquired by the county shall be held in the name of the county unless specifically otherwise provided by law.

(3) The county legislative body shall provide by ordinance, resolution, rule, or regulation for the manner in which property shall be acquired, managed, and disposed of.

(4) (a) Before a county may dispose of a significant parcel of real property, the county 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 county 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).