

Representative Ann W. Hardy proposes the following substitute bill:

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;



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

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

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

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

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

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

44 (b) The criteria for a determination under this Subsection (3) shall be established by the
45 municipality's legislative body. A determination of value received, made by the municipality's
46 legislative body, shall be presumed valid unless it can be shown that the determination was
47 arbitrary, capricious, or illegal.

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

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

55 (e) A study shall be performed before notice of the public hearing is given and shall be
56 made available at the municipality for review by interested parties at least 14 days immediately

57 prior to the public hearing, setting forth an analysis and demonstrating the purpose for the
58 appropriation. In making the study, the following factors shall be considered:

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

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

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

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

73 (g) The provisions of this Subsection (3) apply only to those appropriations made after
74 May 6, 2002.

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

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

80 (i) provide reasonable notice of the proposed disposition; and

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

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

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

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

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

86 **10-9-305. Effect of the plan on public uses.**

87 **[(+)]** After the legislative body has adopted a general plan or any amendments to the

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

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

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

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

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

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

102 **10-9-1001. Appeals.**

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

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

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

112 (A) the arbitrator issues a final award; or

113 (B) the private property ombudsman issues a written statement under Subsection
114 63-34-13(4)(b) declining to arbitrate or to appoint an arbitrator.

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

118 (iii) A request for arbitration filed with the private property ombudsman after the time

119 under Subsection (2)(a) to file a petition has expired does not affect the time to file a petition.

120 (3) The courts shall:

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

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

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

124 **17-27-305. Effect of the plan on public uses.**

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

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

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

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

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

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

140 **17-27-1001. Appeals.**

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

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

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

150 (A) the arbitrator issues a final award; or

151 (B) the private property ombudsman issues a written statement under Subsection
152 63-34-13(4)(b) declining to arbitrate or to appoint an arbitrator.

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

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

158 (3) (a) The courts shall:

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

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

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

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

164 **17-50-312. Acquisition, management, and disposal of property.**

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

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

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

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

174 (i) provide reasonable notice of the proposed disposition; and

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

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

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

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