

**Representative David Ure** proposes the following substitute bill:

**LOCAL GOVERNMENT AUTHORITY**

2005 GENERAL SESSION

STATE OF UTAH

**Sponsor: Ann W. Hardy**

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**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



26 public transit purposes to property within their boundaries; and

27       ▶ enacts legislative intent language.

28 **Monies Appropriated in this Bill:**

29       None

30 **Other Special Clauses:**

31       None

32 **Utah Code Sections Affected:**

33 AMENDS:

34       **10-8-2**, as last amended by Chapter 99, Laws of Utah 2004

35       **17A-2-1016**, as last amended by Chapter 167, Laws of Utah 2004

36 **ENACTS:**

37       **11-13-314, Utah Code Annotated 1953**

38 **Uncodified Material Affected:**

39 ENACTS UNCODIFIED MATERIAL



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

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

43       **10-8-2. Appropriations -- Acquisition and disposal of property -- Corporate**  
44 **purpose -- Procedure -- Notice of intent to acquire real property.**

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

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

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

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

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

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

56       (b) A municipality may:

- 57 (i) furnish all necessary local public services within the municipality;  
58 (ii) purchase, hire, construct, own, maintain and operate, or lease public utilities  
59 located and operating within and operated by the municipality; and  
60 (iii) subject to Subsection (1)(c), acquire by eminent domain, or otherwise, property  
61 located inside or outside the corporate limits of the municipality and necessary for any of the  
62 purposes stated in Subsections (1)(b)(i) and (ii), subject to restrictions imposed by Title 78,  
63 Chapter 34, Eminent Domain, and general law for the protection of other communities.
- 64 (c) Each municipality that intends to acquire property by eminent domain under  
65 Subsection (1)(b) shall, upon the first contact with the owner of the property sought to be  
66 acquired, deliver to the owner a copy of a booklet or other materials provided by the property  
67 rights ombudsman, created under Section 63-34-13, dealing with the property owner's rights in  
68 an eminent domain proceeding.
- 69 (d) Subsection (1)(b) may not be construed to diminish any other authority a  
70 municipality may claim to have under the law to acquire by eminent domain property located  
71 inside or outside the municipality.
- 72 (2) Services or assistance provided pursuant to Subsection (1)(e) is not subject to the  
73 provisions of Subsection (3). The total amount of services or other nonmonetary assistance  
74 provided or fees waived under Subsection (1)(e) in any given fiscal year may not exceed 1% of  
75 the municipality's budget for that fiscal year.
- 76 (3) It is considered a corporate purpose to appropriate money for any purpose that, in  
77 the judgment of the municipal legislative body, provides for the safety, health, prosperity,  
78 moral well-being, peace, order, comfort, or convenience of the inhabitants of the municipality  
79 subject to the following:
- 80 (a) The net value received for any money appropriated shall be measured on a  
81 project-by-project basis over the life of the project.
- 82 (b) The criteria for a determination under this Subsection (3) shall be established by the  
83 municipality's legislative body. A determination of value received, made by the municipality's  
84 legislative body, shall be presumed valid unless it can be shown that the determination was  
85 arbitrary, capricious, or illegal.
- 86 (c) The municipality may consider intangible benefits received by the municipality in  
87 determining net value received.

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

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

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

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

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

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

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

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

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

118 (i) provide reasonable notice of the proposed disposition at least 14 days before the

119 opportunity for public comment under Subsection (4)(a)(ii); and  
120 (ii) allow an opportunity for public comment on the proposed disposition.  
121 (b) Each municipality shall, by ordinance, define what constitutes:  
122 (i) a significant parcel of real property for purposes of Subsection (4)(a); and  
123 (ii) reasonable notice for purposes of Subsection (4)(a)(i).  
124 (5) (a) Except as provided in Subsection (5)(d), each municipality intending to acquire  
125 real property for the purpose of expanding the municipality's infrastructure or other facilities  
126 used for providing services that the municipality offers or intends to offer shall provide written  
127 notice, as provided in this Subsection (5), of its intent to acquire the property if:  
128 (i) the property is located:  
129 (A) outside the boundaries of the municipality; and  
130 (B) in a county of the first or second class; and  
131 (ii) the intended use of the property is contrary to:  
132 (A) the anticipated use of the property under the general plan of the county in whose  
133 unincorporated area or the municipality in whose boundaries the property is located; or  
134 (B) the property's current zoning designation.  
135 (b) Each notice under Subsection (5)(a) shall:  
136 (i) indicate that the municipality intends to acquire real property;  
137 (ii) identify the real property; and  
138 (iii) be sent to:  
139 (A) each county in whose unincorporated area and each municipality in whose  
140 boundaries the property is located; and  
141 (B) each affected entity.  
142 (c) A notice under this Subsection (5) is a protected record as provided in Subsection  
143 63-2-304(7).  
144 (d) (i) The notice requirement of Subsection (5)(a) does not apply if the municipality  
145 previously provided notice under Section 10-9-301.5 identifying the general location within the  
146 municipality or unincorporated part of the county where the property to be acquired is located.  
147 (ii) If a municipality is not required to comply with the notice requirement of  
148 Subsection (5)(a) because of application of Subsection (5)(d)(i), the municipality shall provide  
149 the notice specified in Subsection (5)(a) as soon as practicable after its acquisition of the real

150 property.

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

152 **11-13-314. Eminent domain authority of certain project entities.**

153 (1) (a) Subject to Subsection (2) a ~~§~~ **commercial** ~~§~~ project entity ~~§~~ **[created] that**  
 153a **existed as a project entity** ~~§~~ **before January 1, 1980** ~~§~~ **[that**  
 154 **owns additional project capacity]** ~~§~~ **may** ~~§~~ **, with respect to a project or facilities providing**  
 154a **additional project capacity in which the commercial project entity has an interest,** ~~§~~ **acquire**  
 154b **property within the state through eminent**  
 155 **domain, subject to restrictions imposed by Title 78, Chapter 34, Eminent Domain, and general**  
 156 **law for the protection of other communities.**

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

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

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

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

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

167 **17A-2-1016. Powers of incorporated district -- Bidding -- Eminent domain.**

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

170 (2) Any district incorporated under this part may:

171 (a) have perpetual succession;

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

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

175 (d) levy and collect taxes only for paying:

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

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

180 (e) take by grant, purchase, bequest, devise, or lease, and to hold, enjoy, lease, sell,

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181 encumber, alien, or otherwise dispose of real or personal property of every kind within the  
182 district;

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

185 (i) to indemnify and save harmless;

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

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

190 (g) (i) insure against:

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

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

195 (ii) provide in the proceedings authorizing the issuance of any bonds for the carrying of  
196 any other insurance, in an amount and of such character as may be specified, and for the  
197 payment of the premiums on the insurance;

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

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

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

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

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

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

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



212 board.

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

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

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

223 (e) Contracts, in writing or otherwise, may be let without advertising for or inviting  
224 bids when any repairs, alterations, or other work or the purchase of materials, supplies,  
225 equipment, or other property is found by the board upon a two-thirds vote of its members  
226 present to be of urgent necessity, or where the general manager certifies by affidavit that there  
227 is only one source for the required supplies, equipment, and materials, or construction items.

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

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

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

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

243 or private owner for the reasonable cost incurred in relocation, replacement, or alteration.

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

251 (i) pursuant to agreement; or

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

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

257 Section 4. **Legislative intent.**

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