

**LOCAL GOVERNMENT ACQUISITION OF
REAL PROPERTY**

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Ann W. Hardy

LONG TITLE

General Description:

This bill modifies provisions of the Utah Municipal Code and the Interlocal Cooperation Act related to the acquisition of real property by certain local government entities.

Highlighted Provisions:

This bill:

- ▶ authorizes municipalities and interlocal entities to acquire real property by eminent domain, whether the property is located inside or outside the municipality or interlocal entity; and
- ▶ requires municipalities and interlocal entities that acquire by eminent domain real property located outside their boundaries to provide property rights ombudsman materials on eminent domain to the property owner.

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

11-13-204, as last amended by Chapter 21, Laws of Utah 2003



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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 -- Notice of intent to acquire real property.

(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 Subsections (4) [~~and~~], (5), and (6), purchase, receive, acquire by eminent domain as provided in Title 78, Chapter 34, Eminent Domain, 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) purchase, receive, hold, sell, lease, convey, and dispose of personal property for the benefit of the municipality, whether the property is within or without the municipality's corporate boundaries;

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

[~~(e)~~] (f) 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)~~](f) 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)~~](f) 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

59 municipality's legislative body. A determination of value received, made by the municipality's
60 legislative body, shall be presumed valid unless it can be shown that the determination was
61 arbitrary, capricious, or illegal.

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

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

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

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

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

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

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

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

89 (h) This section shall only apply to appropriations not otherwise approved pursuant to

90 Title 10, Chapter 5, Uniform Fiscal Procedures Act for Utah Towns, or Title 10, Chapter 6,
91 Uniform Fiscal Procedures Act for Utah Cities.

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

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

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

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

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

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

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

104 (i) the property is located:

105 (A) outside the boundaries of the municipality; and

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

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

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

110 (B) the property's current zoning designation.

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

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

113 (ii) identify the real property; and

114 (iii) be sent to:

115 (A) each county in whose unincorporated area and each municipality in whose
116 boundaries the property is located; and

117 (B) each affected entity.

118 (c) A notice under this Subsection (5) is a protected record as provided in Subsection
119 63-2-304(7).

120 (d) (i) The notice requirement of Subsection (5)(a) does not apply if the municipality

121 previously provided notice under Section 10-9-301.5 identifying the general location within the
122 municipality or unincorporated part of the county where the property to be acquired is located.

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

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

132 Section 2. Section **11-13-204** is amended to read:

133 **11-13-204. Powers and duties of interlocal entities -- Additional powers of energy**
134 **services interlocal entities -- Length of term of agreement and interlocal entity -- Notice to**
135 **State Tax Commission.**

136 (1) (a) An interlocal entity:

137 (i) may:

138 (A) adopt, amend, and repeal rules, bylaws, policies, and procedures for the regulation
139 of its affairs and the conduct of its business;

140 (B) sue and be sued;

141 (C) have an official seal and alter that seal at will;

142 (D) make and execute contracts and other instruments necessary or convenient for the
143 performance of its duties and the exercise of its powers and functions;

144 (E) acquire real or personal property, or an undivided, fractional, or other interest in
145 real or personal property, necessary or convenient for the purposes contemplated in the
146 agreement creating the interlocal entity and sell, lease, or otherwise dispose of that property;

147 (F) subject to Subsection (1)(c), acquire, by eminent domain, real property, or an
148 undivided, fractional, or other interest in real property, that is necessary or convenient for the
149 purposes contemplated in the agreement creating the interlocal entity, regardless of whether the
150 real property is located inside or outside the geographic area of the interlocal entity, and sell,
151 lease, or otherwise dispose of that property;

152 ~~[(F)]~~ (G) directly or by contract with another:

153 (I) own and acquire facilities and improvements or an undivided, fractional, or other
154 interest in facilities and improvements;

155 (II) construct, operate, maintain, and repair facilities and improvements; and

156 (III) provide the services contemplated in the agreement creating the interlocal entity;

157 ~~[(G)]~~ (H) borrow money, incur indebtedness, and issue revenue bonds, notes, or other
158 obligations and secure their payment by an assignment, pledge, or other conveyance of all or
159 any part of the revenues and receipts from the facilities, improvements, or services that the
160 interlocal entity provides;

161 ~~[(H)]~~ (I) offer, issue, and sell warrants, options, or other rights related to the bonds,
162 notes, or other obligations issued by the interlocal entity; and

163 ~~[(I)]~~ (J) sell or contract for the sale of the services, output, product, or other benefits
164 provided by the interlocal entity to:

165 (I) public agencies inside or outside the state; and

166 (II) with respect to any excess services, output, product, or benefits, any person on
167 terms that the interlocal entity considers to be in the best interest of the public agencies that are
168 parties to the agreement creating the interlocal entity; and

169 (ii) may not levy, assess, or collect ad valorem property taxes.

170 (b) An assignment, pledge, or other conveyance under Subsection (1)(a)(i)(G) may, to
171 the extent provided by the documents under which the assignment, pledge, or other conveyance
172 is made, rank prior in right to any other obligation except taxes or payments in lieu of taxes
173 payable to the state or its political subdivisions.

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

179 (2) An energy services interlocal entity:

180 (a) except with respect to any ownership interest it has in facilities providing additional
181 project capacity, is not subject to:

182 (i) Part 3, Project Entity Provisions; or

183 (ii) Title 59, Chapter 8, Gross Receipts Tax on Certain Corporations Not Required to
184 Pay Corporate Franchise or Income Tax Act; and

185 (b) may:

186 (i) own, acquire, and, by itself or by contract with another, construct, operate, and
187 maintain a facility or improvement for the generation, transmission, and transportation of
188 electric energy or related fuel supplies;

189 (ii) enter into a contract to obtain a supply of electric power and energy and ancillary
190 services, transmission, and transportation services, and supplies of natural gas and fuels
191 necessary for the operation of generation facilities;

192 (iii) enter into a contract with public agencies, investor-owned or cooperative utilities,
193 and others, whether located in or out of the state, for the sale of wholesale services provided by
194 the energy services interlocal entity; and

195 (iv) adopt and implement risk management policies and strategies and enter into
196 transactions and agreements to manage the risks associated with the purchase and sale of
197 energy, including forward purchase and sale contracts, hedging, tolling and swap agreements,
198 and other instruments.

199 (3) Notwithstanding Section 11-13-216, an agreement creating an interlocal entity or
200 an amendment to that agreement may provide that the agreement may continue and the
201 interlocal entity may remain in existence until the latest to occur of:

202 (a) 50 years after the date of the agreement or amendment;

203 (b) five years after the interlocal entity has fully paid or otherwise discharged all of its
204 indebtedness;

205 (c) five years after the interlocal entity has abandoned, decommissioned, or conveyed
206 or transferred all of its interest in its facilities and improvements; or

207 (d) five years after the facilities and improvements of the interlocal entity are no longer
208 useful in providing the service, output, product, or other benefit of the facilities and
209 improvements, as determined under the agreement governing the sale of the service, output,
210 product, or other benefit.

211 (4) (a) The governing body of each interlocal entity created under Section 11-13-203
212 on or after May 4, 1998, shall, within 30 days of the creation, file a written notice of the
213 creation with the State Tax Commission.

214 (b) Each written notice required under Subsection (4)(a) shall:
215 (i) be accompanied by:
216 (A) a copy of the agreement creating the interlocal entity; and
217 (B) if less than all of the territory of any Utah public agency that is a party to the
218 agreement is included within the interlocal entity, a plat that delineates a metes and bounds
219 description of the area affected or a map of the area affected and evidence that the information
220 has been recorded by the recorder of the county in which the Utah public agency is located; and
221 (ii) contain a certification by the governing body that all necessary legal requirements
222 relating to the creation have been completed.
223 (5) Nothing in this section shall be construed as expanding the rights of any
224 municipality or interlocal entity to sell or provide retail service.

Legislative Review Note
as of 11-27-04 2:28 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0256

Local Government Acquisition of Real Property

08-Feb-05

12:38 PM

State Impact

No fiscal impact.

Individual and Business Impact

Any individual impact would be dependent on each unique case.

Office of the Legislative Fiscal Analyst