

**Representative Ann W. Hardy** proposes the following substitute bill:

**LOCAL GOVERNMENT ACQUISITION OF**

**REAL PROPERTY**

2005 GENERAL SESSION

STATE OF UTAH

**Sponsor: Ann W. Hardy**

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**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

- ▶ authorizes municipalities and interlocal entities to acquire by eminent domain land and structures located outside the municipality or interlocal entity;
- ▶ requires municipalities and interlocal entities that acquire by eminent domain land or structures located outside their boundaries to provide property rights ombudsman materials on eminent domain to the property owner; and
- ▶ enacts legislative intent language.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:



26 10-8-2, as last amended by Chapter 99, Laws of Utah 2004

27 11-13-204, as last amended by Chapter 21, Laws of Utah 2003

28 **Uncodified Material Affected:**

29 ENACTS UNCODIFIED MATERIAL



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

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

33 **10-8-2. Appropriations -- Acquisition and disposal of property -- Corporate**  
34 **purpose -- Procedure -- Notice of intent to acquire real property.**

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

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

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

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

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

43 ~~(e)~~ (v) subject to Subsection (2) and after first holding a public hearing, authorize  
44 municipal services or other nonmonetary assistance to be provided to or waive fees required to  
45 be paid by a nonprofit entity, whether or not the municipality receives consideration in  
46 return[-]; and

47 (vi) subject to Subsection (6), acquire by eminent domain, as provided in Title 78,  
48 Chapter 34, Eminent Domain, land and structures located outside the municipality.

49 (b) Subsection (1)(a)(vi) may not be construed to diminish any other authority a  
50 municipality may claim to have under the law to acquire by eminent domain property located  
51 inside or outside the municipality.

52 (2) Services or assistance provided pursuant to Subsection (1)~~(e)~~(a)(v) is not subject  
53 to the provisions of Subsection (3). The total amount of services or other nonmonetary  
54 assistance provided or fees waived under Subsection (1)~~(e)~~(a)(v) in any given fiscal year may  
55 not exceed 1% of the municipality's budget for that fiscal year.

56 (3) It is considered a corporate purpose to appropriate money for any purpose that, in

57 the judgment of the municipal legislative body, provides for the safety, health, prosperity,  
58 moral well-being, peace, order, comfort, or convenience of the inhabitants of the municipality  
59 subject to the following:

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

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

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

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

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

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

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

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

86 (f) An appeal may be taken from a final decision of the municipal legislative body, to  
87 make an appropriation. The appeal shall be filed within 30 days after the date of that decision,

88 to the district court. Any appeal shall be based on the record of the proceedings before the  
89 legislative body. A decision of the municipal legislative body shall be presumed to be valid  
90 unless the appealing party shows that the decision was arbitrary, capricious, or illegal.

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

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

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

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

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

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

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

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

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

108 (i) the property is located:

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

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

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

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

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

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

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

117 (ii) identify the real property; and

118 (iii) be sent to:

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

121 (B) each affected entity.

122 (c) A notice under this Subsection (5) is a protected record as provided in Subsection  
123 63-2-304(7).

124 (d) (i) The notice requirement of Subsection (5)(a) does not apply if the municipality  
125 previously provided notice under Section 10-9-301.5 identifying the general location within the  
126 municipality or unincorporated part of the county where the property to be acquired is located.

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

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

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

137 **11-13-204. Powers and duties of interlocal entities -- Additional powers of energy**  
138 **services interlocal entities -- Length of term of agreement and interlocal entity -- Notice to**  
139 **State Tax Commission.**

140 (1) (a) An interlocal entity:

141 (i) may:

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

144 (B) sue and be sued;

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

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

148 (E) acquire real or personal property, or an undivided, fractional, or other interest in  
149 real or personal property, necessary or convenient for the purposes contemplated in the

150 agreement creating the interlocal entity and sell, lease, or otherwise dispose of that property;

151 (F) subject to Subsection (1)(c), acquire by eminent domain, as provided in Title 78,

152 Chapter 34, Eminent Domain, land or structures located outside the interlocal entity's

153 boundaries:

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

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

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

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

159 [~~G~~] (H) borrow money, incur indebtedness, and issue revenue bonds, notes, or other

160 obligations and secure their payment by an assignment, pledge, or other conveyance of all or

161 any part of the revenues and receipts from the facilities, improvements, or services that the

162 interlocal entity provides;

163 [~~H~~] (I) offer, issue, and sell warrants, options, or other rights related to the bonds,

164 notes, or other obligations issued by the interlocal entity; and

165 [~~F~~] (J) sell or contract for the sale of the services, output, product, or other benefits

166 provided by the interlocal entity to:

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

168 (II) with respect to any excess services, output, product, or benefits, any person on

169 terms that the interlocal entity considers to be in the best interest of the public agencies that are

170 parties to the agreement creating the interlocal entity; and

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

172 (b) An assignment, pledge, or other conveyance under Subsection (1)(a)(i)(G) may, to

173 the extent provided by the documents under which the assignment, pledge, or other conveyance

174 is made, rank prior in right to any other obligation except taxes or payments in lieu of taxes

175 payable to the state or its political subdivisions.

176 (c) Each interlocal entity that intends to acquire land or a structure by eminent domain

177 under Subsection (1)(a)(i)(F) shall, upon the first contact with the owner of the property sought

178 to be acquired, deliver to the owner a copy of a booklet or other materials provided by the

179 property rights ombudsman, created under Section 63-34-13, dealing with the property owner's

180 rights in an eminent domain proceeding.

181           (d) Subsection (1)(a)(i)(F) may not be construed to diminish any other authority an  
182 interlocal entity may claim to have under the law to acquire by eminent domain property  
183 located inside or outside the boundaries of the interlocal entity.

184           (2) An energy services interlocal entity:

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

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

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

190           (b) may:

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

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

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

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

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

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

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

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

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

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

219 (b) Each written notice required under Subsection (4)(a) shall:

220 (i) be accompanied by:

221 (A) a copy of the agreement creating the interlocal entity; and

222 (B) if less than all of the territory of any Utah public agency that is a party to the  
223 agreement is included within the interlocal entity, a plat that delineates a metes and bounds  
224 description of the area affected or a map of the area affected and evidence that the information  
225 has been recorded by the recorder of the county in which the Utah public agency is located; and

226 (ii) contain a certification by the governing body that all necessary legal requirements  
227 relating to the creation have been completed.

228 (5) Nothing in this section shall be construed as expanding the rights of any  
229 municipality or interlocal entity to sell or provide retail service.

230 Section 3. **Legislative intent.**

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