

DISPOSITION OF REAL PROPERTY

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne L. Niederhauser

House Sponsor: _____

LONG TITLE

General Description:

This bill addresses the disposition of property by a county or municipality.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires the disposition of property by a county or municipality to be in the public interest and for fair and adequate consideration;
- ▶ provides a process for a county's or municipality's disposition of property valued at more than ~~§→ [\$25,000]~~ 50,000 ~~←§~~ ; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-8-2, as last amended by Chapters 136 and 254, Laws of Utah 2005

17-50-312, as last amended by Chapter 124, Laws of Utah 2003

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

S.B. 261



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

29 **10-8-2. Appropriations -- Acquisition and disposal of property -- Municipal**
30 **authority -- Corporate purpose -- Procedure -- Notice of intent to acquire real property.**

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

32 (i) appropriate money for corporate purposes only;

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

34 (iii) subject to Subsections (4) and (5), purchase, receive, hold, sell, lease, convey, and
35 dispose of real and personal property for the benefit of the municipality, whether the property is
36 within or without the municipality's corporate boundaries, if the action is in the public interest
37 and complies with other law;

38 (iv) improve, protect, and do any other thing in relation to this property that an
39 individual could do; and

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

43 (b) A municipality may:

44 (i) furnish all necessary local public services within the municipality;

45 (ii) purchase, hire, construct, own, maintain and operate, or lease public utilities
46 located and operating within and operated by the municipality; and

47 (iii) subject to Subsection (1)(c), acquire by eminent domain, or otherwise, property
48 located inside or outside the corporate limits of the municipality and necessary for any of the
49 purposes stated in Subsections (1)(b)(i) and (ii), subject to restrictions imposed by Title 78,
50 Chapter 34, Eminent Domain, and general law for the protection of other communities.

51 (c) Each municipality that intends to acquire property by eminent domain under
52 Subsection (1)(b) shall, upon the first contact with the owner of the property sought to be
53 acquired, deliver to the owner a copy of a booklet or other materials provided by the property
54 rights ombudsman, created under [~~Section 63-34-13~~] Title 13, Chapter 43, Property Rights
55 Ombudsmen Act, dealing with the property owner's rights in an eminent domain proceeding.

56 (d) Subsection (1)(b) may not be construed to diminish any other authority a
57 municipality may claim to have under the law to acquire by eminent domain property located
58 inside or outside the municipality.

59 (2) (a) Services or assistance provided pursuant to Subsection (1)(a)(v) is not subject to
60 the provisions of Subsection (3).

61 (b) The total amount of services or other nonmonetary assistance provided or fees
62 waived under Subsection (1)(a)(v) in any given fiscal year may not exceed 1% of the
63 municipality's budget for that fiscal year.

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

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

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

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

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

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

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

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

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

94 (f) (i) An appeal may be taken from a final decision of the municipal legislative body,
 95 to make an appropriation.

96 (ii) The appeal shall be filed within 30 days after the date of that decision, to the
 97 district court.

98 (iii) Any appeal shall be based on the record of the proceedings before the legislative
 99 body.

100 (iv) A decision of the municipal legislative body shall be presumed to be valid unless
 101 the appealing party shows that the decision was arbitrary, capricious, or illegal.

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

104 (h) This section [~~shall only apply~~] applies only to appropriations not otherwise
 105 approved pursuant to Title 10, Chapter 5, Uniform Fiscal Procedures Act for Utah Towns, or
 106 Title 10, Chapter 6, Uniform Fiscal Procedures Act for Utah Cities.

107 (4) (a) A municipally owned parcel of real or personal property may not be disposed of
 108 other than in good faith and for adequate consideration.

109 (b) "Adequate consideration" as used in Subsection (4)(a) means an apparent, present
 110 benefit reflecting the fair market value of the property disposed of, as determined by a credible
 111 and reliable independent source.

112 [~~(4)(a)~~] (c) Before a municipality may dispose of a [significant] parcel of real or
 113 personal property with a fair market value of more than \$→ [\$25,000] 50,000 ←\$, the municipality
 113a shall:

114 (i) provide reasonable notice of the proposed disposition at least 14 days before the
 115 opportunity for public comment under Subsection (4)[~~(a)~~](c)(ii); and

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

117 [~~(b) Each municipality shall, by ordinance, define what constitutes:]~~

118 [~~(i) a significant parcel of real property for purposes of Subsection (4)(a); and]~~

119 [~~(ii) reasonable notice for purposes of Subsection (4)(a)(i).]~~

120 (d) (i) For disposition of a parcel of real property, notice under Subsection (4)(c)(i)

121 shall be mailed at least ~~§→ [14] 10 ←§~~ days before the proposed disposition to the owner of any
 121a parcel of
 122 real property within ~~§→ [500] 300 ←§~~ feet of the boundaries of the real property proposed for
 122a disposition.

123 (ii) "Parcel of real property" as used in Subsection (4)(d)(i) means any:

124 (A) real estate;

125 (B) present interest in real estate;

126 (C) future interest in real estate;

127 (D) future development right; or

128 (E) other interest in land, whether or not currently in public use.

128a **§→ (iii) "Parcel of real property" as used in Subsection (4)(d)(i) does not include:**

128b **(A) an easement for use in connection with a road or the provision of utility service; or**

128c **(B) a donation or sale of land to the Department of Transportation created in Section**

128d **72-1-201. ←§**

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

133 (i) the property is located:

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

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

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

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

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

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

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

142 (ii) identify the real property; and

143 (iii) be sent to:

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

146 (B) each affected entity.

147 (c) A notice under this Subsection (5) is a protected record as provided in Subsection
 148 63-2-304(7).

149 (d) (i) The notice requirement of Subsection (5)(a) does not apply if the municipality
 150 previously provided notice under Section 10-9a-203 identifying the general location within the
 151 municipality or unincorporated part of the county where the property to be acquired is located.

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

156 Section 2. Section **17-50-312** is amended to read:

157 **17-50-312. Acquisition, management, and disposal of property.**

158 (1) Subject to Subsection (4), a county may purchase, receive, hold, sell, lease, convey,
159 or otherwise acquire and dispose of any real or personal property or any interest in ~~[such]~~ the
160 property [that it determines to be] if the action is in the public interest and complies with other
161 law.

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

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

166 (4) (a) A county-owned parcel of real or personal property may not be disposed of
167 other than in good faith and for adequate consideration.

168 (b) "Adequate consideration" as used in Subsection (4)(a) means an apparent, present
169 benefit reflecting the fair market value of the property disposed of, as determined by a credible
170 and reliable independent source.

171 ~~[(4)(a)]~~ (c) Before a county may dispose of a [significant] parcel of real or personal
172 property with a fair market value of more than \$25,000, the county shall:

173 (i) provide reasonable notice of the proposed disposition at least 14 days before the
174 opportunity for public comment under Subsection (4)~~[(a)]~~(c)(ii); 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).]~~

179 (d) (i) For disposition of a parcel of real property, notice under Subsection (4)(c)(i)
180 shall be mailed at least 14 days before the proposed disposition to the owner of any parcel of
181 real property within 500 feet of the boundaries of the real property proposed for disposition.

182 (ii) "Parcel of real property" as used in Subsection (4)(d)(i) means any:

- 183 (A) real estate;
 - 184 (B) present interest in real estate;
 - 185 (C) future interest in real estate;
 - 186 (D) future development right; or
 - 187 (E) other interest in land, whether or not currently in public use.
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Legislative Review Note
as of 2-5-07 10:19 AM

Office of Legislative Research and General Counsel

S.B. 261 - Disposition of Real Property

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses. Local governments may be impacted with some increase in administrative costs to comply with the provisions of the bill.
