

1 **DISPOSITION OF REAL PROPERTY**

2 2007 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Wayne L. Niederhauser**

5 House Sponsor: Gregory H. Hughes

7 **LONG TITLE**

8 **General Description:**

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

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ requires the disposition of property by a county or municipality to be in the public
- 13 interest;
- 14 ▶ addresses a county's or municipality's disposal of property acquired by exaction; and
- 15 ▶ makes technical changes.

16 **Monies Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **10-8-2**, as last amended by Chapters 136 and 254, Laws of Utah 2005

23 **10-9a-508**, as enacted by Chapter 254, Laws of Utah 2005

24 **17-27a-507**, as enacted by Chapter 254, Laws of Utah 2005

25 **17-50-312**, as last amended by Chapter 124, Laws of Utah 2003

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

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~~] Office of the Property Rights Ombudsman, created under Section
55 [~~63-34-13~~] 13-43-201, dealing with the property owner's rights in an eminent domain
56 proceeding.

57 (d) Subsection (1)(b) may not be construed to diminish any other authority a

58 municipality may claim to have under the law to acquire by eminent domain property located
59 inside or outside the municipality.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 114 (i) a significant parcel of real property for purposes of Subsection (4)(a); and
- 115 (ii) reasonable notice for purposes of Subsection (4)(a)(i).
- 116 (5) (a) Except as provided in Subsection (5)(d), each municipality intending to acquire
- 117 real property for the purpose of expanding the municipality's infrastructure or other facilities
- 118 used for providing services that the municipality offers or intends to offer shall provide written
- 119 notice, as provided in this Subsection (5), of its intent to acquire the property if:
 - 120 (i) the property is located:
 - 121 (A) outside the boundaries of the municipality; and
 - 122 (B) in a county of the first or second class; and
 - 123 (ii) the intended use of the property is contrary to:
 - 124 (A) the anticipated use of the property under the general plan of the county in whose
 - 125 unincorporated area or the municipality in whose boundaries the property is located; or
 - 126 (B) the property's current zoning designation.
 - 127 (b) Each notice under Subsection (5)(a) shall:
 - 128 (i) indicate that the municipality intends to acquire real property;
 - 129 (ii) identify the real property; and
 - 130 (iii) be sent to:
 - 131 (A) each county in whose unincorporated area and each municipality in whose
 - 132 boundaries the property is located; and
 - 133 (B) each affected entity.
 - 134 (c) A notice under this Subsection (5) is a protected record as provided in Subsection
 - 135 63-2-304(7).
 - 136 (d) (i) The notice requirement of Subsection (5)(a) does not apply if the municipality
 - 137 previously provided notice under Section 10-9a-203 identifying the general location within the
 - 138 municipality or unincorporated part of the county where the property to be acquired is located.
 - 139 (ii) If a municipality is not required to comply with the notice requirement of
 - 140 Subsection (5)(a) because of application of Subsection (5)(d)(i), the municipality shall provide
 - 141 the notice specified in Subsection (5)(a) as soon as practicable after its acquisition of the real

142 property.

143 Section 2. Section **10-9a-508** is amended to read:

144 **10-9a-508. Exactions.**

145 (1) A municipality may impose an exaction or exactions on development proposed in a
146 land use application if:

147 [~~(1)~~] (a) an essential link exists between a legitimate governmental interest and each
148 exaction; and

149 [~~(2)~~] (b) each exaction is roughly proportionate, both in nature and extent, to the
150 impact of the proposed development.

151 (2) (a) If a municipality plans to dispose of surplus real property that was acquired
152 under this section and has been owned by the municipality for less than five years, the
153 municipality shall first offer to reconvey the property, without receiving additional
154 consideration, to the person who granted the property to the municipality.

155 (b) A person to whom a municipality offers to reconvey property under Subsection
156 (2)(a) has 90 days to accept or reject the municipality's offer.

157 (c) If a person to whom a municipality offers to reconvey property declines the offer,
158 the municipality may offer the property for sale.

159 (d) Subsection (2)(a) does not apply to the disposal of property acquired by exaction by
160 a community development or urban renewal agency.

161 Section 3. Section **17-27a-507** is amended to read:

162 **17-27a-507. Exactions.**

163 (1) A county may impose an exaction or exactions on development proposed in a land
164 use application provided that:

165 [~~(1)~~] (a) an essential link exists between a legitimate governmental interest and each
166 exaction; and

167 [~~(2)~~] (b) each exaction is roughly proportionate, both in nature and extent, to the
168 impact of the proposed development.

169 (2) (a) If a county plans to dispose of surplus real property under Section 17-50-312

170 that was acquired under this section and has been owned by the county for less than five years,
171 the county shall first offer to reconvey the property, without receiving additional consideration,
172 to the person who granted the property to the county.

173 (b) A person to whom a county offers to reconvey property under Subsection (2)(a) has
174 90 days to accept or reject the county's offer.

175 (c) If a person to whom a county offers to reconvey property declines the offer, the
176 county may offer the property for sale.

177 (d) Subsection (2)(a) does not apply to the disposal of property acquired by exaction by
178 a community development or urban renewal agency.

179 Section 4. Section **17-50-312** is amended to read:

180 **17-50-312. Acquisition, management, and disposal of property.**

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

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

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

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

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

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

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

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

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