

Senator Wayne L. Niederhauser proposes the following substitute bill:

DISPOSITION OF REAL PROPERTY

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne L. Niederhauser

House Sponsor: Gregory H. Hughes

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 \$50,000;
- ▶ addresses a county's or municipality's disposal of property acquired by exaction; 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



26 **10-9a-508**, as enacted by Chapter 254, Laws of Utah 2005
27 **17-27a-507**, as enacted by Chapter 254, Laws of Utah 2005
28 **17-50-312**, as last amended by Chapter 124, Laws of Utah 2003



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

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

32 **10-8-2. Appropriations -- Acquisition and disposal of property -- Municipal**
33 **authority -- Corporate purpose -- Procedure -- Notice of intent to acquire real property.**

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

35 (i) appropriate money for corporate purposes only;

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

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

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

43 (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 return.

46 (b) A municipality may:

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

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

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

54 (c) Each municipality that intends to acquire property by eminent domain under
55 Subsection (1)(b) shall, upon the first contact with the owner of the property sought to be
56 acquired, deliver to the owner a copy of a booklet or other materials provided by the Office of

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

110 (4) (a) A municipally owned interest in real property may not be disposed of other than
111 in good faith and for adequate consideration.

112 (b) "Adequate consideration" as used in Subsection (4)(a) means either:

113 (i) an apparent, present benefit reflecting the fair market value of the property disposed
114 of, as determined by a credible and reliable independent source; or

115 (ii) approval of the terms of the proposed conveyance by the governing body of the
116 municipality in accordance with Subsection (5) and the following:

117 (A) The net value received for the interest in real property is measured on a
118 project-by-project basis over the life of the project.

119 (B) The criteria for determining whether adequate consideration is received under
 120 Subsection (4)(a) are established by the municipality's legislative body.

121 (C) A determination of value received made by a municipality's legislative body is
 122 valid unless the determination is arbitrary, capricious, or illegal.

123 (D) A municipality may consider intangible benefits the municipality receives in
 124 making its determination of value.

125 ~~[(4)(a)]~~ (c) Before a municipality may dispose of a [significant] parcel of real property
 126 with a fair market value of more than \$50,000, the municipality shall:

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

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

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

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

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

133 (d) For disposition of an interest in real property, notice under Subsection (4)(c)(i) shall
 134 be mailed at least ten days before the proposed disposition to the owner of any parcel of real
 135 property within 300 feet of the boundaries of the real property proposed for disposition.

136 (e) (i) "Interest in real property" as used in this section means any:

137 (A) real estate;

138 (B) present interest in real estate;

139 (C) future interest in real estate;

140 (D) future development right; or

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

142 (ii) "Interest in real property" as used in this section does not include:

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

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

145 72-1-201;

146 (C) an interest in real property the primary purpose of which is the preservation of open
 147 space or historic buildings or property, or watershed protection; or

148 (D) property of a community development or urban renewal agency.

149 (5) (a) A municipal legislative body shall hold a public hearing before making a

150 decision to convey property under Subsection (4).

151 (b) Notice of a hearing held under Subsection (5)(a) shall be published in a newspaper
152 of general circulation at least 14 days before the day on which the hearing is to be held.

153 (c) If there is no newspaper of general circulation in the municipality, notice of a
154 hearing held under Subsection (5)(a) shall be posted conspicuously in at least three places
155 within the municipality for the duration of the time period beginning 14 days before the day on
156 which the hearing is to be held and ending with the day of the hearing.

157 (d) Before holding a hearing under Subsection (5)(a), a municipality shall perform a
158 study, which shall be available for public review at least 14 days before the hearing, describing
159 the purpose of and analyzing the conveyance considering the following factors:

160 (i) Any identified benefit to the municipality from the conveyance.

161 (ii) The purpose of the conveyance, including analysis of the ways in which the
162 conveyance will enhance the safety, health, prosperity, moral well-being, peace, order, comfort,
163 or convenience of the municipality's inhabitants.

164 (iii) Whether the conveyance is necessary and appropriate to accomplish the reasonable
165 goals and objectives of the municipality concerning economic development, job creation and
166 preservation, affordable housing, elimination of blight, preservation of historic structures and
167 property, and any other public purpose.

168 (e) (i) A person may appeal a municipal legislative body's final decision to convey
169 property under Subsection (4) within 30 days after the day on which the final decision is made
170 in the district court for any county in which the municipality is located.

171 (ii) An appeal under Subsection (5)(e)(i) is based on the record of the proceedings
172 before the legislative body.

173 (iii) A municipal legislative body's decision to convey property under Subsection (4) is
174 valid unless the decision is arbitrary, capricious, or illegal.

175 [(5)] (6) (a) Except as provided in Subsection [(5)] (6)(d), each municipality intending
176 to acquire real property for the purpose of expanding the municipality's infrastructure or other
177 facilities used for providing services that the municipality offers or intends to offer shall
178 provide written notice, as provided in this Subsection [(5)] (6), of its intent to acquire the
179 property if:

180 (i) the property is located:

- 181 (A) outside the boundaries of the municipality; and
- 182 (B) in a county of the first or second class; and
- 183 (ii) the intended use of the property is contrary to:
- 184 (A) the anticipated use of the property under the general plan of the county in whose
- 185 unincorporated area or the municipality in whose boundaries the property is located; or
- 186 (B) the property's current zoning designation.

- 187 (b) Each notice under Subsection [~~(5)~~] (6)(a) shall:
- 188 (i) indicate that the municipality intends to acquire real property;
- 189 (ii) identify the real property; and
- 190 (iii) be sent to:

191 (A) each county in whose unincorporated area and each municipality in whose

192 boundaries the property is located; and

193 (B) each affected entity.

194 (c) A notice under this Subsection [~~(5)~~] (6) is a protected record as provided in

195 Subsection 63-2-304(7).

196 (d) (i) The notice requirement of Subsection [~~(5)~~] (6)(a) does not apply if the

197 municipality previously provided notice under Section 10-9a-203 identifying the general

198 location within the municipality or unincorporated part of the county where the property to be

199 acquired is located.

200 (ii) If a municipality is not required to comply with the notice requirement of

201 Subsection [~~(5)~~] (6)(a) because of application of Subsection [~~(5)~~] (6)(d)(i), the municipality

202 shall provide the notice specified in Subsection [~~(5)~~] (6)(a) as soon as practicable after its

203 acquisition of the real property.

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

205 **10-9a-508. Exactions.**

206 (1) A municipality may impose an exaction or exactions on development proposed in a

207 land use application if:

208 [~~(1)~~] (a) an essential link exists between a legitimate governmental interest and each

209 exaction; and

210 [~~(2)~~] (b) each exaction is roughly proportionate, both in nature and extent, to the

211 impact of the proposed development.

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

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

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

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

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

223 **17-27a-507. Exactions.**

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

226 [(+)] (a) an essential link exists between a legitimate governmental interest and each
227 exaction; and

228 [(-)] (b) each exaction is roughly proportionate, both in nature and extent, to the
229 impact of the proposed development.

230 (2) (a) If a county plans to dispose of surplus real property under Section 17-50-312
231 that was acquired under this section and has been owned by the county for less than five years,
232 the county shall first offer to reconvey the property, without receiving additional consideration,
233 to the person who granted the property to the county.

234 (b) A person to whom a county offers to reconvey property under Subsection (2)(a) has
235 90 days to accept or reject the county's offer.

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

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

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

241 **17-50-312. Acquisition, management, and disposal of property.**

242 (1) Subject to Subsection (4), a county may purchase, receive, hold, sell, lease, convey,

243 or otherwise acquire and dispose of any real or personal property or any interest in ~~[such]~~ the
244 property [that it determines to be] if the action is in the public interest and complies with other
245 law.

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

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

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

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

255 ~~[(4)(a)]~~ (c) Before a county may dispose of a ~~[significant]~~ parcel of real property with
256 a fair market value of more than \$50,000, the county shall:

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

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

260 ~~[(b) Each county shall, by ordinance, define what constitutes:]~~

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

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

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

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

267 (A) real estate;

268 (B) present interest in real estate;

269 (C) future interest in real estate;

270 (D) future development right; or

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