

**Representative Gregory H. Hughes** 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

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**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

- ▶ requires the disposition of property by a county or municipality to be in the public interest;
- ▶ 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

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

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

**17-50-312**, as last amended by Chapter 124, 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 -- Municipal authority -- Corporate purpose -- Procedure -- Notice of intent to acquire real property.**

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

(i) appropriate money for corporate purposes only;

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

(iii) subject to Subsections (4) and (5), purchase, receive, 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, if the action is in the public interest and complies with other law;

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

(v) 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.

(b) A municipality may:

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

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

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

(c) Each municipality that intends to acquire property by eminent domain under Subsection (1)(b) shall, upon the first contact with the owner of the property sought to be acquired, deliver to the owner a copy of a booklet or other materials provided by the ~~[property rights ombudsman]~~ Office of the Property Rights Ombudsman, created under Section ~~[63-34-13]~~ 13-43-201, dealing with the property owner's rights in an eminent domain 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  
117 acquire real property for the purpose of expanding the municipality's infrastructure or other  
118 facilities used for providing services that the municipality offers or intends to offer shall

119 provide written notice, as provided in this Subsection (5) , of its intent to acquire the property  
120 if:

121 (i) the property is located:

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

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

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

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

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

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

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

130 (ii) identify the real property; and

131 (iii) be sent to:

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

134 (B) each affected entity.

135 (c) A notice under this Subsection (5) is a protected record as provided in Subsection  
136 63-2-304(7).

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

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

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

145 **10-9a-508. Exactions.**

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

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

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

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

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

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

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

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

163           **17-27a-507. Exactions.**

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

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

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

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

174           (b) A person to whom a county offers to reconvey property under Subsection (2)(a) has  
175 90 days to accept or reject the county's offer.

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

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

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

181           **17-50-312. Acquisition, management, and disposal of property.**

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

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

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

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

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

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

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

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

197           (ii) reasonable notice for purposes of Subsection (4)(a)(I).

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**S.B. 261 2nd Sub. (Salmon) - Disposition of Real Property**

**Fiscal Note**

2007 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**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.

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