

1                                   **ASSIGNABLE RIGHT OF FIRST REFUSAL**

2   2017 GENERAL SESSION

3   STATE OF UTAH

4                                   **Chief Sponsor: D. Gregg Buxton**

5                                   House Sponsor: Mike Schultz

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7 **LONG TITLE**

8 **General Description:**

9           This bill modifies provisions related to a sale of state property that was acquired  
10 through an eminent domain proceeding.

11 **Highlighted Provisions:**

12           This bill:

- 13           ▶ defines what constitutes a "highest offer" on the sale of certain property;
- 14           ▶ provides that an original grantor of property acquired by the state through an  
15 eminent domain proceeding is permitted to transfer the grantor's first right of  
16 refusal; and
- 17           ▶ makes technical changes.

18 **Money Appropriated in this Bill:**

19           None

20 **Other Special Clauses:**

21           None

22 **Utah Code Sections Affected:**

23 AMENDS:

24           **72-5-111**, as last amended by Laws of Utah 2015, Chapter 192

25           **78B-6-521**, as renumbered and amended by Laws of Utah 2008, Chapter 3

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

28           Section 1. Section **72-5-111** is amended to read:

29           **72-5-111. Disposal of real property.**

30 (1) (a) If the department determines that any real property or interest in real property,  
31 acquired for a highway purpose, is no longer necessary for the purpose, the department may  
32 lease, sell, exchange, or otherwise dispose of the real property or interest in the real property.

33 (b) (i) Real property may be sold at private or public sale.

34 (ii) Except as provided in Subsection (1)(c) related to exchanges and Subsection (1)(d)  
35 related to the proceeds of any sale of real property from a maintenance facility, proceeds of any  
36 sale shall be deposited with the state treasurer and credited to the Transportation Fund.

37 (c) If approved by the commission, real property or an interest in real property may be  
38 exchanged by the department for other real property or interest in real property, including  
39 improvements, for highway purposes.

40 (d) Proceeds from the sale of real property or an interest in real property from a  
41 maintenance facility may be used by the department for the purchase or improvement of  
42 another maintenance facility, including real property.

43 (2) (a) In the disposition of real property at any private sale, first consideration shall be  
44 given to the original grantor.

45 (b) Notwithstanding the provisions of Section 78B-6-521, if no portion of a parcel of  
46 real property acquired by the department is used for transportation purposes, then the original  
47 grantor shall be given the opportunity to repurchase the parcel of real property at the  
48 department's original purchase price from the grantor.

49 (c) In accordance with Section 72-5-404, this Subsection (2) does not apply to property  
50 rights acquired in proposed transportation corridors using funds from the Marda Dillree  
51 Corridor Preservation Fund created in Section 72-2-117.

52 [~~(d) Nothing in this Subsection (2) or Section 78B-6-521 creates an assignable right.~~]

53 (d) (i) The right of first consideration described in Subsection (2)(a) is subject to the  
54 same terms and may be assigned by the original grantor in the manner described in Subsection  
55 78B-6-521(2).

56 (ii) The original grantor or the assignee shall notify the department of an assignment by  
57 certified mail to the current office address of the executive director of the department.

58 (iii) An exchange of real property as provided in Subsection (1)(c) or Section 72-5-113  
59 does not entitle the original grantor to exercise the right of first consideration described in  
60 Subsection (2)(a).

61 (iv) The right of first consideration described in Subsection (2)(a) terminates upon an  
62 exchange of the acquired real property as provided in Subsection (1)(c) or Section 72-5-113.

63 (3) (a) Any sale, exchange, or disposal of real property or interest in real property made  
64 by the department under this section, is exempt from the mineral reservation provisions of Title  
65 65A, Chapter 6, Mineral Leases.

66 (b) Any deed made and delivered by the department under this section without specific  
67 reservations in the deed is a conveyance of all the state's right, title, and interest in the real  
68 property or interest in the real property.

69 Section 2. Section **78B-6-521** is amended to read:

70 **78B-6-521. Sale of property acquired by eminent domain.**

71 (1) As used in this section[;]:

72 (a) [~~"condemnation"~~] "Condemnation" or "threat of condemnation" means:

73 [~~(a)~~] (i) acquisition through an eminent domain proceeding; or

74 [~~(b)~~] (ii) an official body of the state or a subdivision of the state, having the power of  
75 eminent domain, has specifically authorized the use of eminent domain to acquire the real  
76 property.

77 (b) (i) "Highest offer" means all material terms of the best bona fide offer received by  
78 the state or one of the state's subdivisions, including:

79 (A) purchase price;

80 (B) conditions; and

81 (C) terms of performance.

82 (ii) "Highest offer" does not mean the terms and conditions of an agreement to  
83 exchange real property or an interest in real property for other real property or an interest in real  
84 property.

85 (2) (a) If the state or one of [~~its~~] the state's subdivisions, at [~~its~~] the state's or the state's

86 subdivision's sole discretion, declares real property that is acquired through condemnation or  
87 threat of condemnation to be surplus real property, it may not sell the real property on the open  
88 market unless:

89 ~~[(a)]~~ (i) the real property has been offered for sale to the original grantor, at the highest  
90 offer made to the state or one of its subdivisions with first right of refusal being given to the  
91 original grantor;

92 ~~[(b)]~~ (ii) the original grantor expressly waived in writing the first right of refusal on the  
93 offer or failed to accept the offer within 90 days after notification by registered mail to the  
94 last-known address; and

95 ~~[(c)]~~ (iii) neither the state nor the subdivision of the state selling the property is  
96 involved in the rezoning of the property or the acquisition of additional property to enhance the  
97 value of the real property to be sold.

98 (b) An original grantor may assign the first right of refusal within 90 days after an offer  
99 has been made under Subsection (2)(a)(i) if the right has not been waived pursuant to  
100 Subsection (2)(a)(ii).

101 (c) The assignment of a right of first refusal pursuant to Subsection (2)(b) does not  
102 extend the time for acceptance of an offer as described in Subsection (2)(a)(ii).

103 (3) (a) Real property acquired through condemnation or the threat of condemnation is  
104 not considered surplus if the real property is approved for use in an exchange for other real  
105 property.

106 (b) An exchange of real property for other real property is not a sale on the open  
107 market.

108 (c) The first right of refusal described in Subsection (2)(a)(i) shall terminate upon an  
109 exchange of the acquired real property.

110 ~~[(3)]~~ (4) This section shall only apply to property acquired after July 1, 1983.