

SB0260S01 compared with SB0260

~~text~~ shows text that was in SB0260 but was deleted in SB0260S01.

Inserted text shows text that was not in SB0260 but was inserted into SB0260S01.

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Senator D. Gregg Buxton proposes the following substitute bill:

ASSIGNABLE RIGHT OF FIRST REFUSAL

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: D. Gregg Buxton

House Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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

Money Appropriated in this Bill:

None

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Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

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

72-5-111. Disposal of real property.

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

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

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

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

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

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

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

(c) In accordance with Section 72-5-404, this Subsection (2) does not apply to property rights acquired in proposed transportation corridors using funds from the Marda Dillree

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Corridor Preservation Fund created in Section 72-2-117.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(fit)A)~~ purchase price;

~~(fit)B)~~ conditions; and

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~~(fiii)C~~ terms of performance.

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

(2) (a) If the state or one of [its] the state's subdivisions, at [its] the state's or the state's subdivision's sole discretion, declares real property that is acquired through condemnation or threat of condemnation to be surplus real property, it may not sell the real property on the open market unless:

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

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

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

(b) ~~{Notwithstanding any other provision of law, an}~~ An original {grantor's} grantor may assign the first right of refusal {is assignable}.

~~(3)}~~ within 90 days after an offer has been made under Subsection (2)(a)(i) if the right has not been waived pursuant to Subsection (2)(a)(ii).

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

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

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

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

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

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Legislative Review Note

Office of Legislative Research and General Counsel†