

## HB0255S02 compared with HB0255S01

~~deleted text~~ shows text that was in HB0255S01 but was deleted in HB0255S02.

Inserted text shows text that was not in HB0255S01 but was inserted into HB0255S02.

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**Representative Kim F. Coleman** proposes the following substitute bill:

### **EXTRA-JURISDICTIONAL MUNICIPAL PROPERTY**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Kim F. Coleman**

Senate Sponsor: \_\_\_\_\_

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#### **LONG TITLE**

##### **General Description:**

This bill addresses municipal ownership of property outside the municipality's boundaries.

##### **Highlighted Provisions:**

This bill:

- ▶ limits the circumstances in which a municipality may own property outside the municipality's boundaries;
- ▶ applies certain property tax liability to property that a city owns regardless of that city's extraterritorial jurisdiction;
- ▶ creates an exception to the property tax exemption for certain property that a municipality owns;
- ▶ authorizes a municipality to levy a property tax on certain property that another

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municipality owns within the taxing municipality's boundaries;

- ▶ prohibits a municipality that owns property within another municipality's boundaries from levying a tax within the other municipality's boundaries; and
- ▶ makes technical and conforming changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

This bill provides a coordination clause.

### Utah Code Sections Affected:

AMENDS:

**10-8-2**, as last amended by Laws of Utah 2014, Chapter 59

**10-8-15**, as last amended by Laws of Utah 2016, Chapter 348

**59-2-1101**, as last amended by Laws of Utah 2015, Chapters 129 and 261

### Utah Code Sections Affected by Coordination Clause:

**10-8-15**, as last amended by Laws of Utah 2016, Chapter 348

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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[;]:

(A) within the municipality's corporate boundaries; or

(B) if the municipal legislative body makes a finding in a public hearing that no land within the municipality's corporate boundaries exists that is reasonably suitable to address a compelling interest related to health, safety, or welfare within the municipality for the

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municipality's inhabitants, outside the municipality's corporate boundaries to address the compelling interest;

(iv) improve, protect, and do any other thing in relation to ~~[this]~~ the property described in Subsection (1)(a)(iii) 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 78B, Chapter 6, Part 5, Eminent Domain, and general law for the protection of other communities~~[:]~~, if the property is located:

(A) within the municipality's corporate boundaries; or

(B) if the municipal legislative body makes a finding in a public hearing that no land within the municipality's corporate boundaries exists that is reasonably suitable to address a compelling interest related to health, safety, or welfare within the municipality for the municipality's inhabitants, outside the municipality's corporate boundaries to address the compelling interest.

(c) Each municipality that intends to acquire property by eminent domain under Subsection (1)(b) shall comply with the requirements of Section 78B-6-505.

(d) ~~[Subsection (1)(b) may not be construed to]~~ Except as provided in Subsection (1)(b)(iii)(B), Subsection (1)(b) does not diminish any other authority a municipality [may claim to have] has under the law to acquire by eminent domain property located inside or outside the municipality.

(2) (a) Services or assistance provided ~~[pursuant to]~~ under Subsection (1)(a)(v) is not subject to the provisions of Subsection (3).

(b) The total amount of services or other nonmonetary assistance provided or fees

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waived under Subsection (1)(a)(v) in any given fiscal year may not exceed 1% of the municipality's budget for that fiscal year.

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

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

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

(b) (i) The municipal legislative body shall establish the criteria for a determination under this Subsection (3).

(ii) The municipal legislative body's determination of value received is presumed valid unless the determination was arbitrary, capricious, or illegal.

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

(d) (i) ~~[Prior to]~~ Before the municipal legislative body ~~[making any decision]~~ decides to appropriate any funds for a corporate purpose under this section, ~~[a public hearing shall be held]~~ the municipal legislative body shall hold a public hearing.

(ii) ~~[Notice]~~ The municipal legislative body shall publish notice of the hearing described in Subsection (3)(d)(i) ~~[shall be published]:~~

(A) ~~[(†)]~~ in a newspaper of general circulation at least 14 days before the date of the hearing~~[: or (H)]~~, or if there is no newspaper of general circulation, ~~[by posting notice]~~ in at least three conspicuous places within the municipality for the same time period; and

(B) on the Utah Public Notice Website created in Section 63F-1-701, at least 14 days before the date of the hearing.

(e) (i) ~~[A study shall be performed before]~~ The municipal legislative body shall prepare a study before giving notice of the public hearing [is given and shall be made] described in Subsection (3)(d)(i) and make the study available at the municipality for review by interested

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parties at least 14 days immediately [~~prior to~~] before the public hearing, setting forth an analysis and demonstrating the purpose for the appropriation.

(ii) In making the study, the municipal legislative body shall consider the following factors [~~shall be considered~~]:

[(+)] (A) [~~what~~] the identified benefit the municipality will receive in return for any money or resources appropriated;

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

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

(f) (i) [~~An appeal may be taken from~~] An individual may appeal a final decision of the municipal legislative body[;] to make an appropriation.

(ii) [~~The appeal shall be filed~~] An individual shall file the appeal described in Subsection (3)(f)(i) in the district court within 30 days after the date of [~~that decision, to the district court~~] the decision described in Subsection (3)(f)(i).

(iii) Any appeal [~~shall be~~] is based on the record of the proceedings before the municipal legislative body.

(iv) [~~A decision of the municipal legislative body shall be presumed to be~~] The court hearing the appeal shall presume that a decision of the municipal legislative body under this section is valid unless the appealing party shows that the decision was arbitrary, capricious, or illegal.

(g) The provisions of this Subsection (3) apply only to [~~those~~] appropriations [~~made~~] a municipality makes after May 6, 2002.

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

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

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

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

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

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

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

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

(i) the property is located:

(A) outside the boundaries of the municipality; and

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

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

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

(B) the property's current zoning designation.

(b) ~~[Each]~~ The municipal legislative body shall:

(i) ensure that each notice under Subsection (5)(a) ~~[shall]~~:

~~[(i)]~~ (A) ~~[indicate]~~ indicates that the municipality intends to acquire real property;

~~[(ii)]~~ (B) ~~[identify]~~ identifies the real property; and

(C) includes the findings the municipal legislative body makes in accordance with

Subsection (1)(a)(iii)(B) or (1)(b)(iii)(B); and

~~[(iii) be sent to:]~~

(ii) send the notice to:

(A) each county ~~[in whose]~~ with unincorporated area within which the property is located and each municipality ~~[in whose]~~ with boundaries within which the property is located; and

(B) each affected entity.

(c) A notice under this Subsection (5) is a protected record as provided in Subsection

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63G-2-305(8).

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

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

Section 2. Section **10-8-15** is amended to read:

### **10-8-15. Waterworks -- Construction -- Extraterritorial jurisdiction.**

~~[They may]~~ (1) (a) A city may:

(i) construct or authorize the construction of waterworks within or without the city limits~~;~~; and

(ii) exercise jurisdiction for the purpose of maintaining and protecting the ~~[same]~~ waterworks described in Subsection (1)(a)(i) from injury and the water from pollution ~~[their jurisdiction shall extend]~~ as described in this section.

(b) The jurisdiction described in Subsection (1)(a)(ii) extends over the territory occupied by ~~[such works]~~ the waterworks described in Subsection (1)(a)(i), and over all reservoirs, streams, canals, ditches, pipes and drains used in and necessary for the construction, maintenance and operation of the ~~[same]~~ waterworks, and over the stream or source from which the water is taken, for:

(i) 15 miles above the point from which it is taken and for a distance of 300 feet on each side of such stream and over highways along such stream or watercourse within said 15 miles and said 300 feet; ~~[provided, that the jurisdiction of]~~ or

(ii) for cities of the first class ~~[shall be over]~~, the entire watershed~~[, except that]~~.

(2) Notwithstanding Subsection (1):

(a) livestock ~~[shall be permitted to]~~ may graze beyond 1,000 feet from any such stream or source; and ~~[provided further, that]~~

(b) each city of the first class shall provide a highway in and through its corporate limits, and so far as its jurisdiction extends, which may not be closed to cattle, horses, sheep or hogs driven through any ~~[such]~~ city of the first class, or through any territory adjacent thereto

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over which such city has jurisdiction, but the board of commissioners of such city may enact ordinances placing under police regulations the manner of driving such cattle, sheep, horses and hogs through such city, or any territory adjacent thereto over which it has jurisdiction.

~~[They may]~~

(3) A city may:

(a) enact all ordinances and regulations necessary to carry the power ~~[herein conferred]~~ described in this section into effect~~[, and are authorized and empowered to];~~ and

(b) enact ordinances preventing pollution or contamination of the streams or watercourses from which the inhabitants of cities derive their water supply, in whole or in part, for domestic and culinary purposes~~[, and may];~~

(c) enact ordinances prohibiting or regulating the construction or maintenance of any closet, privy, outhouse or urinal within the area over which the city has jurisdiction~~[, and];~~

(d) provide for permits for the construction and maintenance of the ~~[same. In granting such permits they may]~~ items described in Subsection (3)(c); and

(e) in granting the permits described in Subsection (3)(d):

(i) annex thereto such reasonable conditions and requirements for the protection of the public health as ~~[they deem proper, and may,]~~ the city considers proper; and

(ii) if deemed advisable, require that all closets, privies and urinals along ~~[such]~~ streams ~~[shall]~~ be provided with effective septic tanks or other germ-destroying instrumentalities.

(4) Regardless of the jurisdiction described in Subsection (1), property that a city of the first class owns outside of the geographic boundaries of the city is subject to property tax in accordance with Subsection 59-2-1101(3)(c).

Section 3. Section **59-2-1101** is amended to read:

**59-2-1101. Definitions -- Exemption of certain property -- Proportional payments for certain property -- County legislative body authority to adopt rules or ordinances.**

(1) As used in this section:

(a) "Educational purposes" includes:

(i) the physical or mental teaching, training, or conditioning of competitive athletes by a national governing body of sport recognized by the United States Olympic Committee that qualifies as being tax exempt under Section 501(c)(3), Internal Revenue Code; and



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(ii) an activity in support of or incidental to the teaching, training, or conditioning described in Subsection (1)(a)(i).

(b) "Exclusive use exemption" means a property tax exemption under Subsection (3)(a)(iv), for property owned by a nonprofit entity used exclusively for religious, charitable, or educational purposes.

(c) "Government exemption" means a property tax exemption provided under Subsection (3)(a)(i), (ii), or (iii).

(d) "Nonprofit entity" includes an entity if the:

(i) entity is treated as a disregarded entity for federal income tax purposes;

(ii) entity is wholly owned by, and controlled under the direction of, a nonprofit entity; and

(iii) net earnings and profits of the entity irrevocably inure to the benefit of a nonprofit entity.

(e) "Tax relief" means an exemption, deferral, or abatement that is authorized by this part.

(2) (a) Except as provided in Subsection (2)(b) or (c), tax relief may be allowed only if the claimant is the owner of the property as of January 1 of the year the exemption is claimed.

(b) Notwithstanding Subsection (2)(a), a claimant shall collect and pay a proportional tax based upon the length of time that the property was not owned by the claimant if:

(i) the claimant is a federal, state, or political subdivision entity described in Subsection (3)(a)(i), (ii), or (iii); or

(ii) pursuant to Subsection (3)(a)(iv):

(A) the claimant is a nonprofit entity; and

(B) the property is used exclusively for religious, charitable, or educational purposes.

(c) Subsection (2)(a) does not apply to an exemption under Section 59-2-1104.

(3) (a) The following property is exempt from taxation:

(i) property exempt under the laws of the United States;

(ii) property of:

(A) the state;

(B) school districts; and

(C) public libraries;

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(iii) except as provided in Title 11, Chapter 13, Interlocal Cooperation Act, or Subsection (3)(c), property of:

- (A) counties;
- (B) cities;
- (C) towns;
- (D) local districts;
- (E) special service districts; and
- (F) all other political subdivisions of the state;

(iv) property owned by a nonprofit entity used exclusively for religious, charitable, or educational purposes;

- (v) places of burial not held or used for private or corporate benefit;
- (vi) farm machinery and equipment;
- (vii) a high tunnel, as defined in Section 10-9a-525;
- (viii) intangible property; and
- (ix) the ownership interest of an out-of-state public agency, as defined in Section

11-13-103:

(A) if that ownership interest is in property providing additional project capacity, as defined in Section 11-13-103; and

(B) on which a fee in lieu of ad valorem property tax is payable under Section 11-13-302.

(b) For purposes of a property tax exemption for property of school districts under Subsection (3)(a)(ii)(B), a charter school under Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act, is considered to be a school district.

(c) ~~{ Notwithstanding }~~ (i) As used in this Subsection (3)(~~a~~)(iii)~~c~~:

(~~i~~) A) ~~{ the property of }~~ "Proprietor city or town" means a city or town that owns property that is located within the geographic boundaries of another city or town.

(B) "Situs city or town" means a city or town that has within its geographic boundaries the property of another city or town.

(ii) For property of a proprietor city or town that is located outside of the proprietor city's or town's geographic boundaries and that the proprietor city or town acquired after the ~~{ other }~~ situs city or town incorporated ~~{ is not exempt from a property tax that the other city or~~

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~~town levies on the property;~~

~~(ii) a};~~

(A) the situs city or town may levy a property tax on the property ~~{ of a city or town described in Subsection (3)(c)(ii); and~~

~~(iii) a city or town that owns property described in Subsection (3)(c)(ii)}; and~~

(B) the acquiring city or town may not levy a ~~{tax within the geographic boundaries of the city or town in which the property is located}~~ property tax on the property.

(4) Subject to Subsection (5), if property that is allowed an exclusive use exemption or a government exemption ceases to qualify for the exemption because of a change in the ownership of the property:

(a) the new owner of the property shall pay a proportional tax based upon the period of time:

(i) beginning on the day that the new owner acquired the property; and

(ii) ending on the last day of the calendar year during which the new owner acquired the property; and

(b) the new owner of the property and the person from whom the new owner acquires the property shall notify the county assessor, in writing, of the change in ownership of the property within 30 days from the day that the new owner acquires the property.

(5) Notwithstanding Subsection (4)(a), the proportional tax described in Subsection (4)(a):

(a) is subject to any exclusive use exemption or government exemption that the property is entitled to under the new ownership of the property; and

(b) applies only to property that is acquired after December 31, 2005.

(6) A county legislative body may adopt rules or ordinances to:

(a) effectuate the exemptions, deferrals, abatements, or other relief from taxation provided in this part; and

(b) designate one or more persons to perform the functions given the county under this part.

**Section 4. Coordinating H.B. 255 with H.B. 138 -- Substantive and technical amendments.**

If this H.B. 255 and H.B. 138, Extraterritorial Jurisdiction Amendments, both pass and

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become law, it is the intent of the Legislature that the Office of Legislative Research General Counsel shall prepare the Utah Code database for publication by:

(1) on May 8, 2018, amending Section 10-8-15 to read:

**"10-8-15. Waterworks -- Construction -- Extraterritorial jurisdiction.**

~~[They may]~~ (1) (a) A city may:

(i) construct or authorize the construction of waterworks within or without the city limits~~;~~; and

(ii) exercise jurisdiction for the purpose of maintaining and protecting the ~~[same]~~ waterworks described in Subsection (1)(a)(i) from injury and the water from pollution ~~[their jurisdiction shall extend]~~ as described in this section.

(b) The jurisdiction described in Subsection (1)(a)(ii) extends over the territory occupied by ~~[such works]~~ the waterworks described in Subsection (1)(a)(i), and over all reservoirs, streams, canals, ditches, pipes and drains used in and necessary for the construction, maintenance and operation of the ~~[same]~~ waterworks, and over the stream or source from which the water is taken, for:

(i) 15 miles above the point from which it is taken and for a distance of 300 feet on each side of such stream and over highways along such stream or watercourse within said 15 miles and said 300 feet; ~~[provided, that the jurisdiction of]~~ or

(ii) for cities of the first class ~~[shall be over]~~, the entire watershed~~[, except that].~~

(2) Notwithstanding Subsection (1):

(a) livestock ~~[shall be permitted to]~~ may graze beyond 1,000 feet from any such stream or source; and ~~[provided further, that]~~

(b) each city of the first class shall provide a highway in and through its corporate limits, and so far as its jurisdiction extends, which may not be closed to cattle, horses, sheep or hogs driven through any ~~[such]~~ city of the first class, or through any territory adjacent thereto over which such city has jurisdiction, but the board of commissioners of such city may enact ordinances placing under police regulations the manner of driving such cattle, sheep, horses and hogs through such city, or any territory adjacent thereto over which it has jurisdiction.

~~[They may]~~

(3) A city may:

(a) enact all ordinances and regulations necessary to carry the power ~~[herein conferred]~~

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described in this section into effect~~[, and are authorized and empowered to]; and~~

(b) enact ordinances preventing pollution or contamination of the streams or watercourses from which the inhabitants of cities derive their water supply, in whole or in part, for domestic and culinary purposes~~[, and may];~~

(c) enact ordinances prohibiting or regulating the construction or maintenance of any closet, privy, outhouse or urinal within the area over which the city has jurisdiction~~[, and];~~

(d) provide for permits for the construction and maintenance of the ~~[same. In granting such permits they may]~~ items described in Subsection (3)(c); and

(e) in granting the permits described in Subsection (3)(d):

(i) annex thereto such reasonable conditions and requirements for the protection of the public health as ~~[they deem proper, and may,]~~ the city considers proper; and

(ii) if deemed advisable, require that all closets, privies and urinals along ~~[such]~~ streams ~~[shall]~~ be provided with effective septic tanks or other germ-destroying instrumentalities.

(4) Regardless of the jurisdiction described in Subsection (1), property that a city of the first class owns outside of the geographic boundaries of the city is subject to property tax in accordance with Subsection 59-2-1101(3)(c)."; and

(2) on July 1, 2020, modifying Subsection 10-8-15(1)(b) to read:

“(b) The jurisdiction described in Subsection (1)(a)(ii) extends over the territory occupied by the waterworks described in Subsection (1)(a)(i), and over all reservoirs, streams, canals, ditches, pipes and drains used in and necessary for the construction, maintenance and operation of the waterworks, and over the stream or source from which the water is taken, for~~[(i)]~~ 15 miles above the point from which it is taken and for a distance of 300 feet on each side of such stream and over highways along such stream or watercourse within said 15 miles and said 300 feet~~[- or (ii) for cities of the first class, the entire watershed].”~~