

Senator Daniel McCay proposes the following substitute bill:

RIGHT-OF-WAY DISPOSAL AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel McCay

House Sponsor: Mike Schultz

LONG TITLE

General Description:

This bill amends provisions related to the sale of real property acquired for a state transportation purpose or by eminent domain.

Highlighted Provisions:

This bill:

- ▶ modifies provisions related to the Division of Facilities Construction and Management's disposal of vacant real property acquired by eminent domain under certain circumstances;
- ▶ for the sale of surplus property or an easement, requires the Department of Transportation to provide the right of first refusal to the original owner or subsequent bona fide purchaser of the surplus real property or easement under certain circumstances;
- ▶ for the sale of surplus property acquired by eminent domain, requires the state or state subdivision to provide the right of first refusal to the original owner or subsequent bona fide purchaser of the surplus real property or easement under certain circumstances; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:



None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63A-5b-909, as renumbered and amended by Laws of Utah 2020, Chapter 152

72-5-111, as last amended by Laws of Utah 2019, Chapter 479

78B-6-521, as last amended by Laws of Utah 2017, Chapter 273

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

Section 1. Section **63A-5b-909** is amended to read:

63A-5b-909. State real property subject to right of first refusal.

(1) (a) If Section **78B-6-520.3** applies to vacant division-owned property, the division shall comply with Subsection **78B-6-520.3(3)**.

(b) If a condemnee accepts the division's offer to sell the vacant division-owned property as provided in Section **78B-6-520.3**, the division shall:

(i) comply with the requirements of Section **78B-6-520.3**; and

(ii) terminate any process under this chapter to convey the vacant division-owned property.

(c) A condemnee may waive rights and benefits afforded under Section **78B-6-520.3** and instead seek a transfer of ownership or lease of vacant division-owned property under the provisions of this chapter in the same manner as any other person not entitled to the rights and benefits of Section **78B-6-520.3**.

(2) (a) If Section **78B-6-521** applies to the anticipated disposal of the vacant division-owned property, the division shall comply with the limitations and requirements of ~~[Subsection]~~ Subsections **78B-6-521(2)** and **(3)**.

(b) If the original grantor or a subsequent bona fide purchaser, or the original grantor's or subsequent bona fide purchaser's assignee, accepts an offer for sale as provided in Subsection **78B-6-521(2)(a)[(f)]**, the division shall:

(i) sell the vacant division-owned property to the original grantor or subsequent bona fide purchaser, or the original grantor's or subsequent bona fide purchaser's assignee, [as

provided] in accordance with Section 78B-6-521; and

(ii) terminate any process under this chapter to convey the vacant division-owned property.

(c) An original grantor or subsequent bona fide purchaser, or the original grantor's or subsequent bona fide purchaser's assignee, may waive rights afforded under Section 78B-6-521 and instead seek a transfer of ownership or lease of vacant division-owned property under the provisions of this chapter in the same manner as any other person seeking a transfer of ownership or lease of vacant division-owned property to which Section 78B-6-521 does not apply.

Section 2. 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] state transportation 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 or an interest in 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) (i) Except as provided in Subsection (1)(c)(ii), 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] a state transportation purpose.

(ii) The department may exchange an interest in real property for another interest in real property for a project that is part of a statewide transportation improvement program approved by the commission.

(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.]~~

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

92 (2) (a) In disposing of real property or an interest in real property described in
93 Subsection (1), the department shall give the right of first refusal for the highest offer, as
94 defined in Section 78B-6-521, to:

95 (i) for real property, the original grantor if, since the date of the original transfer to the
96 department, the original grantor has owned real property adjacent to the transferred real
97 property; or

98 (ii) for an interest in real property that is an easement:

99 (A) if the original grantor owns the servient estate subject to the easement, the original
100 grantor; or

101 (B) if a subsequent bona fide purchaser owns the servient estate subject to the
102 easement, the subsequent bona fide purchaser.

103 (b) Notwithstanding Subsection (2)(a) and Section 78B-6-521, if the department
104 acquires real property or an easement and does not use any portion of the real property or
105 easement for a state transportation purpose, the department shall give the original grantor the
106 opportunity to purchase the real property or easement at the original purchase price if, since the
107 date of the original transfer to the department, the original grantor has owned real property
108 adjacent to the transferred real property or the servient estate subject to the easement.

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

112 (d) (i) The right of first [consideration] refusal described in this Subsection (2)[(a)] is
113 subject to the same terms and may be assigned by the original grantor or subsequent bona fide
114 purchaser in the manner described in Subsection 78B-6-521[(2)](3).

115 (ii) The original grantor [or the assignee] or subsequent bona fide purchaser, or the
116 original grantor's or subsequent bona fide purchaser's assignee, shall notify the department of
117 an assignment by certified mail to the current office address of the executive director of the
118 department.

(iii) An exchange of real property as provided in Subsection (1)(c) or Section 72-5-113 does not entitle the original grantor or subsequent bona fide purchaser to exercise the right of first ~~[consideration]~~ refusal described in this Subsection (2)~~[(a)]~~.

(iv) The right of first ~~[consideration]~~ refusal described in this 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 3. 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" or "threat of condemnation" means:

(i) acquisition through an eminent domain proceeding; or

(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:

(A) purchase price;

(B) conditions; and

(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 the state's subdivisions, at the state's or the ~~[state's]~~ state subdivision's sole discretion, declares real property ~~[that is acquired]~~ or an easement the state or state subdivision acquires through condemnation or threat of condemnation to be surplus real

property, [it] the state or state subdivision may not sell the real property [~~on the open market~~]
or easement at a private or public sale unless:

~~[(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;]~~

(a) (i) for real property, the state or state subdivision gives the right of first refusal to
the original grantor for the highest offer if, since the date of the original transfer to the state or
state subdivision, the original grantor has owned real property adjacent to the transferred real
property; or

(ii) for an easement, the state or state subdivision gives the right of first refusal to:

(A) if the original grantor owns the servient estate subject to the easement, the original
grantor for the highest offer; or

(B) if a subsequent bona fide purchaser owns the servient estate subject to the
easement, the subsequent bona fide purchaser for the highest offer;

~~[(ii)]~~ (b) the original grantor or subsequent bona fide purchaser described in Subsection
(2)(a):

(i) expressly [~~waived~~] waives in writing the [~~first~~] right of first refusal on the offer; or

(ii) [~~failed~~] fails to accept the offer within 90 days after the day on which the original
grantor or subsequent bona fide purchaser receives notification by registered mail to the
original grantor's or subsequent bona fide purchaser's last-known address; and

~~[(iii)]~~ (c) neither the state nor the state 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) An original grantor may assign the first right of refusal 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).]~~

(3) (a) If the original grantor or subsequent bona fide purchaser has not waived the
right of first refusal as described in Subsection (2)(b), an original grantor or subsequent bona
fide purchaser may assign the right of first refusal.

~~[(c)]~~ (b) The assignment of a right of first refusal [~~pursuant to~~] in accordance with
Subsection [~~(2)(b)] (3)(a) does not extend the time for acceptance of an offer as described in~~

181 Subsection [(2)(a)(ii)] (2)(b).

182 [(3)] (4) (a) Real property acquired through condemnation or the threat of
183 condemnation is not considered surplus if the real property is approved for use in an exchange
184 for other real property.

185 (b) An exchange of real property for other real property is not a private or public sale
186 ~~[on the open market]~~.

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

189 [(4)] (5) This section shall only apply to property acquired after July 1, 1983.