

LOCAL GOVERNMENT REAL PROPERTY AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mark B. Madsen

House Sponsor: _____

LONG TITLE

General Description:

This bill enacts language related to a local government's interest in real property.

Highlighted Provisions:

This bill:

- ▶ amends provisions authorizing a municipality to hold real property or hold an interest in real property;
- ▶ requires a municipality to conduct an annual inventory of real property held by the municipality;
- ▶ requires a municipality to dispose of real property that does not have an identified public use;
- ▶ amends provisions related to a municipality's disposal of real property;
- ▶ amends provisions authorizing a county to hold real property or hold an interest in real property;
- ▶ requires a county to conduct an annual inventory of real property held by the municipality;
- ▶ requires a county to dispose of real property that does not have an identified public use;
- ▶ amends provisions related to a county's disposal of real property; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:



28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **10-8-2**, as last amended by Laws of Utah 2010, Chapter 90

34 **17-50-312**, as last amended by Laws of Utah 2007, Chapter 291

35

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

37 Section 1. Section **10-8-2** is amended to read:

38 **10-8-2. Appropriations -- Municipal authority -- Corporate purpose -- Procedure**
39 **-- Acquisition and disposal of property -- Public use required -- Inventory of real**
40 **property -- Notice of intent to acquire real property.**

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

42 (i) appropriate money for corporate purposes only;

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

44 [~~(iii) subject to Subsections (4) and (5), purchase, receive, hold, sell, lease, convey, and~~
45 ~~dispose of real and personal property for the benefit of the municipality, whether the property is~~
46 ~~within or without the municipality's corporate boundaries, if the action is in the public interest~~
47 ~~and complies with other law;]~~

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

50 (iii) improve and protect municipal real or personal property; and

51 [~~(v)~~] (iv) subject to Subsection (2) and after first holding a public hearing, authorize
52 municipal services or other nonmonetary assistance to be provided to or waive fees required to
53 be paid by a nonprofit entity, whether or not the municipality receives consideration in return.

54 (b) A municipality may:

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

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

58 (iii) subject to Subsection (1)(c), acquire by eminent domain, or otherwise, property

59 located inside or outside the corporate limits of the municipality and necessary for any of the
60 purposes stated in Subsections (1)(b)(i) and (ii), subject to restrictions imposed by Title 78B,
61 Chapter 6, Part 5, Eminent Domain, and general law for the protection of other communities.

62 (c) Each municipality that intends to acquire property by eminent domain under
63 Subsection (1)(b) shall, upon the first contact with the owner of the property sought to be
64 acquired, deliver to the owner a copy of a booklet or other materials provided by the Office of
65 the Property Rights Ombudsman, created under Section 13-43-201, dealing with the property
66 owner's rights in an eminent domain proceeding.

67 (d) Subsection (1)(b) may not be construed to diminish any other authority a
68 municipality may claim to have under the law to acquire by eminent domain property located
69 inside or outside the municipality.

70 (2) (a) Services or assistance provided pursuant to Subsection (1)(a)~~(iv)~~(iv) is not
71 subject to the provisions of Subsection (3).

72 (b) The total amount of services or other nonmonetary assistance provided or fees
73 waived under Subsection (1)(a)~~(iv)~~(iv) in any given fiscal year may not exceed 1% of the
74 municipality's budget for that fiscal year.

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

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

81 (b) (i) The criteria for a determination under this Subsection (3) shall be established by
82 the municipality's legislative body.

83 (ii) A determination of value received, made by the municipality's legislative body,
84 shall be presumed valid unless it can be shown that the determination was arbitrary, capricious,
85 or illegal.

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

88 (d) (i) Prior to the municipal legislative body making any decision to appropriate any
89 funds for a corporate purpose under this section, a public hearing shall be held.

90 (ii) Notice of the hearing described in Subsection (3)(d)(i) shall be published:
91 (A) (I) in a newspaper of general circulation at least 14 days before the date of the
92 hearing; or
93 (II) if there is no newspaper of general circulation, by posting notice in at least three
94 conspicuous places within the municipality for the same time period; and
95 (B) on the Utah Public Notice Website created in Section 63F-1-701, at least 14 days
96 before the date of the hearing.
97 ~~[(e) A study shall be performed before]~~
98 (e) The municipality shall:
99 (i) conduct a study before giving notice of the public hearing ~~[is given and shall be~~
100 ~~made];~~
101 (ii) make the study available at the municipality for review by interested parties at least
102 14 days immediately prior to the public hearing~~[-, setting forth]; and~~
103 (iii) include in the study an analysis ~~[and demonstrating]~~ that demonstrates the purpose
104 for the appropriation~~[- In making the study, the following factors shall be considered],~~
105 including:
106 ~~[(i)]~~ (A) what identified benefit the municipality will receive in return for any money or
107 resources appropriated;
108 ~~[(ii)]~~ (B) the municipality's purpose for the appropriation, including an analysis of the
109 way the appropriation will be used to enhance the safety, health, prosperity, moral well-being,
110 peace, order, comfort, or convenience of the inhabitants of the municipality; and
111 ~~[(iii)]~~ (C) whether the appropriation is necessary and appropriate to accomplish the
112 reasonable goals and objectives of the municipality in the area of economic development, job
113 creation, affordable housing, blight elimination, job preservation, the preservation of historic
114 structures and property, and any other public purpose.
115 (f) (i) An appeal may be taken from a final decision of the municipal legislative body,
116 to make an appropriation.
117 (ii) The appeal shall be filed within 30 days after the date of that decision, to the
118 district court.
119 (iii) Any appeal shall be based on the record of the proceedings before the legislative
120 body.

121 (iv) A decision of the municipal legislative body shall be presumed to be valid unless
122 the appealing party shows that the decision was arbitrary, capricious, or illegal.

123 (g) The provisions of this Subsection (3) apply only to those appropriations made after
124 May 6, 2002.

125 (h) This section applies only to appropriations not otherwise approved pursuant to Title
126 10, Chapter 5, Uniform Fiscal Procedures Act for Utah Towns, or Title 10, Chapter 6, Uniform
127 Fiscal Procedures Act for Utah Cities.

128 (4) (a) A municipality:

129 (i) may purchase, receive, hold, sell, lease, convey, or otherwise acquire and, subject to
130 Subsection (6), dispose of any real or personal property or an interest in real or personal
131 property if:

132 (A) the action is in the public interest;

133 (B) the action complies with applicable law; and

134 (C) the property is for a public use; and

135 (ii) subject to Subsection (5), may not purchase, receive, hold, sell, lease, or otherwise
136 hold an interest in real or personal property if it is not for a public use.

137 (b) A municipality may not purchase, hold, convey, or have an interest in real property
138 for speculative purposes.

139 (c) A municipality may not lease real property to a person or an entity other than the
140 municipality.

141 (5) (a) A municipality shall:

142 (i) conduct and complete by August 1 of each year an inventory of all real property
143 purchased, held, or received by the municipality or that the municipality otherwise has an
144 interest in;

145 (ii) for each property described in Subsection (5)(a)(i), identify whether or not the
146 property is currently used for a public use or is intended for a public use and what the public
147 use is; and

148 (iii) make available the information described in Subsections (5)(a)(i) and (ii) on the
149 municipality's website.

150 (b) On or before December 31 of each year, a municipality shall, in accordance with
151 Subsection (6), dispose of, including any interest in, all real property that does not have a

152 public use as identified under Subsection (5)(a)(ii).

153 (c) If the municipality purchases, holds, receives, or otherwise has an interest in real
154 property that was initially acquired for an identified public use but for which that public use is
155 no longer needed or the property location is later determined to not be viable for the intended
156 public use, the municipality shall identify the property in the next annual inventory described in
157 Subsection (5)(a)(i) as not having a public use and dispose of the property.

158 ~~[(4)] (6)~~ (a) Before a municipality may dispose of ~~[a significant parcel of]~~ real property,
159 the municipality:

160 (i) shall:

161 ~~[(i)] (A)~~ provide reasonable notice of the proposed disposition at least 14 days before
162 the opportunity for public comment under Subsection ~~[(4)(a)(ii); and] (6)(a)(i)(B); and~~

163 ~~[(ii)] (B)~~ allow an opportunity for public comment on the proposed disposition~~[-]; and~~

164 (ii) may not rezone the real property to be sold to enhance its value.

165 (b) ~~[Each] A~~ municipality shall, by ordinance, define what constitutes~~[- (i) a~~
166 ~~significant parcel of real property for purposes of Subsection (4)(a); and (ii)]~~ reasonable notice
167 for purposes of Subsection ~~[(4)] (6)(a)(i)(A).~~

168 ~~[(5)] (7)~~ (a) Except as provided in Subsection ~~[(5)] (7)(d)~~, each municipality intending
169 to acquire real property for the purpose of expanding the municipality's infrastructure or other
170 facilities used for providing services that the municipality offers or intends to offer shall
171 provide written notice, as provided in this Subsection ~~[(5)] (7)~~, of its intent to acquire the
172 property if:

173 (i) the property is located:

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

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

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

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

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

180 (b) ~~[Each] A~~ notice under Subsection ~~[(5)] (7)(a)~~ shall:

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

182 (ii) identify the real property; and

- 183 (iii) be sent to:
- 184 (A) each county in whose unincorporated area and each municipality in whose
- 185 boundaries the property is located; and
- 186 (B) each affected entity.
- 187 (c) A notice under this Subsection [~~(5)~~] (7) is a protected record as provided in
- 188 Subsection 63G-2-305(7).
- 189 (d) (i) The notice requirement of Subsection [~~(5)~~] (7)(a) does not apply if the
- 190 municipality previously provided notice under Section 10-9a-203 identifying the general
- 191 location within the municipality or unincorporated part of the county where the property to be
- 192 acquired is located.
- 193 (ii) If a municipality is not required to comply with the notice requirement of
- 194 Subsection [~~(5)~~] (7)(a) because of application of Subsection [~~(5)~~] (7)(d)(i), the municipality
- 195 shall provide the notice specified in Subsection [~~(5)~~] (7)(a) as soon as practicable after its
- 196 acquisition of the real property.

197 Section 2. Section 17-50-312 is amended to read:

198 **17-50-312. Acquisition, management, and disposal of property -- Public use**
199 **required -- Inventory of real property.**

200 [~~(1) Subject to Subsection (4), a county]~~

201 (1) (a) A county:

202 (i) may purchase, receive, hold, sell, lease, convey, or otherwise acquire and, subject to
203 Subsection (5), dispose of any real or personal property or any interest in [such] real or
204 personal property if:

205 (A) the action is in the public interest [and complies with other law.];

206 (B) the action complies with applicable law; and

207 (C) the property is for a public use; and

208 (ii) subject to Subsection (2), may not purchase, receive, hold, sell, lease, or otherwise
209 hold an interest in real or personal property if it is not for a public use.

210 (b) A county may not purchase, hold, convey, or have an interest in real property for
211 speculative purposes.

212 (c) A county may not lease real property to a person or an entity other than the county.

213 (2) (a) A county shall:

214 (i) conduct and complete by August 1 of each year an inventory of all real property
215 purchased, held, or received by the county or that the county otherwise has an interest in;

216 (ii) for each property described in Subsection (2)(a)(i), identify whether or not the
217 property is currently used for a public use or is intended for a public use and what the public
218 use is; and

219 (iii) make available the information described in Subsections (2)(a)(i) and (ii) on the
220 county's website.

221 (b) On or before December 31 of each year, a county shall dispose of, including any
222 interest in, all real property that does not have a public use as identified under Subsection
223 (2)(a)(ii).

224 (c) If the county purchases, holds, receives, or otherwise has an interest in real property
225 that was initially acquired for an identified public use but for which that public use is no longer
226 needed or the property location is later determined to not be viable for the intended public use,
227 the county shall identify the property in the next annual inventory described in Subsection
228 (2)(a)(i) as not having a public use and dispose of the property.

229 ~~[(2)]~~ (3) Any property interest acquired by the county shall be held in the name of the
230 county unless specifically otherwise provided by law.

231 ~~[(3)]~~ (4) The county legislative body shall provide by ordinance, resolution, rule, or
232 regulation for the manner in which property shall be, in accordance with this section, acquired,
233 managed, and disposed of.

234 ~~[(4)]~~ (5) (a) Before a county may dispose of ~~[a significant parcel of]~~ real property and
235 except as provided in Section 17-27a-507, the county:

236 (i) shall:

237 ~~[(i)]~~ (A) provide reasonable notice of the proposed disposition at least 14 days before
238 the opportunity for public comment under Subsection ~~[(4)(a)(ii)]~~ (5)(a)(i)(B); and

239 ~~[(ii)]~~ (B) allow an opportunity for public comment on the proposed disposition~~[-];~~ and

240 (ii) may not rezone the real property to be sold to enhance its value.

241 (b) ~~[Each]~~ A county shall, by ordinance, define what constitutes~~[-(i) a significant~~
242 ~~parcel of real property for purposes of Subsection (4)(a); and (ii)]~~ reasonable notice for
243 purposes of Subsection ~~[(4)]~~ (5)(a)(i)(A).

Legislative Review Note
as of 7-7-11 1:37 PM

Office of Legislative Research and General Counsel