

Representative Evan L. Olsen proposes to substitute the following bill:

PRIVATE PROPERTY OMBUDSMAN AMENDMENT

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Evan L. Olsen

AN ACT RELATING TO CITIES AND TOWNS, COUNTIES, STATE AFFAIRS IN GENERAL, AND THE JUDICIAL CODE; MODIFYING DEFINITIONS; PROVIDING FOR A TOLLING OF THE TIME TO FILE A PETITION FOR COURT REVIEW UPON THE FILING OF A REQUEST FOR ARBITRATION WITH THE PRIVATE PROPERTY OMBUDSMAN; MODIFYING THE CONDITIONS UNDER WHICH A STAY OF A BOARD OF ADJUSTMENT DECISION MAY BE REQUESTED; PROVIDING FOR A STAY OF AN EMINENT DOMAIN ACTION; AND MAKING TECHNICAL CORRECTIONS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

10-9-103, as last amended by Chapters 37 and 89, Laws of Utah 1998

10-9-708, as enacted by Chapter 235, Laws of Utah 1991

10-9-1001, as last amended by Chapter 30, Laws of Utah 1992

17-27-103, as last amended by Chapter 89, Laws of Utah 1998

17-27-708, as enacted by Chapter 235, Laws of Utah 1991

17-27-1001, as last amended by Chapter 79, Laws of Utah 1996

63-34-13, as last amended by Chapter 295, Laws of Utah 1998

78-34-21, as enacted by Chapter 295, Laws of Utah 1998

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

Section 1. Section **10-9-103** is amended to read:

10-9-103. Definitions -- Notice.

(1) As used in this chapter:

26 (a) "Billboard" means a freestanding ground sign located on industrial, commercial, or
27 residential property if the sign is designed or intended to direct attention to a business, product, or
28 service that is not sold, offered, or existing on the property where the sign is located.

29 (b) "Chief executive officer" means:

30 (i) the mayor in municipalities operating under all forms of municipal government except
31 the council-manager form; or

32 (ii) the city manager in municipalities operating under the council-manager form of
33 municipal government.

34 (c) "Conditional use" means a land use that, because of its unique characteristics or
35 potential impact on the municipality, surrounding neighbors, or adjacent land uses, may not be
36 compatible in some areas or may be compatible only if certain conditions are required that mitigate
37 or eliminate the detrimental impacts.

38 (d) "Constitutional taking" has the meaning as defined in Section 63-34-13.

39 ~~[(d)]~~ (e) "County" means the unincorporated area of the county.

40 ~~[(e)]~~ (f) "Elderly person" means a person who is 60 years old or older, who desires or
41 needs to live with other elderly persons in a group setting, but who is capable of living
42 independently.

43 ~~[(f)]~~ (g) (i) "General plan" means a document that a municipality adopts that sets forth
44 general guidelines for proposed future development of the land within the municipality, as set forth
45 in Sections 10-9-301 and 10-9-302.

46 (ii) "General plan" includes what is also commonly referred to as a "master plan."

47 ~~[(g)]~~ (h) "Legislative body" means the city council or city commission.

48 ~~[(h)]~~ (i) "Lot line adjustment" in a subdivision means the relocation of the property
49 boundary line between two adjoining lots with the consent of the owners of record.

50 ~~[(i)]~~ (j) "Municipality" means a city or town.

51 ~~[(j)]~~ (k) "Nonconforming structure" means a structure that:

52 (i) legally existed before its current zoning designation; and

53 (ii) because of subsequent zoning changes, does not conform with the zoning regulation's
54 setback, height restrictions, or other regulations that govern the structure.

55 ~~[(k)]~~ (l) "Nonconforming use" means a use of land that:

56 (i) legally existed before its current zoning designation;

57 (ii) has been maintained continuously since the time the zoning regulation governing the
58 land changed; and

59 (iii) because of subsequent zoning changes, does not conform with the zoning regulations
60 that now govern the land.

61 [~~(t)~~] (m) "Official map" means a map of proposed streets that has the legal effect of
62 prohibiting development of the property until the municipality develops the proposed street.

63 [~~(m)~~] (n) (i) "Residential facility for elderly persons" means a single-family or
64 multiple-family dwelling unit that meets the requirements of Part 5 and any ordinance adopted
65 under authority of that part.

66 (ii) "Residential facility for elderly persons" does not include a health care facility as
67 defined by Section 26-21-2.

68 [~~(m)~~] (o) "Special district" means all entities established under the authority of Title 17A,
69 Special Districts, and any other governmental or quasi-governmental entity that is not a county,
70 municipality, school district, or unit of the state.

71 [~~(o)~~] (p) "Street" means public rights-of-way, including highways, avenues, boulevards,
72 parkways, roads, lanes, walks, alleys, viaducts, subways, tunnels, bridges, public easements, and
73 other ways.

74 [~~(p)~~] (q) (i) "Subdivision" means any land that is divided, resubdivided or proposed to be
75 divided into two or more lots, parcels, sites, units, plots, or other division of land for the purpose,
76 whether immediate or future, for offer, sale, lease, or development either on the installment plan
77 or upon any and all other plans, terms, and conditions.

78 (ii) "Subdivision" includes:

79 (A) the division or development of land whether by deed, metes and bounds description,
80 devise and testacy, lease, map, plat, or other recorded instrument; and

81 (B) except as provided in Subsection (1)[~~(p)~~](q)(iii), divisions of land for all residential
82 and nonresidential uses, including land used or to be used for commercial, agricultural, and
83 industrial purposes.

84 (iii) "Subdivision" does not include:

85 (A) a bona fide division or partition of agricultural land for the purpose of joining one of
86 the resulting separate parcels to a contiguous parcel of unsubdivided agricultural land, if neither
87 the resulting combined parcel nor the parcel remaining from the division or partition violates an

88 applicable zoning ordinance;

89 (B) a recorded agreement between owners of adjoining properties adjusting their mutual
90 boundary if:

91 (I) no new lot is created; and

92 (II) the adjustment does not result in a violation of applicable zoning ordinances; or

93 (C) a recorded document, executed by the owner of record, revising the legal description
94 of more than one contiguous parcel of property into one legal description encompassing all such
95 parcels of property.

96 (iv) The joining of a subdivided parcel of property to another parcel of property that has
97 not been subdivided does not constitute a "subdivision" under this Subsection (1)[(p)](q) as to the
98 unsubdivided parcel of property or subject the unsubdivided parcel to the municipality's
99 subdivision ordinance.

100 [(q)] (r) "Unincorporated" means the area outside of the incorporated boundaries of cities
101 and towns.

102 (2) (a) A municipality meets the requirements of reasonable notice required by this chapter
103 if it:

104 (i) posts notice of the hearing or meeting in at least three public places within the
105 jurisdiction and publishes notice of the hearing or meeting in a newspaper of general circulation
106 in the jurisdiction, if one is available; or

107 (ii) gives actual notice of the hearing or meeting.

108 (b) A municipal legislative body may enact an ordinance establishing stricter notice
109 requirements than those required by this subsection.

110 (c) (i) Proof that one of the two forms of notice authorized by this subsection was given
111 is prima facie evidence that notice was properly given.

112 (ii) If notice given under authority of this section is not challenged as provided in Section
113 10-9-1001 within 30 days from the date of the meeting for which the notice was given, the notice
114 is considered adequate and proper.

115 Section 2. Section **10-9-708** is amended to read:

116 **10-9-708. District court review of board of adjustment decision.**

117 (1) Any person adversely affected by any decision of a board of adjustment may petition
118 the district court for a review of the decision.

119 (2) In the petition, the plaintiff may only allege that the board of adjustment's decision was
120 arbitrary, capricious, or illegal.

121 (3) (a) The petition is barred unless it is filed within 30 days after the board of adjustment's
122 decision is final.

123 (b) (i) The time under Subsection (3)(a) to file a petition is tolled from the date a property
124 owner files a request for arbitration of a constitutional taking issue with the private property
125 ombudsman under Section 63-34-13 until 30 days after:

126 (A) the arbitrator issues a final award; or

127 (B) the private property ombudsman issues a written statement under Subsection
128 63-34-13(4)(b) declining to arbitrate or to appoint an arbitrator.

129 (ii) A tolling under Subsection (3)(b)(i) operates only as to the specific constitutional
130 taking issues that are the subject of the request for arbitration filed with the private property
131 ombudsman by a property owner.

132 (iii) A request for arbitration filed with the private property ombudsman after the time
133 under Subsection (3)(a) to file a petition has expired does not affect the time to file a petition.

134 (4) (a) The board of adjustment shall transmit to the reviewing court the record of its
135 proceedings including its minutes, findings, orders and, if available, a true and correct transcript
136 of its proceedings.

137 (b) If the proceeding was tape recorded, a transcript of that tape recording is a true and
138 correct transcript for purposes of this subsection.

139 (5) (a) (i) If there is a record, the district court's review is limited to the record provided
140 by the board of adjustment.

141 (ii) The court may not accept or consider any evidence outside the board of adjustment's
142 record unless that evidence was offered to the board of adjustment and the court determines that
143 it was improperly excluded by the board of adjustment.

144 (b) If there is no record, the court may call witnesses and take evidence.

145 (6) The court shall affirm the decision of the board of adjustment if the decision is
146 supported by substantial evidence in the record.

147 (7) (a) The filing of a petition does not stay the decision of the board of adjustment.

148 (b) (i) Before filing [the] a petition under this section or a request for mediation or
149 arbitration of a constitutional taking issue under Section 63-34-13, the aggrieved party may petition

150 the board of adjustment to stay its decision.

151 (ii) Upon receipt of a petition to stay, the board of adjustment may order its decision stayed
152 pending district court review if the board of adjustment finds it to be in the best interest of the
153 municipality.

154 (iii) After [the] a petition is filed under this section or a request for mediation or arbitration
155 of a constitutional taking issue is filed under Section 63-34-13, the petitioner may seek an
156 injunction staying the board of adjustment's decision.

157 Section 3. Section **10-9-1001** is amended to read:

158 **10-9-1001. Appeals.**

159 (1) No person may challenge in district court a municipality's land use decisions made
160 under this chapter or under the regulation made under authority of this chapter until that person
161 has exhausted his administrative remedies.

162 (2) (a) Any person adversely affected by any decision made in the exercise of the
163 provisions of this chapter may file a petition for review of the decision with the district court
164 within 30 days after the local decision is rendered.

165 (b) (i) The time under Subsection (2)(a) to file a petition is tolled from the date a property
166 owner files a request for arbitration of a constitutional taking issue with the private property
167 ombudsman under Section 63-34-13 until 30 days after:

168 (A) the arbitrator issues a final award; or

169 (B) the private property ombudsman issues a written statement under Subsection
170 63-34-13(4)(b) declining to arbitrate or to appoint an arbitrator.

171 (ii) A tolling under Subsection (2)(b)(i) operates only as to the specific constitutional
172 taking issues that are the subject of the request for arbitration filed with the private property
173 ombudsman by a property owner.

174 (iii) A request for arbitration filed with the private property ombudsman after the time
175 under Subsection (2)(a) to file a petition has expired does not affect the time to file a petition.

176 (3) The courts shall:

177 (a) presume that land use decisions and regulations are valid; and

178 (b) determine only whether or not the decision is arbitrary, capricious, or illegal.

179 Section 4. Section **17-27-103** is amended to read:

180 **17-27-103. Definitions -- Notice.**

181 (1) As used in this chapter:

182 (a) "Billboard" means a freestanding ground sign located on industrial, commercial, or
183 residential property if the sign is designed or intended to direct attention to a business, product, or
184 service that is not sold, offered, or existing on the property where the sign is located.

185 (b) "Chief executive officer" means the county executive, or if the county has adopted an
186 alternative form of government, the official who exercises the executive powers.

187 (c) "Conditional use" means a land use that, because of its unique characteristics or
188 potential impact on the county, surrounding neighbors, or adjacent land uses, may not be
189 compatible in some areas or may be compatible only if certain conditions are required that mitigate
190 or eliminate the detrimental impacts.

191 (d) "Constitutional taking" has the meaning as defined in Section 63-34-13.

192 [~~(d)~~] (e) "County" means the unincorporated area of the county.

193 [~~(e)~~] (f) "Elderly person" means a person who is 60 years old or older, who desires or
194 needs to live with other elderly persons in a group setting, but who is capable of living
195 independently.

196 [~~(f)~~] (g) (i) "General plan" means a document that a county adopts that sets forth general
197 guidelines for proposed future development of the land within the county, as set forth in Sections
198 17-27-301 and 17-27-302.

199 (ii) "General plan" includes what is also commonly referred to as a "master plan."

200 [~~(g)~~] (h) "Legislative body" means the county legislative body, or for a county that has
201 adopted an alternative form of government, the body exercising legislative powers.

202 [~~(h)~~] (i) "Lot line adjustment" means the relocation of the property boundary line between
203 two adjoining lots with the consent of the owners of record.

204 [~~(i)~~] (j) "Municipality" means a city or town.

205 [~~(j)~~] (k) "Nonconforming structure" means a structure that:

206 (i) legally existed before its current zoning designation; and

207 (ii) because of subsequent zoning changes, does not conform with the zoning regulation's
208 setback, height restrictions, or other regulations that govern the structure.

209 [~~(k)~~] (l) "Nonconforming use" means a use of land that:

210 (i) legally existed before its current zoning designation;

211 (ii) has been maintained continuously since the time the zoning regulation governing the

212 land changed; and

213 (iii) because of subsequent zoning changes, does not conform with the zoning regulations
214 that now govern the land.

215 ~~[(h)]~~ (m) "Official map" means a map of proposed streets that has the legal effect of
216 prohibiting development of the property until the county develops the proposed street.

217 ~~[(m)]~~ (n) (i) "Residential facility for elderly persons" means a single-family or
218 multiple-family dwelling unit that meets the requirements of Part 5 and any ordinance adopted
219 under authority of that part.

220 (ii) "Residential facility for elderly persons" does not include a health care facility as
221 defined by Section 26-21-2.

222 ~~[(n)]~~ (o) "Special district" means all entities established under the authority of Title 17A,
223 Special Districts, and any other governmental or quasi-governmental entity that is not a county,
224 municipality, school district, or unit of the state.

225 ~~[(o)]~~ (p) "Street" means public rights-of-way, including highways, avenues, boulevards,
226 parkways, roads, lanes, walks, alleys, viaducts, subways, tunnels, bridges, public easements, and
227 other ways.

228 ~~[(p)]~~ (q) (i) "Subdivision" means any land that is divided, resubdivided or proposed to be
229 divided into two or more lots, parcels, sites, units, plots, or other division of land for the purpose,
230 whether immediate or future, for offer, sale, lease, or development either on the installment plan
231 or upon any and all other plans, terms, and conditions.

232 (ii) "Subdivision" includes the division or development of land whether by deed, metes
233 and bounds description, devise and testacy, lease, map, plat, or other recorded instrument.

234 (iii) "Subdivision" does not include:

235 (A) a bona fide division or partition of agricultural land for agricultural purposes;

236 (B) a recorded agreement between owners of adjoining properties adjusting their mutual
237 boundary if:

238 (I) no new lot is created; and

239 (II) the adjustment does not result in a violation of applicable zoning ordinances; or

240 (C) a recorded document, executed by the owner of record, revising the legal description
241 of more than one contiguous parcel of property into one legal description encompassing all such
242 parcels of property.

243 (iv) The joining of a subdivided parcel of property to another parcel of property that has
244 not been subdivided does not constitute a "subdivision" under this Subsection (1)~~(p)~~(q) as to the
245 unsubdivided parcel of property or subject the unsubdivided parcel to the county's subdivision
246 ordinance.

247 ~~(q)~~ (r) "Unincorporated" means the area outside of the incorporated boundaries of cities
248 and towns.

249 (2) (a) A county meets the requirements of reasonable notice required by this chapter if
250 it:

251 (i) posts notice of the hearing or meeting in at least three public places within the
252 jurisdiction and publishes notice of the hearing or meeting in a newspaper of general circulation
253 in the jurisdiction, if one is available; or

254 (ii) gives actual notice of the hearing or meeting.

255 (b) A county legislative body may enact an ordinance establishing stricter notice
256 requirements than those required by this subsection.

257 (c) (i) Proof that one of the two forms of notice authorized by this subsection was given
258 is prima facie evidence that notice was properly given.

259 (ii) If notice given under authority of this section is not challenged as provided in Section
260 17-27-1001 within 30 days from the date of the meeting for which the notice was given, the notice
261 is considered adequate and proper.

262 Section 5. Section **17-27-708** is amended to read:

263 **17-27-708. District court review of board of adjustment decision.**

264 (1) Any person adversely affected by any decision of a board of adjustment may petition
265 the district court for a review of the decision.

266 (2) In the petition, the plaintiff may only allege that the board of adjustment's decision was
267 arbitrary, capricious, or illegal.

268 (3) (a) The petition is barred unless it is filed within 30 days after the board of adjustment's
269 decision is final.

270 (b) (i) The time under Subsection (3)(a) to file a petition is tolled from the date a property
271 owner files a request for arbitration of a constitutional taking issue with the private property
272 ombudsman under Section 63-34-13 until 30 days after:

273 (A) the arbitrator issues a final award; or

274 (B) the private property ombudsman issues a written statement under Subsection
275 63-34-13(4)(b) declining to arbitrate or to appoint an arbitrator.

276 (ii) A tolling under Subsection (3)(b)(i) operates only as to the specific constitutional
277 taking issues that are the subject of the request for arbitration filed with the private property
278 ombudsman by a property owner.

279 (iii) A request for arbitration filed with the private property ombudsman after the time
280 under Subsection (3)(a) to file a petition has expired does not affect the time to file a petition.

281 (4) (a) The board of adjustment shall transmit to the reviewing court the record of its
282 proceedings including its minutes, findings, orders and, if available, a true and correct transcript
283 of its proceedings.

284 (b) If the proceeding was tape recorded, a transcript of that tape recording is a true and
285 correct transcript for purposes of this subsection.

286 (5) (a) (i) If there is a record, the district court's review is limited to the record provided
287 by the board of adjustment.

288 (ii) The court may not accept or consider any evidence outside the board of adjustment's
289 record unless that evidence was offered to the board of adjustment and the court determines that
290 it was improperly excluded by the board of adjustment.

291 (b) If there is no record, the court may call witnesses and take evidence.

292 (6) The court shall affirm the decision of the board of adjustment if the decision is
293 supported by substantial evidence in the record.

294 (7) (a) The filing of a petition does not stay the decision of the board of adjustment.

295 (b) (i) Before filing [the] a petition under this section or a request for mediation or
296 arbitration of a constitutional taking issue under Section 63-34-13, the aggrieved party may petition
297 the board of adjustment to stay its decision.

298 (ii) Upon receipt of a petition to stay, the board of adjustment may order its decision stayed
299 pending district court review if the board of adjustment finds it to be in the best interest of the
300 county.

301 (iii) After [the] a petition is filed under this section or a request for mediation or arbitration
302 of a constitutional taking issue is filed under Section 63-34-13, the petitioner may seek an
303 injunction staying the board of adjustment's decision.

304 Section 6. Section **17-27-1001** is amended to read:

305 **17-27-1001. Appeals.**

306 (1) No person may challenge in district court a county's land use decisions made under this
307 chapter or under the regulation made under authority of this chapter until that person has exhausted
308 all administrative remedies.

309 (2) (a) Any person adversely affected by any decision made in the exercise of the
310 provisions of this chapter may file a petition for review of the decision with the district court
311 within 30 days after the local decision is rendered.

312 (b) (i) The time under Subsection (2)(a) to file a petition is tolled from the date a property
313 owner files a request for arbitration of a constitutional taking issue with the private property
314 ombudsman under Section 63-34-13 until 30 days after:

315 (A) the arbitrator issues a final award; or

316 (B) the private property ombudsman issues a written statement under Subsection
317 63-34-13(4)(b) declining to arbitrate or to appoint an arbitrator.

318 (ii) A tolling under Subsection (2)(b)(i) operates only as to the specific constitutional
319 taking issues that are the subject of the request for arbitration filed with the private property
320 ombudsman by a property owner.

321 (iii) A request for arbitration filed with the private property ombudsman after the time
322 under Subsection (2)(a) to file a petition has expired does not affect the time to file a petition.

323 (3) The courts shall:

324 (a) presume that land use decisions and regulations are valid; and

325 (b) determine only whether or not the decision is arbitrary, capricious, or illegal.

326 Section 7. Section **63-34-13** is amended to read:

327 **63-34-13. Private property ombudsman -- Powers -- Arbitration procedures.**

328 (1) As used in this section:

329 (a) "Constitutional taking" or "taking" means a governmental action that results in a taking
330 of private property so that compensation to the owner of the property is required by:

331 (i) the Fifth or Fourteenth Amendment of the Constitution of the United States; or

332 (ii) Utah Constitution Article I, Section 22.

333 (b) "Takings law" means the provisions of the federal and state constitutions, the case law
334 interpreting those provisions, and any relevant statutory provisions that require a governmental unit
335 to compensate a private property owner for a constitutional taking.

336 (2) (a) There is created a private property ombudsman in the Department of Natural
337 Resources.

338 (b) The executive director of the Department of Natural Resources shall hire a person with
339 background or expertise in takings law to fill the position.

340 (c) The person hired to fill the position is an exempt employee.

341 (3) The private property ombudsman shall:

342 (a) develop and maintain expertise in and understanding of takings law;

343 (b) assist state agencies and local governments in developing the guidelines required by
344 this chapter and Title 63, Chapter 90a, Constitutional Takings Issues;

345 (c) at the request of a state agency or local government, assist the state agency or local
346 government in analyzing actions with potential takings implications;

347 (d) advise private property owners who have a legitimate potential or actual takings claim
348 against a state or local government entity;

349 (e) identify state or local government actions that have potential takings implications and,
350 if appropriate, advise those state or local government entities about those implications;

351 (f) provide information to private citizens, civic groups, government entities, and other
352 interested parties about takings law and their rights and responsibilities under it; and

353 (g) if appropriate and requested to do so by the private property owner, mediate or conduct
354 or arrange arbitration for disputes between private property owners and government entities that
355 involve:

356 (i) takings issues law;

357 (ii) actions for eminent domain under Title 78, Chapter 34, Eminent Domain; or

358 (iii) disputes about relocation assistance under Title 57, Chapter 12, Utah Relocation
359 Assistance Act.

360 (4) (a) (i) In conducting or arranging for arbitration, the private property ombudsman shall
361 follow the procedures and requirements of Title 78, Chapter 31a, Utah Arbitration Act.

362 (ii) In applying the Utah Arbitration Act, the arbitrator and parties shall treat the matter
363 as if:

364 (A) it were ordered to arbitration by a court; and

365 (B) the private property ombudsman or other arbitrator chosen as provided for in this
366 section was appointed as arbitrator by the court.

367 (iii) For the purpose of arbitrations conducted under this section, if the dispute to be
368 arbitrated is not already the subject of legal action, the district court having jurisdiction over the
369 county where the private property involved in the dispute is located shall act as the court referred
370 to in Title 78, Chapter 31a, Utah Arbitration Act.

371 (iv) The award from an arbitration conducted under this chapter may not be vacated under
372 the provisions of Title 78, Chapter 31a, Subsection 14(1)(e), Utah Arbitration Act, because of the
373 lack of an arbitration agreement between the parties.

374 (b) The private property ombudsman shall [~~decline~~] issue a written statement declining
375 to arbitrate or to appoint an arbitrator when, in the opinion of the private property ombudsman:

376 (i) the issues are not ripe for review;

377 (ii) assuming the alleged facts are true, no cause of action exists under United States or
378 Utah law;

379 (iii) all issues raised are beyond the scope of the ombudsman's statutory duty to review;
380 or

381 (iv) the arbitration is otherwise not appropriate.

382 (c) (i) The private property ombudsman shall appoint another person to arbitrate the
383 dispute when:

384 (A) either party objects to the private property ombudsman serving as the arbitrator and
385 agrees to pay for the services of another arbitrator; or

386 (B) the private property ombudsman declines to arbitrate the dispute for a reason other
387 than those listed in Subsection (4)(b) and one or both parties are willing to pay for the services of
388 another arbitrator.

389 (ii) In appointing a person other than himself to arbitrate a dispute, the private property
390 ombudsman shall appoint an arbitrator who is:

391 (A) agreeable to both parties; or

392 (B) agreeable to the party paying for the arbitrator and the private property ombudsman.

393 (iii) The private property ombudsman may, on [~~his own~~] the initiative of the private
394 property ombudsman or upon agreement of both parties, appoint a panel of arbitrators to conduct
395 the arbitration.

396 (d) In arbitrating a dispute, the arbitrator shall apply the relevant statutes, case law,
397 regulations, and rules of Utah and the United States in conducting the arbitration and in

398 determining the award.

399 (e) The property owner and government entity may agree in advance of arbitration that the
400 arbitration shall be binding and that no de novo review may occur.

401 [~~e~~] (f) Arbitration by or through the private property ombudsman is not necessary before
402 bringing legal action to adjudicate any claim.

403 [~~f~~] (g) The lack of arbitration by or through the private property ombudsman does not
404 constitute, and may not be interpreted as constituting, a failure to exhaust available administrative
405 remedies or as a bar to bringing legal action.

406 [~~g~~] (h) Arbitration under this section is not subject to Title 63, Chapter 46b,
407 Administrative Procedures Act, nor Title 78, Chapter 31b, Alternative Dispute Resolution.

408 [~~h~~] (i) Within 30 days after the arbitrator issues the final award and except as provided
409 in Subsection (4)(e), any party may submit the award or any issue upon which the award is based
410 to the district court for de novo review.

411 (5) The filing with the private property ombudsman of a request for mediation or
412 arbitration of a constitutional taking issue does not stay any county or municipal land use decision,
413 including the decision of a board of adjustment.

414 [~~5~~] (6) The private property ombudsman may not be compelled to testify in a civil action
415 filed with regard to the subject matter of any review or arbitration by the ombudsman.

416 [~~6~~] (7) (a) Except as provided in Subsection [~~6~~] (7)(b), evidence of a review by the
417 private property ombudsman and his opinions, writings, findings, and determinations are not
418 admissible as evidence in an action subsequently brought in court and dealing with the same
419 dispute.

420 (b) Subsection [~~6~~] (7)(a) does not apply to:

421 (i) actions brought under authority of Title 78, Chapter 6, Small Claims Court;

422 (ii) a judicial confirmation or review of the arbitration itself as authorized in Title 78,
423 Chapter 31a, the Utah Arbitration Act; or

424 (iii) actions for de novo review of an arbitration award or issue brought under the authority
425 of Subsection (4)[~~h~~](i).

426 [~~7~~] (8) The private property ombudsman may not represent private property owners, state
427 agencies, or local governments in court or in adjudicative proceedings under Title 63, Chapter 46b,
428 Administrative Procedures Act.

429 Section 8. Section **78-34-21** is amended to read:

430 **78-34-21. Dispute resolution.**

431 (1) In any dispute between a condemner and a private property owner arising out of this
432 chapter, the private property owner may submit the dispute for mediation or arbitration to the
433 private property ombudsman under Section 63-34-13.

434 (2) An action submitted to the private property ombudsman under authority of this section
435 does not bar or stay any action for occupancy of premises authorized by Section 78-34-9.

436 (3) (a) (i) A mediator or arbitrator, acting at the request of the property owner under
437 Section 63-34-13, has standing in an action brought in district court under this chapter to file with
438 the court a motion to stay the action during the pendency of the mediation or arbitration.

439 (ii) A mediator or arbitrator may not file a motion to stay under Subsection (3)(a)(i) unless
440 the mediator or arbitrator certifies at the time of filing the motion that a stay is reasonably
441 necessary to reach a resolution of the case through mediation or arbitration.

442 (b) If a stay is granted pursuant to a motion under Subsection (3)(a) and the order granting
443 the stay does not specify when the stay terminates, the mediator or arbitrator shall file with the
444 district court a motion to terminate the stay within 30 days after:

445 (i) the resolution of the dispute through mediation;

446 (ii) the issuance of a final arbitration award; or

447 (iii) a determination by the mediator or arbitrator that mediation or arbitration is not
448 appropriate.

449 [(3)] (4) (a) The private property owner or displaced person may request that the mediator
450 or arbitrator authorize an additional appraisal.

451 (b) If the mediator or arbitrator determines that an additional appraisal is reasonably
452 necessary to reach a resolution of the case, the mediator or arbitrator may:

453 (i) have an additional appraisal of the property prepared by an independent appraiser; and

454 (ii) require the agency to pay the costs of the first additional appraisal.