

**FUNDING DEPARTMENT OF NATURAL
RESOURCES PRIVATE PROPERTY OMBUDSMAN**

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Evan L. Olsen

AN ACT RELATING TO THE UTAH NATURAL RESOURCES ACT; AUTHORIZING THE DEPARTMENT OF NATURAL RESOURCES TO HIRE PERSONNEL TO ASSIST THE PRIVATE PROPERTY OMBUDSMAN AND TO PAY PER DIEM TO AND REIMBURSE EXPENSES OF ARBITRATORS; APPROPRIATING \$40,000 FROM THE GENERAL FUND IN FISCAL YEAR 1999-2000 TO THE DEPARTMENT OF NATURAL RESOURCES FOR SALARIES AND EXPENSES OF PERSONNEL TO ASSIST THE PRIVATE PROPERTY OMBUDSMAN AND PER DIEM AND EXPENSES OF ARBITRATORS; AND PROVIDING AN EFFECTIVE DATE.

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

AMENDS:

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

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

Section 1. Section **63-34-13** is amended to read:

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

(1) As used in this section:

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

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

(ii) Utah Constitution Article I, Section 22.

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

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

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

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

(d) The executive director of the Department of Natural Resources may hire clerks, interns, or other personnel to assist the private property ombudsman.

(3) The private property ombudsman shall:

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

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

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

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

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

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

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

(i) takings issues law;

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

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

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

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

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

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

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

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

(b) The private property ombudsman shall decline to arbitrate or to appoint an arbitrator when, in the opinion of the private property ombudsman:

(i) the issues are not ripe for review;

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

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

(iv) the arbitration is otherwise not appropriate.

(c) (i) The private property ombudsman shall appoint another person to arbitrate ~~[the]~~ a dispute when:

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

(B) the private property ombudsman declines to arbitrate the dispute for a reason other than those stated in Subsection (4)(b) and one or both parties are willing to pay for the services of another arbitrator~~[-]; or~~

(C) the private property ombudsman determines that it is appropriate to appoint another person to arbitrate the dispute with no charge to the parties for the services of the appointed arbitrator.

(ii) In appointing [a] another person ~~[other than himself]~~ to arbitrate a dispute, the private

property ombudsman shall appoint an arbitrator who is:

(A) agreeable to both parties; or

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

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

(iv) The Department of Natural Resources may provide an arbitrator per diem and reimburse expenses incurred in the performance of the arbitrator's duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

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

(e) Arbitration by or through the private property ombudsman is not necessary before bringing legal action to adjudicate any claim.

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

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

(h) Within 30 days after the arbitrator issues the final award, any party may submit the award or any issue upon which the award is based to the district court for de novo review.

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

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

(b) Subsection (6)(a) does not apply to:

(i) actions brought under authority of Title 78, Chapter 6, Small Claims ~~[Court]~~ Courts;

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

(iii) actions for de novo review of an arbitration award or issue brought under the authority of Subsection (4)(h).

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

Section 2. Appropriation.

(1) There is appropriated from the General Fund for fiscal year 1999-2000, \$40,000 to the Department of Natural Resources to pay for salaries and expenses of personnel to assist the private property ombudsman and per diem and expenses of arbitrators.

(2) The money appropriated in Subsection (1) is nonlapsing.

Section 3. Effective date.

This act takes effect on July 1, 1999.