

Representative Ann W. Hardy proposes the following substitute bill:

**PLANNING COMMISSION REVIEW OF
CHANGES TO PUBLIC USES**

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Ann W. Hardy

This act modifies municipal and county land use development and management provisions to eliminate the requirement of planning commission review of certain actions with respect to public lands or facilities. The act expands the kinds of municipal and county decisions that are subject to judicial review within a specified time.

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

AMENDS:

10-9-305, as enacted by Chapter 235, Laws of Utah 1991

10-9-1001, as last amended by Chapter 291, Laws of Utah 1999

17-27-305, as last amended by Chapter 179, Laws of Utah 1995

17-27-1001, as last amended by Chapter 241, Laws of Utah 2001

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

Section 1. Section **10-9-305** is amended to read:

10-9-305. Effect of the plan on public uses.

~~[(1)]~~ After the legislative body has adopted a general plan or any amendments to the general plan, no street, park, or other public way, ground, place, or space, no publicly owned building or structure, and no public utility, whether publicly or privately owned, may be constructed or authorized until and unless:

~~[(a)]~~ (1) it conforms to the plan; or

~~[(b)]~~ (2) it has been considered by the planning commission and, after receiving the advice of the planning commission, ~~[approved by]~~ the legislative body approves it as an



26 amendment to the general plan.

27 ~~[(2)(a) Before accepting, widening, removing, extending, relocating, narrowing,~~
28 ~~vacating, abandoning, changing the use, acquiring land for, or selling or leasing any street or~~
29 ~~other public way, ground, place, property, or structure, the legislative body shall submit the~~
30 ~~proposal to the planning commission for its review and recommendations.]~~

31 ~~[(b) If the legislative body approves any of the items contained in Subsection (a), it~~
32 ~~shall also amend the general plan.]~~

33 Section 2. Section **10-9-1001** is amended to read:

34 **10-9-1001. Appeals.**

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

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

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

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

45 (B) the private property ombudsman issues a written statement under Subsection
46 63-34-13(4)(b) declining to arbitrate or to appoint an arbitrator.

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

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

52 (3) The courts shall:

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

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

55 Section 3. Section **17-27-305** is amended to read:

56 **17-27-305. Effect of the plan on public uses.**

57 [(†)] After the legislative body has adopted a general plan or any amendments to the
 58 general plan, no street, park, or other public way, ground, place, or space, no publicly owned
 59 building or structure, and no public utility, whether publicly or privately owned, may be
 60 constructed or authorized until and unless:

61 [(a)] (1) it conforms to the plan; or

62 [(b)] (2) it has been considered by the planning commission and, after receiving the
 63 advice of the planning commission, ~~approved by~~ the legislative body approves it as an
 64 amendment to the general plan.

65 ~~[(2) (a) Before accepting, widening, removing, extending, relocating, narrowing,
 66 vacating, abandoning, changing the use, acquiring land for, or selling or leasing any street or
 67 other public way, ground, place, property, or structure, the legislative body shall submit the
 68 proposal to the planning commission for its review and recommendations.]~~

69 ~~[(b) If the legislative body approves any of the items contained in Subsection (a), it
 70 shall also amend the general plan.]~~

71 Section 4. Section **17-27-1001** is amended to read:

72 **17-27-1001. Appeals.**

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

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

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

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

83 (B) the private property ombudsman issues a written statement under Subsection
 84 63-34-13(4)(b) declining to arbitrate or to appoint an arbitrator.

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

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

90 (3) (a) The courts shall:

91 (i) presume that land use decisions and regulations are valid; and

92 (ii) determine only whether or not the decision is arbitrary, capricious, or illegal.

93 (b) A determination of illegality requires a determination that the decision violates a
94 statute, ordinance, or existing law.