

**EMINENT DOMAIN AMENDMENTS**

2003 GENERAL SESSION

STATE OF UTAH

**Sponsor: Parley G. Hellewell**

**This act clarifies a property owner's right to mediate or arbitrate disputes arising from eminent domain actions.**

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

AMENDS:

**63-34-13**, as last amended by Chapters 291 and 349, Laws of Utah 1999

**78-34-21**, as last amended by Chapter 291, Laws of Utah 1999

*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,



28 interns, or other personnel to assist the private property ombudsman.

29 (3) The private property ombudsman shall:

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

31 (b) assist state agencies and local governments in developing the guidelines required by  
32 this chapter and, Chapter 90a, Constitutional Taking Issues;

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

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

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

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

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

44 (i) takings issues law;

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

46 (iii) disputes about relocation assistance under Title 57, Chapter 12, Utah Relocation  
47 Assistance Act[-]; and

48 (h) if arbitration or mediation is requested by the private property owner under this  
49 section, Section 78-34-21 or 57-12-14, and arranged by the private property ombudsman, the  
50 government entity or condemning entity shall participate in the mediation or arbitration as if  
51 the matter were ordered to arbitration by a court.

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

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

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

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

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

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

66 (b) The private property ombudsman shall issue a written statement declining to  
67 arbitrate or to appoint an arbitrator when, in the opinion of the private property ombudsman:

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

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

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

73 (iv) the arbitration is otherwise not appropriate.

74 (c) (i) The private property ombudsman shall appoint another person to arbitrate a  
75 dispute when:

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

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

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

84 (ii) In appointing another person to arbitrate a dispute, the private property ombudsman  
85 shall appoint an arbitrator who is:

86 (A) agreeable to both parties; or

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

89 (iii) The private property ombudsman may, on the initiative of the private property

90 ombudsman or upon agreement of both parties, appoint a panel of arbitrators to conduct the  
91 arbitration.

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

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

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

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

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

105 (h) Arbitration under this section is not subject to Chapter 46b, Administrative  
106 Procedures Act, or Title 78, Chapter 31b, Alternative Dispute Resolution Act.

107 (i) Within 30 days after the arbitrator issues the final award and except as provided in  
108 Subsection (4)(e), any party may submit the award or any issue upon which the award is based  
109 to the district court for de novo review.

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

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

115 (7) (a) Except as provided in Subsection (7)(b), evidence of a review by the private  
116 property ombudsman and his opinions, writings, findings, and determinations are not  
117 admissible as evidence in an action subsequently brought in court and dealing with the same  
118 dispute.

119 (b) Subsection (7)(a) does not apply to:

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

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

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

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

128 Section 2. Section **78-34-21** is amended to read:

129 **78-34-21. Dispute resolution.**

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

133 (2) An action submitted to the private property ombudsman under authority of this  
134 section does not bar or stay any action for occupancy of premises authorized by Section  
135 78-34-9.

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

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

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

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

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

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

149 (4) (a) The private property owner or displaced person may request that the mediator or  
150 arbitrator authorize an additional appraisal.

151 (b) If the mediator or arbitrator determines that an additional appraisal is reasonably

- 152 necessary to reach a resolution of the case, the mediator or arbitrator may:
- 153           (i) have an additional appraisal of the property prepared by an independent appraiser;
- 154 and
- 155           (ii) require the [agency] condemnor to pay the costs of the first additional appraisal.

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**Legislative Review Note**  
**as of 2-4-03 7:37 AM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**

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**Fiscal Note**  
**Bill Number SB0187**

**Eminent Domain Amendments**

*12-Feb-03*

*10:34 AM*

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**State Impact**

No fiscal impact.

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**Individual and Business Impact**

Private property owners may incur some savings by avoiding litigation.

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**Office of the Legislative Fiscal Analyst**