

28 ▶ imposes reasonable time and reasonable notice requirements on those entering land
29 for examination, survey, and other purposes when the land is subject to being
30 acquired by eminent domain; and

31 ▶ prohibits a defendant in an eminent domain action from having to respond to a
32 motion for immediate occupancy before the time for answering the complaint
33 expires, unless the court so orders.

34 **Monies Appropriated in this Bill:**

35 None

36 **Other Special Clauses:**

37 None

38 **Utah Code Sections Affected:**

39 AMENDS:

- 40 **10-9-708**, as last amended by Chapter 291, Laws of Utah 1999
- 41 **10-9-1001**, as last amended by Chapter 124, Laws of Utah 2003
- 42 **17-27-708**, as last amended by Chapter 241, Laws of Utah 2001
- 43 **17-27-1001**, as last amended by Chapter 124, Laws of Utah 2003
- 44 **17B-4-1102**, as enacted by Chapter 133, Laws of Utah 2001
- 45 **57-12-3**, as last amended by Chapters 295 and 321, Laws of Utah 1998
- 46 **57-12-9**, as last amended by Chapter 161, Laws of Utah 1987
- 47 **63-2-304**, as last amended by Chapters 60 and 131, Laws of Utah 2003
- 48 **63-30-10.5**, as last amended by Chapter 76, Laws of Utah 1991
- 49 **63-34-13**, as last amended by Chapter 214, Laws of Utah 2003
- 50 **78-34-5**, as last amended by Chapter 220, Laws of Utah 1967
- 51 **78-34-9**, as last amended by Chapters 295 and 321, Laws of Utah 1998

52 ENACTS:

53 **78-34-4.5**, Utah Code Annotated 1953



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

56 Section 1. Section **10-9-708** is amended to read:

57 **10-9-708. District court review of board of adjustment decision.**

58 (1) Any person adversely affected by any decision of a board of adjustment may

59 petition the district court for a review of the decision.

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

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

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

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

68 (B) the [private] property rights ombudsman issues a written statement under
69 Subsection 63-34-13(4)(b) declining to arbitrate or to appoint an arbitrator.

70 (ii) A tolling under Subsection (3)(b)(i) operates only as to the specific constitutional
71 taking issues that are the subject of the request for arbitration filed with the [private] property
72 rights ombudsman by a property owner.

73 (iii) A request for arbitration filed with the [private] property rights ombudsman after
74 the time under Subsection (3)(a) to file a petition has expired does not affect the time to file a
75 petition.

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

79 (b) If the proceeding was tape recorded, a transcript of that tape recording is a true and
80 correct transcript for purposes of this Subsection (4).

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

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

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

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

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

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

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

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

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

100 **10-9-1001. Appeals.**

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

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

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

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

111 (B) the [private] property rights ombudsman issues a written statement under
112 Subsection 63-34-13(4)(b) declining to arbitrate or to appoint an arbitrator.

113 (ii) A tolling under Subsection (2)(b)(i) operates only as to the specific constitutional
114 taking [~~issues~~] issue that [~~are~~] is the subject of the request for arbitration filed with the [private]
115 property rights ombudsman by a property owner.

116 (iii) A request for arbitration filed with the [private] property rights ombudsman after
117 the time under Subsection (2)(a) to file a petition has expired does not affect the time to file a
118 petition.

119 (3) The courts shall:

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

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

122 Section 3. Section **17-27-708** is amended to read:

123 **17-27-708. District court review of board of adjustment decision.**

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

126 (2) (a) The district court's review is limited to a determination of whether the board of
127 adjustment's decision is arbitrary, capricious, or illegal.

128 (b) A determination of illegality requires a determination that the board of adjustment's
129 decision violates a statute, ordinance, or existing law.

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

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

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

136 (B) the private property ombudsman issues a written statement under Subsection
137 63-34-13(4)(b) declining to arbitrate or to appoint an arbitrator.

138 (ii) A tolling under Subsection (3)(b)(i) operates only as to the specific constitutional
139 taking [~~issues~~] issue that [~~are~~] is the subject of the request for arbitration filed with the [private]
140 property rights ombudsman by a property owner.

141 (iii) A request for arbitration filed with the [private] property rights ombudsman after
142 the time under Subsection (3)(a) to file a petition has expired does not affect the time to file a
143 petition.

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

147 (b) If the proceeding was tape recorded, a transcript of that tape recording is a true and
148 correct transcript for purposes of this Subsection (4).

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

151 (ii) The court may not accept or consider any evidence outside the board of

152 adjustment's record unless that evidence was offered to the board of adjustment and the court
153 determines that it was improperly excluded by the board of adjustment.

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

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

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

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

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

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

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

168 **17-27-1001. Appeals.**

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

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

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

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

179 (B) the private property ombudsman issues a written statement under Subsection
180 63-34-13(4)(b) declining to arbitrate or to appoint an arbitrator.

181 (ii) A tolling under Subsection (2)(b)(i) operates only as to the specific constitutional
182 taking [~~issues~~] issue that [~~are~~] is the subject of the request for arbitration filed with the [private]

183 property rights ombudsman by a property owner.

184 (iii) A request for arbitration filed with the [~~private~~] property rights ombudsman after
185 the time under Subsection (2)(a) to file a petition has expired does not affect the time to file a
186 petition.

187 (3) (a) The courts shall:

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

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

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

192 Section 5. Section **17B-4-1102** is amended to read:

193 **17B-4-1102. Prerequisites to exercise of eminent domain -- Civil action**
194 **authorized -- Record of good faith negotiations to be retained.**

195 (1) Before an agency may exercise the power of eminent domain, the agency shall:

196 (a) negotiate in good faith with the affected record property owner;

197 (b) provide to each affected record property owner a written declaration that includes:

198 (i) an explanation of the eminent domain process and the reasons for using it including:

199 (A) the need for the agency to obtain an independent appraisal that indicates the fair
200 market value of the property and how the fair market value was determined;

201 (B) a statement explaining agency compliance with the owner participation guidelines;

202 (C) a statement that the agency may adopt a resolution authorizing the agency to make
203 an offer to the record property owner to purchase the property for the fair market value amount
204 determined by the appraiser and that, if the offer is rejected, the agency has the right to acquire
205 the property through a condemnation proceeding; and

206 (D) a statement that the agency will prepare an offer that will include the price the
207 agency is offering for the property, an explanation of how the agency determined the price
208 being offered, the legal description of the property, conditions of the offer, and the time at
209 which the offer will expire;

210 (ii) an explanation of the record property owner's relocation rights under Title 57,
211 Chapter 12, Utah Relocation Assistance Act, and how to receive relocation assistance; and

212 (iii) a statement that the owner has the right to receive just compensation and an
213 explanation of how to obtain it; and

214 (c) provide to the affected record property owner or the owner's designated
215 representative a notice that is printed in a type size of at least ten-point type that contains:

- 216 (i) a description of the property to be acquired;
- 217 (ii) the name of the agency acquiring the property and the agency's contact person and
218 telephone number; [~~and~~]
- 219 (iii) a copy of Title 57, Chapter 12, Utah Relocation Assistance Act[-]; and
- 220 (iv) a summary of the dispute resolution rights under Section 78-34-21, including the
221 name and current telephone number of the property rights ombudsman established under
222 Section 63-34-13.

223 (2) A person may bring a civil suit against an agency for a violation of Subsection
224 (1)(b) that results in damage to that person.

225 (3) Each agency shall keep a record and evidence of the good faith negotiations
226 required under Subsection (1)(a) and retain the record and evidence as provided in:

- 227 (a) Title 63, Chapter 2, Government Records Access and Management Act; or
- 228 (b) an ordinance or policy that the agency has adopted under Section 63-2-701.

229 (4) A record property owner whose property is being taken by an agency through the
230 exercise of eminent domain may elect to receive for the real property being taken either fair
231 market value or replacement property under Section 57-12-7.

232 Section 6. Section **57-12-3** is amended to read:

233 **57-12-3. Definitions.**

234 As used in this chapter:

235 (1) "Agency" means:

- 236 (a) a department, division, agency, commission, board, council, committee, authority,
237 political subdivision, or other instrumentality of the state or of a political subdivision of the
238 state whether one or more[-]; and

239 (b) any other person whose use of the power of eminent domain results in a person
240 becoming a displaced person.

241 (2) "Business" means any lawful activity, excepting a farm operation, conducted
242 primarily:

- 243 (a) for the purchase, sale, lease, or rental of personal or real property, and for the
244 manufacture, processing, or marketing of products, commodities, or any other personal

245 property;

246 (b) for the sale of services to the public;

247 (c) by a nonprofit organization; or

248 (d) for assisting in the purchase, sale, resale, manufacture, processing, or marketing of
249 products, commodities, personal property, or services by the erection and maintenance of an
250 outdoor advertising display or displays, whether or not such display or displays are located on
251 the premises on which any of the above activities are conducted.

252 (3) "Displaced person" means any person who, after the effective date of this chapter,
253 moves from real property, or who moves [~~his~~] the person's personal property from real
254 property, or moves or discontinues [~~his~~] the person's business or moves [~~his~~] the person's
255 dwelling as a result of the acquisition of the real property, in whole or in part, or as a result of a
256 written order of the acquiring agency to vacate real property for a program of purchase
257 undertaken by an agency or as a direct result of code enforcement activities or a program of
258 rehabilitation of buildings conducted pursuant to a federal or state assisted program.

259 (4) "Family farm" means a farm operation which is conducted:

260 (a) on two sections (1280 acres) or less; or

261 (b) as a sole proprietorship or through an entity which is wholly owned by members of
262 the same immediate family.

263 (5) "Farm operation" means any activity conducted solely or primarily for the
264 production of one or more agricultural products or commodities, including timber, for sale or
265 home use, and customarily producing such products or commodities in sufficient quantity to be
266 capable of contributing materially to the operator's support.

267 (6) "Non-profit organization" means all corporations, societies, and associations whose
268 object is not pecuniary profit, but is to promote the general interest and welfare of the
269 members, whether temporal, social, or spiritual.

270 (7) "Person" means any individual, partnership, corporation, or association.

271 (8) "Small business" means a business which has a gross annual income of less than
272 \$1,500,000.

273 Section 7. Section **57-12-9** is amended to read:

274 **57-12-9. Rules of displacing agency.**

275 (1) (a) [~~The~~] A displacing agency [~~shall~~] may enact rules to assure that:

276 ~~[(a)]~~ (i) the payments and assistance authorized by this chapter are administered in a
277 manner that is fair, reasonable, and as uniform as practicable;

278 ~~[(b)]~~ (ii) a displaced person who makes proper application for a payment authorized
279 ~~[for him]~~ by this chapter is paid promptly after a move or, in hardship cases, is paid in advance;
280 and

281 ~~[(c)]~~ (iii) any person aggrieved by a determination as to eligibility for a payment
282 authorized by this chapter, or the amount of a payment, may have ~~[his]~~ the person's application
283 reviewed by the head of the displacing agency.

284 (b) Each displacing agency that has not adopted rules under Subsection (1)(a) shall
285 comply with the rules promulgated by the Utah Department of Transportation relating to
286 displaced persons in right-of-way acquisitions.

287 (2) ~~[The]~~ Each displacing agency shall comply with the procedures and requirements of
288 Title 63, Chapter 46b, Administrative Procedures Act, in its adjudicative proceedings.

289 Section 8. Section **63-2-304** is amended to read:

290 **63-2-304. Protected records.**

291 The following records are protected if properly classified by a governmental entity:

292 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret
293 has provided the governmental entity with the information specified in Section 63-2-308;

294 (2) commercial information or nonindividual financial information obtained from a
295 person if:

296 (a) disclosure of the information could reasonably be expected to result in unfair
297 competitive injury to the person submitting the information or would impair the ability of the
298 governmental entity to obtain necessary information in the future;

299 (b) the person submitting the information has a greater interest in prohibiting access
300 than the public in obtaining access; and

301 (c) the person submitting the information has provided the governmental entity with
302 the information specified in Section 63-2-308;

303 (3) commercial or financial information acquired or prepared by a governmental entity
304 to the extent that disclosure would lead to financial speculations in currencies, securities, or
305 commodities that will interfere with a planned transaction by the governmental entity or cause
306 substantial financial injury to the governmental entity or state economy;

307 (4) records the disclosure of which could cause commercial injury to, or confer a
308 competitive advantage upon a potential or actual competitor of, a commercial project entity as
309 defined in Subsection 11-13-103 (4);

310 (5) test questions and answers to be used in future license, certification, registration,
311 employment, or academic examinations;

312 (6) records the disclosure of which would impair governmental procurement
313 proceedings or give an unfair advantage to any person proposing to enter into a contract or
314 agreement with a governmental entity, except that this Subsection (6) does not restrict the right
315 of a person to see bids submitted to or by a governmental entity after bidding has closed;

316 (7) records that would identify real property or the appraisal or estimated value of real
317 or personal property, including intellectual property, under consideration for public acquisition
318 before any rights to the property are acquired unless:

319 (a) public interest in obtaining access to the information outweighs the governmental
320 entity's need to acquire the property on the best terms possible;

321 (b) the information has already been disclosed to persons not employed by or under a
322 duty of confidentiality to the entity;

323 (c) in the case of records that would identify property, potential sellers of the described
324 property have already learned of the governmental entity's plans to acquire the property; ~~or~~

325 (d) in the case of records that would identify the appraisal or estimated value of
326 property, the potential sellers have already learned of the governmental entity's estimated value
327 of the property; or

328 (e) the property under consideration for public acquisition is a single family residence
329 and the governmental entity seeking to acquire the property has initiated negotiations to acquire
330 the property as required under Section 78-34-4.5;

331 (8) records prepared in contemplation of sale, exchange, lease, rental, or other
332 compensated transaction of real or personal property including intellectual property, which, if
333 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value
334 of the subject property, unless:

335 (a) the public interest in access outweighs the interests in restricting access, including
336 the governmental entity's interest in maximizing the financial benefit of the transaction; or

337 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of

338 the value of the subject property have already been disclosed to persons not employed by or
339 under a duty of confidentiality to the entity;

340 (9) records created or maintained for civil, criminal, or administrative enforcement
341 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if
342 release of the records:

343 (a) reasonably could be expected to interfere with investigations undertaken for
344 enforcement, discipline, licensing, certification, or registration purposes;

345 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement
346 proceedings;

347 (c) would create a danger of depriving a person of a right to a fair trial or impartial
348 hearing;

349 (d) reasonably could be expected to disclose the identity of a source who is not
350 generally known outside of government and, in the case of a record compiled in the course of
351 an investigation, disclose information furnished by a source not generally known outside of
352 government if disclosure would compromise the source; or

353 (e) reasonably could be expected to disclose investigative or audit techniques,
354 procedures, policies, or orders not generally known outside of government if disclosure would
355 interfere with enforcement or audit efforts;

356 (10) records the disclosure of which would jeopardize the life or safety of an
357 individual;

358 (11) records the disclosure of which would jeopardize the security of governmental
359 property, governmental programs, or governmental recordkeeping systems from damage, theft,
360 or other appropriation or use contrary to law or public policy;

361 (12) records that, if disclosed, would jeopardize the security or safety of a correctional
362 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere
363 with the control and supervision of an offender's incarceration, treatment, probation, or parole;

364 (13) records that, if disclosed, would reveal recommendations made to the Board of
365 Pardons and Parole by an employee of or contractor for the Department of Corrections, the
366 Board of Pardons and Parole, or the Department of Human Services that are based on the
367 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's
368 jurisdiction;

369 (14) records and audit workpapers that identify audit, collection, and operational
370 procedures and methods used by the State Tax Commission, if disclosure would interfere with
371 audits or collections;

372 (15) records of a governmental audit agency relating to an ongoing or planned audit
373 until the final audit is released;

374 (16) records prepared by or on behalf of a governmental entity solely in anticipation of
375 litigation that are not available under the rules of discovery;

376 (17) records disclosing an attorney's work product, including the mental impressions or
377 legal theories of an attorney or other representative of a governmental entity concerning
378 litigation;

379 (18) records of communications between a governmental entity and an attorney
380 representing, retained, or employed by the governmental entity if the communications would be
381 privileged as provided in Section 78-24-8;

382 (19) personal files of a legislator, including personal correspondence to or from a
383 member of the Legislature, provided that correspondence that gives notice of legislative action
384 or policy may not be classified as protected under this section;

385 (20) (a) records in the custody or control of the Office of Legislative Research and
386 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated
387 legislation or contemplated course of action before the legislator has elected to support the
388 legislation or course of action, or made the legislation or course of action public; and

389 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the
390 Office of Legislative Research and General Counsel is a public document unless a legislator
391 asks that the records requesting the legislation be maintained as protected records until such
392 time as the legislator elects to make the legislation or course of action public;

393 (21) research requests from legislators to the Office of Legislative Research and
394 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared
395 in response to these requests;

396 (22) drafts, unless otherwise classified as public;

397 (23) records concerning a governmental entity's strategy about collective bargaining or
398 pending litigation;

399 (24) records of investigations of loss occurrences and analyses of loss occurrences that

400 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the
401 Uninsured Employers' Fund, or similar divisions in other governmental entities;

402 (25) records, other than personnel evaluations, that contain a personal recommendation
403 concerning an individual if disclosure would constitute a clearly unwarranted invasion of
404 personal privacy, or disclosure is not in the public interest;

405 (26) records that reveal the location of historic, prehistoric, paleontological, or
406 biological resources that if known would jeopardize the security of those resources or of
407 valuable historic, scientific, educational, or cultural information;

408 (27) records of independent state agencies if the disclosure of the records would
409 conflict with the fiduciary obligations of the agency;

410 (28) records of a public institution of higher education regarding tenure evaluations,
411 appointments, applications for admissions, retention decisions, and promotions, which could be
412 properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public
413 Meetings, provided that records of the final decisions about tenure, appointments, retention,
414 promotions, or those students admitted, may not be classified as protected under this section;

415 (29) records of the governor's office, including budget recommendations, legislative
416 proposals, and policy statements, that if disclosed would reveal the governor's contemplated
417 policies or contemplated courses of action before the governor has implemented or rejected
418 those policies or courses of action or made them public;

419 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,
420 revenue estimates, and fiscal notes of proposed legislation before issuance of the final
421 recommendations in these areas;

422 (31) records provided by the United States or by a government entity outside the state
423 that are given to the governmental entity with a requirement that they be managed as protected
424 records if the providing entity certifies that the record would not be subject to public disclosure
425 if retained by it;

426 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body
427 except as provided in Section 52-4-7;

428 (33) records that would reveal the contents of settlement negotiations but not including
429 final settlements or empirical data to the extent that they are not otherwise exempt from
430 disclosure;

431 (34) memoranda prepared by staff and used in the decision-making process by an
432 administrative law judge, a member of the Board of Pardons and Parole, or a member of any
433 other body charged by law with performing a quasi-judicial function;

434 (35) records that would reveal negotiations regarding assistance or incentives offered
435 by or requested from a governmental entity for the purpose of encouraging a person to expand
436 or locate a business in Utah, but only if disclosure would result in actual economic harm to the
437 person or place the governmental entity at a competitive disadvantage, but this section may not
438 be used to restrict access to a record evidencing a final contract;

439 (36) materials to which access must be limited for purposes of securing or maintaining
440 the governmental entity's proprietary protection of intellectual property rights including patents,
441 copyrights, and trade secrets;

442 (37) the name of a donor or a prospective donor to a governmental entity, including a
443 public institution of higher education, and other information concerning the donation that could
444 reasonably be expected to reveal the identity of the donor, provided that:

445 (a) the donor requests anonymity in writing;

446 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be
447 classified protected by the governmental entity under this Subsection (37); and

448 (c) except for public institutions of higher education, the governmental unit to which
449 the donation is made is primarily engaged in educational, charitable, or artistic endeavors, and
450 has no regulatory or legislative authority over the donor, a member of his immediate family, or
451 any entity owned or controlled by the donor or his immediate family;

452 (38) accident reports, except as provided in Sections 41-6-40, 41-12a-202, and
453 73-18-13;

454 (39) a notification of workers' compensation insurance coverage described in Section
455 34A-2-205;

456 (40) (a) the following records of a public institution of education, which have been
457 developed, discovered, or received by or on behalf of faculty, staff, employees, or students of
458 the institution:

459 (i) unpublished lecture notes;

460 (ii) unpublished research notes and data;

461 (iii) unpublished manuscripts;

- 462 (iv) creative works in process;
- 463 (v) scholarly correspondence; and
- 464 (vi) confidential information contained in research proposals; and
- 465 (b) Subsection (40)(a) may not be construed to affect the ownership of a record;
- 466 (41) (a) records in the custody or control of the Office of Legislative Auditor General
467 that would reveal the name of a particular legislator who requests a legislative audit prior to the
468 date that audit is completed and made public; and
- 469 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
470 Office of the Legislative Auditor General is a public document unless the legislator asks that
471 the records in the custody or control of the Office of Legislative Auditor General that would
472 reveal the name of a particular legislator who requests a legislative audit be maintained as
473 protected records until the audit is completed and made public;
- 474 (42) records that provide detail as to the location of an explosive, including a map or
475 other document that indicates the location of:
- 476 (a) a production facility; or
- 477 (b) a magazine;
- 478 (43) information contained in the database described in Section 62A-3-311.1;
- 479 (44) information contained in the Management Information System and Licensing
480 Information System described in Title 62A, Chapter 4a, Child and Family Services; and
- 481 (45) information regarding National Guard operations or activities in support of the
482 National Guard's federal mission.
- 483 Section 9. Section **63-30-10.5** is amended to read:
- 484 **63-30-10.5. Waiver of immunity for taking private property without**
485 **compensation.**
- 486 (1) As provided by Article I, Section 22 of the Utah Constitution, immunity from suit
487 of all governmental entities is waived for the recovery of compensation from the governmental
488 entity when the governmental entity has taken or damaged private property for public uses
489 without just compensation.
- 490 (2) Compensation and damages shall be assessed according to the requirements of Title
491 78, Chapter 34, Eminent Domain.
- 492 (3) An action that involves takings law, as defined in Section 63-34-13, is not subject

493 to the requirements of Sections 63-30-11, 63-30-12, 63-30-13, 63-30-14, 63-30-15, and
494 63-30-19.

495 Section 10. Section **63-34-13** is amended to read:

496 **63-34-13. Property rights ombudsman -- Powers -- Arbitration procedures.**

497 (1) As used in this section:

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

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

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

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

505 (2) (a) There is created a [~~private~~] property rights ombudsman in the Department of
506 Natural Resources.

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

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

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

512 (3) The [~~private~~] property rights ombudsman shall:

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

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

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

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

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

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

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

527 (i) takings issues law;

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

529 (iii) disputes about relocation assistance under Title 57, Chapter 12, Utah Relocation
530 Assistance Act; and

531 (h) if arbitration or mediation is requested by the private property owner under this
532 section, Section 78-34-21, or Section 57-12-14, and arranged by the [private] property rights
533 ombudsman, the government entity or condemning entity shall participate in the mediation or
534 arbitration as if the matter were ordered to mediation or arbitration by a court.

535 (4) (a) The property rights ombudsman may assist a private property owner with
536 respect to a dispute involving the effect of local government regulation on the use and
537 occupancy of real property.

538 (b) In assisting a private property owner with a dispute under Subsection (4)(a), the
539 property rights ombudsman may not require mediation or arbitration of a dispute except as
540 provided in Subsection (3)(g).

541 [~~4~~] (5) (a) (i) In conducting or arranging for arbitration under Subsection (2), the
542 [private] property rights ombudsman shall follow the procedures and requirements of Title 78,
543 Chapter 31a, Utah Uniform Arbitration Act.

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

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

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

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

553 (iv) The award from an arbitration conducted under this chapter may not be vacated
554 under the provisions of Subsection [~~78-31a-14(1)(e), Utah Arbitration Act,~~] 78-31a-124(1)(e)

555 because of the lack of an arbitration agreement between the parties.

556 (b) The [private] property rights ombudsman shall issue a written statement declining
557 to arbitrate or to appoint an arbitrator when, in the opinion of the [private] property rights
558 ombudsman:

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

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

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

563 or

564 (iv) the arbitration is otherwise not appropriate.

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

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

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

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

575 (ii) In appointing another person to arbitrate a dispute, the [private] property rights
576 ombudsman shall appoint an arbitrator who is:

577 (A) agreeable to both parties; or

578 (B) agreeable to the party paying for the arbitrator and the [private] property rights
579 ombudsman.

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

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

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

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

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

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

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

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

601 [~~(5)~~] (6) The filing with the [~~private~~] property rights ombudsman of a request for
602 mediation or arbitration of a constitutional taking issue does not stay any county or municipal
603 land use decision, including the decision of a board of adjustment.

604 [~~(6)~~] (7) The [~~private~~] property rights ombudsman may not be compelled to testify in a
605 civil action filed with regard to the subject matter of any review or arbitration by the
606 ombudsman.

607 [~~(7)~~] (8) (a) Except as provided in Subsection [~~(7)~~] (8)(b), evidence of a review by the
608 [~~private~~] property rights ombudsman and [~~his~~] the opinions, writings, findings, and
609 determinations of the property rights ombudsman are not admissible as evidence in an action
610 subsequently brought in court and dealing with the same dispute.

611 (b) Subsection [~~(7)~~] (8)(a) does not apply to:

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

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

615 (iii) actions for de novo review of an arbitration award or issue brought under the
616 authority of Subsection [~~(4)~~] (5)(i).

617 ~~[(8)]~~ (9) The ~~[private]~~ property rights ombudsman may not represent private property
 618 owners, state agencies, or local governments in court or in adjudicative proceedings under
 619 Chapter 46b, Administrative Procedures Act.

620 Section 11. Section **78-34-4.5** is enacted to read:

621 **78-34-4.5. Negotiation and disclosure required before eminent domain action.**

622 Each person who seeks to acquire property by eminent domain shall:

623 (1) before initiating an eminent domain action, make a reasonable effort to negotiate
 624 with the property owner for the purchase of the property; and

625 (2) as early in the negotiation process under Subsection (1) as practicable but no later
 626 than 14 days before the filing of an eminent domain action, unless the court for good cause
 627 allows a shorter period before filing:

628 (a) advise the property owner of the owner's rights to mediation and arbitration under
 629 Section 78-34-21, including the name and current telephone number of the property rights
 630 ombudsman, established in Section 63-34-13; and

631 (b) provide the property owner a written statement explaining that oral representations
 632 or promises made during the negotiation process are not binding upon the person seeking to
 633 acquire the property by eminent domain.

634 Section 12. Section **78-34-5** is amended to read:

635 **78-34-5. Right of entry for survey and location.**

636 ~~[In all cases where]~~ (1) If land is required for public use, the person[;] or [his] the
 637 person's agent[;] in charge of [such] the use may survey and locate the same; but it must be
 638 located in the manner which will be most compatible with the greatest public good and the
 639 least private injury, and subject to the provisions of this chapter.

640 (2) (a) The person[;] or [his] the person's agent[;] in charge of [such] the public use
 641 may, at reasonable times and upon reasonable notice, enter upon the land and make
 642 examinations, surveys, and maps [thereof, and such entry shall] of the land.

643 (b) Entry upon land as authorized under Subsection (2)(a) does not constitute [no] a
 644 cause of action in favor of the owners of the lands, except for actual damage to the land and
 645 improvements [thereon] on the land caused by such entry, which is not repaired on or before
 646 the date the examinations and surveys are completed.

647 Section 13. Section **78-34-9** is amended to read:

648 **78-34-9. Occupancy of premises pending action -- Deposit paid into court --**
649 **Procedure for payment of compensation.**

650 (1) (a) At any time after the commencement of suit, and after giving notice to the
651 defendant as provided in the Utah Rules of Civil Procedure, the plaintiff may file a motion
652 with the court requesting an order permitting the plaintiff to:

653 ~~[(a)]~~ (i) occupy the premises sought to be condemned pending the action, including
654 appeal; and

655 ~~[(b)]~~ (ii) to do whatever work on the premises that is required.

656 (b) Except as ordered by the court for good cause shown, a defendant may not be
657 required to reply to a motion for immediate occupancy before expiration of the time to answer
658 the complaint.

659 (2) The court shall:

660 (a) take proof by affidavit or otherwise of:

661 (i) the value of the premises sought to be condemned;

662 (ii) the damages that will accrue from the condemnation; and

663 (iii) the reasons for requiring a speedy occupation; and

664 (b) grant or refuse the motion according to the equity of the case and the relative
665 damages that may accrue to the parties.

666 (3) (a) If the motion is granted, the court shall enter its order requiring that the plaintiff,
667 as a condition precedent to occupancy, file with the clerk of the court a sum equal to the
668 condemning authority's appraised valuation of the property sought to be condemned.

669 (b) That amount shall be for the purposes of the motion only and is not admissible in
670 evidence on final hearing.

671 (4) (a) Upon the filing of the petition for immediate occupancy, the court shall fix the
672 time within which, and the terms upon which, the parties in possession are required to
673 surrender possession to the plaintiff.

674 (b) The court may issue orders governing encumbrances, liens, rents, assessments,
675 insurance, and other charges, if any, as required.

676 (5) (a) The rights of just compensation for the land taken as authorized by this section
677 or damaged as a result of that taking vests in the parties entitled to it.

678 (b) That compensation shall be ascertained and awarded as provided in Section

679 78-34-10.

680 (c) (i) Except as provided in Subsection (5)(c)(ii), judgment shall include, as part of the
681 just compensation awarded, interest at the rate of 8% per annum on the amount finally awarded
682 as the value of the property and damages, from the date of taking actual possession of the
683 property by the plaintiff or from the date of the order of occupancy, whichever is earlier, to the
684 date of judgment.

685 (ii) The court may not award interest on the amount of the judgment that was paid into
686 court.

687 (6) (a) Upon the application of the parties in interest, the court shall order that the
688 money deposited in the court be paid before judgment as an advance on the just compensation
689 to be awarded in the proceeding.

690 (b) This advance payment to a defendant shall be considered to be an abandonment by
691 the defendant of all defenses except a claim for greater compensation.

692 (c) If the compensation finally awarded exceeds the advance, the court shall enter
693 judgment against the plaintiff for the amount of the deficiency.

694 (d) If the advance received by the defendant is greater than the amount finally awarded,
695 the court shall enter judgment against the defendant for the amount of the excess.

696 (7) Arbitration of a dispute under Section 78-34-21 or Section 63-34-13 is not a bar or
697 cause to stay the action for occupancy of premises authorized by this section.

Legislative Review Note
as of 11-19-03 7:42 AM

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

Office of Legislative Research and General Counsel

Interim Committee Note
as of 12-10-03 11:07 AM

The Political Subdivisions Interim Committee recommended this bill.

Fiscal Note
Bill Number SB0009

Property Rights Amendments

17-Jan-04

4:55 PM

State Impact

No fiscal impact to State Government. There might be some fiscal impact to local governments and utility companies.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst