

Senator Jerry W. Stevenson proposes the following substitute bill:

OFFICE OF THE PROPERTY RIGHTS OMBUDSMAN

AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jerry W. Stevenson

House Sponsor: Brad J. Galvez

LONG TITLE

General Description:

This bill amends provisions relating to the Office of the Property Rights Ombudsman.

Highlighted Provisions:

This bill:

- ▶ clarifies the scope of the de novo district court review of an arbitrator's decision;
- ▶ modifies the time for requesting an advisory opinion from a neutral third party; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

13-43-204, as last amended by Laws of Utah 2008, Chapters 3 and 382

13-43-205, as enacted by Laws of Utah 2006, Chapter 258

78B-6-522, as renumbered and amended by Laws of Utah 2008, Chapter 3



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

27 Section 1. Section **13-43-204** is amended to read:

28 **13-43-204. Office of the Property Rights Ombudsman -- Arbitration or mediation**
29 **of takings or eminent domain disputes.**

30 (1) If requested by the private property owner and if otherwise appropriate, the Office
31 of the Property Rights Ombudsman shall mediate, or conduct or arrange arbitration for,
32 [~~disputes between private property owners and government entities that involve~~] a dispute
33 between the owner and a government entity:

34 (a) [~~takings~~] involving taking or eminent domain issues;

35 (b) [~~actions~~] involved in an action for eminent domain under Title 78B, Chapter 6, Part
36 5, Eminent Domain; or

37 (c) [~~disputes about~~] involving relocation assistance under Title 57, Chapter 12, Utah
38 Relocation Assistance Act.

39 (2) If arbitration or mediation is requested by a private property owner under this
40 section, Section 57-12-14 or 78B-6-522, and arranged by the Office of the Property Rights
41 Ombudsman, the government entity or condemning entity shall participate in the mediation or
42 arbitration as if the matter were ordered to mediation or arbitration by a court.

43 (3) (a) (i) In conducting or arranging for arbitration under Subsection (1), the Office of
44 the Property Rights Ombudsman shall follow the procedures and requirements of Title 78B,
45 Chapter 11, Utah Uniform Arbitration Act.

46 (ii) In applying Title 78B, Chapter 11, Utah Uniform Arbitration Act, the arbitrator and
47 parties shall treat the matter as if:

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

49 (B) the Office of the Property Rights Ombudsman or other arbitrator chosen as
50 provided for in this section was appointed as arbitrator by the court.

51 (iii) For the purpose of an arbitration conducted under this section, if the dispute to be
52 arbitrated is not already the subject of legal action, the district court having jurisdiction over
53 the county where the private property involved in the dispute is located is the court referred to
54 in Title 78B, Chapter 11, Utah Uniform Arbitration Act.

55 (iv) An arbitration award under this chapter may not be vacated under the provisions of
56 Subsection 78B-11-124(1)(e) because of the lack of an arbitration agreement between the

57 parties.

58 (b) The Office of the Property Rights Ombudsman shall issue a written statement
59 declining to arbitrate or to appoint an arbitrator when, in the opinion of the Office of the
60 Property Rights Ombudsman:

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

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

64 (iii) all issues raised are beyond the scope of the Office of the Property Rights
65 Ombudsman's statutory duty to review; or

66 (iv) the arbitration is otherwise not appropriate.

67 (c) (i) The Office of the Property Rights Ombudsman shall appoint another person to
68 arbitrate a dispute when:

69 (A) either party objects to the Office of the Property Rights Ombudsman serving as the
70 arbitrator and agrees to pay for the services of another arbitrator;

71 (B) the Office of the Property Rights Ombudsman declines to arbitrate the dispute for a
72 reason other than those stated in Subsection (3)(b) and one or both parties are willing to pay for
73 the services of another arbitrator; or

74 (C) the Office of the Property Rights Ombudsman determines that it is appropriate to
75 appoint another person to arbitrate the dispute with no charge to the parties for the services of
76 the appointed arbitrator.

77 (ii) In appointing another person to arbitrate a dispute, the Office of the Property Rights
78 Ombudsman shall appoint an arbitrator who is agreeable to:

79 (A) both parties; or

80 (B) the Office of the Property Rights Ombudsman and the party paying for the
81 arbitrator.

82 (iii) The Office of the Property Rights Ombudsman may, on its own initiative or upon
83 agreement of both parties, appoint a panel of arbitrators to conduct the arbitration.

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

87 (d) In arbitrating a dispute, the arbitrator shall apply the relevant statutes, case law,

88 regulations, and rules of Utah and the United States in conducting the arbitration and in
89 determining the award.

90 (e) The property owner and government entity may agree in advance of arbitration that
91 the arbitration is binding and that no de novo review may occur.

92 (f) Arbitration by or through the Office of the Property Rights Ombudsman is not
93 necessary before bringing legal action to adjudicate any claim.

94 (g) The lack of arbitration by or through the Office of the Property Rights Ombudsman
95 does not constitute, and may not be interpreted as constituting, a failure to exhaust available
96 administrative remedies or as a bar to bringing legal action.

97 (h) Arbitration under this section is not subject to Title 63G, Chapter 4, Administrative
98 Procedures Act, or Title 78B, Chapter 6, Part 2, Alternative Dispute Resolution Act.

99 (i) Within 30 days after an arbitrator issues a final award, and except as provided in
100 Subsection (3)(e), any party may submit the dispute, the award, or any issue upon which the
101 award is based, to the district court for [de novo] review by trial de novo.

102 (4) The filing with the Office of the Property Rights Ombudsman of a request for
103 mediation or arbitration of a constitutional taking issue does not stay any county or municipal
104 land use decision, including the decision of a board of adjustment.

105 (5) Members of the Office of the Property Rights Ombudsman may not be compelled
106 to testify in a civil action filed concerning the subject matter of any review, mediation, or
107 arbitration by the Office of the Property Rights Ombudsman.

108 Section 2. Section **13-43-205** is amended to read:

109 **13-43-205. Advisory opinion.**

110 [~~At any time before a final decision on a land use application by a local appeal authority~~
111 ~~under Section 10-9a-708 or 17-27a-708, a]~~

112 A local government or a potentially aggrieved person may, in accordance with Section
113 13-43-206, request a written advisory opinion:

114 (1) from a neutral third party to determine compliance with:

115 ~~(1)~~ (a) Sections 10-9a-507 through 10-9a-511;

116 ~~(2)~~ (b) Sections 17-27a-506 through 17-27a-510; and

117 ~~(3)~~ (c) Title 11, Chapter 36, Impact Fees Act[-]; and

118 (2) (a) at any time before a final decision on a land use application by a local appeal

119 authority under Section 10-9a-708 or 17-27a-708; or

120 (b) at any time before the deadline for filing an appeal with the district court under
121 Section 10-9a-801 or 17-27a-801, if no local appeal authority is designated to hear the issue
122 that is the subject of the request for an advisory opinion.

123 Section 3. Section **78B-6-522** is amended to read:

124 **78B-6-522. Dispute resolution.**

125 (1) In any dispute between a condemner and a private property owner arising out of this
126 chapter, the private property owner may submit the dispute for mediation or arbitration to the
127 [~~private property ombudsman~~] Office of the Property Rights Ombudsman under Section
128 13-43-204.

129 (2) An action submitted to the [~~private property ombudsman~~] Office of the Property
130 Rights Ombudsman under authority of this section does not bar or stay any action for
131 occupancy of premises authorized by Section 78B-6-510.

132 (3) (a) (i) A mediator or arbitrator, acting at the request of the property owner under
133 Section 13-43-204, has standing in an action brought in district court under this chapter to file
134 with the court a motion to stay the action during the pendency of the mediation or arbitration.

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

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

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

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

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

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

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

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

150 and

151 (ii) require the condemnor to pay the costs of the first additional appraisal.