

Representative Lee B. Perry proposes the following substitute bill:

EMINENT DOMAIN AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lee B. Perry

Senate Sponsor: _____

LONG TITLE

General Description:

This bill enacts language related to an entity's power of eminent domain.

Highlighted Provisions:

This bill:

- ▶ enacts provisions that require the Office of the Property Rights Ombudsman to provide certain information on its website;
- ▶ allows a private property owner to request that a mediator or arbitrator authorize an appraisal if there is an allegation of physical occupation in certain eminent domain actions;
- ▶ amends provisions related to the proposes for which eminent domain may be used;
- ▶ enacts provisions that require a political subdivision, or a person who seeks to acquire property by eminent domain, to provide a property owner with certain information from the Office of the Property Rights Ombudsman;
- ▶ enacts provisions that require an entity that seeks to acquire property by eminent domain to provide certain information, including an appraisal or written calculation, to a property owner;
- ▶ enacts provisions that require an entity to make an offer or pay just compensation for an uneconomic remnant created in a condemnation action; and



26 ▶ makes technical corrections.

27 **Money Appropriated in this Bill:**

28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **10-9a-801**, as last amended by Laws of Utah 2007, Chapters 306 and 363

34 **13-43-203**, as last amended by Laws of Utah 2008, Chapters 3, 84, and 382

35 **13-43-204**, as last amended by Laws of Utah 2011, Chapter 385

36 **17-27a-801**, as last amended by Laws of Utah 2007, Chapters 306 and 363

37 **78B-6-501**, as last amended by Laws of Utah 2012, Chapter 264

38 **78B-6-505**, as last amended by Laws of Utah 2012, Chapter 264



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

41 Section 1. Section **10-9a-801** is amended to read:

42 **10-9a-801. No district court review until administrative remedies exhausted --**

43 **Time for filing -- Tolling of time -- Standards governing court review -- Record on review**

44 **-- Staying of decision.**

45 (1) No person may challenge in district court a municipality's land use decision made
46 under this chapter, or under a regulation made under authority of this chapter, until that person
47 has exhausted the person's administrative remedies as provided in Part 7, Appeal Authority and
48 Variances, if applicable.

49 (2) (a) Any person adversely affected by a final decision made in the exercise of or in
50 violation of the provisions of this chapter may file a petition for review of the decision with the
51 district court within 30 days after the local land use decision is final.

52 (b) (i) The time under Subsection (2)(a) to file a petition is tolled from the date a
53 property owner files a request for arbitration of a constitutional taking issue with the property
54 rights ombudsman under Section 13-43-204 until 30 days after:

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

56 (B) the property rights ombudsman issues a written statement under Subsection

57 13-43-204[(3)](4)(b) declining to arbitrate or to appoint an arbitrator.

58 (ii) A tolling under Subsection (2)(b)(i) operates only as to the specific constitutional
59 taking issue that is the subject of the request for arbitration filed with the property rights
60 ombudsman by a property owner.

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

63 (3) (a) The courts shall:

64 (i) presume that a decision, ordinance, or regulation made under the authority of this
65 chapter is valid; and

66 (ii) determine only whether or not the decision, ordinance, or regulation is arbitrary,
67 capricious, or illegal.

68 (b) A decision, ordinance, or regulation involving the exercise of legislative discretion
69 is valid if it is reasonably debatable that the decision, ordinance, or regulation promotes the
70 purposes of this chapter and is not otherwise illegal.

71 (c) A final decision of a land use authority or an appeal authority is valid if the decision
72 is supported by substantial evidence in the record and is not arbitrary, capricious, or illegal.

73 (d) A determination of illegality requires a determination that the decision, ordinance,
74 or regulation violates a law, statute, or ordinance in effect at the time the decision was made or
75 the ordinance or regulation adopted.

76 (4) The provisions of Subsection (2)(a) apply from the date on which the municipality
77 takes final action on a land use application for any adversely affected third party, if the
78 municipality conformed with the notice provisions of Part 2, Notice, or for any person who had
79 actual notice of the pending decision.

80 (5) If the municipality has complied with Section 10-9a-205, a challenge to the
81 enactment of a land use ordinance or general plan may not be filed with the district court more
82 than 30 days after the enactment.

83 (6) The petition is barred unless it is filed within 30 days after the appeal authority's
84 decision is final.

85 (7) (a) The land use authority or appeal authority, as the case may be, shall transmit to
86 the reviewing court the record of its proceedings, including its minutes, findings, orders, and, if
87 available, a true and correct transcript of its proceedings.

88 (b) If the proceeding was tape recorded, a transcript of that tape recording is a true and
89 correct transcript for purposes of this Subsection (7).

90 (8) (a) (i) If there is a record, the district court's review is limited to the record provided
91 by the land use authority or appeal authority, as the case may be.

92 (ii) The court may not accept or consider any evidence outside the record of the land
93 use authority or appeal authority, as the case may be, unless that evidence was offered to the
94 land use authority or appeal authority, respectively, and the court determines that it was
95 improperly excluded.

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

97 (9) (a) The filing of a petition does not stay the decision of the land use authority or
98 authority appeal authority, as the case may be.

99 (b) (i) Before filing a petition under this section or a request for mediation or
100 arbitration of a constitutional taking issue under Section 13-43-204, the aggrieved party may
101 petition the appeal authority to stay its decision.

102 (ii) Upon receipt of a petition to stay, the appeal authority may order its decision stayed
103 pending district court review if the appeal authority finds it to be in the best interest of the
104 municipality.

105 (iii) After a petition is filed under this section or a request for mediation or arbitration
106 of a constitutional taking issue is filed under Section 13-43-204, the petitioner may seek an
107 injunction staying the appeal authority's decision.

108 Section 2. Section **13-43-203** is amended to read:

109 **13-43-203. Office of the Property Rights Ombudsman -- Duties.**

110 (1) (a) The Office of the Property Rights Ombudsman shall:

111 [~~(a)~~] (i) develop and maintain expertise in and understanding of takings, eminent
112 domain, and land use law;

113 (ii) clearly identify the specific information that is prepared for distribution to property
114 owners whose land is being acquired under the provisions of Section 78B-6-505;

115 [~~(b)~~] (iii) assist state agencies and local governments in developing the guidelines
116 required by Title 63L, Chapter 4, Constitutional Taking Issues;

117 [~~(c)~~] (iv) at the request of a state agency or local government, assist the state agency or
118 local government, in analyzing actions with potential takings implications or other land use

119 issues;

120 [~~(v)~~] (v) advise real property owners who:

121 [~~(i)~~] (A) have a legitimate potential or actual takings claim against a state or local
122 government entity or have questions about takings, eminent domain, and land use law; or

123 [~~(ii)~~] (B) own a parcel of property that is landlocked, as to the owner's rights and
124 options with respect to obtaining access to a public street;

125 [~~(e)~~] (vi) identify state or local government actions that have potential takings
126 implications and, if appropriate, advise those state or local government entities about those
127 implications; and

128 [~~(f)~~] (vii) provide information to private citizens, civic groups, government entities,
129 and other interested parties about takings, eminent domain, and land use law and their rights,
130 including a right to just compensation, and responsibilities under the takings, eminent domain,
131 or land use laws through seminars and publications, and by other appropriate means.

132 (b) The Office of the Property Rights Ombudsman shall:

133 (i) provide the information described in Section 78B-6-505 on its website in a form
134 that is easily accessible; and

135 (ii) ensure that the information is current.

136 (2) The Office of the Property Rights Ombudsman may not represent private property
137 owners, state agencies, or local governments in court or in adjudicative proceedings under Title
138 63G, Chapter 4, Administrative Procedures Act.

139 (3) No member of the Office of the Property Rights Ombudsman nor a neutral third
140 party rendering an advisory opinion under Section 13-43-205 or 13-43-206, may be compelled
141 to testify in a civil action filed concerning the subject matter of any review, mediation, or
142 arbitration by, or arranged through, the office.

143 (4) (a) Except as provided in Subsection (4)(b), evidence of a review by the Office of
144 the Property Rights Ombudsman and the opinions, writings, findings, and determinations of the
145 Office of the Property Rights Ombudsman are not admissible as evidence in a judicial action.

146 (b) Subsection (4)(a) does not apply to:

147 (i) actions brought under authority of Title 78A, Chapter 8, Small Claims Courts;

148 (ii) a judicial confirmation or review of the arbitration itself as authorized in Title 78B,
149 Chapter 11, Utah Uniform Arbitration Act;

150 (iii) actions for de novo review of an arbitration award or issue brought under the
151 authority of Subsection 13-43-204~~[(3)]~~(4)(a)(i); or

152 (iv) advisory opinions provided for in Sections 13-43-205 and 13-43-206.

153 Section 3. Section **13-43-204** is amended to read:

154 **13-43-204. Office of the Property Rights Ombudsman -- Arbitration or mediation**
155 **of disputes.**

156 (1) If requested by the private property owner and if otherwise appropriate, the Office
157 of the Property Rights Ombudsman shall mediate, or conduct or arrange arbitration for, a
158 dispute between the owner and a government entity:

159 (a) involving taking or eminent domain issues;

160 (b) involved in an action for eminent domain under Title 78B, Chapter 6, Part 5,
161 Eminent Domain; or

162 (c) involving relocation assistance under Title 57, Chapter 12, Utah Relocation
163 Assistance Act.

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

168 (3) (a) If a request under this section involves an allegation of a taking by physical
169 occupation, a private property owner may request that the mediator or arbitrator authorize an
170 appraisal of the just compensation that would be due to the property owner if a taking has
171 occurred.

172 (b) If the mediator or arbitrator determines that an appraisal is reasonably necessary to
173 reach a resolution, the mediator or arbitrator may:

174 (i) have an appraisal prepared by an independent appraiser; and

175 (ii) require the entity that is alleged to have physically taken the property to pay the
176 cost of the appraisal.

177 ~~[(3)]~~ (4) (a) (i) In conducting or arranging for arbitration under Subsection (1), the
178 Office of the Property Rights Ombudsman shall follow the procedures and requirements of
179 Title 78B, Chapter 11, Utah Uniform Arbitration Act.

180 (ii) In applying Title 78B, Chapter 11, Utah Uniform Arbitration Act, the arbitrator and

181 parties shall treat the matter as if:

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

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

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

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

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

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

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

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

200 (iv) the arbitration is otherwise not appropriate.

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

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

205 (B) the Office of the Property Rights Ombudsman declines to arbitrate the dispute for a
206 reason other than those stated in Subsection [~~3~~] 4(b) and one or both parties are willing to
207 pay for the services of another arbitrator; or

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

211 (ii) In appointing another person to arbitrate a dispute, the Office of the Property Rights

212 Ombudsman shall appoint an arbitrator who is agreeable to:

213 (A) both parties; or

214 (B) the Office of the Property Rights Ombudsman and the party paying for the
215 arbitrator.

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

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

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

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

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

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

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

233 (i) Within 30 days after an arbitrator issues a final award, and except as provided in
234 Subsection ~~[(3)]~~ (4)(e), any party may submit the dispute, the award, or any issue upon which
235 the award is based, to the district court for review by trial de novo.

236 ~~[(4)]~~ (5) The filing with the Office of the Property Rights Ombudsman of a request for
237 mediation or arbitration of a constitutional taking issue does not stay any county or municipal
238 land use decision, including the decision of a board of adjustment.

239 ~~[(5)]~~ (6) Members of the Office of the Property Rights Ombudsman may not be
240 compelled to testify in a civil action filed concerning the subject matter of any review,
241 mediation, or arbitration by the Office of the Property Rights Ombudsman.

242 Section 4. Section **17-27a-801** is amended to read:

243 **17-27a-801. No district court review until administrative remedies exhausted --**
244 **Time for filing -- Tolling of time -- Standards governing court review -- Record on review**
245 **-- Staying of decision.**

246 (1) No person may challenge in district court a county's land use decision made under
247 this chapter, or under a regulation made under authority of this chapter, until that person has
248 exhausted the person's administrative remedies as provided in Part 7, Appeal Authority and
249 Variances, if applicable.

250 (2) (a) Any person adversely affected by a final decision made in the exercise of or in
251 violation of the provisions of this chapter may file a petition for review of the decision with the
252 district court within 30 days after the local land use decision is final.

253 (b) (i) The time under Subsection (2)(a) to file a petition is tolled from the date a
254 property owner files a request for arbitration of a constitutional taking issue with the property
255 rights ombudsman under Section 13-43-204 until 30 days after:

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

257 (B) the property rights ombudsman issues a written statement under Subsection
258 13-43-204~~(3)~~(4)(b) declining to arbitrate or to appoint an arbitrator.

259 (ii) A tolling under Subsection (2)(b)(i) operates only as to the specific constitutional
260 taking issue that is the subject of the request for arbitration filed with the property rights
261 ombudsman by a property owner.

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

264 (3) (a) The courts shall:

265 (i) presume that a decision, ordinance, or regulation made under the authority of this
266 chapter is valid; and

267 (ii) determine only whether or not the decision, ordinance, or regulation is arbitrary,
268 capricious, or illegal.

269 (b) A decision, ordinance, or regulation involving the exercise of legislative discretion
270 is valid if it is reasonably debatable that the decision, ordinance, or regulation promotes the
271 purposes of this chapter and is not otherwise illegal.

272 (c) A final decision of a land use authority or an appeal authority is valid if the decision
273 is supported by substantial evidence in the record and is not arbitrary, capricious, or illegal.

274 (d) A determination of illegality requires a determination that the decision, ordinance,
275 or regulation violates a law, statute, or ordinance in effect at the time the decision was made or
276 the ordinance or regulation adopted.

277 (4) The provisions of Subsection (2)(a) apply from the date on which the county takes
278 final action on a land use application for any adversely affected third party, if the county
279 conformed with the notice provisions of Part 2, Notice, or for any person who had actual notice
280 of the pending decision.

281 (5) If the county has complied with Section 17-27a-205, a challenge to the enactment
282 of a land use ordinance or general plan may not be filed with the district court more than 30
283 days after the enactment.

284 (6) The petition is barred unless it is filed within 30 days after land use authority or the
285 appeal authority's decision is final.

286 (7) (a) The land use authority or appeal authority, as the case may be, shall transmit to
287 the reviewing court the record of its proceedings, including its minutes, findings, orders and, if
288 available, a true and correct transcript of its proceedings.

289 (b) If the proceeding was tape recorded, a transcript of that tape recording is a true and
290 correct transcript for purposes of this Subsection (7).

291 (8) (a) (i) If there is a record, the district court's review is limited to the record provided
292 by the land use authority or appeal authority, as the case may be.

293 (ii) The court may not accept or consider any evidence outside the record of the land
294 use authority or appeal authority, as the case may be, unless that evidence was offered to the
295 land use authority or appeal authority, respectively, and the court determines that it was
296 improperly excluded.

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

298 (9) (a) The filing of a petition does not stay the decision of the land use authority or
299 appeal authority, as the case may be.

300 (b) (i) Before filing a petition under this section or a request for mediation or
301 arbitration of a constitutional taking issue under Section 13-43-204, the aggrieved party may
302 petition the appeal authority to stay its decision.

303 (ii) Upon receipt of a petition to stay, the appeal authority may order its decision stayed
304 pending district court review if the appeal authority finds it to be in the best interest of the

305 county.

306 (iii) After a petition is filed under this section or a request for mediation or arbitration
307 of a constitutional taking issue is filed under Section 13-43-204, the petitioner may seek an
308 injunction staying the appeal authority's decision.

309 Section 5. Section **78B-6-501** is amended to read:

310 **78B-6-501. Eminent domain -- Uses for which right may be exercised.**

311 Subject to the provisions of this part, the right of eminent domain may be exercised on
312 behalf of the following public uses:

313 (1) all public uses authorized by the federal government;

314 (2) public buildings and grounds for the use of the state, and all other public uses
315 authorized by the Legislature;

316 (3) (a) public buildings and grounds for the use of any county, city, town, or board of
317 education;

318 (b) reservoirs, canals, aqueducts, flumes, ditches, or pipes for conducting water for the
319 use of the inhabitants of any county, city, or town, or for the draining of any county, city, or
320 town;

321 (c) the raising of the banks of streams, removing obstructions from streams, and
322 widening, deepening, or straightening their channels;

323 (d) bicycle paths and sidewalks adjacent to paved roads;

324 (e) roads, streets, and alleys for public vehicular use, excluding trails, paths, or other
325 ways for walking, hiking, bicycling, equestrian use, or other recreational uses, or whose
326 primary purpose is as a foot path, equestrian trail, bicycle path, or walkway; and

327 (f) all other public uses for the benefit of any county, city, or town, or its inhabitants;

328 (4) wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank
329 and turnpike roads, roads for transportation by traction engines or road locomotives, roads for
330 logging or lumbering purposes, and railroads and street railways for public transportation;

331 (5) reservoirs, dams, watergates, canals, ditches, flumes, tunnels, aqueducts and pipes
332 for the supplying of persons, mines, mills, smelters or other works for the reduction of ores,
333 with water for domestic or other uses, or for irrigation purposes, or for the draining and
334 reclaiming of lands, or for the floating of logs and lumber on streams not navigable, or for solar
335 evaporation ponds and other facilities for the recovery of minerals in solution;

336 (6) (a) roads, railroads, tramways, tunnels, ditches, flumes, pipes, and dumping places
337 to access or facilitate the milling, smelting, or other reduction of ores, or the working of mines,
338 quarries, coal mines, or mineral deposits including oil, gas, and minerals in solution;

339 (b) outlets, natural or otherwise, for the deposit or conduct of tailings, refuse or water
340 from mills, smelters or other works for the reduction of ores, or from mines, quarries, coal
341 mines or mineral deposits including minerals in solution;

342 (c) mill dams;

343 (d) gas, oil or coal pipelines, tanks or reservoirs, including any subsurface stratum or
344 formation in any land for the underground storage of natural gas, and in connection with that,
345 any other interests in property which may be required to adequately examine, prepare,
346 maintain, and operate underground natural gas storage facilities;

347 (e) solar evaporation ponds and other facilities for the recovery of minerals in solution;
348 and

349 (f) any occupancy in common by the owners or possessors of different mines, quarries,
350 coal mines, mineral deposits, mills, smelters, or other places for the reduction of ores, or any
351 place for the flow, deposit or conduct of tailings or refuse matter;

352 (7) byroads leading from a highway to:

353 (a) a residence; or

354 [~~(b) a development; or~~]

355 [~~(c)~~] (b) a farm;

356 (8) telegraph, telephone, electric light and electric power lines, and sites for electric
357 light and power plants;

358 (9) sewage service for:

359 (a) a city, a town, or any settlement of not [~~less~~] fewer than 10 families;

360 [~~(b) a development;~~]

361 [~~(c)~~] (b) a public building belonging to the state; or

362 [~~(d)~~] (c) a college or university;

363 (10) canals, reservoirs, dams, ditches, flumes, aqueducts, and pipes for supplying and
364 storing water for the operation of machinery for the purpose of generating and transmitting
365 electricity for power, light or heat;

366 (11) cemeteries and public parks, except for a park whose primary use is:

367 (a) as a trail, path, or other way for walking, hiking, bicycling, or equestrian use; or

368 (b) to connect other trails, paths, or other ways for walking, hiking, bicycling, or

369 equestrian use;

370 (12) pipelines for the purpose of conducting any and all liquids connected with the

371 manufacture of beet sugar; and

372 (13) sites for mills, smelters or other works for the reduction of ores and necessary to

373 their successful operation, including the right to take lands for the discharge and natural

374 distribution of smoke, fumes, and dust, produced by the operation of works, provided that the

375 powers granted by this section may not be exercised in any county where the population

376 exceeds 20,000, or within one mile of the limits of any city or incorporated town nor unless the

377 proposed condemner has the right to operate by purchase, option to purchase or easement, at

378 least 75% in value of land acreage owned by persons or corporations situated within a radius of

379 four miles from the mill, smelter or other works for the reduction of ores; nor beyond the limits

380 of the four-mile radius; nor as to lands covered by contracts, easements, or agreements existing

381 between the condemner and the owner of land within the limit and providing for the operation

382 of such mill, smelter, or other works for the reduction of ores; nor until an action shall have

383 been commenced to restrain the operation of such mill, smelter, or other works for the

384 reduction of ores.

385 Section 6. Section **78B-6-505** is amended to read:

386 **78B-6-505. Negotiation and disclosure required before filing an eminent domain**

387 **action.**

388 (1) A political subdivision of the state that seeks to acquire property by eminent

389 domain or that intends to use eminent domain to acquire property if the property cannot be

390 acquired in a voluntary transaction shall:

391 (a) before the governing body, as defined in Subsection 78B-6-504(2)(a), of the

392 political subdivision takes a final vote to approve the filing of an eminent domain action, make

393 a reasonable effort to negotiate with the property owner for the purchase of the property; and

394 (b) except as provided in Subsection (3), as early in the negotiation process described

395 in Subsection (1)(a) as practicable, but no later than 14 days before the day on which a final

396 vote is taken to approve the filing of an eminent domain action:

397 (i) advise the property owner of the owner's rights to mediation and arbitration under

398 Section 78B-6-522, including the name and current telephone number of the property rights
399 ombudsman, established in Title 13, Chapter 43, Property Rights Ombudsman Act; [~~and~~]

400 (ii) provide the property owner a complete printed copy of the materials provided on
401 the Office of the Property Rights Ombudsman website in accordance with Section 13-43-203
402 regarding the acquisition of property for a public purpose and a property owner's right to just
403 compensation; and

404 [~~(ii)~~] (iii) provide the property owner a written statement explaining that oral
405 representations or promises made during the negotiation process are not binding upon the
406 person seeking to acquire the property by eminent domain.

407 (2) A person, other than a political subdivision of the state, that seeks to acquire
408 property by eminent domain or that intends to use eminent domain to acquire property if the
409 property cannot be acquired in a voluntary transaction shall:

410 (a) before filing an eminent domain action, make a reasonable effort to negotiate with
411 the property owner for the purchase of the property; and

412 (b) except as provided in Subsection (3), as early in the negotiation process described
413 in Subsection (2)(a) as practicable, but no later than 14 days before the day on which the person
414 files an eminent domain action:

415 (i) advise the property owner of the owner's rights to mediation and arbitration under
416 Section 78B-6-522, including the name and current telephone number of the property rights
417 ombudsman, established in Title 13, Chapter 43, Property Rights Ombudsman Act; [~~and~~]

418 (ii) provide the property owner a complete printed copy of the materials provided on
419 the Office of the Property Rights Ombudsman website in accordance with Section 13-43-203
420 regarding the acquisition of property for a public purpose and a property owner's right to just
421 compensation; and

422 [~~(ii)~~] (iii) provide the property owner a written statement explaining that oral
423 representations or promises made during the negotiation process are not binding upon the
424 person seeking to acquire the property by eminent domain.

425 (3) The court may, for good cause, shorten the 14-day period described in Subsection
426 (1)(b) or (2)(b).

427 (4) (a) If an entity seeks to acquire property by eminent domain or intends to use
428 eminent domain to acquire property if the entity cannot acquire the property in a voluntary

429 transaction, the entity shall prepare and provide to the property owner as early as practicable in
430 the negotiation process an appraisal or written calculation of the amount to be offered by the
431 entity for the property.

432 (b) The written calculation shall separately state the fair market value of the property to
433 be acquired and any damages to the remaining real property in accordance with Section
434 78B-6-511.

435 (c) A person making the appraisal or written calculation shall:

436 (i) inspect the property in the process of providing the appraisal or calculation; and

437 (ii) notify the property owner or the owner's representative in advance that the property
438 owner or property owner's representative may accompany the person making the appraisal or
439 calculation during the inspection of the property.

440 (d) An entity may not offer an amount that is less than the fair market value of the
441 property to be acquired together with any damages to the remaining real property determined in
442 a manner consistent with the requirements of this part.

443 (5) (a) If the acquisition of a part of a property would leave its owner with an
444 uneconomic remnant, the entity shall:

445 (i) make an offer to acquire the entire property for the property's fair market value; or

446 (ii) offer compensation in an amount that equals or exceeds the fair market value of the
447 entire property.

448 (b) If an entity compensates a property owner for an uneconomic remnant, but does not
449 take title of the uneconomic remnant, the property owner may keep the uneconomic remnant.

450 (c) An entity may not acquire an uneconomic remnant over the objection of the
451 property owner.