

# HB0111S01 compared with HB0111

~~{deleted text}~~ shows text that was in HB0111 but was deleted in HB0111S01.

inserted text shows text that was not in HB0111 but was inserted into HB0111S01.

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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: \_\_\_\_\_

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### 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 ~~{uses}~~proposes for which eminent domain may be used;
- ▶ ~~{amends provisions related to negotiation and disclosure requirements before filing~~

## HB0111S01 compared with HB0111

~~an eminent domain action;~~

- ~~prohibits a condemning entity from occupying private real property for a public purpose unless certain requirements are met;~~
- ~~requires a condemning entity to reimburse an owner for certain expenses;~~ 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 governing the acquisition of or~~ 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 ~~certain structures on acquired real property;~~
- ~~prohibits a person acting on behalf of a condemning entity from acquiring real property unless the person holds a current real estate license;~~ an uneconomic remnant created in a condemnation action; and
  - ▶ makes technical corrections.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

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

~~{ENACTS:~~

~~78B-6-510.5, Utah Code Annotated 1953~~

~~78B-6-510.6, Utah Code Annotated 1953~~

## HB0111S01 compared with HB0111

~~78B-6-510.7, Utah Code Annotated 1953~~

~~78B-6-510.8, Utah Code Annotated 1953~~

REPEALS:

~~57-12-5, as last amended by Laws of Utah 1998, Chapter 321~~

~~57-12-6, as enacted by Laws of Utah 1972, Chapter 24~~

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

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

**10-9a-801. No district court review until administrative remedies exhausted -- Time for filing -- Tolling of time -- Standards governing court review -- Record on review -- Staying of decision.**

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

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

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

(A) the arbitrator issues a final award; or

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

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

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

(3) (a) The courts shall:

(i) presume that a decision, ordinance, or regulation made under the authority of this

## HB0111S01 compared with HB0111

chapter is valid; and

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

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

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

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

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

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

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

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

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

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

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

## HB0111S01 compared with HB0111

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## HB0111S01 compared with HB0111

implications; and

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

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

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

(ii) ensure that the information is current.

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

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

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

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

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

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

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

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

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

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

(1) If requested by the private property owner and if otherwise appropriate, the Office of the Property Rights Ombudsman shall mediate, or conduct or arrange arbitration for, a

## HB0111S01 compared with HB0111

dispute between the owner and a government entity:

(a) involving taking or eminent domain issues;

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

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

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

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

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

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

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

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

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

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

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

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

## HB0111S01 compared with HB0111

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

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

(i) the issues are not ripe for review;

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

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

(iv) the arbitration is otherwise not appropriate.

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

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

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

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

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

(A) both parties; or

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

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

(iv) The Department of Commerce may pay an arbitrator per diem and reimburse expenses incurred in the performance of the arbitrator's duties at the rates established by the

## HB0111S01 compared with HB0111

Division of Finance under Sections 63A-3-106 and 63A-3-107.

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

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

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

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

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

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

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

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

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

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

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

(2) (a) Any person adversely affected by a final decision made in the exercise of or in

## HB0111S01 compared with HB0111

violation of the provisions of this chapter may file a petition for review of the decision with the district court within 30 days after the local land use decision is final.

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

(A) the arbitrator issues a final award; or

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

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

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

(3) (a) The courts shall:

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

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

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

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

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

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

(5) If the county has complied with Section 17-27a-205, a challenge to the enactment

## HB0111S01 compared with HB0111

of a land use ordinance or general plan may not be filed with the district court more than 30 days after the enactment.

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

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

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

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

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

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

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

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

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

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

Section ~~44~~5. Section **78B-6-501** is amended to read:

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

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

## HB0111S01 compared with HB0111

- (1) all public uses authorized by the federal government;
- (2) public buildings and grounds for the use of the state, and all other public uses authorized by the Legislature;
- (3) (a) public buildings and grounds for the use of any county, city, town, or board of education;
- (b) reservoirs, canals, aqueducts, flumes, ditches, or pipes for conducting water for the use of the inhabitants of any county, city, or town, or for the draining of any county, city, or town;
- (c) the raising of the banks of streams, removing obstructions from streams, and widening, deepening, or straightening their channels;
- (d) bicycle paths and sidewalks adjacent to paved roads;
- (e) roads, streets, and alleys for public vehicular use, excluding trails, paths, or other ways for walking, hiking, bicycling, equestrian use, or other recreational uses, or whose primary purpose is as a foot path, equestrian trail, bicycle path, or walkway; and
- (f) all other public uses for the benefit of any county, city, or town, or its inhabitants;
- (4) wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank and turnpike roads, roads for transportation by traction engines or road locomotives, roads for logging or lumbering purposes, and railroads and street railways for public transportation;
- (5) reservoirs, dams, watergates, canals, ditches, flumes, tunnels, aqueducts and pipes for the supplying of persons, mines, mills, smelters or other works for the reduction of ores, with water for domestic or other uses, or for irrigation purposes, or for the draining and reclaiming of lands, or for the floating of logs and lumber on streams not navigable, or for solar evaporation ponds and other facilities for the recovery of minerals in solution;
- (6) (a) roads, railroads, tramways, tunnels, ditches, flumes, pipes, and dumping places to access or facilitate the milling, smelting, or other reduction of ores, or the working of mines, quarries, coal mines, or mineral deposits including oil, gas, and minerals in solution;
- (b) outlets, natural or otherwise, for the deposit or conduct of tailings, refuse or water from mills, smelters or other works for the reduction of ores, or from mines, quarries, coal mines or mineral deposits including minerals in solution;
- (c) mill dams;
- (d) gas, oil or coal pipelines, tanks or reservoirs, including any subsurface stratum or

## HB0111S01 compared with HB0111

formation in any land for the underground storage of natural gas, and in connection with that, any other interests in property which may be required to adequately examine, prepare, maintain, and operate underground natural gas storage facilities;

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

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

(7) byroads leading from a highway to:

(a) a residence; or

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

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

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

(9) sewage service for:

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

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

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

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

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

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

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

(b) to connect other trails, paths, or other ways for walking, hiking, bicycling, or equestrian use;

(12) ~~{pipe lines}~~ pipelines for the purpose of conducting any and all liquids connected with the manufacture of beet sugar; and

(13) sites for mills, smelters or other works for the reduction of ores and necessary to their successful operation, including the right to take lands for the discharge and natural distribution of smoke, fumes, and dust, produced by the operation of works, provided that the

## HB0111S01 compared with HB0111

powers granted by this section may not be exercised in any county where the population exceeds 20,000, or within one mile of the limits of any city or incorporated town nor unless the proposed condemner has the right to operate by purchase, option to purchase or easement, at least 75% in value of land acreage owned by persons or corporations situated within a radius of four miles from the mill, smelter or other works for the reduction of ores; nor beyond the limits of the four-mile radius; nor as to lands covered by contracts, easements, or agreements existing between the condemner and the owner of land within the limit and providing for the operation of such mill, smelter, or other works for the reduction of ores; nor until an action shall have been commenced to restrain the operation of such mill, smelter, or other works for the reduction of ores.

Section ~~{2}~~6. Section **78B-6-505** is amended to read:

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

(1) A political subdivision of the state that seeks to acquire property by eminent domain or that intends to use eminent domain to acquire property if the property cannot be acquired in a voluntary transaction shall:

(a) before the governing body, as defined in Subsection 78B-6-504(2)(a), of the political subdivision takes a final vote to approve the filing of an eminent domain action, make a reasonable effort to negotiate with the property owner for the purchase of the property; and

(b) except as provided in Subsection ~~{3}~~(3)~~{5}~~, as early in the negotiation process described in Subsection (1)(a) as practicable, but no later than 14 days before the day on which a final vote is taken to approve the filing of an eminent domain action:

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

~~(ii)~~[and]

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

[ii] (iii) provide the property owner a written statement explaining that oral

## HB0111S01 compared with HB0111

representations or promises made during the negotiation process are not binding upon the person seeking to acquire the property by eminent domain.

~~{ (2) An entity shall prepare as early in the negotiation process as practicable and provide to the property an appraisal or written calculation of the just compensation to be offered by the entity to acquire the real property by eminent domain.~~

~~— (a) The written calculation shall separately state the just compensation amount and any amount for damages to the remaining real property in accordance with Section 78B-6-511.~~

~~— (b) A person making the appraisal or calculation shall:~~

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

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

~~— (c) An entity may not offer an amount that is less than the fair market value of the property to be acquired.~~

~~— (3) An entity may not require an owner to surrender possession of real property until:~~

~~— (a) the owner has consented to the surrender of possession;~~

~~— (b) the entity has paid the agreed purchase price; or~~

~~— (c) the entity deposits with a court of jurisdiction of condemnation of the property, in accordance with applicable law, an amount for the benefit of the owner that is no less than:~~

~~— (i) the lowest approved appraisal of the fair market value of the property; or~~

~~— (ii) the amount of the award of compensation in the condemnation proceeding of the property.~~

‡ ~~{(2)}~~{(4)}~~~~ A person, other than a political subdivision of the state, that seeks to acquire property by eminent domain or that intends to use eminent domain to acquire property if the property cannot be acquired in a voluntary transaction shall:

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

(b) except as provided in Subsection ~~{(3)}~~{(5)}~~~~, as early in the negotiation process described in Subsection ~~{(2)}~~{(4)}~~~~(a) as practicable, but no later than 14 days before the day on which the person files an eminent domain action:

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

## HB0111S01 compared with HB0111

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

~~(ii)~~ ~~and~~

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

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

~~(3)~~ ~~(5)~~ The court may, for good cause, shorten the 14-day period described in Subsection (1)(b) or ~~(2)~~ ~~(4)(b)~~:

~~(6)~~ ~~(2)(b)~~.

(4) (a) If an entity seeks to acquire property by eminent domain or intends to use eminent domain to acquire property if the entity cannot acquire the property in a voluntary transaction, the entity shall prepare and provide to the property owner as early as practicable in the negotiation process an appraisal or written calculation of the amount to be offered by the entity for the property.

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

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

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

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

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

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

## HB0111S01 compared with HB0111

(i) make an offer to acquire the entire property;

~~Section 3. Section 78B-6-510.5 is enacted to read:~~

~~**78B-6-510.5. Occupancy of premises without permission.**~~

~~(1) An entity may not occupy private real property for a public purpose as authorized in this part unless the entity has:~~

~~(a) a written or prescriptive easement, license, or other legal right to occupy the property;~~

~~(b) written consent of the property owner; or~~

~~(c) an order of the court.~~

~~(2) If an entity is in violation of Subsection (1), the owner of the occupied property may seek one or a combination of the following:~~

~~(a) relief for a constitutional taking through arbitration or mediation, including the provision of an appraisal by a mediator at the expense of the occupying entity in accordance with Section 13-43-204;~~

~~(b) an immediate injunction to terminate the illegal occupation of the private property; or~~

~~(c) just compensation for the taking or damaging of private property without the payment of just compensation.~~

~~Section 4. Section 78B-6-510.6 is enacted to read:~~

~~**78B-6-510.6. Reimbursement of owner for expenses.**~~

~~An entity acting under authority of this part in acquiring real property for its use shall as soon as practicable after the date of payment of the purchase price or the date of deposit into court of funds to satisfy the award of: for the property's fair market value; or~~

~~(ii) offer compensation in {a condemnation proceeding to acquire real property; whichever is the earlier, reimburse the owner for expenses the owner necessarily incurred for:~~

~~(1) recording fees, transfer taxes, and similar expenses incidental to conveying the real property to the acquiring entity;~~

~~(2) penalty costs for prepayment for any preexisting recorded mortgage entered into in good faith encumbering the real property;~~

~~(3) the pro rata portion of real property taxes paid, which are allocable to a period subsequent to the date of vesting title in the agency, or the effective date of possession of such~~

## HB0111S01 compared with HB0111

~~real property by the agency, whichever is the earlier; and~~

~~—— (4) relocation costs in accordance with Title 57, Chapter 12, Utah Relocation Assistance Act.~~

~~—— Section 5. Section 78B-6-510.7 is enacted to read:~~

~~—— **78B-6-510.7. Buildings, structures, or other improvements:**~~

~~—— (1) If an entity acquires an interest in real property in accordance with this part, the entity shall also acquire an equal interest in each building, structure, or other improvement located upon the real property and that is required to be removed from the real property or that is determined to be adversely affected by the entity's use of the real property.~~

~~—— (2) (a) For the purpose of determining the just compensation to be paid for a building, structure, or other improvement acquired in accordance with Subsection (1), the building, structure, or other improvement is considered to be a part of the acquired real property, notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove the building, structure, or improvement at the expiration of the tenant's term.~~

~~—— (b) An entity described in Subsection (1) shall pay a tenant described in Subsection (2)(a) the greater of:~~

~~—— (i) the fair market value that the building, structure, or improvement contributes to; an amount that equals or exceeds the fair market value of the ~~f~~entity's acquired property; or~~

~~—— (ii) the fair market value of the building, structure, or improvement for removal from the real property.~~

~~—— (3) (a) Payment for the building, structure, or improvement described in Subsection (2)(b) does not result in duplication of any payments otherwise authorized by law.~~

~~—— (b) entire property.~~

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

~~(c) An entity may ~~f~~withhold payment unless}not acquire an uneconomic remnant over the ~~f~~owner}objection of the property ~~f~~involved disclaims all interest in the improvements of the tenant.~~

~~—— (c) In consideration for any payment, the tenant shall assign, transfer, and release all of the tenant's right, title, and interest in and to the improvements.~~

## HB0111S01 compared with HB0111

~~(d) The entity's acquisition of a building, structure, or other improvement may not be construed to deprive the tenant of any rights to reject payment and to obtain payment for a property interest in accordance with other laws of this state.~~

~~Section 6. Section 78B-6-510.8 is enacted to read:~~

~~**78B-6-510.8. License for acquisition required.**~~

~~Except as provided in Section 61-2f-202, a person may not acquire real property in accordance with this part on behalf of an authorized entity unless the person holds a current real estate license as required by Title 61, Section 2f, Real Estate Licensing and Practices Act.~~

~~Section 7. **Repealer.**~~

~~This bill repeals:~~

~~Section 57-12-5, **Reimbursement of owner for expenses.**~~

~~Section 57-12-6, Buildings, structures or other improvements.~~

### Legislative Review Note

~~as of 2-4-13 1:29 PM~~

Office of Legislative Research and General Counsel; owner.