

SB0096S02 compared with SB0096S01

~~text~~ shows text that was in SB0096S01 but was deleted in SB0096S02.

Inserted text shows text that was not in SB0096S01 but was inserted into SB0096S02.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Senator David P. Hinkins proposes the following substitute bill:

CANAL AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: David P. Hinkins

House Sponsor: _____

LONG TITLE

General Description:

This bill changes the procedure to modify a water conveyance facility.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides a process for a property owner and the owner of a water conveyance facility to approve and move forward with a plan to modify a water conveyance facility;
- ▶ states that the Office of the Property Rights Ombudsman shall provide mediation and arbitration services to a property owner and facility owner when requested; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

SB0096S02 compared with SB0096S01

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

13-43-204, as last amended by Laws of Utah 2014, Chapter 59

73-1-15, as last amended by Laws of Utah 2005, Chapter 215

ENACTS:

73-1-15.5, Utah Code Annotated 1953

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

Section 1. 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, or in the case of a water conveyance facility either the private property owner or the facility owner of the water conveyance facility, and if otherwise appropriate, the Office of the Property Rights Ombudsman shall mediate, or conduct or arrange arbitration for[;]:

(a) a dispute between the owner and a government entity or other type of condemning entity:

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

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

~~[(c)]~~ (iii) involving relocation assistance under Title 57, Chapter 12, Utah Relocation Assistance Act[;]; or

(b) the private property owner and the facility owner of a water conveyance facility as described in Section 73-1-15.5 regarding:

(i) the relocation of the water conveyance facility; or

(ii) a modification to the method of water delivery of the water conveyance facility.

(2) If arbitration or mediation is requested by a private property owner under this section, Section 57-12-14, or 78B-6-522, or either the private property owner or the facility

SB0096S02 compared with SB0096S01

owner of a water conveyance facility under Section 73-1-15.5, and arranged by the Office of the Property Rights Ombudsman, the ~~[government entity or condemning entity]~~ parties shall participate in the mediation or arbitration as if the matter were ordered to mediation or arbitration by a court.

(3) (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.

(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 mediate, 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 mediation or 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

SB0096S02 compared with SB0096S01

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

(ii) The private property owner and facility owner of a water conveyance facility, as described in Section 73-1-15.5, 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.

SB0096S02 compared with SB0096S01

(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)(e), any party to the arbitration 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) 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:

- (a) a county or municipal land use decision;
- (b) a land use appeal authority decision; or
- (c) the occupancy of the property.

(5) A member of the Office of the Property Rights Ombudsman, or an arbitrator appointed by the office, 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 2. Section **73-1-15** is amended to read:

73-1-15. Obstructing canals or other watercourses -- Penalties.

(1) (a) Whenever any person has a right-of-way of any established type or title for any canal or other watercourse it shall be unlawful for any person to place or maintain in place any obstruction, or change of the water flow by fence or otherwise, along or across or in such canal or watercourse, except as where said watercourse inflicts damage to private property, without first:

(i) receiving written permission for the change and providing gates sufficient for the passage of the owner or owners of such canal or watercourse~~[-];~~ or

(ii) complying with the requirements of Section 73-1-15.5.

(b) That the vested rights in the established canals and watercourse shall be protected against all encroachments.

(c) That indemnifying agreements may be entered as may be just and proper by governmental agencies.

(2) Any person violating this section is guilty of a crime punishable under Section 73-2-27.

(3) Any person who commits an act defined as a crime under this section is also liable

SB0096S02 compared with SB0096S01

for damages or other relief and costs in a civil action to any person injured by that act.

(4) (a) A civil action under this section may be brought independent of a criminal action.

(b) Proof of the elements of a civil action under this section need only be made by a preponderance of the evidence.

Section 3. Section **73-1-15.5** is enacted to read:

73-1-15.5. Relocation of easements for a water conveyance facility -- Alteration of a water conveyance facility.

(1) As used in this section:

(a) "Facility owner" means an individual, entity, mutual water company, or unincorporated organization:

(i) operating a water conveyance facility;

(ii) owning any interest in a water conveyance facility; or

(iii) having a property interest in real property based on the presence of the water conveyance facility located and operating on the real property.

(b) (i) "Water conveyance facility" means a ditch, canal, flume, pipeline, or other watercourse used to convey water used for irrigation ~~or storm water drainage~~ and any related easement for the ditch, canal, flume, pipeline, or other watercourse.

(ii) "Water conveyance facility" does not mean a ditch, canal, flume, pipeline, or other watercourse used to convey water used for culinary or industrial water, ~~stormwater drainage,~~ or any federal water project facility.

(2) Unless prohibited by the terms of a written grant of easement or an agreement for which consideration was given, a property owner may make reasonable changes in the location and method of delivery of a water conveyance facility located on the property owner's real property after:

(a) having a licensed engineer:

(i) redesign the water conveyance facility, which may include relocating the water conveyance facility to a new location on the property owner's real property or on the real property of another person who consents to the relocation; and

(ii) certify that the engineered redesign of the water conveyance facility and method of delivery meets the requirements of Subsection (4);

SB0096S02 compared with SB0096S01

(b) providing the plans designed by the licensed engineer under Subsection (2)(a)(i) to the facility owner;

(c) allowing the facility owner a reasonable time to review the plans designed by the licensed engineer under Subsection (2)(a)(i), provide comments to the plans, and subject to Subsection (3), require changes and approve the planned redesign before commencing the modifications;

(d) allowing the facility owner to inspect the modified water conveyance facility during construction of the modification and require reasonable changes if construction of the modification is not occurring according to an approved redesign plan as required by Subsection (3)(b); and

(e) providing the facility owner with the ability to reasonably access, operate, maintain, and replace the modified water conveyance facility.

(3) A facility owner:

(a) may require a change to the plans designed by the licensed engineer under Subsection (2)(a)(i) only if the change is:

(i) directly related to a reasonably anticipated negative impact, resulting from the relocation of the water conveyance facility or a change in the method of water delivery; and

(ii) the least costly means of addressing the anticipated negative impact described in Subsection (3)(a)(i) after taking into account the provisions of Subsection (4); and

(b) shall approve the plans designed by the licensed engineer under Subsection (2)(a)(i) if:

(i) the plans reasonably address any anticipated negative impacts resulting from the relocation of the water conveyance facility or a change in the method of water delivery;

(ii) the property owner has proposed reasonable terms or conditions to satisfy the provisions of Subsection (4); and

(iii) the property owner satisfies the provisions of Subsection (2).

(4) A property owner may not relocate a water conveyance facility or change the method of delivery of a water conveyance facility in accordance with Subsection (2) if the modification:

(a) significantly decreases the utility of the water conveyance facility for its current use;

SB0096S02 compared with SB0096S01

(b) increases the burden on the facility owner's use of the water conveyance facility in a way not compensated for by the property owner; or

(c) frustrates the purpose of the water conveyance facility.

(5) (a) A property owner or a facility owner may request the Office of the Property Rights Ombudsman to mediate any dispute over the application of this section.

(b) A property owner and a facility owner may jointly request the Office of the Property Rights Ombudsman to arbitrate any dispute over the application of this section.

(6) A property owner relocating a water conveyance facility under this section is responsible for:

(a) the reasonable, actual costs incurred in modifying the water conveyance facility, including:

(i) planning and construction costs;

(ii) the actual engineering and inspection costs during construction;

(iii) costs reasonably and necessarily incurred by the facility owner related to the modification of the water conveyance facility; and

(iv) legal costs incurred by the facility owner in reviewing and approving plans and proposing modifications, limited to the lesser amount of actual attorney fees incurred or \$5,000; and

(b) the costs of preparing instruments associated with any new easement for the modified water conveyance facility, as described in Subsection (8).

(7) In an action where a claim is made that a provision of this section has been violated, a court may, in addition to any other relief granted, award costs and reasonable attorney fees:

(a) to the facility owner if the court finds that the property owner failed to comply with the plan approved in accordance with Subsection (3); or

(b) to the property owner if the court finds that the facility owner made unreasonable demands in reviewing the property owner's proposed plans or in requiring changes to the proposed or approved plans.

(8) (a) If a water conveyance facility is relocated under this section, the facility owner shall record an instrument extinguishing the existing easement in exchange for the grant of a new easement for the relocated water conveyance facility by the property owner burdened by

SB0096S02 compared with SB0096S01

the modified water conveyance facility.

(b) The instruments extinguishing the previous easement and granting the new easement shall be:

(i) in a form mutually acceptable to the facility owner and the property owner; and

(ii) recorded in the county in which the modified water conveyance facility is located.

(c) The property owner shall pay all recording fees for the instruments described in Subsections (8)(a) and (b).