

1 **PROPERTY RIGHTS OMBUDSMAN ADVISORY OPINION**

2 **AMENDMENTS**

3 2019 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Calvin R. Musselman**

6 Senate Sponsor: David G. Buxton

8 **LONG TITLE**

9 **General Description:**

10 This bill amends provisions regarding issues in question in both litigation and an
11 advisory opinion of the Property Rights Ombudsman.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ amends a provision regarding the award of fees and costs when an issue in an
- 15 advisory opinion of the Property Rights Ombudsman is subsequently litigated;
- 16 ▶ amends a provision regarding a refund of an impact fee at issue in both litigation
- 17 and an advisory opinion of the Property Rights Ombudsman; and
- 18 ▶ makes technical and conforming changes.

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **13-43-206**, as last amended by Laws of Utah 2014, Chapter 59

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

28 Section 1. Section **13-43-206** is amended to read:

29 **13-43-206. Advisory opinion -- Process.**

- 30 (1) A request for an advisory opinion under Section 13-43-205 shall be:
31 (a) filed with the Office of the Property Rights Ombudsman; and
32 (b) accompanied by a filing fee of \$150.
- 33 (2) The Office of the Property Rights Ombudsman may establish policies providing for
34 partial fee waivers for a person who is financially unable to pay the entire fee.
- 35 (3) A person requesting an advisory opinion need not exhaust administrative remedies,
36 including remedies described under Section 10-9a-801 or 17-27a-801, before requesting an
37 advisory opinion.
- 38 (4) The Office of the Property Rights Ombudsman shall:
39 (a) deliver notice of the request to opposing parties indicated in the request;
40 (b) inquire of all parties if there are other necessary parties to the dispute; and
41 (c) deliver notice to all necessary parties.
- 42 (5) If a governmental entity is an opposing party, the Office of the Property Rights
43 Ombudsman shall deliver the request in the manner provided for in Section 63G-7-401.
- 44 (6) (a) The Office of the Property Rights Ombudsman shall promptly determine if the
45 parties can agree to a neutral third party to issue an advisory opinion.
46 (b) If no agreement can be reached within four business days after notice is delivered
47 pursuant to Subsections (4) and (5), the Office of the Property Rights Ombudsman shall
48 appoint a neutral third party to issue an advisory opinion.
- 49 (7) All parties that are the subject of the request for advisory opinion shall:
50 (a) share equally in the cost of the advisory opinion; and
51 (b) provide financial assurance for payment that the neutral third party requires.
- 52 (8) The neutral third party shall comply with the provisions of Section 78B-11-109,
53 and shall promptly:
54 (a) seek a response from all necessary parties to the issues raised in the request for
55 advisory opinion;
56 (b) investigate and consider all responses; and
57 (c) issue a written advisory opinion within 15 business days after the appointment of

58 the neutral third party under Subsection (6)(b), unless:

59 (i) the parties agree to extend the deadline; or

60 (ii) the neutral third party determines that the matter is complex and requires additional
61 time to render an opinion, which may not exceed 30 calendar days.

62 (9) An advisory opinion shall include a statement of the facts and law supporting the
63 opinion's conclusions.

64 (10) (a) Copies of any advisory opinion issued by the Office of the Property Rights
65 Ombudsman shall be delivered as soon as practicable to all necessary parties.

66 (b) A copy of the advisory opinion shall be delivered to the government entity in the
67 manner provided for in Section 63G-7-401.

68 (11) An advisory opinion issued by the Office of the Property Rights Ombudsman is
69 not binding on any party to, nor admissible as evidence in, a dispute involving land use law
70 except as provided in Subsection (12).

71 (12) (a) Subject to Subsection (12)(d), if a dispute involving land use law results in the
72 issuance of an advisory opinion described in this section, if the same issue that is the subject of
73 [an] the advisory opinion [is listed as a cause of action in litigation, and that cause of action] is
74 subsequently litigated on the same facts and circumstances at issue in the advisory opinion, and
75 if the relevant issue is resolved consistent with the advisory opinion[+(t)], the substantially
76 prevailing party on that cause of action[+(A)] may collect reasonable attorney fees and court
77 costs pertaining to the development of that cause of action from the date of the delivery of the
78 advisory opinion to the date of the court's resolution[+(and)].

79 ~~[(B)]~~ (b) In addition to any amounts awarded under Subsection (12)(a), if the dispute
80 described in Subsection (12)(a) in whole or in part concerns an impact fee, and if the result of
81 the litigation requires that the political subdivision or private entity refund the impact fee in
82 accordance with Section 11-36a-603, the political subdivision or private entity shall refund the
83 impact fee in an amount that is [shall be refunded an impact fee held to be in violation of Title
84 11, Chapter 36a, Impact Fees Act,] based on the difference between the impact fee paid and
85 what the impact fee should have been if the [government] political subdivision or private entity

86 had correctly calculated the impact fee[; and].

87 ~~[(ii) in accordance with Subsection (12)(b), a government entity shall refund an impact~~
88 ~~fee held to be in violation of Title 11, Chapter 36a, Impact Fees Act, to the person who was in~~
89 ~~record title of the property on the day on which the impact fee for the property was paid if:]~~

90 ~~[(A) the impact fee was paid on or after the day on which the advisory opinion on the~~
91 ~~impact fee was issued but before the day on which the final court ruling on the impact fee is~~
92 ~~issued; and]~~

93 ~~[(B) the person described in Subsection (12)(a)(ii) requests the impact fee refund from~~
94 ~~the government entity within 30 days after the day on which the court issued the final ruling on~~
95 ~~the impact fee.]~~

96 ~~[(b) A government entity subject to Subsection (12)(a)(ii) shall refund the impact fee~~
97 ~~based on the difference between the impact fee paid and what the impact fee should have been~~
98 ~~if the government entity had correctly calculated the impact fee.]~~

99 (c) Nothing in this Subsection (12) is intended to create any new cause of action under
100 land use law.

101 (d) Subsection (12)(a) does not apply unless the resolution described in Subsection
102 (12)(a) is final.

103 (13) Unless filed by the local government, a request for an advisory opinion under
104 Section 13-43-205 does not stay the progress of a land use application, the effect of a land use
105 decision, or the condemning entity's occupancy of a property.