

1 **PROPERTY RIGHTS OMBUDSMAN AMENDMENTS**

2 2020 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Val L. Peterson**

5 Senate Sponsor: Curtis S. Bramble

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Property Rights Ombudsman Act.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ provides that in a court action involving a dispute related to land use, the
- 13 substantially prevailing party may recover a penalty if:
- 14 • the substantially prevailing party is the land use applicant or a government
 - 15 entity;
 - 16 • the court resolves the dispute consistent with an advisory opinion issued on the
 - 17 same facts and circumstances; and
 - 18 • the opposing party knowingly and intentionally violated the law; and
- 19 ▶ makes technical and conforming changes.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **13-43-206**, as last amended by Laws of Utah 2019, Chapter 112

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

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

30 **13-43-206. Advisory opinion -- Process.**

31 (1) A request for an advisory opinion under Section 13-43-205 shall be:

32 (a) filed with the Office of the Property Rights Ombudsman; and

33 (b) accompanied by a filing fee of \$150.

34 (2) The Office of the Property Rights Ombudsman may establish policies providing for
35 partial fee waivers for a person who is financially unable to pay the entire fee.

36 (3) A person requesting an advisory opinion need not exhaust administrative remedies,
37 including remedies described under Section 10-9a-801 or 17-27a-801, before requesting an
38 advisory opinion.

39 (4) The Office of the Property Rights Ombudsman shall:

40 (a) deliver notice of the request to opposing parties indicated in the request;

41 (b) inquire of all parties if there are other necessary parties to the dispute; and

42 (c) deliver notice to all necessary parties.

43 (5) If a governmental entity is an opposing party, the Office of the Property Rights
44 Ombudsman shall deliver the request in the manner provided for in Section 63G-7-401.

45 (6) (a) The Office of the Property Rights Ombudsman shall promptly determine if the
46 parties can agree to a neutral third party to issue an advisory opinion.

47 (b) If no agreement can be reached within four business days after notice is delivered
48 pursuant to Subsections (4) and (5), the Office of the Property Rights Ombudsman shall
49 appoint a neutral third party to issue an advisory opinion.

50 (7) All parties that are the subject of the request for advisory opinion shall:

51 (a) share equally in the cost of the advisory opinion; and

52 (b) provide financial assurance for payment that the neutral third party requires.

53 (8) The neutral third party shall comply with the provisions of Section 78B-11-109,
54 and shall promptly:

55 (a) seek a response from all necessary parties to the issues raised in the request for
56 advisory opinion;

57 (b) investigate and consider all responses; and

58 (c) issue a written advisory opinion within 15 business days after the appointment of
59 the neutral third party under Subsection (6)(b), unless:

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

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

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

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

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

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

72 (12) ~~[(a)]~~ Subject to Subsection ~~[(12)(d)]~~ (14), if a dispute involving land use law
73 results in the issuance of an advisory opinion described in this section, if the same issue that is
74 the subject of the advisory opinion is subsequently litigated on the same facts and
75 circumstances at issue in the advisory opinion, and if the relevant issue is resolved consistent
76 with the advisory opinion, the substantially prevailing party on that cause of action may collect:

77 (a) reasonable attorney fees and court costs pertaining to the development of that cause
78 of action from the date of the delivery of the advisory opinion to the date of the court's
79 resolution~~[-]; and~~

80 (b) subject to Subsection (13), if the court finds that the opposing party knowingly and
81 intentionally violated the law governing that cause of action, a civil penalty of \$250 per day:

82 (i) beginning on the later of:

83 (A) 30 days after the day on which the advisory opinion was delivered; or

84 (B) the day on which the action was filed; and

85 (ii) ending the day on which the court enters a final judgment.

86 (13) (a) Subsection (12) does not apply unless the resolution described in Subsection
87 (12) is final.

88 (b) A court may not impose a civil penalty under Subsection (12)(b) against or in favor
89 of a party other than the land use applicant or a government entity.

90 ~~[(b)]~~ (14) In addition to any amounts awarded under Subsection (12)~~[(a)]~~, if the dispute
91 described in Subsection (12)~~[(a)]~~ in whole or in part concerns an impact fee, and if the result of
92 the litigation requires that the political subdivision or private entity refund the impact fee in
93 accordance with Section 11-36a-603, the political subdivision or private entity shall refund the
94 impact fee in an amount that is based on the difference between the impact fee paid and what
95 the impact fee should have been if the political subdivision or private entity had correctly
96 calculated the impact fee.

97 ~~[(c)]~~ (15) Nothing in this ~~[Subsection (12)]~~ section is intended to create any new cause
98 of action under land use law.

99 ~~[(d) Subsection (12)(a) does not apply unless the resolution described in Subsection~~
100 ~~(12)(a) is final.]~~

101 ~~[(13)]~~ (16) Unless filed by the local government, a request for an advisory opinion
102 under Section 13-43-205 does not stay the progress of a land use application, the effect of a
103 land use decision, or the condemning entity's occupancy of a property.