

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

77 (i) compensatory damages; and

78 (ii) reasonable attorney fees and court costs pertaining to the development of that cause
79 of action from the date of the delivery of the advisory opinion to the date of the court's
80 resolution.

81 (b) In addition to any amounts awarded under Subsection (12)(a), if the dispute
82 described in Subsection (12)(a) in whole or in part concerns an impact fee, and if the result of
83 the litigation requires that the political subdivision or private entity refund the impact fee in
84 accordance with Section 11-36a-603, the political subdivision or private entity shall refund the
85 impact fee in an amount that is based on the difference between the impact fee paid and what
86 the impact fee should have been if the political subdivision or private entity had correctly
87 calculated the impact fee.

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

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

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

95 Section 2. Section 63G-7-301 is amended to read:

96 **63G-7-301. Waivers of immunity.**

97 (1) (a) Immunity from suit of each governmental entity is waived as to any contractual
98 obligation.

99 (b) Actions arising out of contractual rights or obligations are not subject to the
100 requirements of Sections 63G-7-401, 63G-7-402, 63G-7-403, or 63G-7-601.

101 (c) The Division of Water Resources is not liable for failure to deliver water from a
102 reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development
103 Act, if the failure to deliver the contractual amount of water is due to drought, other natural
104 condition, or safety condition that causes a deficiency in the amount of available water.

105 (2) Immunity from suit of each governmental entity is waived:

106 (a) as to any action brought to recover, obtain possession of, or quiet title to real or
107 personal property;

108 (b) as to any action brought to foreclose mortgages or other liens on real or personal
109 property, to determine any adverse claim on real or personal property, or to obtain an
110 adjudication about any mortgage or other lien that the governmental entity may have or claim
111 on real or personal property;

112 (c) as to any action based on the negligent destruction, damage, or loss of goods,
113 merchandise, or other property while it is in the possession of any governmental entity or
114 employee, if the property was seized for the purpose of forfeiture under any provision of state
115 law;

116 (d) subject to Subsection 63G-7-302(1), as to any action brought under the authority of
117 Utah Constitution, Article I, Section 22, for the recovery of compensation from the
118 governmental entity when the governmental entity has taken or damaged private property for
119 public uses without just compensation;

120 (e) subject to Subsection 63G-7-302(2), as to any action brought to recover attorney

121 fees under Sections [63G-2-405](#) and [63G-2-802](#);

122 (f) for actual damages under Title 67, Chapter 21, Utah Protection of Public Employees
123 Act;

124 (g) as to any action brought to obtain relief from a land use regulation that imposes a
125 substantial burden on the free exercise of religion under Title 63L, Chapter 5, Utah Religious
126 Land Use Act;

127 (h) except as provided in Subsection [63G-7-201\(3\)](#), as to any injury caused by:

128 (i) a defective, unsafe, or dangerous condition of any highway, road, street, alley,
129 crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or
130 (ii) any defective or dangerous condition of a public building, structure, dam, reservoir,
131 or other public improvement;

132 (i) subject to Subsections [63G-7-101\(4\)](#) and [63G-7-201\(4\)](#), as to any injury
133 proximately caused by a negligent act or omission of an employee committed within the scope
134 of employment;

135 (j) as to any action or suit brought under Section [20A-19-301](#) and as to any
136 compensation or expenses awarded under ~~[Section]~~ Subsection [20A-19-301\(5\)](#); ~~[and]~~

137 (k) notwithstanding Subsection [63G-7-101\(4\)](#), as to a claim for an injury resulting from
138 a sexual battery, as provided in Section [76-9-702.1](#), committed:

139 (i) against a student of a public elementary or secondary school, including a charter
140 school; and

141 (ii) by an employee of a public elementary or secondary school or charter school who:

142 (A) at the time of the sexual battery, held a position of special trust, as defined in
143 Section [76-5-404.1](#), with respect to the student;

144 (B) is criminally charged in connection with the sexual battery; and

145 (C) the public elementary or secondary school or charter school knew or in the exercise
146 of reasonable care should have known, at the time of the employee's hiring, to be a sex
147 offender, as defined in Section [77-41-102](#), required to register under Title 77, Chapter 41, Sex
148 and Kidnap Offender Registry, whose status as a sex offender would have been revealed in a
149 background check under Section [53G-11-402](#)~~[;]~~; and

150 (l) as to any claim for compensatory damages, attorney fees, or costs under Subsection
151 [13-43-206\(12\)](#).

152 (3) (a) As used in this Subsection (3):

153 (i) "Appropriate behavior policy" means a policy that:

154 (A) is not less stringent than a model policy, created by the State Board of Education,
155 establishing a professional standard of care for preventing the conduct described in Subsection
156 (3)(a)(i)(D);

157 (B) is adopted by the applicable local education governing body;

158 (C) regulates behavior of a school employee toward a student; and

159 (D) includes a prohibition against any sexual conduct between an employee and a
160 student and against the employee and student sharing any sexually explicit or lewd
161 communication, image, or photograph.

162 (ii) "Local education agency" means:

163 (A) a school district;

164 (B) a charter school; or

165 (C) the Utah Schools for the Deaf and the Blind.

166 (iii) "Local education governing board" means:

167 (A) for a school district, the local school board;

168 (B) for a charter school, the charter school governing board; or

169 (C) for the Utah Schools for the Deaf and the Blind, the state board.

170 (iv) "Public school" means a public elementary or secondary school.

171 (v) "Sexual abuse" means the offense described in Subsection [76-5-404.1\(2\)](#).

172 (vi) "Sexual battery" means the offense described in Section [76-9-702.1](#), considering
173 the term "child" in that section to include an individual under age 18.

174 (b) Notwithstanding Subsection [63G-7-101\(4\)](#), immunity from suit is waived as to a
175 claim against a local education agency for an injury resulting from a sexual battery or sexual
176 abuse committed against a student of a public school by a paid employee of the public school
177 who is criminally charged in connection with the sexual battery or sexual abuse, unless:

178 (i) at the time of the sexual battery or sexual abuse, the public school was subject to an
179 appropriate behavior policy; and

180 (ii) before the sexual battery or sexual abuse occurred, the public school had:

181 (A) provided training on the policy to the employee; and

182 (B) required the employee to sign a statement acknowledging that the employee has

183 read and understands the policy.

184 (4) (a) As used in this Subsection (4):

185 (i) "Higher education institution" means an institution included within the state system
186 of higher education under Section 53B-1-102.

187 (ii) "Policy governing behavior" means a policy adopted by a higher education
188 institution or the State Board of Regents that:

189 (A) establishes a professional standard of care for preventing the conduct described in
190 Subsections (4)(a)(ii)(C) and (D);

191 (B) regulates behavior of a special trust employee toward a subordinate student;

192 (C) includes a prohibition against any sexual conduct between a special trust employee
193 and a subordinate student; and

194 (D) includes a prohibition against a special trust employee and subordinate student
195 sharing any sexually explicit or lewd communication, image, or photograph.

196 (iii) "Sexual battery" means the offense described in Section 76-9-702.1.

197 (iv) "Special trust employee" means an employee of a higher education institution who
198 is in a position of special trust, as defined in Section 76-5-404.1, with a higher education
199 student.

200 (v) "Subordinate student" means a student:

201 (A) of a higher education institution; and

202 (B) whose educational opportunities could be adversely impacted by a special trust
203 employee.

204 (b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a
205 claim for an injury resulting from a sexual battery committed against a subordinate student by a
206 special trust employee, unless:

207 (i) the institution proves that the special trust employee's behavior that otherwise would
208 constitute a sexual battery was:

209 (A) with a subordinate student who was at least 18 years old at the time of the
210 behavior; and

211 (B) with the student's consent; or

212 (ii) (A) at the time of the sexual battery, the higher education institution was subject to
213 a policy governing behavior; and

214 (B) before the sexual battery occurred, the higher education institution had taken steps
215 to implement and enforce the policy governing behavior.