

PROPERTY RIGHTS OMBUDSMAN AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Val L. Peterson

Senate Sponsor: _____

LONG TITLE

General Description:

This bill enacts provisions governing the Office of the Property Rights Ombudsman.

Highlighted Provisions:

This bill:

▸ requires the Office of the Property Rights Ombudsman (office) to annually review certain local government ordinances, policies, and actions for compliance with state law;

▸ allows a person to file a request with the office for an advisory opinion regarding certain condemnation actions;

▸ allows a person to file a request with the office for an advisory opinion to determine if certain local government ordinances, policies, or actions are in compliance with state law;

▸ authorizes a court to award reasonable attorney fees if a local government fails to take timely action; and

▸ makes conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 AMENDS:

29 **13-43-203**, as last amended by Laws of Utah 2018, Chapter 215

30 **13-43-205**, as last amended by Laws of Utah 2014, Chapter 59

31

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

33 Section 1. Section **13-43-203** is amended to read:

34 **13-43-203. Office of the Property Rights Ombudsman -- Duties.**

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

36 (a) develop and maintain expertise in and understanding of takings, eminent domain,
37 and land use law;

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

40 (c) assist state agencies and local governments in developing the guidelines required by
41 Title 63L, Chapter 4, Constitutional Takings Issues Act;

42 (d) at the request of a state agency or local government, assist the state agency or local
43 government, in analyzing actions with potential takings implications or other land use issues;

44 (e) advise real property owners who:

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

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

49 (f) identify state or local government actions that have potential takings implications
50 and, if appropriate, advise those state or local government entities about those implications;

51 (g) provide information to private citizens, civic groups, government entities, and other
52 interested parties about takings, eminent domain, and land use law and their rights, including a
53 right to just compensation, and responsibilities under the takings, eminent domain, or land use
54 laws through seminars and publications, and by other appropriate means;

55 (h) (i) provide the information described in Section **78B-6-505** on the Office of the
56 Property Rights Ombudsman's website in a form that is easily accessible; and

57 (ii) ensure that the information is current; ~~and~~

58 (i) (i) provide education and training regarding:

- 59 (A) the drafting and application of land use laws and regulations; and
60 (B) land use dispute resolution; and
61 (ii) use any money transmitted in accordance with Subsection 15A-1-209(5) to pay for
62 any expenses required to provide the education and training described in Subsection (1)(i)(i),
63 including grants to a land use training organization that:
- 64 (A) the Land Use and Eminent Domain Advisory Board, created in Section 13-43-202,
65 selects and proposes; and
66 (B) the property rights ombudsman and the executive director of the Department of
67 Commerce jointly approve[-]; and
68 (j) (i) annually review for compliance with state law each local government:
69 (A) land use or land development ordinance;
70 (B) land use or land development policy; and
71 (C) written action directing, impacting, or otherwise pertaining to land use or land
72 development, including emails, citations, minutes, or other official declarations; and
73 (ii) provide an annual report based on the findings made under Subsection (1)(j)(i) to
74 the Executive Appropriations Committee no later than October 1.
- 75 (2) (a) Neither the Office of the Property Rights Ombudsman nor its individual
76 attorneys may represent private parties, state agencies, local governments, or any other
77 individual or entity in a legal action that arises from or relates to a matter addressed in this
78 chapter.
- 79 (b) An action by an attorney employed by the Office of the Property Rights
80 Ombudsman, by a neutral third party acting as mediator or arbitrator under Section 13-43-204,
81 or by a neutral third party rendering an advisory opinion under Section 13-43-205 or
82 13-43-206, taken within the scope of the duties set forth in this chapter, does not create an
83 attorney-client relationship between the Office of the Property Rights Ombudsman, or the
84 office's attorneys or appointees, and an individual or entity.
- 85 (3) No member of the Office of the Property Rights Ombudsman nor a neutral third
86 party rendering an advisory opinion under Section 13-43-205 or 13-43-206, may be compelled
87 to testify in a civil action filed concerning the subject matter of any review, mediation, or
88 arbitration by, or arranged through, the office.
- 89 (4) (a) Except as provided in Subsection (4)(b), evidence of a review by the Office of

90 the Property Rights Ombudsman and the opinions, writings, findings, and determinations of the
91 Office of the Property Rights Ombudsman are not admissible as evidence in a judicial action.

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

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

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

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

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

99 Section 2. Section 13-43-205 is amended to read:

100 **13-43-205. Advisory opinion.**

101 (1) A local government, private entity, or a potentially aggrieved person may, in
102 accordance with Section 13-43-206, request a written advisory opinion:

103 (a) from a neutral third party to determine compliance with:

104 (i) Section 10-9a-505.5 and Sections 10-9a-507 through 10-9a-511;

105 (ii) Section 17-27a-505.5 and Sections 17-27a-506 through 17-27a-510; and

106 (iii) Title 11, Chapter 36a, Impact Fees Act; and

107 (b) at any time before:

108 (i) a final decision on a land use application by a local appeal authority under Title 11,
109 Chapter 36a, Impact Fees Act, or Section 10-9a-708 or 17-27a-708;

110 (ii) the deadline for filing an appeal with the district court under Title 11, Chapter 36a,
111 Impact Fees Act, or Section 10-9a-801 or 17-27a-801, if no local appeal authority is designated
112 to hear the issue that is the subject of the request for an advisory opinion; or

113 (iii) the enactment of an impact fee, if the request for an advisory opinion is a request
114 to review and comment on a proposed impact fee facilities plan or a proposed impact fee
115 analysis as defined in Section 11-36a-102.

116 (2) A [~~private property owner~~] person may, in accordance with Section 13-43-206,
117 request a written advisory opinion from a neutral third party to determine if a condemning
118 entity:

119 (a) is in occupancy of the owner's property;

120 (b) is occupying the property:

121 (i) for a public use authorized by law; and
122 (ii) without colorable legal or equitable authority; and
123 (c) continues to occupy the property without the owner's consent, the occupancy would
124 constitute a taking of private property for a public use without just compensation.

125 (3) An advisory opinion issued under Subsection (2) may justify an award of attorney
126 fees against a condemning entity in accordance with Section 13-43-206 only if the court finds
127 that the condemning entity:

128 (a) does not have a colorable claim or defense for the entity's actions; and
129 (b) continued occupancy without payment of just compensation and in disregard of the
130 advisory opinion.

131 (4) (a) A person may, in accordance with Section 13-43-206, request a written advisory
132 opinion from a neutral third party to determine if a local government's ordinance, policy, or
133 action, as described in Subsection 13-43-203(1)(j)(i) is not consistent with state law.

134 (b) An advisory opinion issued under Subsection (4)(a) may justify an award by the
135 court of reasonable attorney fees against the local government, if the local government failed to
136 cure the offending ordinance, policy, or action no later than 30 days after the date the advisory
137 opinion is issued.