

Representative Anthony E. Loubet proposes the following substitute bill:

PROPERTY RIGHTS OMBUDSMAN AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kera Birkeland

Senate Sponsor: Lincoln Fillmore

LONG TITLE

General Description:

This bill modifies the Property Rights Ombudsman Act.

Highlighted Provisions:

This bill:

- ▶ clarifies that a party who prevails in court on an issue that the Office of the Property Rights Ombudsman previously decided in the party's favor is entitled to an award of attorney fees;

- ▶ provides that the party described above may be entitled to collect a civil penalty and consequential damages; and

- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

13-43-206, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 4



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

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

28 **13-43-206. Advisory opinion -- Process.**

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

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

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

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

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

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

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

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

40 (c) deliver notice to all necessary parties.

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

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

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

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

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

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

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

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

55 (b) investigate and consider all responses; and

56 (c) issue a written advisory opinion within 15 business days after the appointment of

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

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

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

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

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

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

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

70 (12) Subject to Subsection (13), if the Office of the Property Rights Ombudsman issues
71 an advisory opinion described in this section, and if the same issue that is the subject of the
72 advisory opinion is subsequently litigated in court on a cause of action alleging the same facts
73 and circumstances that are at issue in the advisory opinion, and if the court resolves the issue
74 consistent with the advisory opinion, the court shall award the substantially prevailing party:

75 (a) reasonable attorney fees and court costs pertaining to the development of the cause
76 of action from the date the Office of the Property Rights Ombudsman delivers the advisory
77 opinion to the date of the court's resolution; and

78 (b) if the court finds that the opposing party knowingly and intentionally violated the
79 law governing the cause of action:

80 (i) a civil penalty of \$250 per day; and

81 (ii) consequential damages;

82 ~~[(12) Subject to Subsection (13), if a dispute involving land use law results in the~~
83 ~~issuance of an advisory opinion described in this section, if the same issue that is the subject of~~
84 ~~the advisory opinion is subsequently litigated on the same facts and circumstances at issue in~~
85 ~~the advisory opinion, and if the relevant issue is resolved consistent with the advisory opinion,~~
86 ~~the substantially prevailing party on that cause of action may collect:]~~

87 ~~[(a) reasonable attorney fees and court costs pertaining to the development of that~~

88 ~~cause of action from the date of the delivery of the advisory opinion to the date of the court's~~
89 ~~resolution; and]~~

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

92 ~~[(i) beginning on the later of:]~~

93 ~~[(A) 30 days after the day on which the advisory opinion was delivered; or]~~

94 ~~[(B) the day on which the action was filed; and]~~

95 ~~[(ii) ending the day on which the court enters a final judgment.]~~

96 (13) (a) Subsection (12) does not apply unless the resolution described in Subsection
97 ~~[(12)]~~ (12)(a) is final.

98 (b) ~~[A court may not impose a civil penalty under Subsection (12)(b) against or in~~
99 ~~favor of a party other than the land use applicant or a government entity.]~~ The civil penalty
100 described in Subsection (12)(b)(i):

101 (i) begins to accrue on the later of:

102 (A) 30 days after the day on which the Office of the Property Rights Ombudsman
103 delivers the advisory opinion; or

104 (B) the day on which the substantially prevailing party or opposing party filed the
105 action in court; and

106 (ii) ends the day on which the court enters a final judgment.

107 (c) A court may not impose a civil penalty against a party under Subsection (12)(b)(i)
108 unless the party is the land use applicant or a government entity.

109 (14) In addition to any amounts awarded under Subsection (12), if the dispute
110 described in Subsection (12) in whole or in part concerns an impact fee, and if the result of the
111 litigation requires that the political subdivision or private entity refund the impact fee in
112 accordance with Section 11-36a-603, the political subdivision or private entity shall refund the
113 impact fee in an amount that is based on the difference between the impact fee paid and what
114 the impact fee should have been if the political subdivision or private entity had correctly
115 calculated the impact fee.

116 (15) Nothing in this section is intended to create [any] a new cause of action under land
117 use law.

118 (16) Unless filed by the local government, a request for an advisory opinion under

119 Section 13-43-205 does not stay the progress of a land use application, the effect of a land use
120 decision, or the condemning entity's occupancy of a property.

121 Section 2. **Effective date.**

122 This bill takes effect on May 1, 2024.