

1 **PROPERTY RIGHTS OMBUDSMAN AMENDMENTS**

2 2024 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Kera Birkeland**

5 Senate Sponsor: \_\_\_\_\_

6 

---

---

**LONG TITLE**

7 **General Description:**

8 This bill modifies the Property Rights Ombudsman Act.

9 **Highlighted Provisions:**

10 This bill:

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

14 ▶ provides that the party described above ~~is entitled to~~ **may be entitled to a civil**  
15 **penalty and** ~~consequential~~ consequential damages; and

16 ▶ makes technical and conforming changes.

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **13-43-206**, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 4

24 

---

---

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

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

26 **13-43-206. Advisory opinion -- Process.**



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

59 time to render an opinion, which may not exceed 30 calendar days.

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

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

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

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

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

74 (a) ~~H→~~ shall award the substantially prevailing party:

74a (i) ~~←H~~ reasonable attorney fees and court costs pertaining to the development of the cause  
75 of action from the date the Office of the Property Rights Ombudsman delivers the advisory  
76 opinion to the date of the court's resolution; ~~H→~~ and ~~←H~~

77 ~~H→~~ [(b) consequential damages; and

78 ~~←H~~ (ii) ~~←H~~ if the court finds that the opposing party knowingly and intentionally violated  
78a the  
79 law governing the cause of action, a civil penalty of \$250 per day ~~H→~~ [;] ; and

79a (b) may award the substantially prevailing party consequential damages. ~~←H~~

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

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

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

90 ~~[(i) beginning on the later of:]~~  
 91 ~~[(A) 30 days after the day on which the advisory opinion was delivered; or]~~  
 92 ~~[(B) the day on which the action was filed; and]~~  
 93 ~~[(ii) ending the day on which the court enters a final judgment.]~~  
 94 (13) (a) Subsection (12) does not apply unless the resolution described in Subsection  
 95 ~~[(12)]~~ (12)(a) is final.

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

99 (i) begins to accrue on the later of:  
 100 (A) 30 days after the day on which the Office of the Property Rights Ombudsman  
 101 delivers the advisory opinion; or  
 102 (B) the day on which the substantially prevailing party or opposing party filed the  
 103 action in court; and  
 104 (ii) ends the day on which the court enters a final judgment.

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

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

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

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

119 Section 2. **Effective date.**  
 120 This bill takes effect on May 1, 2024.