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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:

- provides 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 may be entitled to an award of attorney fees;
- provides that the party described above may be entitled to collect a civil penalty and consequential damages in certain circumstances; 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

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

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

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

- (1) A request for an advisory opinion under Section 13-43-205 shall be:
 - (a) filed with the Office of the Property Rights Ombudsman; and
 - (b) accompanied by a filing fee of \$150.
- (2) The Office of the Property Rights Ombudsman may establish policies providing for

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

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

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

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

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

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

78 (ii) consequential damages;

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

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

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

- 97 ~~of a party other than the land use applicant or a government entity.]~~ The civil penalty
98 described in Subsection (12)(b)(i):
- 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)(b)(i)
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 described in
108 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
111 refund the impact fee in an amount that is based on the difference between the impact
112 fee paid and what the impact fee should have been if the political subdivision or private
113 entity had correctly calculated the impact fee.
- 114 (15) Nothing in this section is intended to create [~~any~~] a new cause of action under land use
115 law.
- 116 (16) Unless filed by the local government, a request for an advisory opinion under Section
117 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.