

UTAH RELIGIOUS LAND USE ACT

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: David L. Thomas

LONG TITLE

General Description:

This bill restricts government entities from applying land use regulations that impose a substantial burden on a person's free exercise of religion.

Highlighted Provisions:

This bill:

- ▶ restricts government entities from applying or enacting land use regulations that impose a substantial burden on a person's free exercise of religion unless certain exemptions apply;
- ▶ permits government to impose land use regulations that substantially burden a person's free exercise of religion only where the government can show that the land use regulation is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest;
- ▶ authorizes a person to seek injunctive or declaratory relief if government fails to remedy a substantial burden imposed on religious expression by a land use regulation;
- ▶ permits a person to use the defense that a government entity's action creates a substantial burden on the free exercise of religion in judicial and administrative hearings;
- ▶ requires persons claiming that a land use regulation substantially burdens their free exercise of religion to file a notice of claim with the governmental entity;
- ▶ provides government entities with the opportunity to remedy the substantial burden before being subject to injunction or declaratory relief; and
- ▶ waives government immunity for cases brought to enforce or obtain remedies for

violation of this chapter.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63-30d-301, as enacted by Chapter 267, Laws of Utah 2004

78-12-29, as last amended by Chapter 241, Laws of Utah 2001

ENACTS:

63-90b-101, Utah Code Annotated 1953

63-90b-102, Utah Code Annotated 1953

63-90b-201, Utah Code Annotated 1953

63-90b-301, Utah Code Annotated 1953

63-90b-302, Utah Code Annotated 1953

63-90b-401, Utah Code Annotated 1953

63-90b-402, Utah Code Annotated 1953

63-90b-403, Utah Code Annotated 1953

Uncodified Material Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 1. Section **63-30d-301** is amended to read:

63-30d-301. Waivers of immunity -- Exceptions.

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

(b) Actions arising out of contractual rights or obligations are not subject to the requirements of Sections 63-30d-401, 63-30d-402, 63-30d-403, or 63-30d-601.

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

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

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

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

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

(d) subject to Subsection 63-30d-302(1), as to any action brought under the authority of Article I, Section 22, of the Utah Constitution, for the recovery of compensation from the governmental entity when the governmental entity has taken or damaged private property for public uses without just compensation;

(e) subject to Subsection 63-30d-302(2), as to any action brought to recover attorneys' fees under Sections 63-2-405 and 63-2-802; ~~[or]~~

(f) for actual damages under Title 67, Chapter 21, ~~[Utah's]~~ Utah Protection of Public Employees Act~~[-]; or~~

(g) as to any action brought to obtain relief from a land use regulation that imposes a substantial burden on the free exercise of religion under Title 63, Chapter 90b, Utah Religious Land Use Act.

(3) (a) Except as provided in Subsection (3)(b), immunity from suit of each governmental entity is waived as to any injury caused by:

(i) a defective, unsafe, or dangerous condition of any highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or

(ii) any defective or dangerous condition of a public building, structure, dam, reservoir, or other public improvement.

(b) Immunity is not waived if the injury arises out of, in connection with, or results from:

(i) a latent dangerous or latent defective condition of any highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or

(ii) a latent dangerous or latent defective condition of any public building, structure, dam, reservoir, or other public improvement.

(4) Immunity from suit of each governmental entity is waived as to any injury proximately caused by a negligent act or omission of an employee committed within the scope of employment.

(5) Immunity is not waived under Subsections (3) and (4) if the injury arises out of, in connection with, or results from:

(a) the exercise or performance, or the failure to exercise or perform, a discretionary function, whether or not the discretion is abused;

(b) assault, battery, false imprisonment, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of mental anguish, or violation of civil rights;

(c) the issuance, denial, suspension, or revocation of, or by the failure or refusal to issue, deny, suspend, or revoke, any permit, license, certificate, approval, order, or similar authorization;

(d) a failure to make an inspection or by making an inadequate or negligent inspection;

(e) the institution or prosecution of any judicial or administrative proceeding, even if malicious or without probable cause;

(f) a misrepresentation by an employee whether or not it is negligent or intentional;

(g) riots, unlawful assemblies, public demonstrations, mob violence, and civil disturbances;

- (h) the collection of and assessment of taxes;
- (i) the activities of the Utah National Guard;
- (j) the incarceration of any person in any state prison, county or city jail, or other place of legal confinement;
- (k) any natural condition on publicly owned or controlled lands, any condition existing in connection with an abandoned mine or mining operation, or any activity authorized by the School and Institutional Trust Lands Administration or the Division of Forestry, Fire, and State Lands;
- (l) research or implementation of cloud management or seeding for the clearing of fog;
- (m) the management of flood waters, earthquakes, or natural disasters;
- (n) the construction, repair, or operation of flood or storm systems;
- (o) the operation of an emergency vehicle, while being driven in accordance with the requirements of Section 41-6-14;
- (p) the activities of:
 - (i) providing emergency medical assistance;
 - (ii) fighting fire;
 - (iii) regulating, mitigating, or handling hazardous materials or hazardous wastes;
 - (iv) emergency evacuations;
 - (v) transporting or removing injured persons to a place where emergency medical assistance can be rendered or where the person can be transported by a licensed ambulance service; or
 - (vi) intervening during dam emergencies;
- (q) the exercise or performance, or the failure to exercise or perform, any function pursuant to Title 73, Chapter 10, Board of Water Resources - Division of Water Resources; or
- (r) unauthorized access to government records, data, or electronic information systems by any person or entity.

Section 2. Section **63-90b-101** is enacted to read:

CHAPTER 90b. UTAH RELIGIOUS LAND USE ACT

Part 1. General Provisions

63-90b-101. Title.

This chapter is known as the "Utah Religious Land Use Act."

Section 3. Section **63-90b-102** is enacted to read:

63-90b-102. Definitions.

As used in this chapter:

(1) "Free exercise of religion" means an act or refusal to act that is substantially motivated by sincere religious belief, whether or not the act or refusal is compulsory or central to a larger system of religious belief, and includes the use, building, or conversion of real property for the purpose of religious exercise.

(2) "Government entity" means the state, a county, a municipality, a higher education institution, a special district, any other political subdivision of the state, or any administrative subunit of any of them.

(3) "Land use regulation" means any state or local law or ordinance, whether statutory or otherwise, that limits or restricts a person's use or development of land or a structure affixed to land.

(4) "Person" means any individual, partnership, corporation, or other legal entity that owns an interest in real property.

Section 4. Section **63-90b-201** is enacted to read:

Part 2. Legal Standard**63-90b-201. Protection of land use as religious exercise.**

(1) Except as provided in Subsection (2), a government entity may not impose or implement a land use regulation in a manner that imposes a substantial burden on a person's free exercise of religion.

(2) A government entity may impose or implement a land use regulation in a manner that imposes a substantial burden on a person's free exercise of religion if the government can establish that the imposition of the burden on that person:

(a) is in furtherance of a compelling governmental interest; and

(b) is the least restrictive means of furthering that compelling governmental interest.

(3) A government entity that meets the requirements of Subsection (2) need not separately prove that the remedy and penalty provisions of the land use regulation are the least restrictive means to ensure compliance or to punish the failure to comply.

(4) This act shall not impair the ability of local government to impose costs and fees reasonably necessary to mitigate the off-site impacts of development.

Section 5. Section **63-90b-301** is enacted to read:

Part 3. Remedies and Procedures

63-90b-301. Remedies.

(1) A person whose free exercise of religion has been substantially burdened by a government entity in violation of Section 63-90b-201 may bring an action in the district court of the county where the largest portion of the property subject to the land use regulation is located.

(2) Any person who asserts a claim or defense against a government entity under this chapter may request:

(a) declaratory relief;

(b) temporary or permanent injunctive relief to prevent the threatened or continued violation; or

(c) a combination of declaratory and injunctive relief.

(3) A person may not bring an action under this chapter against an individual, other than an action against an individual acting in the individual's official capacity as an officer of a government entity.

Section 6. Section **63-90b-302** is enacted to read:

63-90b-302. Notice of claim -- Government's right to accommodate.

(1) A person may not bring an action under Section 63-90b-301 unless, 60 days before bringing the action, the person sends written notice of the intent to bring an action.

(2) The notice shall be addressed to the government entity imposing the land use regulation, and shall be prepared and delivered according to the requirements of Subsection 63-30d-401(3).

(3) Mailing of the notice required by Subsection (1) tolls the limitation period for

bringing an action under this chapter for a period of 75 days, starting on the day the notice was mailed.

(4) Notwithstanding Subsection (1), a person may bring an action under Section 63-90b-301 before the expiration of the 60-day notice period if:

(a) the imposition of a substantial burden on the person's free exercise of religion by the land use regulation is imminent; and

(b) the person was not informed of and did not otherwise have knowledge of the land use regulation in time to reasonably provide 60 days notice.

(5) (a) A government entity provided with the notice required by Subsection (2) may remedy the substantial burden on the person's free exercise of religion:

(i) before the expiration of the 60-day notice period; or

(ii) in the case of an action properly brought according to Subsection (4), before the adjudication of a court hearing on the action.

(b) Nothing in this section prevents a government entity from providing a remedy after these time periods.

(6) The court may not award compensatory damages, attorney's fees, costs, or other expenses to a person if the substantial burden has been cured by a remedy implemented by the government entity according to Subsection (5)(a).

Section 7. Section **63-90b-401** is enacted to read:

Part 4. Application

63-90b-401. Burden on exercise of religion as defense.

A person whose free exercise of religion has been substantially burdened in violation of this chapter may assert that violation as a defense in a judicial or administrative proceeding without regard to whether the proceeding is brought in the name of the state or by any other person.

Section 8. Section **63-90b-402** is enacted to read:

63-90b-402. Establishment clause unaffected.

(1) This chapter does not authorize government to burden a person's free exercise of

religion.

(2) The protection of religious freedom afforded by this chapter is in addition to the protections provided under federal law and the constitutions of Utah and the United States.

(3) Nothing in this chapter may be construed to affect, interpret, or in any way address that portion of the First Amendment to the United States Constitution prohibiting laws respecting an establishment of religion.

Section 9. Section **63-90b-403** is enacted to read:

63-90b-403. Application to certain cases.

This chapter does not affect and is not intended to affect the authority of government entities to adopt or apply land use regulations that do not involve the free exercise of religion.

Section 10. Section **78-12-29** is amended to read:

78-12-29. Within one year.

An action may be brought within one year:

- (1) for liability created by the statutes of a foreign state;
- (2) upon a statute for a penalty or forfeiture where the action is given to an individual, or to an individual and the state, except when the statute imposing it prescribes a different limitation;
- (3) upon a statute, or upon an undertaking in a criminal action, for a forfeiture or penalty to the state;
- (4) for libel, slander, assault, battery, false imprisonment, or seduction;
- (5) against a sheriff or other officer for the escape of a prisoner arrested or imprisoned upon either civil or criminal process;
- (6) against a municipal corporation for damages or injuries to property caused by a mob or riot;
- (7) on a claim for relief or a cause of action under the following sections of Title 25, Chapter 6, Uniform Fraudulent Transfer Act:
 - (a) Subsection 25-6-5(1)(a), which in specific situations limits the time for action to four years, under Section 25-6-10; or

(b) Subsection 25-6-6(2); [~~or~~]

(8) except as otherwise expressly provided by statute, against a county legislative body or a county executive to challenge a decision of the county legislative body or county executive, respectively[~~;~~]; ~~or~~

(9) on a claim for relief or a cause of action under Title 63, Chapter 90b, Utah Religious Land Use Act.

Section 11. **Application of act.**

This chapter shall apply to all causes of action filed after the effective date of this bill and to all land use regulations enacted after the effective date of this bill.