

1 **UTAH RELIGIOUS LAND USE ACT**

2 2005 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: David L. Thomas**

5

LONG TITLE

6 **General Description:**

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

9 **Highlighted Provisions:**

10 This bill:

- 11 ▶ restricts government entities from applying or enacting land use regulations that
12 impose a substantial burden on a person's free exercise of religion unless certain
13 exemptions apply;
- 14 ▶ permits government to impose land use regulations that substantially burden a
15 person's free exercise of religion only where the government can show that the land
16 use regulation is in furtherance of a compelling governmental interest and is the
17 least restrictive means of furthering that interest;
- 18 ▶ authorizes a person to seek injunctive or declaratory relief, compensatory damages,
19 and costs if government fails to remedy a substantial burden imposed on religious
20 expression by a land use regulation;
- 21 ▶ permits a person to use the defense that a governmental entity's action creates a
22 substantial burden on the free exercise of religion in judicial and administrative
23 hearings;
- 24 ▶ requires persons claiming that a land use regulation substantially burdens their free
25 exercise of religion to file a notice of claim with the governmental entity;
- 26 ▶ provides government entities with the opportunity to remedy the substantial burden
27



28 before being subject to damages or court orders;

29 ▶ waives governmental immunity for cases brought to enforce or obtain remedies for
30 violation of this chapter; and

31 ▶ permits a court to order the losing party to pay the prevailing party's reasonable
32 attorney's fees and costs.

33 **Monies Appropriated in this Bill:**

34 None

35 **Other Special Clauses:**

36 None

37 **Utah Code Sections Affected:**

38 AMENDS:

39 **63-30d-301**, as enacted by Chapter 267, Laws of Utah 2004

40 **78-12-29**, as last amended by Chapter 241, Laws of Utah 2001

41 ENACTS:

42 **63-90b-101**, Utah Code Annotated 1953

43 **63-90b-102**, Utah Code Annotated 1953

44 **63-90b-201**, Utah Code Annotated 1953

45 **63-90b-301**, Utah Code Annotated 1953

46 **63-90b-302**, Utah Code Annotated 1953

47 **63-90b-401**, Utah Code Annotated 1953

48 **63-90b-402**, Utah Code Annotated 1953

49 **63-90b-403**, Utah Code Annotated 1953

50 **Uncodified Material Affected:**

51 ENACTS UNCODIFIED MATERIAL



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

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

55 **63-30d-301. Waivers of immunity -- Exceptions.**

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

58 (b) Actions arising out of contractual rights or obligations are not subject to the

59 requirements of Sections 63-30d-401, 63-30d-402, 63-30d-403, or 63-30d-601.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

117 (h) the collection of and assessment of taxes;

118 (i) the activities of the Utah National Guard;

119 (j) the incarceration of any person in any state prison, county or city jail, or other place
120 of legal confinement;

121 (k) any natural condition on publicly owned or controlled lands, any condition existing
122 in connection with an abandoned mine or mining operation, or any activity authorized by the
123 School and Institutional Trust Lands Administration or the Division of Forestry, Fire, and State
124 Lands;

125 (l) research or implementation of cloud management or seeding for the clearing of fog;

126 (m) the management of flood waters, earthquakes, or natural disasters;

127 (n) the construction, repair, or operation of flood or storm systems;

128 (o) the operation of an emergency vehicle, while being driven in accordance with the
129 requirements of Section 41-6-14;

130 (p) the activities of:

131 (i) providing emergency medical assistance;

132 (ii) fighting fire;

133 (iii) regulating, mitigating, or handling hazardous materials or hazardous wastes;

134 (iv) emergency evacuations;

135 (v) transporting or removing injured persons to a place where emergency medical
136 assistance can be rendered or where the person can be transported by a licensed ambulance
137 service; or

138 (vi) intervening during dam emergencies;

139 (q) the exercise or performance, or the failure to exercise or perform, any function
140 pursuant to Title 73, Chapter 10, Board of Water Resources - Division of Water Resources; or

141 (r) unauthorized access to government records, data, or electronic information systems
142 by any person or entity.

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

144 **CHAPTER 90b. UTAH RELIGIOUS LAND USE ACT**

145 **Part 1. General Provisions**

146 **63-90b-101. Title.**

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

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

149 **63-90b-102. Definitions.**

150 As used in this chapter:

151 (1) "Free exercise of religion" means an act or refusal to act that is substantially

152 motivated by sincere religious belief, whether or not the act or refusal is compulsory or central
153 to a larger system of religious belief.

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

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

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

161 **Part 2. Legal Standard**

162 **63-90b-201. Protection of land use as religious exercise.**

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

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

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

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

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

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

175 **Part 3. Remedies and Procedures**

176 **63-90b-301. Remedies.**

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

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

- 183 (i) declaratory relief;
184 (ii) temporary or permanent injunctive relief to prevent the threatened or continued
185 violation; or
186 (iii) a combination of declaratory and injunctive relief.
187 (b) Any person who successfully obtains relief against a government entity under
188 Subsection (2)(a) may recover compensatory damages for pecuniary and nonpecuniary losses.
189 (c) The prevailing party in an action brought under this chapter may recover its court
190 costs and reasonable attorney's fees incurred.

191 (3) Compensatory damages awarded under Subsection (2)(b) may not exceed \$100,000
192 for each entire, distinct controversy, without regard to the number of members or other persons
193 within a religious group who claim injury as a result of the government's exercise of
194 governmental authority.

195 (4) A person may not recover punitive or exemplary damages under this chapter.

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

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

200 **63-90b-302. Notice of claim -- Government's right to accommodate.**

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

203 (2) The notice shall be addressed to the government entity imposing the land use
204 regulation, and shall be prepared and delivered according to the requirements of Subsection
205 63-30d-401(3).

206 (3) Mailing of the notice required by Subsection (1) tolls the limitation period for
207 bringing an action under this chapter for a period of 75 days, starting on the day the notice was
208 mailed.

209 (4) Notwithstanding Subsection (1), a person may bring an action under Section
210 63-90b-301 before the expiration of the 60-day notice period if:

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

213 (b) the person was not informed of and did not otherwise have knowledge of the land

214 use regulation in time to reasonably provide 60 days notice.

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

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

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

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

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

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

226 **Part 4. Application**

227 **63-90b-401. Burden on exercise of religion as defense.**

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

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

233 **63-90b-402. Establishment clause unaffected.**

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

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

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

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

242 **63-90b-403. Application to certain cases.**

243 (1) This chapter does not restrict, and is not intended to restrict, a government entity's
244 authority to adopt or apply laws and regulations concerning zoning, land use planning, traffic

245 management, urban nuisance, historic preservation, or other land use regulations.

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

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

250 **78-12-29. Within one year.**

251 An action may be brought within one year:

252 (1) for liability created by the statutes of a foreign state;

253 (2) upon a statute for a penalty or forfeiture where the action is given to an individual,
254 or to an individual and the state, except when the statute imposing it prescribes a different
255 limitation;

256 (3) upon a statute, or upon an undertaking in a criminal action, for a forfeiture or
257 penalty to the state;

258 (4) for libel, slander, assault, battery, false imprisonment, or seduction;

259 (5) against a sheriff or other officer for the escape of a prisoner arrested or imprisoned
260 upon either civil or criminal process;

261 (6) against a municipal corporation for damages or injuries to property caused by a
262 mob or riot;

263 (7) on a claim for relief or a cause of action under the following sections of Title 25,
264 Chapter 6, Uniform Fraudulent Transfer Act:

265 (a) Subsection 25-6-5(1)(a), which in specific situations limits the time for action to
266 four years, under Section 25-6-10; or

267 (b) Subsection 25-6-6(2); ~~or~~

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

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

273 Section 11. **Application of act.**

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

Legislative Review Note
as of 12-7-04 7:38 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0106

Utah Religious Land Use Act

17-Jan-05

12:32 PM

State Impact

Any fiscal impact on state and local governmental entities, will be dependent on the number of actions taken as allowed under the provisions of this bill.

Individual and Business Impact

This bill could have a fiscal impact on individuals relating to certain land use regulations, and the awarding of "reasonable" attorney's fees and cost to the prevailing party in court actions.

Office of the Legislative Fiscal Analyst