

Senator Dennis E. Stowell proposes the following substitute bill:

WATER RIGHTS - OMBUDSMAN

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Dennis E. Stowell

House Sponsor: James R. Gowans

LONG TITLE

General Description:

This bill requires the Office of the Property Rights Ombudsman to provide information concerning water rights to water rights owners.

Highlighted Provisions:

This bill:

- requires the Office of the Property Rights Ombudsman to provide information concerning water rights and proceedings concerning water rights to certain water right owners;

- requires a fee to be established and collected for use of the Office of the Property Rights Ombudsman by a water right owner; and

- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

13-43-203, as enacted by Laws of Utah 2006, Chapter 258



26 ENACTS:

27 **13-43-207**, Utah Code Annotated 1953

28

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

30 Section 1. Section **13-43-203** is amended to read:

31 **13-43-203. Office of the Property Rights Ombudsman -- Duties.**

32 (1) The Office of the Property Rights Ombudsman shall:

33 (a) develop and maintain expertise in and understanding of takings, eminent domain,
34 and land use law;

35 (b) assist state agencies and local governments in developing the guidelines required by
36 Title 63, Chapter 90a, Constitutional Taking Issues;

37 (c) at the request of a state agency or local government, assist the state agency or local
38 government, in analyzing actions with potential takings implications or other land use issues;

39 (d) advise real property owners who have a legitimate potential or actual takings claim
40 against a state or local government entity or have questions about takings, eminent domain, and
41 land use law;

42 (e) identify state or local government actions that have potential takings implications
43 and, if appropriate, advise those state or local government entities about those implications;

44 [~~and~~]

45 (f) provide information to private citizens, civic groups, government entities, and other
46 interested parties about takings, eminent domain, and land use law and their rights and
47 responsibilities under the takings, eminent domain, or land use laws through seminars and
48 publications, and by other appropriate means[:]; and

49 (g) provide information concerning water rights and administrative and judicial
50 proceedings concerning water rights to a water right owner of 50 acre-feet or less.

51 (2) The Office of the Property Rights Ombudsman may not represent private property
52 owners, state agencies, or local governments in court or in adjudicative proceedings under Title
53 63, Chapter 46b, Administrative Procedures Act.

54 (3) No member of the Office of the Property Rights Ombudsman nor a neutral third
55 party rendering an advisory opinion under Section 13-43-205 or 13-43-206, may be compelled
56 to testify in a civil action filed concerning the subject matter of any review, mediation, or

57 arbitration by, or arranged through, the office.

58 (4) (a) Except as provided in Subsection (4)(b), evidence of a review by the Office of
59 the Property Rights Ombudsman and the opinions, writings, findings, and determinations of the
60 Office of the Property Rights Ombudsman are not admissible as evidence in a judicial action.

61 (b) Subsection (4)(a) does not apply to:

62 (i) actions brought under authority of Title [78] 78A, Chapter [6] 8, Small Claims
63 Courts;

64 (ii) a judicial confirmation or review of the arbitration itself as authorized in Title [78]
65 78B, Chapter [31a] 11, Utah Uniform Arbitration Act;

66 (iii) actions for de novo review of an arbitration award or issue brought under the
67 authority of Subsection 13-43-204(3)(a)(i); or

68 (iv) advisory opinions provided for in Sections 13-43-205 and 13-43-206.

69 Section 2. Section **13-43-207** is enacted to read:

70 **13-43-207. Fee for water right owner.**

71 (1) A water right owner seeking information from the Office of the Property Rights
72 Ombudsman under Section 13-43-203 shall pay a fee established in accordance with
73 Subsection (2).

74 (2) The Office of the Property Rights Ombudsman shall establish a fee in accordance
75 with Section 63-38-3.2 in a manner designed to recover from all water right owners seeking
76 information under Section 13-43-203 the cost of employing an attorney to provide the
77 information.

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Fiscal Note

2008 General Session
State of Utah

State Impact

Enactment of this bill will require an additional appropriation from the Commerce Service Fund of \$300,600 in FY 2009 and \$295,000 in FY 2010 in order for the Department of Commerce to provide information concerning water rights to water right owners. This bill will generate additional revenue in FY 2009 of \$150,300 and \$147,500 in FY 2010. The net impact will reduce the transfer to the General Fund by \$150,300 in FY 2009 and \$147,500 in FY 2010.

| | <u>FY 2008</u> <u>Approp.</u> | <u>FY 2009</u> <u>Approp.</u> | <u>FY 2010</u> <u>Approp.</u> | <u>FY 2008</u> <u>Revenue</u> | <u>FY 2009</u> <u>Revenue</u> | <u>FY 2010</u> <u>Revenue</u> |
|-----------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|
| General Fund | \$0 | \$0 | \$0 | \$0 | (\$150,300) | (\$147,500) |
| Commerce Service Fund | \$0 | \$300,600 | \$295,000 | \$0 | \$150,300 | \$147,500 |
| Total | \$0 | \$300,600 | \$295,000 | \$0 | \$0 | \$0 |

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals. Businesses and local governments may be impacted due to increased requirements to respond to inquiries.