

HB0273S01 compared with HB0273

~~{deleted text}~~ shows text that was in HB0273 but was deleted in HB0273S01.

inserted text shows text that was not in HB0273 but was inserted into HB0273S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Val L. Peterson proposes the following substitute bill:

PROPERTY RIGHTS OMBUDSMAN AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Val L. Peterson

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Property Rights Ombudsman Act.

Highlighted Provisions:

This bill:

- ▶ provides that in a court action involving a dispute related to land use~~{law}~~, the substantially prevailing party may recover ~~{compensatory damages}~~a penalty if~~{}~~:
 - the court resolves the dispute consistent with an advisory opinion issued on the same facts and circumstances;~~{~~
- ▶ ~~waives governmental immunity for a monetary award authorized by the Property Rights Ombudsman Act}~~ and
 - the opposing party knowingly and intentionally violated the law; and
- ▶ makes technical and conforming changes.

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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 2019, Chapter 112

~~{ **63G-7-301**, as last amended by Laws of Utah 2019, Chapters 229 and 248~~

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 partial fee waivers for a person who is financially unable to pay the entire fee.
- (3) A person requesting an advisory opinion need not exhaust administrative remedies, including remedies described under Section 10-9a-801 or 17-27a-801, before requesting an advisory opinion.
- (4) The Office of the Property Rights Ombudsman shall:
 - (a) deliver notice of the request to opposing parties indicated in the request;
 - (b) inquire of all parties if there are other necessary parties to the dispute; and
 - (c) deliver notice to all necessary parties.
- (5) If a governmental entity is an opposing party, the Office of the Property Rights Ombudsman shall deliver the request in the manner provided for in Section 63G-7-401.
- (6) (a) The Office of the Property Rights Ombudsman shall promptly determine if the parties can agree to a neutral third party to issue an advisory opinion.
 - (b) If no agreement can be reached within four business days after notice is delivered pursuant to Subsections (4) and (5), the Office of the Property Rights Ombudsman shall appoint a neutral third party to issue an advisory opinion.

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(7) All parties that are the subject of the request for advisory opinion shall:

- (a) share equally in the cost of the advisory opinion; and
- (b) provide financial assurance for payment that the neutral third party requires.

(8) The neutral third party shall comply with the provisions of Section 78B-11-109, and shall promptly:

(a) seek a response from all necessary parties to the issues raised in the request for advisory opinion;

(b) investigate and consider all responses; and

(c) issue a written advisory opinion within 15 business days after the appointment of the neutral third party under Subsection (6)(b), unless:

(i) the parties agree to extend the deadline; or

(ii) the neutral third party determines that the matter is complex and requires additional time to render an opinion, which may not exceed 30 calendar days.

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

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

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

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

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

~~{ (i) compensatory damages; and~~

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

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(ii) if the court finds that the opposing party knowingly and intentionally violated the law governing that cause of action, a civil penalty of \$1,000 per day:

(A) beginning 30 days after the day on which the advisory opinion was delivered or the day on which the action was filed, whichever is later; and

(B) ending the day on which the court enters a final judgment.

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

(c) Nothing in this Subsection (12) is intended to create any new cause of action under land use law.

(d) Subsection (12)(a) does not apply unless the resolution described in Subsection (12)(a) is final.

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

~~{ Section 2. Section 63G-7-301 is amended to read:~~

~~63G-7-301. Waivers of immunity.~~

~~(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 63G-7-401, 63G-7-402, 63G-7-403, or 63G-7-601.~~

~~(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~~

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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 63G-7-302(1), as to any action brought under the authority of Utah Constitution, Article I, Section 22, 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 63G-7-302(2), as to any action brought to recover attorney fees under Sections 63G-2-405 and 63G-2-802;~~

~~—— (f) for actual damages under Title 67, Chapter 21, Utah Protection of Public Employees Act;~~

~~—— (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 63L, Chapter 5, Utah Religious Land Use Act;~~

~~—— (h) except as provided in Subsection 63G-7-201(3), 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;~~

~~—— (i) subject to Subsections 63G-7-101(4) and 63G-7-201(4), as to any injury proximately caused by a negligent act or omission of an employee committed within the scope of employment;~~

~~—— (j) as to any action or suit brought under Section 20A-19-301 and as to any compensation or expenses awarded under [Section] Subsection 20A-19-301(5); [and]~~

~~—— (k) notwithstanding Subsection 63G-7-101(4), as to a claim for an injury resulting from~~

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~~a sexual battery, as provided in Section 76-9-702.1, committed:~~

~~—— (i) against a student of a public elementary or secondary school, including a charter school; and~~

~~—— (ii) by an employee of a public elementary or secondary school or charter school who:~~

~~—— (A) at the time of the sexual battery, held a position of special trust, as defined in Section 76-5-404.1, with respect to the student;~~

~~—— (B) is criminally charged in connection with the sexual battery; and~~

~~—— (C) the public elementary or secondary school or charter school knew or in the exercise of reasonable care should have known, at the time of the employee's hiring, to be a sex offender, as defined in Section 77-41-102, required to register under Title 77, Chapter 41, Sex and Kidnap Offender Registry, whose status as a sex offender would have been revealed in a background check under Section 53G-11-402[.]; and~~

~~—— (l) as to any claim for compensatory damages, attorney fees, or costs under Subsection 13-43-206(12).~~

~~—— (3) (a) As used in this Subsection (3):~~

~~—— (i) "Appropriate behavior policy" means a policy that:~~

~~—— (A) is not less stringent than a model policy, created by the State Board of Education, establishing a professional standard of care for preventing the conduct described in Subsection (3)(a)(i)(D);~~

~~—— (B) is adopted by the applicable local education governing body;~~

~~—— (C) regulates behavior of a school employee toward a student; and~~

~~—— (D) includes a prohibition against any sexual conduct between an employee and a student and against the employee and student sharing any sexually explicit or lewd communication, image, or photograph;~~

~~—— (ii) "Local education agency" means:~~

~~—— (A) a school district;~~

~~—— (B) a charter school; or~~

~~—— (C) the Utah Schools for the Deaf and the Blind;~~

~~—— (iii) "Local education governing board" means:~~

~~—— (A) for a school district, the local school board;~~

~~—— (B) for a charter school, the charter school governing board; or~~

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- ~~—— (C) for the Utah Schools for the Deaf and the Blind, the state board.~~
- ~~—— (iv) "Public school" means a public elementary or secondary school.~~
- ~~—— (v) "Sexual abuse" means the offense described in Subsection 76-5-404.1(2).~~
- ~~—— (vi) "Sexual battery" means the offense described in Section 76-9-702.1, considering the term "child" in that section to include an individual under age 18.~~
- ~~—— (b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a claim against a local education agency for an injury resulting from a sexual battery or sexual abuse committed against a student of a public school by a paid employee of the public school who is criminally charged in connection with the sexual battery or sexual abuse, unless:~~
 - ~~—— (i) at the time of the sexual battery or sexual abuse, the public school was subject to an appropriate behavior policy; and~~
 - ~~—— (ii) before the sexual battery or sexual abuse occurred, the public school had:~~
 - ~~—— (A) provided training on the policy to the employee; and~~
 - ~~—— (B) required the employee to sign a statement acknowledging that the employee has read and understands the policy.~~
- ~~—— (4) (a) As used in this Subsection (4):~~
 - ~~—— (i) "Higher education institution" means an institution included within the state system of higher education under Section 53B-1-102.~~
 - ~~—— (ii) "Policy governing behavior" means a policy adopted by a higher education institution or the State Board of Regents that:~~
 - ~~—— (A) establishes a professional standard of care for preventing the conduct described in Subsections (4)(a)(ii)(C) and (D);~~
 - ~~—— (B) regulates behavior of a special trust employee toward a subordinate student;~~
 - ~~—— (C) includes a prohibition against any sexual conduct between a special trust employee and a subordinate student; and~~
 - ~~—— (D) includes a prohibition against a special trust employee and subordinate student sharing any sexually explicit or lewd communication, image, or photograph.~~
 - ~~—— (iii) "Sexual battery" means the offense described in Section 76-9-702.1.~~
 - ~~—— (iv) "Special trust employee" means an employee of a higher education institution who is in a position of special trust, as defined in Section 76-5-404.1, with a higher education student.~~

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~~—— (v) "Subordinate student" means a student:~~

~~—— (A) of a higher education institution; and~~

~~—— (B) whose educational opportunities could be adversely impacted by a special trust employee;~~

~~—— (b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a claim for an injury resulting from a sexual battery committed against a subordinate student by a special trust employee, unless:~~

~~—— (i) the institution proves that the special trust employee's behavior that otherwise would constitute a sexual battery was:~~

~~—— (A) with a subordinate student who was at least 18 years old at the time of the behavior; and~~

~~—— (B) with the student's consent; or~~

~~—— (ii) (A) at the time of the sexual battery, the higher education institution was subject to a policy governing behavior; and~~

~~—— (B) before the sexual battery occurred, the higher education institution had taken steps to implement and enforce the policy governing behavior.~~

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