

HB 273 PROPERTY RIGHTS OMBUDSMAN AMENDMENTS

Background

Currently, a property owner or land use regulator in a dispute may request an advisory opinion from the Property Rights Ombudsman (PRO). The Ombudsman acts as a neutral, third party and either the property owner or land use regulator may choose to comply with the PRO opinion, try to negotiate an alternative solution, or pursue litigation in court. If litigation proceeds in court and the court agrees with the PRO advisory opinion, the prevailing party may collect reasonable attorney fees.

The PRO process is an inexpensive, easily accessible process for parties involved in land use disputes and has helped many parties avoid costly court fights.

What does the bill do?

- Allows a land use applicant in a dispute to recover compensatory damages, in addition to reasonable attorney fees, if a city disregards an advisory opinion by the PRO and a court subsequently agrees with the PRO opinion.
- Waives governmental immunity in those decisions against a government entity.

What are compensatory damages?

- Economic loss damages, including earnings, property damage, loss of value, etc.
- General damages, including pain and suffering, emotional distress, etc.
- These damages can accumulate during litigation and while a party waits for a court decision.

What is the Office of the Property Rights Ombudsman (PRO)?

- Office in the Department of Commerce
- Provides free mediation/arbitration for property owners and land use regulators
- Created to be a neutral, third party
- ULCT has strongly supported the creation, funding, and independence of the PRO

What does HB 273 mean for municipalities?

- The bill has a chilling effect on elected officials. The threat of compensatory damages will hang over the decision of elected officials making administrative land use decisions.
- Many land use cases litigated in court beyond a PRO opinion seek clarification on laws on which the courts are split or there is ambiguity in statute. A land use decision where a court finds against a city could potentially cost millions in compensatory damages even though the municipality legitimately sought clarification on an ambiguous or disputed law. The bill elevates unappointed, unelected Ombudsman staff to a quasi-court role in land use disputes because the risk of a city not following an advisory opinion is significant and potentially expensive to a crippling degree.
- The Governmental Immunity Act generally waives immunity for government actors only in cases of negligence or criminal acts. HB 273 would, for the first time, also waive immunity for a land use regulator with whom the PRO and a court disagree, eroding long standing protections for taxpayers and immunity standards.

- ULCT has long supported the neutral, advisory role of the Property Rights Ombudsman. By giving weight, when determining damages, to an Ombudsman advisory opinion, HB 273 corrodes the Ombudsman's purpose and neutrality.
- ULCT has made multiple requests of the development community for specific data showing how often land use applications are rejected without valid reasons, that cities are either abusing or ignoring the current Ombudsman process or disregarding existing local land use laws. As such, HB 273 is a solution to a problem that may not exist. Instead, HB 273 sets bad precedent for amicable resolution of land use disputes.

Encourage your legislator to vote "no" on HB 273

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