

**LOCAL GOVERNMENT COLLECTION FOR SERVICE**

**CHARGES**

2004 GENERAL SESSION

STATE OF UTAH

**Sponsor: Steven R. Mascaro**

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**LONG TITLE**

**General Description:**

This bill modifies provisions related to municipal and special and local district charges for water and sewer services.

**Highlighted Provisions:**

This bill:

- ▶ prohibits special districts and local districts from:
  - refusing to furnish water or sewer service to property based on an arrearage from a previous owner, absent a valid lien; and
  - collecting from the current owner a previous owner's arrearage for water or sewer service provided to the property before the current owner's ownership, absent a valid lien;
- ▶ authorizes municipalities, special districts, and local districts providing sewer service to:
  - required a written application for service; and
  - discontinue providing service if the property owner fails to pay for the service;
- ▶ authorizes special districts and local districts to:
  - certify amounts owing for water or sewer service as a lien on the property of the customer who received the service, with certain limitations;
  - file a civil action to recover past due fees for water or sewer service and related charges and to offer not to file a civil action if the customer pays past due fees, collection costs, certain damages, and an attorney fee; and
  - impose collection costs on a customer who has not paid water or sewer service

fees; and

- ▶ authorizes a municipality to discontinue sewer service to a property whose owner fails to pay for the service;

- ▶ prohibits a municipality from:

- refusing sewer service to property based on an arrearage from a previous owner;

and

- collecting from the current owner a previous owner's arrearage for sewer service provided to the property before the current owner's ownership.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**10-7-10.5**, as enacted by Chapter 161, Laws of Utah 2003

**10-8-38**, as last amended by Chapter 161, Laws of Utah 2003

**17A-2-310**, as last amended by Chapter 227, Laws of Utah 1993

**17A-2-416**, as renumbered and amended by Chapter 186, Laws of Utah 1990

**17A-2-1321**, as last amended by Chapter 228, Laws of Utah 1999

ENACTS:

**17A-1-205**, Utah Code Annotated 1953

**17B-2-801**, Utah Code Annotated 1953

**17B-2-802**, Utah Code Annotated 1953

**17B-2-803**, Utah Code Annotated 1953

**17B-2-804**, Utah Code Annotated 1953

**17B-2-805**, Utah Code Annotated 1953

REPEALS:

**17A-1-103**, as enacted by Chapter 161, Laws of Utah 2003

17B-2-103, as enacted by Chapter 161, Laws of Utah 2003

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

Section 1. Section **10-7-10.5** is amended to read:

**10-7-10.5. Authority to require written application for water or sewer service and to terminate service for failure to pay -- Limitations.**

(1) A municipality that owns or controls a system for furnishing water or for providing sewer service may:

(a) before furnishing water or providing sewer service to a property, require the property owner or an authorized agent to submit a written application, signed by the owner or an authorized agent, agreeing to pay for all water furnished or sewer service provided to the property, respectively, whether occupied by the owner or by a tenant or other occupant, according to the ordinances, rules, and regulations adopted by the municipality; and

(b) if an owner fails to pay for water furnished or sewer service provided to the owner's property, discontinue furnishing water or providing sewer service to the property, respectively, until all amounts for water furnished or sewer service provided, respectively, are paid, subject to Subsection (2).

(2) (a) A municipality may not use an owner's failure to pay for water furnished or sewer service provided to the owner's property as a basis for not furnishing water or providing sewer service to the property after ownership of the property is transferred to a subsequent owner.

(b) A municipality may not require an owner to pay for water that was furnished or sewer service that was provided to the property before the owner's ownership.

Section 2. Section **10-8-38** is amended to read:

**10-8-38. Drainage and sewage systems -- Construction regulation and control -- Retainage -- Mandatory hookup -- Charges for use -- Collection of charges -- Service to tenants -- Failure to pay for service -- Service outside municipality.**

(1) (a) Boards of commissioners, city councils, and boards of trustees of cities and towns may construct, reconstruct, maintain, and operate, sewer systems, sewage treatment plants,

culverts, drains, sewers, catch basins, manholes, cesspools, and all systems, equipment, and facilities necessary to the proper drainage, sewage, and sanitary sewage disposal requirements of the city or town and regulate the construction and use thereof.

(b) If any payment on a contract with a private person, firm, or corporation to construct or reconstruct sewer systems, sewage treatment plants, culverts, drains, sewers, catch basins, manholes, cesspools, and other drainage and sewage systems is retained or withheld, it shall be retained or withheld and released as provided in Section 13-8-5.

(2) (a) In order to defray the cost of constructing, reconstructing, maintaining, or operating a sewer system or sewage treatment plant, a municipality may:

(i) require connection to the sewer system if the sewer is available and within 300 feet of the property line of a property with a building used for human occupancy; and

(ii) make a reasonable charge for the use of the sewer system.

(b) A municipality operating a waterworks system and a sewer system or sewage treatment plant may:

(i) make one charge for the combined use of water and the services of the sewer system or sewage treatment plant; and

(ii) adopt an ordinance requiring a property owner desiring water and sewer service to submit a written application, signed by the owner or the owner's authorized agent, agreeing to pay, according to the ordinance enacted by the municipality, for the water and sewer service furnished the owner.

(c) (i) If a person fails to connect to the sewer when connection is required under Subsection (2)(a)(i) or fails to pay for the sewer service as required under applicable municipal ordinances, then the municipality may cause the water to be shut off from the premises until the person has:

(A) hooked up to the sewer at the person's own expense; or

(B) paid in full for all sewer service.

(ii) A municipality may not use an owner's failure to pay for sewer service furnished to the owner's property as a basis for not furnishing water to the property after ownership of the

property is transferred to a subsequent owner.

~~[(iii) A municipality may not require an owner to pay for sewer service that was furnished to the property before the owner's ownership.]~~

(d) A municipality may sell and deliver water or sewer services to others beyond the limits of the municipality from the surplus capacity of the municipality's waterworks or sewer system.

Section 3. Section **17A-1-205** is enacted to read:

**17A-1-205. Special districts subject to local district provisions relating to collection of water and sewer service fees.**

Each special district under this title is subject to the provisions of Title 17B, Chapter 2, Part 8, Collection of Water and Sewer Service Fees, to the same extent as if the special district were a local district under Title 17B, Chapter 2, Local Districts.

Section 4. Section **17A-2-310** is amended to read:

**17A-2-310. Certification of bond issue to county legislative body -- Tax levy -- Payment of revenue bonds -- Election on general obligation bonds and revenue bonds -- Bonds for sewer purposes -- Collection of charges.**

(1) Except as to bonds issued payable solely from revenues derived from the district's facilities, it is the duty of each board of trustees which has issued bonds under this part to certify annually to each appropriate county legislative body as provided in Section 17A-2-308, and it is the duty of the county legislative body to levy annually until principal and interest shall have been fully paid, taxes on all taxable property in the district, sufficient to assure the prompt payment of principal and interest as each falls due, all as provided in Section 17A-2-309.

(2) If any bonds issued under this part are issued in a manner as not to be payable from taxes but to be payable solely from the revenues to be derived by the district from the operation of its facilities, the bonds so issued shall be payable from and secured by the pledge of all or any specified part of the revenues to be derived by the district from the operation of its facilities; and where the bonds are so issued, it is the duty of the board of trustees to impose for all services rendered thereby rates fully sufficient to pay principal of and interest on the bonds and to carry out all commitments made in the resolution authorizing the bonds. The board may in the

resolution enter into such covenants with the future holders of the bonds as to the management and operation of the facilities, the imposition and collection of fees and charges for water and services furnished by these facilities, the disposition of these fees and revenues, the issuance of future bonds and the creation of future liens and encumbrances against these facilities and the revenue from them, and carrying of insurance on the facilities, the keeping of books and records, and other pertinent matters, as considered proper by the board of trustees to assure the marketability of the bonds. The board may undertake in the resolution to make the revenues of the facilities sufficient to pay the expense of their operation and maintenance and may undertake to make the revenues or net revenues of the facilities sufficient to produce in each year an amount in such specified excess of actual requirements for principal of and interest on the bonds in that year as the board may consider necessary to assure the highest marketability of the bonds. If the board provides in the resolution authorizing the revenue bonds for the creation of a reserve fund to assure the prompt payment of principal and interest, the board may provide for the accumulation of this fund not only from the revenues of the facilities but also through the paying into it of such part of the bond proceeds as it may consider advisable. A proposition of issuing general obligation bonds and a proposition of the issuance of revenue bonds, or any combination of them, may be voted upon at the same election.

(3) When bonds are issued under this part in whole or in part for sewer purposes and the district operates a waterworks system, provision may be made in the bond resolution under which charges for sewer service and water are to be billed in a single bill to each customer and payment of the charge for water accepted only when the charge for sewer service is paid at the same time. The board may agree to suspend water or sewer service, or both, to any customer who shall become delinquent in the payment of any charges due the district. ~~Whether or not a district operates a waterworks system, any unpaid and delinquent charges for sewer or water service shall be certified by the clerk of the district to the treasurer or assessor of the county in which the delinquent premises are located. The amount of the delinquent charges, together with interest and penalties, shall immediately upon the certification become a lien on the delinquent premises on a parity with and collectible at the same time and in the same manner as general county taxes are a~~

~~lien on the premises and are collectible. All methods of enforcement available for the collection of general county taxes, including sale of the delinquent premises, shall be available and shall be used in the collection of the delinquent sewer charges. However, when the customer is a renter of residential property covered by Title 57, Chapter 22, any unpaid and delinquent charges are a personal liability for the customer and may not be placed as lien on the property.]~~

Section 5. Section **17A-2-416** is amended to read:

**17A-2-416. Delinquent fees and charges to become lien when certified.**

The governing authority of a service area may, by ordinance or resolution, provide that fees and charges for commodities, services, and facilities supplied by the service area, except water furnished or sewer service provided by the county service area, shall, if not paid when due, be certified to the treasurer and assessor of the county in which the delinquent premises are located. These delinquent fees and charges, together with applicable penalties and applicable interest established in Section 59-2-1331 shall, immediately upon this certification, become a lien on the delinquent premises on a parity with and collected at the same time and in the same manner as general county taxes that are a lien on the premises as provided in Title 59, Chapter 2, Part 13, Collection of Taxes.

Section 6. Section **17A-2-1321** is amended to read:

**17A-2-1321. Delinquent fees and charges.**

(1) Except as provided in Subsection (3), the governing authority of a special service district may, by ordinance or resolution, provide that fees and charges for [~~water, sewer,~~] garbage[;] or fire protection services supplied by the special service district shall, if not paid when due, be certified to the treasurer and assessor of the county in which the delinquent premises are located.

(2) These delinquent fees and charges, together with penalties and applicable interest shall, immediately upon this certification, become a lien on the delinquent premises on a parity with and collected at the same time and in the same manner as general county taxes that are a lien on the premises.

(3) This section does not apply to a special service district's fees and charges if the

governing authority of the county or municipality that established the special service district levies a tax for district purposes on taxable property within the special service district under Section 17A-2-1322.

Section 7. Section **17B-2-801** is enacted to read:

**Part 8. Collection of Water and Sewer Service Fees**

**17B-2-801. Definitions.**

As used in this part:

(1) "Collection costs" means an amount, not to exceed \$20, to reimburse a local district for expenses associated with its efforts to collect past due service fees from a customer.

(2) "Customer" means the owner of real property to which a local district has furnished water or provided sewer service.

(3) "Damages" means an amount equal to the greater of:

(a) \$100; and

(b) triple the past due service fees.

(4) "Default date" means the date on which payment for service fees becomes past due.

(5) "Past due service fees" means service fees that on or after the default date have not been paid.

(6) "Prelitigation damages" means an amount that is equal to the greater of:

(a) \$50; and

(b) triple the past due service fees.

(7) "Service fees" means the amount charged by a local district to a customer for water furnished or sewer service provided to the customer's property.

Section 8. Section **17B-2-802** is enacted to read:

**17B-2-802. Authority to require written application for water or sewer service and to terminate for failure to pay -- Limitations.**

(1) A local district that owns or controls a system for furnishing water or providing sewer service may:

(a) before furnishing water or providing sewer service to a property, require the property

owner or an authorized agent to submit a written application, signed by the owner or an authorized agent, agreeing to pay for all water furnished or sewer service provided to the property, whether occupied by the owner or by a tenant or other occupant, according to the rules and regulations adopted by the local district; and

(b) if a customer fails to pay for water furnished or sewer service provided to the customer's property, discontinue furnishing water or providing sewer service to the property, respectively, until all amounts for water furnished or sewer service provided, respectively, are paid, subject to Subsection (2).

(2) Unless a valid lien has been established as provided in Section 17B-2-803, has not been satisfied, and has not been terminated by a sale as provided in Subsection 17B-2-803(2), a local district may not:

(a) use a customer's failure to pay for water furnished or sewer service provided to the customer's property as a basis for not furnishing water or providing sewer service to the property after ownership of the property is transferred to a subsequent owner; or

(b) require an owner to pay for water that was furnished or sewer service that was provided to the property before the owner's ownership.

Section 9. Section **17B-2-803** is enacted to read:

**17B-2-803. Lien for past due fees for water or sewer service -- Limitations.**

(1) (a) A local district may certify past due service fees and other amounts for which the customer is liable under this chapter to the treasurer or assessor of the county in which the customer's property is located.

(b) Subject to Subsection (2), the past due service fees and other amounts for which the customer is liable under this chapter, upon their certification under Subsection (1)(a), become a lien on the customer's property to which the water was furnished or sewer service provided, on a parity with and collectible at the same time and in the same manner as general county taxes that are a lien on the property.

(2) A lien under Subsection (1) is not valid if certification under Subsection (1) is made after the filing for record of a document conveying title of the customer's property to a new

owner.

(3) Nothing in this section may be construed to:

(a) waive or release the customer's obligation to pay service fees;

(b) preclude the certification of a lien under Subsection (1) with respect to past due service fees for water furnished or sewer service provided after the date that title to the property is transferred to a new owner; or

(c) nullify or terminate a valid lien.

(5) After all amounts owing under a lien established as provided in this section have been paid, the local district shall file for record in the county recorder's office a release of the lien.

Section 10. Section **17B-2-804** is enacted to read:

**17B-2-804. Collection of past due fees for water or sewer service -- Civil action authorized.**

(1) A customer is liable to a local district for past due service fees and collection costs if:

(a) the customer has not paid service fees before the default date;

(b) the local district mails the customer notice as provided in Section 17B-2-805; and

(c) the past due service fees remain unpaid 15 days after the local district has mailed notice.

(2) If a customer has not paid the local district the past due service fees and collection costs within 30 days after the local district mails notice, the local district may make an offer to the customer that the local district will forego filing a civil action under Subsection (3) if the customer pays the local district an amount that:

(a) consists of the past due service fees, collection costs, prelitigation damages, and, if the local district retains an attorney to recover the past due service fees, a reasonable attorney's fee not to exceed \$50; and

(b) if the customer's property is residential, may not exceed \$100.

(3) (a) A local district may file a civil action against the customer if the customer fails to pay the past due service fees and collection costs within 30 calendar days from the date on which the local district mailed notice under Subsection (1)(b).

(b) (i) In a civil action under this Subsection (3), a customer is liable to the local district for an amount that:

(A) consists of past due service fees, collection costs, interest, court costs, a reasonable attorney's fee, and damages; and

(B) if the customer's property is residential, may not exceed \$200.

(ii) Notwithstanding Subsection (3)(b)(i), a court may, upon a finding of good cause, waive interest, court costs, the attorney's fee, and damages, or any combination of them.

(c) If a local district files a civil action under this Subsection (3) before 31 calendar days after the day on which the local district mailed notice under Subsection (1)(b), a customer may not be held liable for an amount in excess of past due service fees.

(d) A local district may not file a civil action under this Subsection (3) unless the customer has failed to pay the past due service fees and collection costs within 30 days from the day on which the local district mailed notice under Subsection (1)(b).

(4) (a) All amounts charged or collected as prelitigation damages or as damages shall be paid to and be the property of the local district that furnished water or provided sewer service and may not be retained by a person who is not that local district.

(b) A local district may not contract for a person to retain any amounts charged or collected as prelitigation damages or as damages.

(5) This chapter may not be construed to limit a local district that furnishes water or provides sewer service from obtaining relief to which it may be entitled under other applicable statute or cause of action.

Section 11. Section **17B-2-805** is enacted to read:

**17B-2-805. Notice.**

(1) Each notice under Subsection 17B-2-804(1)(b) shall:

(a) be in writing;

(b) be mailed to the customer by the United States mail, postage prepaid;

(c) notify the customer that:

(i) if the past due service fees are not paid within 15 days after the day on which the local

district mailed notice, the customer is liable for the past due service fees and collection costs; and

(ii) the local district may file civil action if the customer does not pay to the local district the past due service fees and collection costs within 30 calendar days from the day on which the local district mailed notice; and

(d) be in substantially the following form:

Date: \_\_\_\_\_

To: \_\_\_\_\_

Service address: \_\_\_\_\_

Account or invoice number(s): \_\_\_\_\_

Date(s) of service: \_\_\_\_\_

Amount past due: \_\_\_\_\_

You are hereby notified that water or sewer service fees (or both) owed by you are in default. In accordance with Section 17B-2-804, Utah Code Annotated, if you do not pay the past due amount within 15 days from the day on which this notice was mailed to you, you are liable for the past due amount together with collection costs of \$20.

You are further notified that if you do not pay the past due amount and the \$20 collection costs within 30 calendar days from the day on which this notice was mailed to you, an appropriate civil legal action may be filed against you for the past due amount, interest, court costs, attorney's fees, and damages in an amount equal to the greater of \$100 or triple the past due amounts, but the combined total of all these amounts may not exceed \$200 if your property is residential.

(Signed) \_\_\_\_\_

Name of local district \_\_\_\_\_

Address of local district \_\_\_\_\_

Telephone number of local district \_\_\_\_\_

(2) Written notice under this section is conclusively presumed to have been given if the notice is:

(a) properly deposited in the United States mail, postage prepaid, by certified or registered mail, return receipt requested; and

(b) addressed to the customer at the customer's:

(i) address as it appears in the records of the local district; or

(ii) last known address.

**Section 12. Repealer.**

This bill repeals:

**Section 17A-1-103, Authority to require written application for water service and to terminate service for failure to pay -- Limitations.**

**Section 17B-2-103, Authority to require written application for water service and to terminate service for failure to pay -- Limitations.**