

Representative Kenneth W. Sumsion proposes the following substitute bill:

POLITICAL SUBDIVISION RESIDENTIAL RENTAL

AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kenneth W. Sumsion

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends language related to a municipal regulation of a residential rental dwelling.

Highlighted Provisions:

This bill:

- ▶ amends provisions related to certain fees collected by a municipality;
- ▶ amends and enacts definitions;
- ▶ requires a municipality that adopts a good landlord program to provide an appeal

procedure;

▶ prohibits a municipality from:

- in certain circumstances, requiring an owner of a rental dwelling from obtaining a business license; and

- conducting an inspection of a rental dwelling; and

- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:



26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **10-1-203**, as last amended by Laws of Utah 2011, Chapter 391

30 **10-8-85.5**, as last amended by Laws of Utah 2011, Chapter 14



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

32 Section 1. Section **10-1-203** is amended to read:

33 **10-1-203. License fees and taxes -- Disproportionate rental fee -- Application**
34 **information to be transmitted to the county assessor.**

35 (1) As used in this section:

36 (a) "Business" means any enterprise carried on for the purpose of gain or economic
37 profit, except that the acts of employees rendering services to employers are not included in
38 this definition.

39 (b) "Telecommunications provider" is as defined in Section 10-1-402.

40 (c) "Telecommunications tax or fee" is as defined in Section 10-1-402.

41 (2) Except as provided in Subsections (3) through (5), the legislative body of a
42 municipality may license for the purpose of regulation and revenue any business within the
43 limits of the municipality and may regulate that business by ordinance.

44 (3) (a) The legislative body of a municipality may raise revenue by levying and
45 collecting a municipal energy sales or use tax as provided in Part 3, Municipal Energy Sales
46 and Use Tax Act, except a municipality may not levy or collect a franchise tax or fee on an
47 energy supplier other than the municipal energy sales and use tax provided in Part 3, Municipal
48 Energy Sales and Use Tax Act.

49 (b) (i) Subsection (3)(a) does not affect the validity of a franchise agreement as defined
50 in Subsection 10-1-303(6), that is in effect on July 1, 1997, or a future franchise.

51 (ii) A franchise agreement as defined in Subsection 10-1-303(6) in effect on January 1,
52 1997, or a future franchise shall remain in full force and effect.

53 (c) A municipality that collects a contractual franchise fee pursuant to a franchise
54 agreement as defined in Subsection 10-1-303(6) with an energy supplier that is in effect on July
55 1, 1997, may continue to collect that fee as provided in Subsection 10-1-310(2).
56

57 (d) (i) Subject to the requirements of Subsection (3)(d)(ii), a franchise agreement as
58 defined in Subsection 10-1-303(6) between a municipality and an energy supplier may contain
59 a provision that:

60 (A) requires the energy supplier by agreement to pay a contractual franchise fee that is
61 otherwise prohibited under Part 3, Municipal Energy Sales and Use Tax Act; and

62 (B) imposes the contractual franchise fee on or after the day on which Part 3,
63 Municipal Energy Sales and Use Tax is:

64 (I) repealed, invalidated, or the maximum allowable rate provided in Section 10-1-305
65 is reduced; and

66 (II) is not superseded by a law imposing a substantially equivalent tax.

67 (ii) A municipality may not charge a contractual franchise fee under the provisions
68 permitted by Subsection (3)(b)(i) unless the municipality charges an equal contractual franchise
69 fee or a tax on all energy suppliers.

70 (4) (a) Subject to Subsection (4)(b), beginning July 1, 2004, the legislative body of a
71 municipality may raise revenue by levying and providing for the collection of a municipal
72 telecommunications license tax as provided in Part 4, Municipal Telecommunications License
73 Tax Act.

74 (b) A municipality may not levy or collect a telecommunications tax or fee on a
75 telecommunications provider except as provided in Part 4, Municipal Telecommunications
76 License Tax Act.

77 (5) (a) (i) The legislative body of a municipality may by ordinance raise revenue by
78 levying and collecting a license fee or tax on:

79 (A) a parking service business in an amount that is less than or equal to:

80 (I) \$1 per vehicle that parks at the parking service business; or

81 (II) 2% of the gross receipts of the parking service business;

82 (B) a public assembly or other related facility in an amount that is less than or equal to
83 \$5 per ticket purchased from the public assembly or other related facility; and

84 (C) subject to the limitations of Subsections (5)(c), (d), and (e):

85 (I) a business that causes disproportionate costs of municipal services; or

86 (II) a purchaser from a business for which the municipality provides an enhanced level
87 of municipal services.

88 (ii) Nothing in this Subsection (5)(a) may be construed to authorize a municipality to
89 levy or collect a license fee or tax on a public assembly or other related facility owned and
90 operated by another political subdivision other than a community development and renewal
91 agency without the written consent of the other political subdivision.

92 (b) As used in this Subsection (5):

93 (i) "Municipal services" includes:

94 (A) public utilities; and

95 (B) services for:

96 (I) police;

97 (II) fire;

98 (III) storm water runoff;

99 (IV) traffic control;

100 (V) parking;

101 (VI) transportation;

102 (VII) beautification; or

103 (VIII) snow removal.

104 (ii) "Parking service business" means a business:

105 (A) that primarily provides off-street parking services for a public facility that is
106 wholly or partially funded by public money;

107 (B) that provides parking for one or more vehicles; and

108 (C) that charges a fee for parking.

109 (iii) "Public assembly or other related facility" means an assembly facility that:

110 (A) is wholly or partially funded by public money;

111 (B) is operated by a business; and

112 (C) requires a person attending an event at the assembly facility to purchase a ticket.

113 (c) (i) Before the legislative body of a municipality imposes a license fee on a business
114 that causes disproportionate costs of municipal services under Subsection (5)(a)(i)(C)(I), the
115 legislative body of the municipality shall adopt an ordinance defining for purposes of the tax
116 under Subsection (5)(a)(i)(C)(I):

117 (A) the costs that constitute disproportionate costs; and

118 (B) the amounts that are reasonably related to the costs of the municipal services

119 provided by the municipality.

120 (ii) The amount of a fee under Subsection (5)(a)(i)(C)(I):

121 (a) shall be reasonably related to the costs of the municipal services provided by the
122 municipality[-]; and

123 (b) may not be greater than the actual disproportionate cost per dwelling unit or other
124 level of service measure, as determined by the municipal services study.

125 (d) (i) Before the legislative body of a municipality imposes a license fee on a
126 purchaser from a business for which it provides an enhanced level of municipal services under
127 Subsection (5)(a)(i)(C)(II), the legislative body of the municipality shall adopt an ordinance
128 defining for purposes of the fee under Subsection (5)(a)(i)(C)(II):

129 (A) the level of municipal services that constitutes the basic level of municipal services
130 in the municipality; and

131 (B) the amounts that are reasonably related to the costs of providing an enhanced level
132 of municipal services in the municipality.

133 (ii) The amount of a fee under Subsection (5)(a)(i)(C)(II) shall be reasonably related to
134 the costs of providing an enhanced level of the municipal services.

135 (e) (i) As used in this Subsection (5)(e):

136 (A) "Disproportionate rental fee" means a license fee on rental housing based on the
137 disproportionate costs of municipal services caused by the rental housing or on an enhanced
138 level of municipal services provided to the rental housing.

139 (B) "Disproportionate rental fee reduction" means a reduction of a disproportionate
140 rental fee as a condition of complying with the requirements of a good landlord program.

141 (C) "Exempt landlord" means a landlord who:

142 (I) has completed:

143 (aa) a landlord training program that has been offered live by any municipality, and the
144 program, at a minimum, incorporates material set forth in a national landlord training program
145 as detailed in the municipality's ordinances;

146 (bb) submits proof of completion of the training described in Subsection
147 (5)(e)(i)(C)(I)(aa);

148 (cc) demonstrates to the municipality a familiarity with the essential provisions of that
149 municipality's good landlord program;

150 (II) (aa) the Division of Real Estate verifies is a certified property manager; and
151 (bb) demonstrates to the municipality a familiarity with the essential provisions of that
152 municipality's good landlord program; or

153 (III) documents an exemption from continuing education from the Division of Real
154 Estate under Subsection 61-2f-204(a)(iv)(B).

155 [~~E~~] (D) "Good landlord program" means a program established by a municipality that
156 provides a reduction in a disproportionate rental fee for a landlord who:

157 (I) completes a landlord training program approved [by] the municipality or is an
158 exempt landlord;

159 (II) implements measures to reduce crime in rental housing as specified in municipal
160 ordinances, provided that a landlord may not be required to deny tenancy to an individual
161 released from probation or parole whose conviction date occurred more than four years before
162 the date of tenancy; and

163 (III) operates and manages rental housing in accordance with applicable municipal
164 ordinances.

165 [~~D~~] (E) "Municipal services study" means a study, or an updated study, conducted by
166 a municipality of the cost of all municipal services that the municipality provides to the
167 applicable rental housing.

168 [~~E~~] (F) "Rental housing cost" means the municipality's cost:

169 (I) of providing municipal services to the rental housing;

170 (II) that is reasonably attributable to the rental housing; and

171 (III) that would not have occurred in the absence of the rental housing.

172 (ii) A municipality may impose and collect a disproportionate rental fee if:

173 (A) the municipality:

174 (I) adopts the ordinances required under Subsections (5)(c) and (d), as applicable;

175 (II) conducts a municipal services study;

176 (III) updates the municipal services study:

177 (Aa) before increasing the amount of the disproportionate rental fee; and

178 (Bb) before decreasing the amount of the disproportionate rental fee reduction; and

179 (IV) establishes a good landlord program; and

180 (B) the disproportionate rental fee does not exceed the rental housing cost, as

181 determined by the municipal services study.

182 (iii) (A) The requirement under Subsection (5)(e)(ii)(A)(IV) to establish a good
183 landlord program does not apply to a municipality that imposed and collected a
184 disproportionate rental fee on January 1, 2009.

185 (B) A municipality claiming an exemption under Subsection (5)(e)(iii)(A) shall
186 conduct an updated municipal services study at least every four years.

187 (iv) The requirement under Subsection (5)(e)(ii)(A)(II) to conduct a municipal services
188 study does not apply to a municipality that:

189 (A) imposed and collected a disproportionate rental fee on May 2, 2005, of \$17 or less
190 per unit per year;

191 (B) does not increase the amount of its disproportionate rental fee; and

192 (C) does not decrease the amount of its disproportionate rental fee reduction.

193 (v) The fee limitation under Subsection (5)(e)(ii)(B) does not apply to a municipality
194 that:

195 (A) imposed and collected a disproportionate rental fee on May 2, 2005, that was \$17
196 or less per unit per year;

197 (B) does not increase the amount of its disproportionate rental fee; and

198 (C) does not decrease the amount of its disproportionate rental fee reduction.

199 (vi) Until May 2, 2012, the requirement under Subsection (5)(e)(ii)(A)(II) to conduct a
200 municipal services study before imposing and collecting a disproportionate rental fee, does not
201 apply to a municipality that:

202 (A) on May 2, 2005, imposed and collected a disproportionate rental fee that exceeds
203 \$17 per unit per year;

204 (B) had implemented, before January 1, 2005, a good landlord program;

205 (C) does not decrease the amount of the disproportionate rental fee reduction; and

206 (D) does not increase the amount of its disproportionate rental fee.

207 (6) All license fees and taxes shall be uniform in respect to the class upon which they
208 are imposed.

209 (7) The municipality shall transmit the information from each approved business
210 license application to the county assessor within 60 days following the approval of the
211 application.

212 (8) If challenged in court, an ordinance enacted by a municipality before January 1,
213 1994, imposing a business license fee on rental dwellings under this section shall be upheld
214 unless the business license fee is found to impose an unreasonable burden on the fee payer.

215 (9) A municipality that adopts a good landlord program shall provide an appeal
216 procedure affording due process of law to a landlord denied a disproportionate rental fee
217 reduction.

218 Section 2. Section **10-8-85.5** is amended to read:

219 **10-8-85.5. Rental terms defined -- Municipality may require a business license or**
220 **a regulatory business license -- Exception.**

221 (1) As used in this section[, "rental dwelling"]:

222 (a) (i) "Owner" means the owner, lessor, or sublessor of a rental dwelling.

223 (ii) A managing agent, leasing agent, or resident manager is considered an owner for
224 purposes of:

225 (A) notice and other communication required or allowed under this section unless the
226 agent or manager specifies otherwise in writing in the rental agreement; and

227 (B) an owner training program.

228 (b) "Rental agreement" means an agreement, written or oral, which establishes or
229 modifies the terms, conditions, rules, or any other provisions regarding the use and occupancy
230 of a rental dwelling.

231 (c) "Rental dwelling" means a building or portion of a building that is:

232 ~~[(a)]~~ (i) used or designated for use as a residence by one or more [persons] renters; and

233 ~~[(b)-(i)]~~ (ii) (A) available to be rented, loaned, leased, or hired out for a period of one
234 month or longer; or

235 ~~[(i)]~~ (B) arranged, designed, or built to be rented, loaned, leased, or hired out for a
236 period of one month or longer.

237 (d) "Renter" means a person entitled under a rental agreement to occupy a rental
238 dwelling to the exclusion of others.

239 (2) (a) ~~[The]~~ Except as provided in Subsection (2)(b), a legislative body of a
240 municipality may by ordinance require the owner of a rental dwelling located within the
241 municipality:

242 (i) to obtain a business license pursuant to Section 10-1-203; or

243 (ii) ~~[(A)]~~ to obtain a regulatory business license to operate and maintain the rental
244 dwelling~~[-and]~~.

245 ~~[(B) to allow inspections of the rental dwelling as a condition of obtaining a regulatory
246 business license.]~~

247 (b) A municipality may not:

248 (i) require the owner of a rental dwelling of two units or less to obtain a business
249 license in accordance with Subsection (2)(a)(i) or a regulatory business license in accordance
250 with Subsection (2)(a)(ii); or

251 (ii) require an owner of multiple rental dwellings or multiple buildings containing
252 rental dwellings other than an owner described in Subsection (2)(b)(i) to obtain more than one
253 regulatory business license for the operation and maintenance of those rental dwellings.

254 ~~[(c) (i) Notwithstanding Subsection (2)(b), a municipality may, until August 31, 2008,
255 impose upon an owner subject to Subsection (2)(a) a reasonable inspection fee for the
256 inspection of each rental dwelling owned by that owner.]~~

257 ~~[(ii) Beginning September 1, 2008, a municipality may not charge a fee for the
258 inspection of a rental dwelling.]~~

259 ~~[(d) If a municipality's inspection of a rental dwelling, allowed under Subsection
260 (2)(a)(ii)(B), approves the rental dwelling for purposes of a regulatory business license, a
261 municipality may not inspect that rental dwelling during the next 36 months, unless the
262 municipality has reasonable cause to believe that a condition in the rental dwelling is in
263 violation of an applicable law or ordinance.]~~

264 (c) (i) A municipality may not:

265 (A) require the inspection of a rental dwelling as a condition of obtaining a business
266 license or a regulatory business license; or

267 (B) except as provided in Subsection (2)(c)(ii), inspect a rental dwelling without the
268 permission of the owner and, if the rental dwelling is occupied, the renter.

269 (ii) Subsection (2)(c)(i)(B) does not apply to an inspection of rental dwelling grounds
270 in accordance with Section 10-11-2.

271 (3) A municipality may not:

272 (a) interfere with the ability of an owner of a rental dwelling to contract with a tenant
273 concerning the payment of the cost of a utility or municipal service provided to the rental

274 dwelling; or

275 (b) except as required under the State Construction Code or an approved code under
276 Title 15A, State Construction and Fire Codes Act, for a structural change to the rental dwelling,
277 or as required in an ordinance adopted before January 1, 2008, require the owner of a rental
278 dwelling to retrofit the rental dwelling with or install in the rental dwelling a safety feature that
279 was not required when the rental dwelling was constructed.

280 (4) Nothing in this section shall be construed to affect the rights and duties established
281 under Title 57, Chapter 22, Utah Fit Premises Act, or to restrict a municipality's ability to
282 enforce its generally applicable health ordinances or building code, a local health department's
283 authority under Title 26A, Chapter 1, Local Health Departments, or the Utah Department of
284 Health's authority under Title 26, Utah Health Code.