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H.B. 216
2nd Sub. (Gray)

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: Wayne L. Niederhauser

LONG TITLE

General Description:

This bill enacts language related to a municipal regulation of a residential rental unit.

Highlighted Provisions:

This bill:

- defines terms;
- enacts language related to a disproportionate rental fee charged by a municipality;
- prohibits a municipality from making certain requirements of a landlord;
- enacts language related to a good landlord program; and
- makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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10-9a-511, as last amended by Laws of Utah 2011, Chapter 210

57-22-7, as last amended by Laws of Utah 2011, Chapter 279

72-7-102, as last amended by Laws of Utah 2008, Chapter 382

ENACTS:

10-1-203.5, Utah Code Annotated 1953

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

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

10-1-203. License fees and taxes -- Application information to be transmitted to the county assessor.

(1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) "Municipal services" includes:

(A) public utilities; and

(B) services for:

(I) police;

(II) fire;

(III) storm water runoff;

(IV) traffic control;

(V) parking;

(VI) transportation;

(VII) beautification; or

(VIII) snow removal.

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

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

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

(C) that charges a fee for parking.

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

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

(B) is operated by a business; and

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

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

(A) the costs that constitute disproportionate costs; and

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

provided by the municipality.

(ii) The amount of a fee under Subsection (5)(a)(i)(C)(I) shall be reasonably related to the costs of the municipal services provided by the municipality.

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

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

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

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

[~~(e) (i) As used in this Subsection (5)(e):~~]

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

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

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

[~~(I) completes a landlord training program approved by the municipality;~~]

[~~(II) implements measures to reduce crime in rental housing as specified in municipal ordinances; and~~]

[~~(III) operates and manages rental housing in accordance with applicable municipal ordinances.~~]

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

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

[~~(I) of providing municipal services to the rental housing;~~]

[~~(II) that is reasonably attributable to the rental housing; and~~]

[~~(III) that would not have occurred in the absence of the rental housing.~~]

[~~(ii) A municipality may impose and collect a disproportionate rental fee if:~~]

[~~(A) the municipality:~~]

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

[~~(II) conducts a municipal services study;~~]

[~~(III) updates the municipal services study:~~]

[~~(Aa) before increasing the amount of the disproportionate rental fee; and~~]

[~~(Bb) before decreasing the amount of the disproportionate rental fee reduction; and~~]

[~~(IV) establishes a good landlord program; and~~]

[~~(B) the disproportionate rental fee does not exceed the rental housing cost, as determined by the municipal services study.~~]

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

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

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

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

[~~(B) does not increase the amount of its disproportionate rental fee; and~~]

[~~(C) does not decrease the amount of its disproportionate rental fee reduction.~~]

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

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

[~~(B) does not increase the amount of its disproportionate rental fee; and~~]

[~~(C) does not decrease the amount of its disproportionate rental fee reduction.~~]

[~~(vi) Until May 2, 2012, the requirement under Subsection (5)(e)(ii)(A)(II) to conduct a municipal services study before imposing and collecting a disproportionate rental fee, does not~~

~~apply to a municipality that:~~]

[~~(A) on May 2, 2005, imposed and collected a disproportionate rental fee that exceeds $17 per unit per year;~~]

[~~(B) had implemented, before January 1, 2005, a good landlord program;~~]

[~~(C) does not decrease the amount of the disproportionate rental fee reduction; and~~]

[~~(D) does not increase the amount of its disproportionate rental fee.~~]

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

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

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

Section 2. Section **10-1-203.5** is enacted to read:

10-1-203.5. Disproportionate rental fee--Good landlord training program -- Fee reduction.

(1) As used in this section:

(a) "Business" means the rental of one or more residential units within a municipality.

(b) "Disproportionate rental fee" means a fee adopted by a municipality to recover its disproportionate costs of providing municipal services to residential rental units compared to similarly-situated owner-occupied housing.

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

(d) "Exempt business" means the rental of a residential unit within a single structure that contains:

(i) no more than four residential units; and

(ii) one unit occupied by the owner.

(e) "Exempt landlord" means a residential landlord who demonstrates to a municipality:

(i) (A) completion of any live good landlord training program offered by any other Utah city that offers a good landlord program; and

(B) familiarity with the essential provisions of that municipality's good landlord program;

(ii) (A) that the residential landlord has current "certified property manager" status with the Utah Division of Real Estate; and

(B) familiarity with the essential provisions of that municipality's good landlord program;

(iii) an exemption from continuing education from the Division of Real Estate under Subsection 61-2f-204(2)(a)(iv)(B); or

(iv) compliance with a requirement described in Subsection (4).

(f) "Good landlord training program" means a program offered by a municipality to encourage business practices that are designed to reduce the disproportionate cost of municipal services to residential rental units by offering a disproportionate rental fee reduction for any landlord who:

(i) (A) completes a landlord training program provided by the municipality; or

(B) is an exempt landlord;

(ii) implements measures to reduce crime in rental housing as specified in a municipal ordinance or policy; and

(iii) operates and manages rental housing in accordance with an applicable municipal ordinance.

(g) "Municipal services" means:

(i) public utilities;

(ii) police;

(iii) fire;

(iv) code enforcement;

(v) storm water runoff;

(vi) traffic control;

(vii) parking

(viii) transportation;

(ix) beautification; or

(x) snow removal.

(h) "Municipal services study" means a study of the cost of all municipal services to rental housing that:

(i) are reasonably attributable to the rental housing; and

(ii) exceed the municipality's cost to serve similarly-situated, owner-occupied housing.

(2) The legislative body of a municipality may charge and collect a disproportionate rental fee on a business that causes disproportionate costs to municipal services if the municipality:

(a) has performed a municipal services study; and

(b) adopts a disproportionate rental fee that does not exceed the amount that is justified by the municipal services study on a per residential rental unit basis.

(3) A municipality may not:

(a) impose a disproportionate rental fee on an exempt business;

(b) require a landlord to deny tenancy to an individual released from probation or parole whose conviction date occurred more than four years before the date of tenancy; or

(c) without cause and notice, require a landlord to submit to a random building inspection.

(4) In addition to a requirement or qualification described in Subsection (1)(e), a municipality may recognize a landlord training described in its ordinance.

(5) If a municipality adopts a good landlord program, the municipality shall provide an appeal procedure affording due process of law to a landlord who is denied a disproportionate rental fee reduction.

Section 3. Section **10-8-85.5** is amended to read:

10-8-85.5. "Rental dwelling" defined -- Municipality may require a business license or a regulatory business license and inspections -- Exception.

(1) As used in this section, "rental dwelling" means a building or portion of a building that is:

(a) used or designated for use as a residence by one or more persons; and

(b) (i) available to be rented, loaned, leased, or hired out for a period of one month or longer; or

(ii) arranged, designed, or built to be rented, loaned, leased, or hired out for a period of

one month or longer.

(2) (a) The legislative body of a municipality may by ordinance require the owner of a rental dwelling located within the municipality:

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

(ii) (A) to obtain a regulatory business license to operate and maintain the rental dwelling in accordance with Section 10-1-203.5; and

(B) to allow inspections of the rental dwelling as a condition of obtaining a regulatory business license.

(b) A municipality may not require an owner of multiple rental dwellings or multiple buildings containing rental dwellings to obtain more than one regulatory business license for the operation and maintenance of those rental dwellings.

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

[~~(ii) Beginning September 1, 2008, a~~]

(c) A municipality may not charge a fee for the inspection of a rental dwelling.

(d) If a municipality's inspection of a rental dwelling, allowed under Subsection (2)(a)(ii)(B), approves the rental dwelling for purposes of a regulatory business license, a municipality may not inspect that rental dwelling [~~during the next 36 months, unless the municipality has reasonable cause to believe that a condition in the rental dwelling is in violation of an applicable law or ordinance~~] except as provided for in Section 10-1-203.5.

(3) A municipality may not:

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

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

(4) Nothing in this section shall be construed to affect the rights and duties established

under Title 57, Chapter 22, Utah Fit Premises Act, or to restrict a municipality's ability to enforce its generally applicable health ordinances or building code, a local health department's authority under Title 26A, Chapter 1, Local Health Departments, or the Utah Department of Health's authority under Title 26, Utah Health Code.

Section 4. Section **10-9a-511** is amended to read:

10-9a-511. Nonconforming uses and noncomplying structures.

(1) (a) Except as provided in this section, a nonconforming use or noncomplying structure may be continued by the present or a future property owner.

(b) A nonconforming use may be extended through the same building, provided no structural alteration of the building is proposed or made for the purpose of the extension.

(c) For purposes of this Subsection (1), the addition of a solar energy device to a building is not a structural alteration.

(2) The legislative body may provide for:

(a) the establishment, restoration, reconstruction, extension, alteration, expansion, or substitution of nonconforming uses upon the terms and conditions set forth in the land use ordinance;

(b) the termination of all nonconforming uses, except billboards, by providing a formula establishing a reasonable time period during which the owner can recover or amortize the amount of his investment in the nonconforming use, if any; and

(c) the termination of a nonconforming use due to its abandonment.

(3) (a) A municipality may not prohibit the reconstruction or restoration of a noncomplying structure or terminate the nonconforming use of a structure that is involuntarily destroyed in whole or in part due to fire or other calamity unless the structure or use has been abandoned.

(b) A municipality may prohibit the reconstruction or restoration of a noncomplying structure or terminate the nonconforming use of a structure if:

(i) the structure is allowed to deteriorate to a condition that the structure is rendered uninhabitable and is not repaired or restored within six months after written notice to the property owner that the structure is uninhabitable and that the noncomplying structure or nonconforming use will be lost if the structure is not repaired or restored within six months; or

(ii) the property owner has voluntarily demolished a majority of the noncomplying

structure or the building that houses the nonconforming use.

(c) (i) Notwithstanding a prohibition in its zoning ordinance, a municipality may permit a billboard owner to relocate the billboard within the municipality's boundaries to a location that is mutually acceptable to the municipality and the billboard owner.

(ii) If the municipality and billboard owner cannot agree to a mutually acceptable location within 90 days after the owner submits a written request to relocate the billboard, the provisions of Subsection 10-9a-513(2)(a)(iv) apply.

(4) (a) Unless the municipality establishes, by ordinance, a uniform presumption of legal existence for nonconforming uses, the property owner shall have the burden of establishing the legal existence of a noncomplying structure or nonconforming use.

(b) Any party claiming that a nonconforming use has been abandoned shall have the burden of establishing the abandonment.

(c) Abandonment may be presumed to have occurred if:

(i) a majority of the primary structure associated with the nonconforming use has been voluntarily demolished without prior written agreement with the municipality regarding an extension of the nonconforming use;

(ii) the use has been discontinued for a minimum of one year; or

(iii) the primary structure associated with the nonconforming use remains vacant for a period of one year.

(d) The property owner may rebut the presumption of abandonment under Subsection (4)(c), and shall have the burden of establishing that any claimed abandonment under Subsection (4)(b) has not in fact occurred.

(5) A municipality may terminate the nonconforming status of a school district or charter school use or structure when the property associated with the school district or charter school use or structure ceases to be used for school district or charter school purposes for a period established by ordinance.

(6) A municipal ordinance adopted under Section [~~10-1-203~~] 10-1-203.5 may not:

(a) require physical changes in a structure with a legal nonconforming rental housing use unless the change is for:

(i) the reasonable installation of:

(A) a smoke detector that is plugged in or battery operated;

(B) a ground fault circuit interrupter protected outlet on existing wiring;

(C) street addressing;

(D) except as provided in Subsection (7), an egress bedroom window if the existing bedroom window is smaller than that required by current state building code;

(E) an electrical system or a plumbing system, if the existing system is not functioning or is unsafe as determined by an independent electrical or plumbing professional who is licensed in accordance with Title 58, Occupations and Professions;

(F) hand or guard rails; or

(G) occupancy separation doors as required by the International Residential Code; or

(ii) the abatement of a structure; or

(b) be enforced to terminate a legal nonconforming rental housing use.

(7) A municipality may not require a change described in Subsection (6)(a)(i)(D) if the change:

(a) would compromise the structural integrity of a building; or

(b) could not be completed in accordance with current building codes, including set-back and window well requirements.

(8) A legal nonconforming rental housing use may not be terminated under Section [~~10-1-203~~] 10-1-203.5.

Section 5. Section **57-22-7** is amended to read:

57-22-7. Limitation on counties and municipalities.

(1) A county or municipality may not adopt an ordinance, resolution, or regulation that is inconsistent with this chapter.

(2) (a) Subsection (1) may not be construed to limit the ability of a county or municipality to enforce an applicable administrative remedy with respect to a residential rental unit for a violation of a county or municipal ordinance, subject to Subsection (2)(b).

(b) A county or municipality's enforcement of an administrative remedy may not have the effect of:

(i) modifying the time requirements of a corrective period, as defined in Section 57-22-6;

(ii) limiting or otherwise affecting a tenant's remedies under Section 57-22-6; or

(iii) modifying an owner's obligation under this chapter to a tenant relating to the

habitability of a residential rental unit.

(3) A municipality with a good landlord program under [~~Subsection 10-1-203(5)(c)~~] Section 10-1-203.5 may not limit an owner's participation in the program or reduce program benefits to the owner because of renter or crime victim action that the owner is prohibited under Subsection 57-22-5.1(5) from restricting or penalizing.

Section 6. Section **72-7-102** is amended to read:

72-7-102. Excavations, structures, or objects prohibited within right-of-way except in accordance with law -- Permit and fee requirements -- Rulemaking -- Penalty for violation.

(1) As used in this section, "management costs" means the reasonable, direct, and actual costs a highway authority incurs in exercising authority over the highways under its jurisdiction.

(2) Except as provided in Subsection (3) and Section 54-4-15, a person may not:

(a) dig or excavate, within the right-of-way of any state highway, county road, or city street; or

(b) place, construct, or maintain any approach road, driveway, pole, pipeline, conduit, sewer, ditch, culvert, billboard, advertising sign, or any other structure or object of any kind or character within the right-of-way.

(3) (a) A highway authority having jurisdiction over the right-of-way may allow excavating, installation of utilities and other facilities or access under rules made by the highway authority and in compliance with federal, state, and local law as applicable.

(b) (i) The rules may require a permit for any excavation or installation and may require a surety bond or other security.

(ii) The application for a permit for excavation or installation on a state highway shall be accompanied by a fee established under Subsection (4)(f).

(iii) The permit may be revoked and the surety bond or other security may be forfeited for cause.

(4) (a) Except as provided in Section 72-7-108 with respect to the department concerning the interstate highway system, a highway authority may require compensation from a utility service provider for access to the right-of-way of a highway only as provided in this section.

(b) A highway authority may recover from a utility service provider, only those management costs caused by the utility service provider's activities in the right-of-way of a highway under the jurisdiction of the highway authority.

(c) (i) A fee or other compensation under this Subsection (4) shall be imposed on a competitively neutral basis.

(ii) If a highway authority's management costs cannot be attributed to only one entity, the management costs shall be allocated among all privately owned and government agencies using the highway right-of-way for utility service purposes, including the highway authority itself. The allocation shall reflect proportionately the management costs incurred by the highway authority as a result of the various utility uses of the highway.

(d) A highway authority may not use the compensation authority granted under this Subsection (4) as a basis for generating revenue for the highway authority that is in addition to its management costs.

(e) (i) A utility service provider that is assessed management costs or a franchise fee by a highway authority is entitled to recover those management costs.

(ii) If the highway authority that assesses the management costs or franchise fees is a political subdivision of the state and the utility service provider serves customers within the boundaries of that highway authority, the management costs may be recovered from those customers.

(f) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall adopt a schedule of fees to be assessed for management costs incurred in connection with issuing and administering a permit on a state highway under this section.

(g) In addition to the requirements of this Subsection (4), a telecommunications tax or fee imposed by a municipality on a telecommunications provider, as defined in Section 10-1-402, is subject to Section 10-1-406.

(5) Permit fees collected by the department under this section shall be deposited with the state treasurer and credited to the Transportation Fund.

(6) Nothing in this section shall affect the authority of a municipality under:

(a) Section [~~10-1-203~~] or 10-1-203.5;

(b) Section 11-26-1;

(c) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act; or

(d) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act.

(7) A person who violates the provisions of Subsection (2) is guilty of a class B misdemeanor.