

LOCAL GOVERNMENT CLEAN-UP FEES

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Eric K. Hutchings

Senate Sponsor: _____

LONG TITLE

General Description:

This bill enacts language governing a municipality or county that charges a fee for residential clean-up service.

Highlighted Provisions:

This bill:

▶ enacts language limiting a fee a municipality or county may charge for a residential clean-up service;

▶ requires a municipality or county to provide a property owner with a statement showing the municipality's or county's calculation method of a clean-up fee;

▶ requires a municipality or county to record with the county recorder and mail to a property owner a notice of a lien if the municipality or county plans to record

~~H~~→ [a] an abatement ←~~H~~ lien

against the property;

▶ enacts language governing ~~H~~→ [a] an abatement ←~~H~~ lien recorded for clean-up costs;

and

▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



28 10-11-3, as last amended by Laws of Utah 2011, Chapter 172

29 ENACTS:

30 10-11-5, Utah Code Annotated 1953

31 17-50-335, Utah Code Annotated 1953

32

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

34 Section 1. Section 10-11-3 is amended to read:

35 **10-11-3. Neglect of property owners -- Removal by municipality -- Costs of**
36 **removal -- Notice -- File action or lien -- Property owner objection.**

37 (1) (a) If an owner of, occupant of, or other person responsible for real property
38 described in the notice delivered in accordance with Section 10-11-2 fails to comply with
39 Section 10-11-2, a municipal inspector may:

40 (i) at the expense of the municipality, employ necessary assistance to enter the property
41 and destroy or remove an item identified in a written notice described in Section 10-11-2; and

42 (ii) (A) prepare an itemized statement in accordance with Subsection (1)(b); and

43 (B) mail to the owner of record according to the records of the county recorder a copy
44 of the statement demanding payment within 30 days after the day on which the statement is
45 post-marked.

46 (b) The statement described in Subsection (1)(a)(ii)(A) shall:

47 (i) include:

48 (A) the address of the property described in Subsection (1)(a);

49 (B) an itemized list of and demand for payment in a specified amount for all expenses,
50 including administrative expenses, incurred by the municipality under Subsection (1)(a)(i); and

51 (C) the address of the municipal treasurer where payment may be made for the
52 expenses; and

53 (ii) notify the property owner:

54 (A) that failure to pay the expenses described in Subsection (1)(b)(i)(B) may result in

54a **Ĥ→ [-a] an abatement ←Ĥ**

55 lien on the property in accordance with Section [~~10-11-4~~] 10-11-5;

56 (B) that the owner may file a written objection to all or part of the statement within 20
57 days after the day of the statement post-mark; and

58 (C) where the owner may file the objection, including the municipal office and address.

59 (c) A statement mailed in accordance with Subsection (1)(a) is delivered when mailed
 60 by certified mail addressed to the property owner's of record last known address according to
 61 the records of the county recorder.

62 (d) (i) ~~[A]~~ No later than 30 days before recording ~~H→~~ [a] **an abatement** ~~←H~~ lien on the
 62a property, a municipality

63 [may] shall:

64 (A) file a notice of a lien, including a copy of the statement described in Subsection
 65 (1)(a)(ii)(A) or a summary of the statement, in the records of the county recorder of the county
 66 in which the property is located[-]; and

67 (B) mail a copy of the notice of the ~~H→~~ **abatement** ~~←H~~ lien to the property owner's of
 67a record last known
 68 address.

69 (ii) If a municipality files a notice of a lien indicating that the municipality intends to
 70 [certify] record ~~H→~~ [a] **an abatement** ~~←H~~ lien against the property for the unpaid costs and
 70a expenses in accordance with
 71 Subsection (2)(a)(ii) and Section ~~[10-11-4]~~ 10-11-5, the municipality shall file for record in the
 72 county recorder's office a release of the ~~H→~~ **abatement** ~~←H~~ lien after all amounts owing are paid.

73 (2) (a) If an owner fails to file a timely written objection as described in Subsection
 74 (1)(b)(ii)(B) or to pay the amount set forth in the statement under Subsection (1)(b)(i)(B), the
 75 municipality may, subject to Subsection (5):

76 (i) file an action in district court; or

77 ~~[(ii) certify the past due costs and expenses to the county treasurer of the county in~~
 78 ~~which the property is located in accordance with Section 10-11-4.]~~

79 (ii) record ~~H→~~ [a] **an abatement** ~~←H~~ lien against the property in accordance with
 79a Section 10-11-5.

80 (b) If a municipality pursues collection of the costs in accordance with Subsection
 81 (2)(a)(i) or (4)(a), the municipality may:

82 (i) sue for and receive judgment for, subject to Subsection (5), all removal and
 83 destruction costs, including administrative costs, and reasonable attorney fees, interest, and
 84 court costs; and

85 (ii) execute on the judgment in the manner provided by law.

86 (3) (a) If a property owner files an objection in accordance with Subsection (1)(b)(ii),
 87 the municipality shall:

88 (i) hold a hearing in accordance with Title 52, Chapter 4, Open and Public Meetings
 89 Act; and

90 (ii) mail or deliver notice of the hearing date and time to the property owner.

91 (b) At the hearing described in Subsection (3)(a)(i), the municipality shall review and
92 determine the actual cost of abatement, if any, incurred under Subsection (1)(a)(i).

93 (c) The property owner shall pay any actual cost due after a decision by the
94 municipality at the hearing described in Subsection (3)(a)(i) to the municipal treasurer within
95 30 days after the day on which the hearing is held.

96 (4) If the property owner fails to pay in accordance with Subsection (3)(c), the
97 municipality may:

98 (a) file an action in district court for the actual cost determined under Subsection (3)(b)
99 and an expense, fee, or cost described in Subsection (2)(b)(i); or

100 [(b) certify the past due costs and expenses to the county treasurer of the county in
101 which the property is located in accordance with Section 10-11-4.]

102 (b) subject to Subsection (5), record ~~H~~→ [a] an abatement ←~~H~~ lien against the property in
102a accordance with
103 Section 10-11-5.

104 (5) (a) If the municipality files an action in district court under Subsection (2)(a)(i) or
105 (4)(a), or records ~~H~~→ [a] an abatement ←~~H~~ lien for the past due costs and expenses under
105a Subsection (2)(a)(ii) or
106 (4)(b), the sum total of remittance for administrative expenses authorized in Subsection
107 (1)(b)(i)(B), or a cost, fee, or interest charge authorized in Subsection (2)(b)(i), that the
108 municipality may claim or certify may not exceed 100% of the actual cost of abatement
109 incurred by the municipality under Subsection (1)(a)(i).

110 (b) A municipality described in Subsection (5)(a) shall provide the owner with an
111 itemized statement that shows the calculation method of an expense, cost, fee, or charge made
112 in accordance with Subsection (5)(a).

113 [(5)] (6) This section does not affect or limit:

114 (a) a municipal governing body's power to pass an ordinance as described in Section
115 10-3-702; or

116 (b) a criminal or civil penalty imposed by a municipality in accordance with Section
117 10-3-703.

118 Section 2. Section **10-11-5** is enacted to read:

119 **10-11-5. Lien recorded -- Priority.**

120 (1) A municipality may record ~~H~~→ [a] an abatement ←~~H~~ lien with the county recorder of
120a the county in which a

121 property described in Section 10-11-3 is located for the unpaid costs and expenses that the
 122 municipality has incurred under Section 10-11-3 with regard to the property.

123 (2) ~~H~~→ [A] **An abatement** ←~~H~~ lien imposed under this section:

124 (a) has priority over any lien, mortgage, security interest, or other encumbrance arising
 125 after the day on which the ~~H~~→ **abatement** ←~~H~~ lien is recorded; and

126 (b) does not have priority over:

127 (i) a lien imposed pursuant to Title 59, Chapter 2, Property Tax Act; or

128 (ii) any other previously recorded lien.

129 (3) This section does not apply to any public building, public structure, or public
 130 improvement.

131 Section 3. Section **17-50-335** is enacted to read:

132 **17-50-335. Limit on fees for residential service -- Notice of fee calculation -- Lien.**

133 (1) If a county directs a county inspector to inspect and clean up or abate real property
 134 for the growth and spread of injurious and noxious weeds, garbage and refuse, a public
 135 nuisance, or an illegal object or structure, the county may not file an action against the owner of
 136 or record a lien against an inspected property for payment due for a sum total amount in
 137 expenses, fees, costs, or interest charges that exceeds 100% of the actual cost of the inspection
 138 or abatement incurred by the county.

139 (2) A county described in Subsection (1) shall provide the owner with an itemized
 140 statement that shows the calculation method of an expense, cost, fee, or charge made in
 141 accordance with Subsection (1).

142 (3) If a county records ~~H~~→ [a] **an abatement** ←~~H~~ lien with the county recorder of the
 142a county in which a property
 143 described in Subsection (1) is located for the unpaid costs and expenses that the county has
 144 incurred for an inspection, clean up, or abatement with regard to the property, the county shall
 145 no later than 30 days before recording ~~H~~→ [a] **the abatement** ←~~H~~ lien on the property:

146 (a) file a notice of a lien, including a copy of the statement described in Subsection (2),
 147 in the records of the county recorder; and

148 (b) mail a copy of the notice of the ~~H~~→ **abatement** ←~~H~~ lien to the property owner's of
 148a record last known
 149 address.

150 (4) ~~H~~→ [A] **An abatement** ←~~H~~ lien imposed under this section:

151 (a) has priority over any lien, mortgage, security interest, or other encumbrance arising

152 after the day on which the ~~H~~→ **abatement** ←~~H~~ lien is recorded; and

153 (b) does not have priority over:

154 (i) a lien imposed pursuant to Title 59, Chapter 2, Property Tax Act; or

155 (ii) any other previously recorded lien.

156 (5) The county shall file for record in the county recorder's office a release of the

156a ~~H~~→ **abatement** ←~~H~~ lien

157 after all amounts owing are paid.

158 (6) This section does not apply to any public building, public structure, or public

159 improvement.

Legislative Review Note
as of 2-14-13 3:00 PM

Office of Legislative Research and General Counsel