

# HB0115S01 compared with HB0115

~~{deleted text}~~ shows text that was in HB0115 but was deleted in HB0115S01.

inserted text shows text that was not in HB0115 but was inserted into HB0115S01.

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Representative Keven J. Stratton proposes the following substitute bill:

## TOWING AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Keven J. Stratton**

Senate Sponsor: \_\_\_\_\_

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### LONG TITLE

#### General Description:

This bill modifies the Traffic Code and the Motor Carrier Safety Act by amending provisions relating to towing.

#### Highlighted Provisions:

This bill:

- ▶ provides that a tow truck operator ~~{or}~~, a tow truck motor carrier, or an impound yard may not charge a fee for a tow truck service or any service rendered, performed, or supplied in connection with the tow truck service in addition to the fees adopted by a county or municipal ordinance ~~{and administrative rule}~~ or the Department of Transportation;
- ▶ provides that a ~~{county or municipality may require}~~ tow truck operator, a tow truck motor carrier, and an impound yard shall accept payment by cash and debit or credit

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card;

▶ requires a tow truck motor carrier ~~{to have a business license to perform a tow truck service that:~~

~~• is performed within the}~~ or impound yard to clearly and conspicuously post and disclose acceptable forms of payment;

▶ removes the signage exception for parking in a location that is prohibited by a declaration of the conditions, covenants, and restrictions or by a contract;

▶ provides that nothing in Title 72, Chapter 9, Part 6, Motor Carrier Safety Act, shall be construed to prevent a county or municipality~~;~~

~~• is done without the vehicle, vessel, or outboard motor owner's knowledge; and~~

~~• is not ordered by a peace officer, a person acting on behalf of a law enforcement agency, or a highway authority}~~ from enacting and enforcing an ordinance, regulation, or rule pertaining to a tow truck operator, a tow truck motor carrier, or an impound yard that is more restrictive than the provisions of Title 72, Chapter 9, Part 6, Motor Carrier Safety Act with exceptions;

▶ provides that a county or municipality may set ~~{maximum rates that:~~

~~• a tow truck operator or tow truck motor carrier may charge}~~ rates for certain fees or charges authorized by the Department of Transportation for certain tow truck services;~~{ and~~

~~• an impound yard may charge for the storage of a vehicle, vessel, or outboard motor that has been towed}~~

▶ provides that a rate set by a county or municipality may not:

• exceed by more than 25% the equivalent rate set by the department; or

• be over 25% less than the equivalent rate set by the department;

▶ provides that a vehicle immobilizer may not charge a fee for the removal of a vehicle immobilization device or any service rendered, performed, or supplied in connection with the removal of the immobilization device in addition to the fees specified in the Traffic Code;

▶ provides that a vehicle immobilizer shall accept payment by cash and debit or credit card; and

▶ makes technical ~~{changes}~~ corrections.

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### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

#### AMENDS:

**41-6a-1406**, as last amended by Laws of Utah 2012, Chapter 226

**41-6a-1409**, as last amended by Laws of Utah 2010, Chapter 91

**72-9-603**, as last amended by Laws of Utah 2011, Chapter 363

**72-9-604**, as renumbered and amended by Laws of Utah 1998, Chapter 270

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

Section 1. Section **41-6a-1406** is amended to read:

**41-6a-1406. Removal and impoundment of vehicles -- Reporting and notification requirements -- Administrative impound fee -- Refunds -- Possessory lien -- Rulemaking.**

(1) If a vehicle, vessel, or outboard motor is removed or impounded as provided under Section 41-1a-1101, 41-6a-527, 41-6a-1405, 41-6a-1408, or 73-18-20.1 by an order of a peace officer or by an order of a person acting on behalf of a law enforcement agency or highway authority, the removal or impoundment of the vehicle, vessel, or outboard motor shall be at the expense of the owner.

(2) The vehicle, vessel, or outboard motor under Subsection (1) shall be removed or impounded to:

- (a) a state impound yard; or
- (b) if none, a garage, docking area, or other place of safety.

(3) The peace officer may move a vehicle, vessel, or outboard motor or cause it to be removed by a tow truck motor carrier that meets standards established:

- (a) under Title 72, Chapter 9, Motor Carrier Safety Act; and
- (b) by the department under Subsection (10).

(4) (a) Immediately after the removal of the vehicle, vessel, or outboard motor, a report of the removal shall be sent to the Motor Vehicle Division by:

- (i) the peace officer or agency by whom the peace officer is employed; and

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(ii) the tow truck operator or the tow truck motor carrier by whom the tow truck operator is employed.

(b) The report shall be in a form specified by the Motor Vehicle Division and shall include:

- (i) the operator's name, if known;
- (ii) a description of the vehicle, vessel, or outboard motor;
- (iii) the vehicle identification number or vessel or outboard motor identification number;
- (iv) the license number or other identification number issued by a state agency;
- (v) the date, time, and place of impoundment;
- (vi) the reason for removal or impoundment;
- (vii) the name of the tow truck motor carrier who removed the vehicle, vessel, or outboard motor; and
- (viii) the place where the vehicle, vessel, or outboard motor is stored.

(c) Until the tow truck operator or tow truck motor carrier reports the removal as required under this Subsection (4), a tow truck motor carrier or impound yard may not:

- (i) collect any fee associated with the removal; and
- (ii) begin charging storage fees.

(5) (a) Except as provided in Subsection (5)(e) and upon receipt of the report, the Motor Vehicle Division shall give notice to the registered owner of the vehicle, vessel, or outboard motor and any lien holder in the manner prescribed by Section 41-1a-114.

(b) The notice shall:

(i) state the date, time, and place of removal, the name, if applicable, of the person operating the vehicle, vessel, or outboard motor at the time of removal, the reason for removal, and the place where the vehicle, vessel, or outboard motor is stored;

(ii) state that the registered owner is responsible for payment of towing, impound, and storage fees charged against the vehicle, vessel, or outboard motor;

(iii) inform the registered owner of the vehicle, vessel, or outboard motor of the conditions that must be satisfied before the vehicle, vessel, or outboard motor is released; and

(iv) inform the registered owner and lienholder of the division's intent to sell the vehicle, vessel, or outboard motor, if within 30 days from the date of the removal or

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impoundment under this section, the owner, lien holder, or the owner's agent fails to make a claim for release of the vehicle, vessel, or outboard motor.

(c) Except as provided in Subsection (5)(e) and if the vehicle, vessel, or outboard motor is not registered in this state, the Motor Vehicle Division shall make a reasonable effort to notify the registered owner and any lien holder of the removal and the place where the vehicle, vessel, or outboard motor is stored.

(d) The Motor Vehicle Division shall forward a copy of the notice to the place where the vehicle, vessel, or outboard motor is stored.

(e) The Motor Vehicle Division is not required to give notice under this Subsection (5) if a report was received by a tow truck operator or tow truck motor carrier reporting a tow truck service in accordance with Subsection 72-9-603(1)(a)(i).

(6) (a) The vehicle, vessel, or outboard motor shall be released after the registered owner, lien holder, or the owner's agent:

(i) makes a claim for release of the vehicle, vessel, or outboard motor at any office of the State Tax Commission;

(ii) presents identification sufficient to prove ownership of the impounded vehicle, vessel, or outboard motor;

(iii) completes the registration, if needed, and pays the appropriate fees;

(iv) if the impoundment was made under Section 41-6a-527, pays an administrative impound fee of \$350; and

(v) pays all towing and storage fees to the place where the vehicle, vessel, or outboard motor is stored.

(b) (i) Twenty-nine dollars of the administrative impound fee assessed under Subsection (6)(a)(iv) shall be dedicated credits to the Motor Vehicle Division;

(ii) \$97 of the administrative impound fee assessed under Subsection (6)(a)(iv) shall be deposited in the Department of Public Safety Restricted Account created in Section 53-3-106;

(iii) \$20 of the administrative impound fee assessed under Subsection (6)(a)(iv) shall be deposited in the Traumatic Spinal Cord and Brain Injury Rehabilitation Fund; and

(iv) the remainder of the administrative impound fee assessed under Subsection (6)(a)(iv) shall be deposited in the General Fund.

(c) The administrative impound fee assessed under Subsection (6)(a)(iv) shall be

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waived or refunded by the State Tax Commission if the registered owner, lien holder, or owner's agent presents written evidence to the State Tax Commission that:

(i) the Driver License Division determined that the arrested person's driver license should not be suspended or revoked under Section 53-3-223 or 41-6a-521 as shown by a letter or other report from the Driver License Division presented within 30 days of the final notification from the Driver License Division; or

(ii) the vehicle was stolen at the time of the impoundment as shown by a copy of the stolen vehicle report presented within 30 days of the impoundment.

(d) A tow truck operator ~~or~~, a tow truck motor carrier, or an impound yard may not charge a fee for the removal or impoundment of a vehicle, vessel, or outboard motor under Subsection (1) or any service rendered, performed, or supplied in connection with the removal or impoundment under Subsection (1) in addition to the fees adopted by:

~~{~~ (i) by a county or municipal ordinance, and

~~}~~ (~~iii~~i) ~~by~~ the Department of Transportation in accordance with Subsection 72-9-603(7) ~~;~~ or

(ii) a county or municipal ordinance.

(e) A tow truck operator, a tow truck motor carrier, and an impound yard shall accept payment by cash and debit or credit card for a removal or impoundment under Subsection (1) or any service rendered, performed, or supplied in connection with a removal or impoundment under Subsection (1).

(7) (a) An impounded vehicle, vessel, or outboard motor not claimed by the registered owner or the owner's agent within the time prescribed by Section 41-1a-1103 shall be sold in accordance with that section and the proceeds, if any, shall be disposed of as provided under Section 41-1a-1104.

(b) The date of impoundment is considered the date of seizure for computing the time period provided under Section 41-1a-1103.

(8) The registered owner who pays all fees and charges incurred in the impoundment of the owner's vehicle, vessel, or outboard motor, has a cause of action for all the fees and charges, together with damages, court costs, and attorney fees, against the operator of the vehicle, vessel, or outboard motor whose actions caused the removal or impoundment.

(9) Towing, impound fees, and storage fees are a possessory lien on the vehicle, vessel,

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or outboard motor.

(10) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules setting the performance standards for towing companies to be used by the department.

(11) (a) The Motor Vehicle Division may specify that a report required under Subsection (4) be submitted in electronic form utilizing a database for submission, storage, and retrieval of the information.

(b) (i) Unless otherwise provided by statute, the Motor Vehicle Division or the administrator of the database may adopt a schedule of fees assessed for utilizing the database.

(ii) The fees under this Subsection (11)(b) shall:

(A) be reasonable and fair; and

(B) reflect the cost of administering the database.

Section 2. Section **41-6a-1409** is amended to read:

**41-6a-1409. Vehicle immobilization devices -- Definitions -- Notice requirements -- Maximum removal fee.**

(1) As used in this section:

(a) "Immobilize" means to affix and lock a vehicle immobilization device to the exterior of a motor vehicle.

(b) "Vehicle immobilization device" means a device that may be affixed and locked to the exterior of a motor vehicle for the purpose of prohibiting the movement or removal of the vehicle from its location.

(c) "Vehicle immobilizer" means a person who or entity that uses or causes to be used a vehicle immobilization device for the purpose of enforcing parking restrictions with prior authorization from the owner or person in lawful possession or control of the real property.

(2) (a) A vehicle immobilizer may not immobilize a vehicle without the motor vehicle owner's knowledge at either of the following locations without signage that meets the requirements of Subsection (2)(b):

(i) a mobile home park as defined in Section 57-16-3; or

(ii) a multifamily dwelling of more than eight units.

(b) Signage under Subsection (2)(a) shall display:

(i) where parking is subject to being immobilized; and

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(ii) one of the following:

(A) the name and phone number of the vehicle immobilizer that immobilizes a vehicle for the locations listed under Subsection (2)(a)(i); or

(B) the name of the mobile home park or multifamily dwelling and the phone number of the mobile home park or multifamily dwelling manager or management office that authorized the vehicle immobilizer to immobilize the motor vehicle.

(c) Signage is not required under Subsection (2)(b) for parking in a location:

(i) that is prohibited by law; or

(ii) if it is reasonably apparent that the location is not open to parking.

(d) Nothing in Subsection (2)(b) restricts the ability of a mobile home park as defined in Section 57-16-3 or a multifamily dwelling from instituting and enforcing regulations on parking.

(3) (a) Upon immobilizing a vehicle, the vehicle immobilizer shall affix a notice to the immobilized vehicle in a conspicuous place so as to be plainly visible to a person seeking to operate the vehicle.

(b) The notice under Subsection (3)(a) shall include:

(i) the name and phone number of the vehicle immobilizer;

(ii) a phone number that the owner of the vehicle may call to arrange for release of the vehicle; and

(iii) applicable fees.

(4) (a) The maximum fee that a vehicle immobilizer may charge to remove a vehicle immobilization device may not exceed:

(i) \$75 for the first 24-hour period a vehicle is immobilized; plus

(ii) \$25 for each additional 24-hour period a vehicle is immobilized.

(b) Notwithstanding Subsection (4)(a), the maximum fee that a vehicle immobilizer may charge to remove a vehicle immobilization device may not exceed \$150 for each instance.

(c) A vehicle immobilizer may not charge a fee for the removal of a vehicle immobilization device or any service rendered, performed, or supplied in connection with the removal of the immobilization device in addition to the fees specified under [this](#) Subsection (4).

(d) A vehicle immobilizer shall accept payment by cash and debit or credit card for the

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removal of a vehicle immobilization device or any service rendered, performed, or supplied in connection with the removal of the immobilization device.

(5) A county or municipal legislative or governing body may not enact or enforce any ordinance, regulation, rule, or fee pertaining to a vehicle immobilization device that conflicts with this part.

Section 3. Section **72-9-603** is amended to read:

**72-9-603. Towing notice requirements -- Cost responsibilities -- Abandoned vehicle title restrictions -- Rules for maximum rates and certification.**

(1) Except for a tow truck service that was ordered by a peace officer, or a person acting on behalf of a law enforcement agency, or a highway authority, [~~as defined in Section 72-1-102,~~] after performing a tow truck service that is being done without the vehicle, vessel, or outboard motor owner's knowledge, the tow truck operator or the tow truck motor carrier shall:

(a) immediately upon arriving at the place of storage or impound of the vehicle, vessel, or outboard motor:

(i) send a report of the removal to the Motor Vehicle Division that complies with the requirements of Subsection 41-6a-1406(4)(b); and

(ii) contact the law enforcement agency having jurisdiction over the area where the vehicle, vessel, or outboard motor was picked up and notify the agency of the:

(A) location of the vehicle, vessel, or outboard motor;

(B) date, time, and location from which the vehicle, vessel, or outboard motor was removed;

(C) reasons for the removal of the vehicle, vessel, or outboard motor;

(D) person who requested the removal of the vehicle, vessel, or outboard motor; and

(E) vehicle, vessel, or outboard motor's description, including its identification number and license number or other identification number issued by a state agency; and

(b) within two business days of performing the tow truck service under Subsection (1)(a), send a certified letter to the last-known address of the registered owner and lien holder of the vehicle, vessel, or outboard motor obtained from the Motor Vehicle Division or if the person has actual knowledge of the owner's address to the current address, notifying the owner of the:

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- (i) location of the vehicle, vessel, or outboard motor;
- (ii) date, time, location from which the vehicle, vessel, or outboard motor was removed;
- (iii) reasons for the removal of the vehicle, vessel, or outboard motor;
- (iv) person who requested the removal of the vehicle, vessel, or outboard motor;
- (v) a description, including its identification number and license number or other identification number issued by a state agency; and
- (vi) costs and procedures to retrieve the vehicle, vessel, or outboard motor.

(2) (a) Until the tow truck operator or tow truck motor carrier reports the removal as required under Subsection (1)(a), a tow truck operator, tow truck motor carrier, or impound yard may not:

- (i) collect any fee associated with the removal; or
- (ii) begin charging storage fees.

(b) (i) Except as provided in Subsection (2)(c), a tow truck operator or tow truck motor carrier may not perform a tow truck service without the vehicle, vessel, or outboard motor owner's or a lien holder's knowledge at either of the following locations without signage that meets the requirements of Subsection (2)(b)(ii):

- (A) a mobile home park as defined in Section 57-16-3; or
- (B) a multifamily dwelling of more than eight units.

(ii) Signage under Subsection (2)(b)(i) shall display:

(A) where parking is subject to towing; and

(B) (I) the Internet website address that provides access to towing database information in accordance with Section 41-6a-1406; or

(II) one of the following:

(Aa) the name and phone number of the tow truck operator or tow truck motor carrier that performs a tow truck service for the locations listed under Subsection (2)(b)(i); or

(Bb) the name of the mobile home park or multifamily dwelling and the phone number of the mobile home park or multifamily dwelling manager or management office that authorized the vehicle, vessel, or outboard motor to be towed.

(c) Signage is not required under Subsection (2)(b) for parking in a location:

- (i) that is prohibited by law; or

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~~[(ii) that is prohibited by a declaration of the conditions, covenants, and restrictions or by a contract, or]~~

~~[(iii)]~~ (ii) if it is reasonably apparent that the location is not open to parking.

(d) Nothing in Subsection (2)(b) restricts the ability of a mobile home park as defined in Section 57-16-3 or a multifamily dwelling from instituting and enforcing regulations on parking.

(3) (a) The owner of a vehicle, vessel, or outboard motor lawfully removed is only responsible for paying:

~~[(a)]~~ (i) the tow truck service and storage fees set in accordance with Subsection (7); and

~~[(b)]~~ (ii) the administrative impound fee set in Section 41-6a-1406, if applicable.

(b) A tow truck operator, a tow truck motor carrier, or an impound yard may not charge a fee for a tow truck service of a vehicle, vessel, or outboard motor under Subsection (1) or any service rendered, performed, or supplied in connection with the towing service under Subsection (1) in addition to the fees adopted by:

~~{~~ (i) by a county or municipal ordinance; and

~~}~~ (iii) by the department under Subsection (7); or

(ii) a county or municipal ordinance.

(4) The fees under Subsection (3) are a possessory lien on the vehicle, non-life essential items that are owned by the owner of the vehicle and securely stored by the tow truck operator, vessel, or outboard motor until paid.

(5) A person may not request a transfer of title to an abandoned vehicle until at least 30 days after notice has been sent under Subsection (1)(b).

(6) (a) A tow truck motor carrier or impound yard shall clearly and conspicuously post and disclose all its current fees ~~[and]~~ rates, and acceptable forms of payment for tow truck service and storage of a vehicle in accordance with rules established under Subsection (7).

(b) A tow truck operator, a tow truck motor carrier, and an impound yard shall accept payment by cash and debit or credit card for a tow truck service under Subsection (1) or any service rendered, performed, or supplied in connection with a tow truck service under Subsection (1).

(7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

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Department of Transportation shall:

(a) set maximum rates that:

(i) a tow truck motor [carriers] carrier may charge for the tow truck service of a vehicle, vessel, or outboard motor that are transported in response to:

(A) a peace officer dispatch call;

(B) a motor vehicle division call; and

(C) any other call or request where the owner of the vehicle, vessel, or outboard motor has not consented to the removal; and

(ii) an impound [yards] yard may charge for the storage of a vehicle, vessel, or outboard motor stored as a result of one of the conditions listed under Subsection (7)(a)(i);

(b) establish authorized towing certification requirements, not in conflict with federal law, related to incident safety, clean-up, and hazardous material handling;

(c) specify the form and content of the posting and disclosure of fees and rates charged and acceptable forms of payment by a tow truck motor carrier or impound yard; and

(d) set a maximum rate for an administrative fee that a tow truck motor carrier may charge for reporting the removal as required under Subsection (1)(a)(i) and providing notice of the removal to the registered owner and lienholder of the vehicle, vessel, or outboard motor as required in Subsection (1)(b).

Section 4. Section **72-9-604** is amended to read:

### **72-9-604. Regulatory powers of local authorities -- Tow trucks.**

~~[(1) A county or municipal legislative or governing body may not enact or enforce any ordinance, regulation, rule, or fee pertaining to a tow truck or tow truck motor carrier that conflicts with this part.]~~

~~— [(2)]~~

(1) Except as provided in this section, nothing in this part shall be construed to prevent a county or municipal legislative or governing body from enacting and enforcing an ordinance, regulation, or rule pertaining to a tow truck operator, a tow truck motor carrier, or an impound yard that is more restrictive than the provisions of this part.

(2) (a) Except for a fee or charge a tow truck operator, a tow truck motor carrier, or an impound yard may charge as a result of a tow truck service that was ordered by a peace officer, a person acting on behalf of a law enforcement agency, or a highway authority, a county or

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municipal legislative or governing body may set a rate for any fee or charge authorized by the department in accordance with Subsection 72-9-603(7) for a tow truck service that is done without the vehicle, vessel, or outboard motor owner's knowledge.

(b) A rate set by a county or municipality under Subsection (2)(a) may not:

(i) exceed by more than 25% the equivalent rate set by the department under

Subsection 72-9-603(7); or

(ii) be over 25% less than the equivalent rate set by the department under Subsection 72-9-603(7).

[2] (3) A tow truck motor carrier that has a county or municipal business license for a place of business located within that county or municipality may not be required to obtain another business license in order to perform a tow truck service in another county or municipality if there is not a business location in the other county or municipality. { }

{ — (2) A county or municipality may require a tow truck motor carrier to have a business license to perform a tow truck service that:

— (a) is performed within the county or municipality;

— (b) is done without the vehicle, vessel, or outboard motor owner's knowledge; and

— (c) is not ordered by:

— (i) a peace officer;

— (ii) a person acting on behalf of a law enforcement agency; or

— (iii) a highway authority.

— (3) (a) Subject to Subsection (3)(b), a county or municipal legislative body may set a maximum rate that:

— (i) a tow truck operator or tow truck motor carrier may charge for a tow truck service of a vehicle, vessel, or outboard motor that is removed in response to:

— (A) a peace officer dispatch call;

— (B) a motor vehicle division call; and

— (C) any other call or request where the owner of the vehicle, vessel, or outboard motor has not consented to the tow truck service; and

— (ii) an impound yard may charge for the storage of a vehicle, vessel, or outboard motor stored as a result of one of the conditions under Subsection (3)(a)(i).

— (b) A maximum rate set by a county or municipality under Subsection (3)(a) may not

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~~exceed the equivalent rate set by the department under Subsection 72-9-603(7).~~

† [(3)] (4) A county or municipal legislative body may require an annual tow truck safety inspection in addition to the inspections required under Sections 53-8-205 and 72-9-602 if:

- (a) no fee is charged for the inspection; and
- (b) the inspection complies with federal motor carrier safety regulations.

[(4)] (5) A tow truck shall be subject to only one annual safety inspection under Subsection [(3)] (4). A county or municipality that requires the additional annual safety inspection shall accept the same inspection performed by another county or municipality.

†

### Legislative Review Note

\_\_\_\_\_ as of ~~2-4-13 3:02 PM~~

\_\_\_\_\_ ~~Office of Legislative Research and General Counsel~~