

Representative Steven R. Mascaro proposes the following substitute bill:

LOCAL GOVERNMENT COLLECTION FOR SERVICE

CHARGES

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Steven R. Mascaro

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ prohibits municipalities, special districts, and local districts from:
 - refusing to furnish 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 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 discontinue providing service if the property owner fails to pay for the service; and
- ▶ authorizes municipalities, 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



26 charges and to offer not to file a civil action if the customer pays past due fees,
 27 collection costs, certain damages, and an attorney fee; and
 28 • impose collection costs on a customer who has not paid water or sewer service
 29 fees.

30 **Monies Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 None

34 **Utah Code Sections Affected:**

35 AMENDS:

36 **10-8-38**, as last amended by Chapter 161, Laws of Utah 2003

37 **17A-2-1321**, as last amended by Chapter 228, Laws of Utah 1999

38 ENACTS:

39 **11-41-101**, Utah Code Annotated 1953

40 **11-41-102**, Utah Code Annotated 1953

41 **11-41-103**, Utah Code Annotated 1953

42 **11-41-104**, Utah Code Annotated 1953

43 **11-41-105**, Utah Code Annotated 1953

44 **11-41-106**, Utah Code Annotated 1953

45 REPEALS:

46 **10-7-10.5**, as enacted by Chapter 161, Laws of Utah 2003

47 **17A-1-103**, as enacted by Chapter 161, Laws of Utah 2003

48 **17A-2-416**, as renumbered and amended by Chapter 186, Laws of Utah 1990

49 **17B-2-103**, as enacted by Chapter 161, Laws of Utah 2003



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

52 Section 1. Section **10-8-38** is amended to read:

53 **10-8-38. Drainage and sewage systems -- Construction regulation and control --**
 54 **Retainage -- Mandatory hookup -- Charges for use -- Collection of charges -- Service to**
 55 **tenants -- Failure to pay for service -- Service outside municipality.**

56 (1) (a) Boards of commissioners, city councils, and boards of trustees of cities and

57 towns may construct, reconstruct, maintain, and operate, sewer systems, sewage treatment
58 plants, culverts, drains, sewers, catch basins, manholes, cesspools, and all systems, equipment,
59 and facilities necessary to the proper drainage, sewage, and sanitary sewage disposal
60 requirements of the city or town and regulate the construction and use thereof.

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

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

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

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

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

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

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

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

82 ~~[(A)]~~ (i) hooked up to the sewer at the person's own expense; or

83 ~~[(B)]~~ (ii) paid in full for all sewer service.

84 ~~[(ii) A municipality may not use an owner's failure to pay for sewer service furnished
85 to the owner's property as a basis for not furnishing water to the property after ownership of the
86 property is transferred to a subsequent owner.]~~

87 ~~[(iii) A municipality may not require an owner to pay for sewer service that was~~

88 furnished to the property before the owner's ownership.]

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

92 Section 2. Section **11-41-101** is enacted to read:

93 **CHAPTER 41. COLLECTION OF WATER AND SEWER SERVICE FEES BY**
94 **LOCAL GOVERNMENT PROVIDERS**

95 **11-41-101. Title.**

96 This chapter is known as "Collection of Water and Sewer Service Fees by Local
97 Government Providers."

98 Section 3. Section **11-41-102** is enacted to read:

99 **11-41-102. Definitions.**

100 As used in this chapter:

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

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

105 (3) "Damages" means an amount:

106 (a) equal to the greater of:

107 (i) \$100; and

108 (ii) triple the past due service fees; and

109 (b) not to exceed the past due service fees plus \$500.

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

111 (5) "Local entity" means a city, town, special district under Title 17A, Special Districts,
112 or local district under Title 17B, Chapter 2, Local Districts.

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

115 (7) "Prelitigation damages" means an amount that:

116 (a) is equal to the greater of:

117 (i) \$50; and

118 (ii) triple the past due service fees;

119 (b) does not exceed the past due service fees plus \$250.

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

122 Section 4. Section **11-41-103** is enacted to read:

123 **11-41-103. Lien for past due fees for water or sewer service -- Limitations.**

124 (1) (a) Subject to Subsection (2), a local entity may certify past due service fees and
125 other amounts for which the customer is liable under this chapter to the treasurer or assessor of
126 the county in which the customer's property is located.

127 (b) Upon their certification, the past due service fees and other amounts for which the
128 customer is liable under this chapter become a lien on the customer's property to which the
129 water was furnished or sewer service provided on a parity with general county taxes that are a
130 lien on the property.

131 (2) A lien under Subsection (1) is valid only if certification is made before:

132 (a) if the property is subject to a sale under a power of sale, the filing for record in the
133 county recorder's office of a notice of default under Section 57-1-24;

134 (b) if the property is subject to judicial foreclosure, the filing for record of a notice of
135 the pendency of the action under Section 78-40-2; or

136 (c) if the property is conveyed other than as a result of a sale under a power of sale or a
137 judicial foreclosure, the filing for record of a document conveying title to a new owner.

138 (3) If a sale under a power of sale or judicial foreclosure is not completed under
139 Subsection (2)(a) or (b), respectively, a lien for past due service fees and other amounts for
140 which the customer is liable under this chapter may be certified under Subsection (1).

141 (4) Nothing in this section may be construed to:

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

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

146 (c) nullify or terminate a valid lien.

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

150 Section 5. Section **11-41-104** is enacted to read:

151 **11-41-104. Authority to require written application for water or sewer service and**
152 **to terminate for failure to pay -- Limitations.**

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

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

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

164 (2) Unless a valid lien has been established as provided in Section 11-41-103 and the
165 lien has not been satisfied, a local entity may not:

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

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

171 Section 6. Section **11-41-105** is enacted to read:

172 **11-41-105. Collection of past due fees for water or sewer service -- Civil action**
173 **authorized.**

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

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

177 (b) the local entity mails ~~H~~ [provides] ~~h~~ the customer notice as provided in Section
178 11-41-106; and

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

181 (2) If a customer has not paid the local entity the past due service fees and collection
182 costs within 30 days after the local entity mails notice, the local entity may make an offer to the
183 customer that the local entity will forego filing a civil action under Subsection (3) if the
184 customer pays the local entity the past due service fees, collection costs, prelitigation damages,
185 and, if the local entity retains an attorney to recover the past due service fees, a reasonable
186 attorney's fee not to exceed \$50.

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

190 (b) (i) In a civil action under this Subsection (3), a customer is liable to the local entity
191 for past due service fees, collection costs, interest, court costs, a reasonable attorney's fee, and
192 damages.

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

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

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

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

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

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

209 Section 7. Section **11-41-106** is enacted to read:

210 **11-41-106. Notice.**

211 (1) Each notice under Subsection 11-41-105(1)(b) shall:

212 (a) be in writing;
 213 (b) be mailed to the customer by the United States mail, postage prepaid;
 214 (c) notify the customer that:
 215 (i) if the past due service fees are not paid within 15 days after the day on which the
 216 local entity mailed notice, the customer is liable for the past due service fees and collection
 217 costs; and

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

221 (d) be in substantially the following form:

222 Date: _____
 223 To: _____
 224 Service address: _____
 225 Account or invoice number(s): _____
 226 Date(s) of service: _____
 227 Amount past due: _____

228 You are hereby notified that water or sewer service fees (or both) owed by you are in
 229 default. In accordance with Section 11-41-105, Utah Code Annotated, if you do not pay the
 230 past due amount within 15 days from the day on which this notice was mailed to you, you are
 231 liable for the past due amounts together with collection costs of \$20.

232 You are further notified that if you do not pay the past due amounts and the \$20
 233 collection costs within 30 calendar days from the day on which this notice was mailed to you,
 234 an appropriate civil legal action may be filed against you for the past due amounts, interest,
 235 court costs, attorney's fees, and damages in an amount equal to the greater of \$100 or triple the
 236 past due amounts, but not to exceed \$500.

237 (Signed) _____
 238 Name of local entity _____
 239 Address of local entity _____
 240 Telephone number of local entity _____

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

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

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

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

247 (ii) last known address.

248 Section 8. Section **17A-2-1321** is amended to read:

249 **17A-2-1321. Delinquent fees and charges.**

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

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

259 (3) This section does not apply to a special service district's fees and charges if the
260 governing authority of the county or municipality that established the special service district
261 levies a tax for district purposes on taxable property within the special service district under
262 Section 17A-2-1322.

263 Section 9. **Repealer.**

264 This bill repeals:

265 Section **10-7-10.5, Authority to require written application for water service and to**
266 **terminate service for failure to pay -- Limitations.**

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

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

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