

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-2-310**, as last amended by Chapter 227, Laws of Utah 1993
- 38 **17A-2-416**, as renumbered and amended by Chapter 186, Laws of Utah 1990
- 39 **17A-2-1321**, as last amended by Chapter 228, Laws of Utah 1999

40 ENACTS:

- 41 **11-41-101**, Utah Code Annotated 1953
- 42 **11-41-102**, Utah Code Annotated 1953
- 43 **11-41-103**, Utah Code Annotated 1953
- 44 **11-41-104**, Utah Code Annotated 1953
- 45 **11-41-105**, Utah Code Annotated 1953
- 46 **11-41-106**, Utah Code Annotated 1953

47 REPEALS:

- 48 **10-7-10.5**, as enacted by Chapter 161, Laws of Utah 2003
- 49 **17A-1-103**, as enacted by Chapter 161, Laws of Utah 2003
- 50 **17B-2-103**, as enacted by Chapter 161, Laws of Utah 2003



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

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

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

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

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

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

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

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

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

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

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

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

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

84 ~~(B)~~ (ii) paid in full for all sewer service.

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

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

120 **11-41-103. Authority to require written application for water or sewer service and**
121 **to terminate for failure to pay -- Limitations.**

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

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

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

133 (2) Unless a valid lien has been established as provided in Section 11-41-104, has not
134 been satisfied, and has not been terminated by a sale as provided in Subsection 11-41-104(3), a
135 local entity may not:

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

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

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

142 **11-41-104. Lien for past due fees for water or sewer service -- Limitations.**

143 (1) (a) A local entity may certify past due service fees and other amounts for which the
144 customer is liable under this chapter to the treasurer or assessor of the county in which the
145 customer's property is located.

146 (b) Subject to Subsection (2), the past due service fees and other amounts for which the
147 customer is liable under this chapter, upon their certification under Subsection (1)(a), become a
148 lien on the customer's property to which the water was furnished or sewer service provided on a
149 parity with and collectible at the same time and in the same manner as general county taxes that

150 are a lien on the property.

151 (2) A lien under Subsection (1) is not valid if certification under Subsection (1) is
152 made after the filing for record of a document conveying title of the customer's property to a
153 new owner.

154 (3) A lien under Subsection (1) does not survive the sale of the property that is the
155 subject of the lien if the sale is pursuant to:

156 (a) a power of sale under a notice of default under Section 57-1-24 that is filed for
157 record in the county recorder's office before certification under Subsection (1) occurs; or

158 (b) a judicial foreclosure if the notice of the pendency of the action under Section
159 74-40-2 is filed for record in the county recorder's office before certification under Subsection
160 (1) occurs.

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

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

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

166 (c) nullify or terminate a valid lien.

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

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

171 **11-41-105. Collection of past due fees for water or sewer service -- Civil action**
172 **authorized.**

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

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

176 (b) the local entity mails the customer notice as provided in Section 11-41-106; and

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

179 (2) If a customer has not paid the local entity the past due service fees and collection
180 costs within 30 days after the local entity mails notice, the local entity may make an offer to the

181 customer that the local entity will forego filing a civil action under Subsection (3) if the
182 customer pays the local entity an amount that:

183 (a) consists of the past due service fees, collection costs, prelitigation damages, and, if
184 the local entity retains an attorney to recover the past due service fees, a reasonable attorney's
185 fee not to exceed \$50; and

186 (b) if the customer's property is residential, may not exceed \$250.

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 an amount that:

192 (A) consists of past due service fees, collection costs, interest, court costs, a reasonable
193 attorney's fee, and damages; and

194 (B) if the customer's property is residential, may not exceed \$500.

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

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

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

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

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

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

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

212 **11-41-106. Notice.**

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

214 (a) be in writing;

215 (b) be mailed to the customer by the United States mail, postage prepaid;

216 (c) notify the customer that:

217 (i) if the past due service fees are not paid within 15 days after the day on which the
218 local entity mailed notice, the customer is liable for the past due service fees and collection
219 costs; and

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

223 (d) be in substantially the following form:

224 Date: _____

225 To: _____

226 Service address: _____

227 Account or invoice number(s): _____

228 Date(s) of service: _____

229 Amount past due: _____

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

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

240 (Signed) _____

241 Name of local entity _____

242 Address of local entity _____

243 Telephone number of local entity

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

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

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

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

250 (ii) last known address.

251 Section 8. Section **17A-2-310** is amended to read:

252 **17A-2-310. Certification of bond issue to county legislative body -- Tax levy --**
253 **Payment of revenue bonds -- Election on general obligation bonds and revenue bonds --**
254 **Bonds for sewer purposes -- Collection of charges.**

255 (1) Except as to bonds issued payable solely from revenues derived from the district's
256 facilities, it is the duty of each board of trustees which has issued bonds under this part to
257 certify annually to each appropriate county legislative body as provided in Section 17A-2-308,
258 and it is the duty of the county legislative body to levy annually until principal and interest
259 shall have been fully paid, taxes on all taxable property in the district, sufficient to assure the
260 prompt payment of principal and interest as each falls due, all as provided in Section
261 17A-2-309.

262 (2) If any bonds issued under this part are issued in a manner as not to be payable from
263 taxes but to be payable solely from the revenues to be derived by the district from the operation
264 of its facilities, the bonds so issued shall be payable from and secured by the pledge of all or
265 any specified part of the revenues to be derived by the district from the operation of its
266 facilities; and where the bonds are so issued, it is the duty of the board of trustees to impose for
267 all services rendered thereby rates fully sufficient to pay principal of and interest on the bonds
268 and to carry out all commitments made in the resolution authorizing the bonds. The board may
269 in the resolution enter into such covenants with the future holders of the bonds as to the
270 management and operation of the facilities, the imposition and collection of fees and charges
271 for water and services furnished by these facilities, the disposition of these fees and revenues,
272 the issuance of future bonds and the creation of future liens and encumbrances against these
273 facilities and the revenue from them, and carrying of insurance on the facilities, the keeping of

274 books and records, and other pertinent matters, as considered proper by the board of trustees to
275 assure the marketability of the bonds. The board may undertake in the resolution to make the
276 revenues of the facilities sufficient to pay the expense of their operation and maintenance and
277 may undertake to make the revenues or net revenues of the facilities sufficient to produce in
278 each year an amount in such specified excess of actual requirements for principal of and
279 interest on the bonds in that year as the board may consider necessary to assure the highest
280 marketability of the bonds. If the board provides in the resolution authorizing the revenue
281 bonds for the creation of a reserve fund to assure the prompt payment of principal and interest,
282 the board may provide for the accumulation of this fund not only from the revenues of the
283 facilities but also through the paying into it of such part of the bond proceeds as it may consider
284 advisable. A proposition of issuing general obligation bonds and a proposition of the issuance
285 of revenue bonds, or any combination of them, may be voted upon at the same election.

286 (3) When bonds are issued under this part in whole or in part for sewer purposes and
287 the district operates a waterworks system, provision may be made in the bond resolution under
288 which charges for sewer service and water are to be billed in a single bill to each customer and
289 payment of the charge for water accepted only when the charge for sewer service is paid at the
290 same time. The board may agree to suspend water or sewer service, or both, to any customer
291 who shall become delinquent in the payment of any charges due the district. [~~Whether or not a
292 district operates a waterworks system, any unpaid and delinquent charges for sewer or water
293 service shall be certified by the clerk of the district to the treasurer or assessor of the county in
294 which the delinquent premises are located. The amount of the delinquent charges, together with
295 interest and penalties, shall immediately upon the certification become a lien on the delinquent
296 premises on a parity with and collectible at the same time and in the same manner as general
297 county taxes are a lien on the premises and are collectible. All methods of enforcement
298 available for the collection of general county taxes, including sale of the delinquent premises,
299 shall be available and shall be used in the collection of the delinquent sewer charges. However,
300 when the customer is a renter of residential property covered by Title 57, Chapter 22, any
301 unpaid and delinquent charges are a personal liability for the customer and may not be placed
302 as lien on the property.]~~

303 Section 9. Section 17A-2-416 is amended to read:

304 **17A-2-416. Delinquent fees and charges to become lien when certified.**

305 The governing authority of a service area may, by ordinance or resolution, provide that
306 fees and charges for commodities, services, and facilities supplied by the service area, except
307 water furnished or sewer service provided by the county service area, shall, if not paid when
308 due, be certified to the treasurer and assessor of the county in which the delinquent premises
309 are located. These delinquent fees and charges, together with applicable penalties and
310 applicable interest established in Section 59-2-1331 shall, immediately upon this certification,
311 become a lien on the delinquent premises on a parity with and collected at the same time and in
312 the same manner as general county taxes that are a lien on the premises as provided in Title 59,
313 Chapter 2, Part 13.

314 Section 10. Section **17A-2-1321** is amended to read:

315 **17A-2-1321. Delinquent fees and charges.**

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

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

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

329 Section 11. **Repealer.**

330 This bill repeals:

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

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

335 Section **17B-2-103, Authority to require written application for water service and**

336 **to terminate service for failure to pay -- Limitations.**