

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 special districts and local districts from:
 - refusing to furnish water or 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 water or 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:
 - required a written application for service; and
 - discontinue providing service if the property owner fails to pay for the service;
- ▶ authorizes 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;



26 • file a civil action to recover past due fees for water or sewer service and related
27 charges and to offer not to file a civil action if the customer pays past due fees,
28 collection costs, certain damages, and an attorney fee; and

29 • impose collection costs on a customer who has not paid water or sewer service
30 fees; and

31 ▶ authorizes a municipality to discontinue sewer service to a property whose owner
32 fails to pay for the service;

33 ▶ prohibits a municipality from:

34 • refusing sewer service to property based on an arrearage from a previous owner;

35 and

36 • collecting from the current owner a previous owner's arrearage for sewer service
37 provided to the property before the current owner's ownership.

38 **Monies Appropriated in this Bill:**

39 None

40 **Other Special Clauses:**

41 None

42 **Utah Code Sections Affected:**

43 AMENDS:

44 **10-7-10.5**, as enacted by Chapter 161, Laws of Utah 2003

45 **10-8-38**, as last amended by Chapter 161, Laws of Utah 2003

46 **17A-2-310**, as last amended by Chapter 227, Laws of Utah 1993

47 **17A-2-416**, as renumbered and amended by Chapter 186, Laws of Utah 1990

48 **17A-2-1321**, as last amended by Chapter 228, Laws of Utah 1999

49 ENACTS:

50 **17A-1-205**, Utah Code Annotated 1953

51 **17B-2-801**, Utah Code Annotated 1953

52 **17B-2-802**, Utah Code Annotated 1953

53 **17B-2-803**, Utah Code Annotated 1953

54 **17B-2-804**, Utah Code Annotated 1953

55 **17B-2-805**, Utah Code Annotated 1953

56 REPEALS:

57 17A-1-103, as enacted by Chapter 161, Laws of Utah 2003

58 17B-2-103, as enacted by Chapter 161, Laws of Utah 2003



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

61 Section 1. Section 10-7-10.5 is amended to read:

62 **10-7-10.5. Authority to require written application for water or sewer service and**
63 **to terminate service for failure to pay -- Limitations.**

64 (1) A municipality that owns or controls a system for furnishing water or for providing
65 sewer service may:

66 (a) before furnishing water or providing sewer service to a property, require the
67 property owner or an authorized agent to submit a written application, signed by the owner or
68 an authorized agent, agreeing to pay for all water furnished or sewer service provided to the
69 property, respectively, whether occupied by the owner or by a tenant or other occupant,
70 according to the ordinances, rules, and regulations adopted by the municipality; and

71 (b) if an owner fails to pay for water furnished or sewer service provided to the owner's
72 property, discontinue furnishing water or providing sewer service to the property, respectively,
73 until all amounts for water furnished or sewer service provided, respectively, are paid, subject
74 to Subsection (2).

75 (2) (a) A municipality may not use an owner's failure to pay for water furnished or
76 sewer service provided to the owner's property as a basis for not furnishing water or providing
77 sewer service to the property after ownership of the property is transferred to a subsequent
78 owner.

79 (b) A municipality may not require an owner to pay for water that was furnished or
80 sewer service that was provided to the property before the owner's ownership.

81 Section 2. Section 10-8-38 is amended to read:

82 **10-8-38. Drainage and sewage systems -- Construction regulation and control --**
83 **Retainage -- Mandatory hookup -- Charges for use -- Collection of charges -- Service to**
84 **tenants -- Failure to pay for service -- Service outside municipality.**

85 (1) (a) Boards of commissioners, city councils, and boards of trustees of cities and
86 towns may construct, reconstruct, maintain, and operate, sewer systems, sewage treatment
87 plants, culverts, drains, sewers, catch basins, manholes, cesspools, and all systems, equipment,

88 and facilities necessary to the proper drainage, sewage, and sanitary sewage disposal
89 requirements of the city or town and regulate the construction and use thereof.

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

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

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

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

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

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

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

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

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

112 (B) paid in full for all sewer service.

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

116 ~~[(iii) A municipality may not require an owner to pay for sewer service that was
117 furnished to the property before the owner's ownership.]~~

118 (d) A municipality may sell and deliver water or sewer services to others beyond the

119 limits of the municipality from the surplus capacity of the municipality's waterworks or sewer
120 system.

121 Section 3. Section **17A-1-205** is enacted to read:

122 **17A-1-205. Special districts subject to local district provisions relating to**
123 **collection of water and sewer service fees.**

124 Each special district under this title is subject to the provisions of Title 17B, Chapter 2,
125 Part 8, Collection of Water and Sewer Service Fees, to the same extent as if the special district
126 were a local district under Title 17B, Chapter 2, Local Districts.

127 Section 4. Section **17A-2-310** is amended to read:

128 **17A-2-310. Certification of bond issue to county legislative body -- Tax levy --**
129 **Payment of revenue bonds -- Election on general obligation bonds and revenue bonds --**
130 **Bonds for sewer purposes -- Collection of charges.**

131 (1) Except as to bonds issued payable solely from revenues derived from the district's
132 facilities, it is the duty of each board of trustees which has issued bonds under this part to
133 certify annually to each appropriate county legislative body as provided in Section 17A-2-308,
134 and it is the duty of the county legislative body to levy annually until principal and interest
135 shall have been fully paid, taxes on all taxable property in the district, sufficient to assure the
136 prompt payment of principal and interest as each falls due, all as provided in Section
137 17A-2-309.

138 (2) If any bonds issued under this part are issued in a manner as not to be payable from
139 taxes but to be payable solely from the revenues to be derived by the district from the operation
140 of its facilities, the bonds so issued shall be payable from and secured by the pledge of all or
141 any specified part of the revenues to be derived by the district from the operation of its
142 facilities; and where the bonds are so issued, it is the duty of the board of trustees to impose for
143 all services rendered thereby rates fully sufficient to pay principal of and interest on the bonds
144 and to carry out all commitments made in the resolution authorizing the bonds. The board may
145 in the resolution enter into such covenants with the future holders of the bonds as to the
146 management and operation of the facilities, the imposition and collection of fees and charges
147 for water and services furnished by these facilities, the disposition of these fees and revenues,
148 the issuance of future bonds and the creation of future liens and encumbrances against these
149 facilities and the revenue from them, and carrying of insurance on the facilities, the keeping of

150 books and records, and other pertinent matters, as considered proper by the board of trustees to
151 assure the marketability of the bonds. The board may undertake in the resolution to make the
152 revenues of the facilities sufficient to pay the expense of their operation and maintenance and
153 may undertake to make the revenues or net revenues of the facilities sufficient to produce in
154 each year an amount in such specified excess of actual requirements for principal of and
155 interest on the bonds in that year as the board may consider necessary to assure the highest
156 marketability of the bonds. If the board provides in the resolution authorizing the revenue
157 bonds for the creation of a reserve fund to assure the prompt payment of principal and interest,
158 the board may provide for the accumulation of this fund not only from the revenues of the
159 facilities but also through the paying into it of such part of the bond proceeds as it may consider
160 advisable. A proposition of issuing general obligation bonds and a proposition of the issuance
161 of revenue bonds, or any combination of them, may be voted upon at the same election.

162 (3) When bonds are issued under this part in whole or in part for sewer purposes and
163 the district operates a waterworks system, provision may be made in the bond resolution under
164 which charges for sewer service and water are to be billed in a single bill to each customer and
165 payment of the charge for water accepted only when the charge for sewer service is paid at the
166 same time. The board may agree to suspend water or sewer service, or both, to any customer
167 who shall become delinquent in the payment of any charges due the district. ~~[Whether or not a
168 district operates a waterworks system, any unpaid and delinquent charges for sewer or water
169 service shall be certified by the clerk of the district to the treasurer or assessor of the county in
170 which the delinquent premises are located. The amount of the delinquent charges, together with
171 interest and penalties, shall immediately upon the certification become a lien on the delinquent
172 premises on a parity with and collectible at the same time and in the same manner as general
173 county taxes are a lien on the premises and are collectible. All methods of enforcement
174 available for the collection of general county taxes, including sale of the delinquent premises,
175 shall be available and shall be used in the collection of the delinquent sewer charges. However,
176 when the customer is a renter of residential property covered by Title 57, Chapter 22, any
177 unpaid and delinquent charges are a personal liability for the customer and may not be placed
178 as lien on the property.]~~

179 Section 5. Section 17A-2-416 is amended to read:

180 **17A-2-416. Delinquent fees and charges to become lien when certified.**

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

190 Section 6. Section **17A-2-1321** is amended to read:

191 **17A-2-1321. Delinquent fees and charges.**

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

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

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

205 Section 7. Section **17B-2-801** is enacted to read:

206 **Part 8. Collection of Water and Sewer Service Fees**

207 **17B-2-801. Definitions.**

208 As used in this part:

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

211 (2) "Customer" means the owner of real property to which a local district has furnished

212 water or provided sewer service.

213 (3) "Damages" means an amount equal to the greater of:

214 (a) \$100; and

215 (b) triple the past due service fees.

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

217 (5) "Past due service fees" means service fees that on or after the default date have not
218 been paid.

219 (6) "Prelitigation damages" means an amount that is equal to the greater of:

220 (a) \$50; and

221 (b) triple the past due service fees.

222 (7) "Service fees" means the amount charged by a local district to a customer for water
223 furnished or sewer service provided to the customer's property.

224 Section 8. Section **17B-2-802** is enacted to read:

225 **17B-2-802. Authority to require written application for water or sewer service**
226 **and to terminate for failure to pay -- Limitations.**

227 (1) A local district that owns or controls a system for furnishing water or providing
228 sewer service may:

229 (a) before furnishing water or providing sewer service to a property, require the
230 property owner or an authorized agent to submit a written application, signed by the owner or
231 an authorized agent, agreeing to pay for all water furnished or sewer service provided to the
232 property, whether occupied by the owner or by a tenant or other occupant, according to the
233 rules and regulations adopted by the local district; and

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

238 (2) Unless a valid lien has been established as provided in Section 17B-2-803, has not
239 been satisfied, and has not been terminated by a sale as provided in Subsection 17B-2-803(3), a
240 local district may not:

241 (a) use a customer's failure to pay for water furnished or sewer service provided to the
242 customer's property as a basis for not furnishing water or providing sewer service to the

243 property after ownership of the property is transferred to a subsequent owner; or

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

246 Section 9. Section **17B-2-803** is enacted to read:

247 **17B-2-803. Lien for past due fees for water or sewer service -- Limitations.**

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

251 (b) (i) Subject to Subsection (2), the past due service fees and other amounts for which
252 the customer is liable under this chapter, upon their certification under Subsection (1)(a),
253 become a lien on the customer's property to which the water was furnished or sewer service
254 provided.

255 (ii) With respect to a lien under Subsection (1)(b)(i) for water furnished to a customer's
256 property:

257 (A) the priority of the lien is determined by the time of certification under Subsection
258 (1)(a);

259 (B) the lien is collectible through judicial foreclosure; and

260 (C) the lien does not survive the sale of the property that is the subject of the lien if the
261 sale is pursuant to:

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

264 (II) a judicial foreclosure if the notice of the pendency of the action under Section
265 78-40-2 is filed for record in the county recorder's office before certification under Subsection
266 (1) occurs.

267 (iii) A lien under Subsection (1)(b)(i) for sewer service provided to a customer's
268 property is on a parity with and collectible at the same time and in the same manner as general
269 county taxes that are a lien on the property.

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

273 (3) Nothing in this section may be construed to:

274 (a) waive or release the customer's obligation to pay service fees;
275 (b) preclude the certification of a lien under Subsection (1) with respect to past due
276 service fees for water furnished or sewer service provided after the date that title to the property
277 is transferred to a new owner; or

278 (c) nullify or terminate a valid lien.

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

282 Section 10. Section **17B-2-804** is enacted to read:

283 **17B-2-804. Collection of past due fees for water or sewer service -- Civil action**
284 **authorized.**

285 (1) A customer is liable to a local district for past due service fees and collection costs
286 if:

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

288 (b) the local district mails the customer notice as provided in Section 17B-2-805; and

289 (c) the past due service fees remain unpaid 15 days after the local district has mailed
290 notice.

291 (2) If a customer has not paid the local district the past due service fees and collection
292 costs within 30 days after the local district mails notice, the local district may make an offer to
293 the customer that the local district will forego filing a civil action under Subsection (3) if the
294 customer pays the local district an amount that:

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

298 (b) if the customer's property is residential, may not exceed \$100.

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

302 (b) (i) In a civil action under this Subsection (3), a customer is liable to the local
303 district for an amount that:

304 (A) consists of past due service fees, collection costs, interest, court costs, a reasonable

305 attorney's fee, and damages; and

306 (B) if the customer's property is residential, may not exceed \$200.

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

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

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

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

318 (b) A local district may not contract for a person to retain any amounts charged or
319 collected as prelitigation damages or as damages.

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

323 Section 11. Section **17B-2-805** is enacted to read:

324 **17B-2-805. Notice.**

325 (1) Each notice under Subsection 17B-2-804(1)(b) shall:

326 (a) be in writing;

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

328 (c) notify the customer that:

329 (i) if the past due service fees are not paid within 15 days after the day on which the
330 local district mailed notice, the customer is liable for the past due service fees and collection
331 costs; and

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

335 (d) be in substantially the following form:

336 Date: _____

337 To: _____

338 Service address: _____

339 Account or invoice number(s): _____

340 Date(s) of service: _____

341 Amount past due: _____

342 You are hereby notified that water or sewer service fees (or both) owed by you are in
343 default. In accordance with Section 17B-2-804, Utah Code Annotated, if you do not pay the
344 past due amount within 15 days from the day on which this notice was mailed to you, you are
345 liable for the past due amount together with collection costs of \$20.

346 You are further notified that if you do not pay the past due amount and the \$20
347 collection costs within 30 calendar days from the day on which this notice was mailed to you,
348 an appropriate civil legal action may be filed against you for the past due amount, interest,
349 court costs, attorney's fees, and damages in an amount equal to the greater of \$100 or triple the
350 past due amounts, but the combined total of all these amounts may not exceed \$200 if your
351 property is residential.

352 (Signed) _____

353 Name of local district _____

354 Address of local district _____

355 Telephone number of local district _____

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

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

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

361 (i) address as it appears in the records of the local district; or

362 (ii) last known address.

363 **Section 12. Repealer.**

364 This bill repeals:

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

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