

HB0268S01 compared with HB0268

~~{deleted text}~~ shows text that was in HB0268 but was deleted in HB0268S01.

inserted text shows text that was not in HB0268 but was inserted into HB0268S01.

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Representative Michael T. Morley proposes the following substitute bill:

MUNICIPAL ENFORCEMENT REGARDING PROPERTY

MAINTENANCE

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael T. Morley

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to a municipality's authority to regulate the inspection and abatement of property.

Highlighted Provisions:

This bill:

- ▶ amends provisions related to a municipality's authority to regulate the inspection and abatement of property;
- ▶ amends provisions related to a municipal inspector;
- ▶ amends notice provisions;
- ▶ amends provisions authorizing a municipality to file suit against a property owner or

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~~{a lien on a property}~~ certify costs and expenses with the treasurer of the county; and

- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-11-1, as last amended by Laws of Utah 2003, Chapter 292

10-11-3, as last amended by Laws of Utah 2005, Chapter 69

10-11-4, as last amended by Laws of Utah 1993, Chapter 227

REPEALS AND REENACTS:

10-11-2, as last amended by Laws of Utah 2010, Chapter 378

~~{ **10-11-4**, as last amended by Laws of Utah 1993, Chapter 227~~

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

Section 1. Section **10-11-1** is amended to read:

10-11-1. Abatement of weeds, garbage, refuse, and unsightly objects.

A municipal legislative body may:

(1) ~~designate[;] and regulate the abatement of[, injurious and noxious weeds, garbage, refuse, or any unsightly or deleterious objects or structures, and may];~~

(a) the growth and spread of injurious and noxious weeds;

(b) garbage and refuse;

(c) ~~unsightly or deleterious objects; or~~

~~(d) unsightly or deleterious structures}~~ a public nuisance; or

(d) an illegal object or structure; and

(2) appoint a municipal inspector for the purpose of carrying out and in accordance with the provisions of this chapter.

Section 2. Section **10-11-2** is repealed and reenacted to read:

10-11-2. Inspection of property -- Notice.

(1) (a) If a municipality adopts an ordinance describing the duties of a municipal

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inspector appointed under Section 10-11-1, the ordinance:

(i) may, subject to Subsection (1)(b), direct the inspector to examine and investigate real property for:

(A) the growth and spread of injurious and noxious weeds;

(B) garbage and refuse;

(C) ~~unsightly or deleterious objects; or~~

~~(D) unsightly or deleterious structures;~~ a public nuisance; or

~~(D) an illegal object or structure;~~ and

(ii) if an inspector conducts an examination and investigation under Subsection (1)(a), shall direct the inspector to deliver written notice of the examination and investigation in accordance with Subsection (2).

(b) An ordinance described in Subsection (1)(a) may not direct an inspector or authorize a municipality to abate conditions solely associated with the interior of a structure, unless required for the demolition and removal of the structure.

(2) (a) (i) The municipal inspector shall serve written notice to a property owner of record according to the records of the county recorder in accordance with Subsection (2)(b).

(ii) The municipal inspector may serve written notice in accordance with Subsection (2)(b) to a non-owner occupant of the property or another person responsible for the property who is not the owner of record, including a manager or agent of the owner, if:

(A) the property owner is not an occupant of the property; and

(B) the municipality in which the property is located has adopted an ordinance imposing a duty to maintain the property on an occupant who is not the property owner of record or a person other than the property owner of record who is responsible for the property.

(b) The municipal inspector may serve the written notice:

(i) in person or by mail to the property owner of record as described in Subsection (2)(a)(i), if mailed to the last-known address of the owner according to the records of the county recorder; or

(ii) in person or by mail to a non-owner occupant or another person responsible for the property who is not the owner of record as described in Subsection (2)(a)(ii), if mailed to the property address.

(c) In the written notice described in Subsection (2)(a), the municipal inspector shall:

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(i) identify the property owner of record according to the records of the county recorder;

(ii) describe the property and the nature and results of the examination and investigation conducted in accordance with Subsection (1)(a); and

(iii) require the property owner, occupant, or, if applicable, another person responsible for the property to:

(A) eradicate or destroy and remove any identified item examined and investigated under Subsection (1)(a); and

(B) comply with Subsection (2)(c)(iii)(A) in a time period designated by the municipal inspector but no less than 10 days after the day on which notice is delivered in person ~~under Subsection (2)(b)(i)~~ or post-marked ~~{ under Subsection (2)(b)(ii)}~~.

(d) For a notice of injurious and noxious weeds described in Subsection (2)(a), the municipal inspector is not required to make more than one notice for each annual season of weed growth for weeds growing on a property.

(e) The municipal inspector shall serve the notice required under Subsection (2)(a)(i) under penalty of perjury.

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

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

(1) (a) If ~~[any] an~~ owner ~~[or] of~~, occupant of, or other person responsible for ~~[lands]~~ real property described in the notice ~~[under]~~ delivered in accordance with Section 10-11-2 fails ~~[or neglects to eradicate, or destroy and remove, the weeds, garbage, refuse, objects, or structure upon the premises in accordance with the notice, the inspector shall]~~ to comply with Section 10-11-2, a municipal inspector may:

(i) at the expense of the municipality, employ necessary assistance ~~[and cause the weeds, garbage, refuse, objects, or structures to be removed or destroyed]~~ to enter the property and destroy or remove an item identified in a written notice described in Section 10-11-2; and

(ii) (A) prepare an itemized statement ~~[of all expenses, including administrative expenses, incurred in the removal and destruction of the weeds, garbage, refuse, objects, or structures]~~ in accordance with Subsection (1)(b); and

(B) mail to the owner of record according to the records of the county recorder a copy

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of the statement ~~[to the owner]~~ demanding payment within 30 days ~~[of the date of mailing]~~ after the day on which the statement is post-marked.

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

(i) include:

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

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

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

(ii) notify the property owner:

(A) that failure to pay the expenses described in Subsection (1)(b)(i)(B) may result in a lien on the property ~~{on a parity with and collectible at the same time and in the same manner as general property taxes }~~ in accordance with Section 10-11-4;

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

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

~~[(b) Each notice under]~~ (c) A statement mailed in accordance with Subsection (1)(a) [shall be considered] is delivered when mailed by certified mail addressed to the property owner's of record last-known address according to the records of the county recorder.

(d) (i) A municipality may file a notice of a lien, including a copy of the statement described in Subsection (1)(a)(ii)(A) or a summary of the statement, in the records of the county recorder of the county in which the property is located.

(ii) If a municipality files a notice of a lien indicating that the municipality intends to certify the unpaid costs and expenses in accordance with Subsection (2)(a)(ii) and Section 10-11-4, the municipality shall file for record in the county recorder's office a release of the lien after all amounts owing are paid.

(2) (a) If ~~[the]~~ an owner fails to file a timely written objection as described in Subsection (1)(b)(ii)(B) or to ~~[make payment of]~~ pay the amount set forth in the statement ~~[to the municipal treasurer within the required 30 days, the inspector, on behalf of the municipality,]~~ under Subsection (1)(b)(i)(B), the municipality may:

~~[(i) cause suit to be brought in an appropriate court of law; or]~~

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~~[(ii) refer the matter]~~

(i) file an action in district court; or

(ii) certify the past due costs and expenses to the county treasurer [as provided in Subsection (2)(c):] of the county in which the property is located in accordance with Section 10-11-4.

(b) If a municipality pursues collection of the costs ~~[are pursued through the courts]~~ in accordance with Subsection (2)(a)(i) or (4)(a), the municipality may:

(i) sue for and receive judgment [upon all of the costs of] for all removal and destruction costs, including administrative costs, ~~[together with]~~ and reasonable ~~[attorneys']~~ attorney fees, interest, and court costs; and

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

~~[(c) If the inspector elects to refer the matter to the county treasurer for inclusion in the tax notice of the property owner, the inspector shall:]~~

~~[(i) make, in triplicate, an itemized statement of all expenses, including administrative expenses, incurred in the removal and destruction of the weeds, garbage, refuse, objects, or structures; and]~~

~~[(ii) deliver the three copies of the statement to the county treasurer within 10 days after the expiration of the 30-day period provided in the statement under Subsection (1)(a)(ii):]~~

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

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

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

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

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

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

(a) file an action in district court for the actual cost determined under Subsection

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(3)(b); or

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

(5) This section does not affect or limit:

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

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

Section 4. Section 10-11-4 is ~~{repeated and reenacted}~~ amended to read:

~~{ }10-11-4. { Lien -- }~~ Costs of removal to be included in tax notice.

[Upon receipt of the itemized statement of the cost of destroying or removing such weeds, refuse, garbage, objects, or structures, the county treasurer shall forthwith mail one copy to the owner of the land from which the same were removed, together with a notice that objection in writing may be made within 30 days to the whole or any part of the statement so filed to the county legislative body. The county treasurer shall at the same time deliver a copy of the statement to the clerk of the county legislative body. If objections to any statement are filed with the county legislative body, they shall set a date for hearing, giving notice thereof, and upon the hearing fix and determine the actual cost of removing the weeds, garbage, refuse, or unsightly or deleterious objects or structures, and report their findings to the county treasurer. If no objections to the items of the account so filed are made within 30 days of the date of mailing such itemized statement, the county treasurer]

(1) A municipality may certify ~~{,}~~ to the treasurer of the county in which a property described in Section 10-11-3 is located, the unpaid costs and expenses that the municipality has incurred under Section 10-11-3 with regard to the property.

(2) ~~{Subject to Subsection (3), the unpaid}~~ If the municipality certifies with the treasurer of the county any costs or expenses incurred for a property under Section 10-11-3, the treasurer shall enter the amount of [such statement] the costs and expenses ~~{, upon their certification under Subsection (1), become a lien}~~ on the ~~{property on a parity with and collectible at the same time and in the same manner as general property taxes that are a lien on the property.~~

~~_____ (3) If the county treasurer is unable to include}~~ assessment and tax rolls of the county

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~~in the column prepared for that purpose[, and likewise within 10 days from the date of the action of the county legislative body upon objections filed shall enter in the prepared column upon the tax rolls the amount found by the county legislative body as the cost of removing and destroying the said weeds, refuse, garbage or unsightly and deleterious objects or structures].~~

~~(3) If current tax notices have been mailed, [said taxes may be carried over] the treasurer of the county may carry the costs and expenses [in the tax notice for the year in which they are incurred by a municipality, the costs and expenses shall:~~

~~—— (a) be carried over to the tax notice for the following year; and~~

~~—— (b) become a lien on the property on a parity with and collectible at the same time and in the same manner as general property taxes that are a lien on the property for the year described in Subsection ~~(3)(a)~~.~~

~~—— ~~(4)2~~ on the assessment and tax rolls to the following year.~~

~~(4) After [the] entry by the [county] treasurer [of the costs of removing weeds, garbage, refuse or unsightly and deleterious objects or structures] of the county, the amount [so] entered:~~

~~(a) shall have the force and effect of a valid judgment of the district court[, and shall be];~~

~~(b) is a lien upon the [lands from which the weeds, refuse, garbage or unsightly and deleterious objects or structures were removed and destroyed,] property; and~~

~~(c) shall be collected by the [county] treasurer of the county in which the property is located at the time of the payment of general taxes.~~

~~(5) Upon payment [thereof] of the costs and expenses:~~

~~(a) the judgement is satisfied;~~

~~(b) the lien is released from the property; and~~

~~(c) receipt shall be acknowledged upon the general tax receipt issued by the treasurer.~~

~~(6) This section does not apply to any public building, public structure, or public improvement.~~

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Legislative Review Note

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~~as of 1-28-11 5:22 PM~~

~~Office of Legislative Research and General Counsel}~~