

POLITICAL SUBDIVISION RESIDENTIAL RENTAL

AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kenneth W. Sumsion

Senate Sponsor: Wayne L. Niederhauser

LONG TITLE

General Description:

This bill enacts language related to a municipal regulation of a residential rental unit.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ enacts language related to a disproportionate rental fee charged by a municipality;
- ▶ prohibits a municipality from making certain requirements of a landlord;
- ▶ enacts language related to a good landlord program; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-1-203, as last amended by Laws of Utah 2011, Chapter 391

10-8-85.5, as last amended by Laws of Utah 2011, Chapter 14

10-9a-511, as last amended by Laws of Utah 2011, Chapter 210

57-22-7, as last amended by Laws of Utah 2011, Chapter 279

72-7-102, as last amended by Laws of Utah 2008, Chapter 382

ENACTS:

30 10-1-203.5, Utah Code Annotated 1953



31
32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section 10-1-203 is amended to read:

34 **10-1-203. License fees and taxes -- Application information to be transmitted to**
35 **the county assessor.**

36 (1) As used in this section:

37 (a) "Business" means any enterprise carried on for the purpose of gain or economic
38 profit, except that the acts of employees rendering services to employers are not included in
39 this definition.

40 (b) "Telecommunications provider" is as defined in Section 10-1-402.

41 (c) "Telecommunications tax or fee" is as defined in Section 10-1-402.

42 (2) Except as provided in Subsections (3) through (5), the legislative body of a
43 municipality may license for the purpose of regulation and revenue any business within the
44 limits of the municipality and may regulate that business by ordinance.

45 (3) (a) The legislative body of a municipality may raise revenue by levying and
46 collecting a municipal energy sales or use tax as provided in Part 3, Municipal Energy Sales
47 and Use Tax Act, except a municipality may not levy or collect a franchise tax or fee on an
48 energy supplier other than the municipal energy sales and use tax provided in Part 3, Municipal
49 Energy Sales and Use Tax Act.

50 (b) (i) Subsection (3)(a) does not affect the validity of a franchise agreement as defined
51 in Subsection 10-1-303(6), that is in effect on July 1, 1997, or a future franchise.

52 (ii) A franchise agreement as defined in Subsection 10-1-303(6) in effect on January 1,
53 1997, or a future franchise shall remain in full force and effect.

54 (c) A municipality that collects a contractual franchise fee pursuant to a franchise
55 agreement as defined in Subsection 10-1-303(6) with an energy supplier that is in effect on July
56 1, 1997, may continue to collect that fee as provided in Subsection 10-1-310(2).

57 (d) (i) Subject to the requirements of Subsection (3)(d)(ii), a franchise agreement as

58 defined in Subsection 10-1-303(6) between a municipality and an energy supplier may contain
59 a provision that:

60 (A) requires the energy supplier by agreement to pay a contractual franchise fee that is
61 otherwise prohibited under Part 3, Municipal Energy Sales and Use Tax Act; and

62 (B) imposes the contractual franchise fee on or after the day on which Part 3,
63 Municipal Energy Sales and Use Tax is:

64 (I) repealed, invalidated, or the maximum allowable rate provided in Section 10-1-305
65 is reduced; and

66 (II) is not superseded by a law imposing a substantially equivalent tax.

67 (ii) A municipality may not charge a contractual franchise fee under the provisions
68 permitted by Subsection (3)(b)(i) unless the municipality charges an equal contractual franchise
69 fee or a tax on all energy suppliers.

70 (4) (a) Subject to Subsection (4)(b), beginning July 1, 2004, the legislative body of a
71 municipality may raise revenue by levying and providing for the collection of a municipal
72 telecommunications license tax as provided in Part 4, Municipal Telecommunications License
73 Tax Act.

74 (b) A municipality may not levy or collect a telecommunications tax or fee on a
75 telecommunications provider except as provided in Part 4, Municipal Telecommunications
76 License Tax Act.

77 (5) (a) (i) The legislative body of a municipality may by ordinance raise revenue by
78 levying and collecting a license fee or tax on:

79 (A) a parking service business in an amount that is less than or equal to:

80 (I) \$1 per vehicle that parks at the parking service business; or

81 (II) 2% of the gross receipts of the parking service business;

82 (B) a public assembly or other related facility in an amount that is less than or equal to
83 \$5 per ticket purchased from the public assembly or other related facility; and

84 (C) subject to the limitations of Subsections (5)(c)[;] and (d)[, ~~and (e)~~]:

85 (I) a business that causes disproportionate costs of municipal services; or

86 (II) a purchaser from a business for which the municipality provides an enhanced level
87 of municipal services.

88 (ii) Nothing in this Subsection (5)(a) may be construed to authorize a municipality to
89 levy or collect a license fee or tax on a public assembly or other related facility owned and
90 operated by another political subdivision other than a community development and renewal
91 agency without the written consent of the other political subdivision.

92 (b) As used in this Subsection (5):

93 (i) "Municipal services" includes:

94 (A) public utilities; and

95 (B) services for:

96 (I) police;

97 (II) fire;

98 (III) storm water runoff;

99 (IV) traffic control;

100 (V) parking;

101 (VI) transportation;

102 (VII) beautification; or

103 (VIII) snow removal.

104 (ii) "Parking service business" means a business:

105 (A) that primarily provides off-street parking services for a public facility that is
106 wholly or partially funded by public money;

107 (B) that provides parking for one or more vehicles; and

108 (C) that charges a fee for parking.

109 (iii) "Public assembly or other related facility" means an assembly facility that:

110 (A) is wholly or partially funded by public money;

111 (B) is operated by a business; and

112 (C) requires a person attending an event at the assembly facility to purchase a ticket.

113 (c) (i) Before the legislative body of a municipality imposes a license fee on a business

114 that causes disproportionate costs of municipal services under Subsection (5)(a)(i)(C)(I), the
115 legislative body of the municipality shall adopt an ordinance defining for purposes of the tax
116 under Subsection (5)(a)(i)(C)(I):

- 117 (A) the costs that constitute disproportionate costs; and
- 118 (B) the amounts that are reasonably related to the costs of the municipal services
119 provided by the municipality.

120 (ii) The amount of a fee under Subsection (5)(a)(i)(C)(I) shall be reasonably related to
121 the costs of the municipal services provided by the municipality.

122 (d) (i) Before the legislative body of a municipality imposes a license fee on a
123 purchaser from a business for which it provides an enhanced level of municipal services under
124 Subsection (5)(a)(i)(C)(II), the legislative body of the municipality shall adopt an ordinance
125 defining for purposes of the fee under Subsection (5)(a)(i)(C)(II):

126 (A) the level of municipal services that constitutes the basic level of municipal services
127 in the municipality; and

128 (B) the amounts that are reasonably related to the costs of providing an enhanced level
129 of municipal services in the municipality.

130 (ii) The amount of a fee under Subsection (5)(a)(i)(C)(II) shall be reasonably related to
131 the costs of providing an enhanced level of the municipal services.

132 [~~(e) (i) As used in this Subsection (5)(e):~~]

133 [~~(A) "Disproportionate rental fee" means a license fee on rental housing based on the
134 disproportionate costs of municipal services caused by the rental housing or on an enhanced
135 level of municipal services provided to the rental housing.]~~]

136 [~~(B) "Disproportionate rental fee reduction" means a reduction of a disproportionate
137 rental fee as a condition of complying with the requirements of a good landlord program.]~~]

138 [~~(C) "Good landlord program" means a program established by a municipality that
139 provides a reduction in a disproportionate rental fee for a landlord who:]~~]

140 [~~(F) completes a landlord training program approved by the municipality;]~~]

141 [~~(H) implements measures to reduce crime in rental housing as specified in municipal~~]

142 ordinances; and]

143 ~~[(H) operates and manages rental housing in accordance with applicable municipal~~
144 ~~ordinances.]~~

145 ~~[(D) "Municipal services study" means a study, or an updated study, conducted by a~~
146 ~~municipality of the cost of all municipal services that the municipality provides to the~~
147 ~~applicable rental housing.]~~

148 ~~[(E) "Rental housing cost" means the municipality's cost:]~~

149 ~~[(F) of providing municipal services to the rental housing;]~~

150 ~~[(H) that is reasonably attributable to the rental housing; and]~~

151 ~~[(HH) that would not have occurred in the absence of the rental housing:]~~

152 ~~[(ii) A municipality may impose and collect a disproportionate rental fee if:]~~

153 ~~[(A) the municipality:]~~

154 ~~[(F) adopts the ordinances required under Subsections (5)(c) and (d), as applicable;]~~

155 ~~[(H) conducts a municipal services study;]~~

156 ~~[(HH) updates the municipal services study:]~~

157 ~~[(Aa) before increasing the amount of the disproportionate rental fee; and]~~

158 ~~[(Bb) before decreasing the amount of the disproportionate rental fee reduction; and]~~

159 ~~[(IV) establishes a good landlord program; and]~~

160 ~~[(B) the disproportionate rental fee does not exceed the rental housing cost, as~~
161 ~~determined by the municipal services study.]~~

162 ~~[(iii) (A) The requirement under Subsection (5)(c)(ii)(A)(IV) to establish a good~~
163 ~~landlord program does not apply to a municipality that imposed and collected a~~
164 ~~disproportionate rental fee on January 1, 2009:]~~

165 ~~[(B) A municipality claiming an exemption under Subsection (5)(c)(iii)(A) shall~~
166 ~~conduct an updated municipal services study at least every four years.]~~

167 ~~[(iv) The requirement under Subsection (5)(c)(ii)(A)(H) to conduct a municipal~~
168 ~~services study does not apply to a municipality that:]~~

169 ~~[(A) imposed and collected a disproportionate rental fee on May 2, 2005, of \$17 or less~~

170 per unit per year;]

171 [~~(B) does not increase the amount of its disproportionate rental fee; and]~~

172 [~~(C) does not decrease the amount of its disproportionate rental fee reduction.]~~

173 [~~(v) The fee limitation under Subsection (5)(e)(ii)(B) does not apply to a municipality~~
174 ~~that:]~~

175 [~~(A) imposed and collected a disproportionate rental fee on May 2, 2005, that was \$17~~
176 ~~or less per unit per year;]~~

177 [~~(B) does not increase the amount of its disproportionate rental fee; and]~~

178 [~~(C) does not decrease the amount of its disproportionate rental fee reduction.]~~

179 [~~(vi) Until May 2, 2012, the requirement under Subsection (5)(e)(ii)(A)(H) to conduct a~~
180 ~~municipal services study before imposing and collecting a disproportionate rental fee, does not~~
181 ~~apply to a municipality that:]~~

182 [~~(A) on May 2, 2005, imposed and collected a disproportionate rental fee that exceeds~~
183 ~~\$17 per unit per year;]~~

184 [~~(B) had implemented, before January 1, 2005, a good landlord program;]~~

185 [~~(C) does not decrease the amount of the disproportionate rental fee reduction; and]~~

186 [~~(D) does not increase the amount of its disproportionate rental fee.]~~

187 (6) All license fees and taxes shall be uniform in respect to the class upon which they
188 are imposed.

189 (7) The municipality shall transmit the information from each approved business
190 license application to the county assessor within 60 days following the approval of the
191 application.

192 (8) If challenged in court, an ordinance enacted by a municipality before January 1,
193 1994, imposing a business license fee on rental dwellings under this section shall be upheld
194 unless the business license fee is found to impose an unreasonable burden on the fee payer.

195 Section 2. Section **10-1-203.5** is enacted to read:

196 **10-1-203.5. Disproportionate rental fee -- Good landlord training program -- Fee**
197 **reduction.**

198 (1) As used in this section:

199 (a) "Business" means the rental of one or more residential units within a municipality.

200 (b) "Disproportionate rental fee" means a fee adopted by a municipality to recover its
201 disproportionate costs of providing municipal services to residential rental units compared to
202 similarly-situated owner-occupied housing.

203 (c) "Disproportionate rental fee reduction" means a reduction of a disproportionate
204 rental fee as a condition of complying with the requirements of a good landlord training
205 program.

206 (d) "Exempt business" means the rental of a residential unit within a single structure
207 that contains:

208 (i) no more than four residential units; and

209 (ii) one unit occupied by the owner.

210 (e) "Exempt landlord" means a residential landlord who demonstrates to a
211 municipality:

212 (i) completion of any live good landlord training program offered by any other Utah
213 city that offers a good landlord program;

214 (ii) that the residential landlord has a current professional designation of "property
215 manager"; or

216 (iii) compliance with a requirement described in Subsection (4).

217 (f) "Good landlord training program" means a program offered by a municipality to
218 encourage business practices that are designed to reduce the disproportionate cost of municipal
219 services to residential rental units by offering a disproportionate rental fee reduction for any
220 landlord who:

221 (i) (A) completes a landlord training program provided by the municipality; or

222 (B) is an exempt landlord;

223 (ii) implements measures to reduce crime in rental housing as specified in a municipal
224 ordinance or policy; and

225 (iii) operates and manages rental housing in accordance with an applicable municipal

226 ordinance.

227 (g) "Municipal services" means:

228 (i) public utilities;

229 (ii) police;

230 (iii) fire;

231 (iv) code enforcement;

232 (v) storm water runoff;

233 (vi) traffic control;

234 (vii) parking;

235 (viii) transportation;

236 (ix) beautification; or

237 (x) snow removal.

238 (h) "Municipal services study" means a study of the cost of all municipal services to
239 rental housing that:

240 (i) are reasonably attributable to the rental housing; and

241 (ii) exceed the municipality's cost to serve similarly-situated, owner-occupied housing.

242 (2) The legislative body of a municipality may charge and collect a disproportionate
243 rental fee on a business that causes disproportionate costs to municipal services if the
244 municipality:

245 (a) has performed a municipal services study; and

246 (b) adopts a disproportionate rental fee that does not exceed the amount that is justified
247 by the municipal services study on a per residential rental unit basis.

248 (3) A municipality may not:

249 (a) impose a disproportionate rental fee on an exempt business;

250 (b) require a landlord to deny tenancy to an individual released from probation or
251 parole whose conviction date occurred more than four years before the date of tenancy; or

252 (c) without cause and notice, require a landlord to submit to a random building
253 inspection.

254 (4) In addition to a requirement or qualification described in Subsection (1)(e), a
255 municipality may recognize a landlord training described in its ordinance.

256 (5) (a) If a municipality adopts a good landlord program, the municipality shall provide
257 an appeal procedure affording due process of law to a landlord who is denied a
258 disproportionate rental fee reduction.

259 (b) A municipality may not adopt a new disproportionate rental fee unless the
260 municipality provides a disproportionate rental fee reduction.

261 Section 3. Section **10-8-85.5** is amended to read:

262 **10-8-85.5. "Rental dwelling" defined -- Municipality may require a business**
263 **license or a regulatory business license and inspections -- Exception.**

264 (1) As used in this section, "rental dwelling" means a building or portion of a building
265 that is:

266 (a) used or designated for use as a residence by one or more persons; and

267 (b) (i) available to be rented, loaned, leased, or hired out for a period of one month or
268 longer; or

269 (ii) arranged, designed, or built to be rented, loaned, leased, or hired out for a period of
270 one month or longer.

271 (2) (a) The legislative body of a municipality may by ordinance require the owner of a
272 rental dwelling located within the municipality:

273 (i) to obtain a business license pursuant to Section 10-1-203; or

274 (ii) (A) to obtain a regulatory business license to operate and maintain the rental
275 dwelling in accordance with Section 10-1-203.5; and

276 (B) to allow inspections of the rental dwelling as a condition of obtaining a regulatory
277 business license.

278 (b) A municipality may not require an owner of multiple rental dwellings or multiple
279 buildings containing rental dwellings to obtain more than one regulatory business license for
280 the operation and maintenance of those rental dwellings.

281 [~~(c) (i) Notwithstanding Subsection (2)(b), a municipality may, until August 31, 2008,~~

282 ~~impose upon an owner subject to Subsection (2)(a) a reasonable inspection fee for the~~
283 ~~inspection of each rental dwelling owned by that owner.]~~

284 ~~[(ii) Beginning September 1, 2008, a]~~

285 (c) A municipality may not charge a fee for the inspection of a rental dwelling.

286 (d) If a municipality's inspection of a rental dwelling, allowed under Subsection
287 (2)(a)(ii)(B), approves the rental dwelling for purposes of a regulatory business license, a
288 municipality may not inspect that rental dwelling ~~[during the next 36 months, unless the~~
289 ~~municipality has reasonable cause to believe that a condition in the rental dwelling is in~~
290 ~~violation of an applicable law or ordinance]~~ except as provided for in Section 10-1-203.5.

291 (3) A municipality may not:

292 (a) interfere with the ability of an owner of a rental dwelling to contract with a tenant
293 concerning the payment of the cost of a utility or municipal service provided to the rental
294 dwelling; or

295 (b) except as required under the State Construction Code or an approved code under
296 Title 15A, State Construction and Fire Codes Act, for a structural change to the rental dwelling,
297 or as required in an ordinance adopted before January 1, 2008, require the owner of a rental
298 dwelling to retrofit the rental dwelling with or install in the rental dwelling a safety feature that
299 was not required when the rental dwelling was constructed.

300 (4) Nothing in this section shall be construed to affect the rights and duties established
301 under Title 57, Chapter 22, Utah Fit Premises Act, or to restrict a municipality's ability to
302 enforce its generally applicable health ordinances or building code, a local health department's
303 authority under Title 26A, Chapter 1, Local Health Departments, or the Utah Department of
304 Health's authority under Title 26, Utah Health Code.

305 Section 4. Section **10-9a-511** is amended to read:

306 **10-9a-511. Nonconforming uses and noncomplying structures.**

307 (1) (a) Except as provided in this section, a nonconforming use or noncomplying
308 structure may be continued by the present or a future property owner.

309 (b) A nonconforming use may be extended through the same building, provided no

310 structural alteration of the building is proposed or made for the purpose of the extension.

311 (c) For purposes of this Subsection (1), the addition of a solar energy device to a
312 building is not a structural alteration.

313 (2) The legislative body may provide for:

314 (a) the establishment, restoration, reconstruction, extension, alteration, expansion, or
315 substitution of nonconforming uses upon the terms and conditions set forth in the land use
316 ordinance;

317 (b) the termination of all nonconforming uses, except billboards, by providing a
318 formula establishing a reasonable time period during which the owner can recover or amortize
319 the amount of his investment in the nonconforming use, if any; and

320 (c) the termination of a nonconforming use due to its abandonment.

321 (3) (a) A municipality may not prohibit the reconstruction or restoration of a
322 noncomplying structure or terminate the nonconforming use of a structure that is involuntarily
323 destroyed in whole or in part due to fire or other calamity unless the structure or use has been
324 abandoned.

325 (b) A municipality may prohibit the reconstruction or restoration of a noncomplying
326 structure or terminate the nonconforming use of a structure if:

327 (i) the structure is allowed to deteriorate to a condition that the structure is rendered
328 uninhabitable and is not repaired or restored within six months after written notice to the
329 property owner that the structure is uninhabitable and that the noncomplying structure or
330 nonconforming use will be lost if the structure is not repaired or restored within six months; or

331 (ii) the property owner has voluntarily demolished a majority of the noncomplying
332 structure or the building that houses the nonconforming use.

333 (c) (i) Notwithstanding a prohibition in its zoning ordinance, a municipality may
334 permit a billboard owner to relocate the billboard within the municipality's boundaries to a
335 location that is mutually acceptable to the municipality and the billboard owner.

336 (ii) If the municipality and billboard owner cannot agree to a mutually acceptable
337 location within 90 days after the owner submits a written request to relocate the billboard, the

338 provisions of Subsection 10-9a-513(2)(a)(iv) apply.

339 (4) (a) Unless the municipality establishes, by ordinance, a uniform presumption of
340 legal existence for nonconforming uses, the property owner shall have the burden of
341 establishing the legal existence of a noncomplying structure or nonconforming use.

342 (b) Any party claiming that a nonconforming use has been abandoned shall have the
343 burden of establishing the abandonment.

344 (c) Abandonment may be presumed to have occurred if:

345 (i) a majority of the primary structure associated with the nonconforming use has been
346 voluntarily demolished without prior written agreement with the municipality regarding an
347 extension of the nonconforming use;

348 (ii) the use has been discontinued for a minimum of one year; or

349 (iii) the primary structure associated with the nonconforming use remains vacant for a
350 period of one year.

351 (d) The property owner may rebut the presumption of abandonment under Subsection
352 (4)(c), and shall have the burden of establishing that any claimed abandonment under
353 Subsection (4)(b) has not in fact occurred.

354 (5) A municipality may terminate the nonconforming status of a school district or
355 charter school use or structure when the property associated with the school district or charter
356 school use or structure ceases to be used for school district or charter school purposes for a
357 period established by ordinance.

358 (6) A municipal ordinance adopted under Section [~~10-1-203~~] 10-1-203.5 may not:

359 (a) require physical changes in a structure with a legal nonconforming rental housing
360 use unless the change is for:

361 (i) the reasonable installation of:

362 (A) a smoke detector that is plugged in or battery operated;

363 (B) a ground fault circuit interrupter protected outlet on existing wiring;

364 (C) street addressing;

365 (D) except as provided in Subsection (7), an egress bedroom window if the existing

366 bedroom window is smaller than that required by current state building code;

367 (E) an electrical system or a plumbing system, if the existing system is not functioning
368 or is unsafe as determined by an independent electrical or plumbing professional who is
369 licensed in accordance with Title 58, Occupations and Professions;

370 (F) hand or guard rails; or

371 (G) occupancy separation doors as required by the International Residential Code; or

372 (ii) the abatement of a structure; or

373 (b) be enforced to terminate a legal nonconforming rental housing use.

374 (7) A municipality may not require a change described in Subsection (6)(a)(i)(D) if the
375 change:

376 (a) would compromise the structural integrity of a building; or

377 (b) could not be completed in accordance with current building codes, including
378 set-back and window well requirements.

379 (8) A legal nonconforming rental housing use may not be terminated under Section
380 [~~10-1-203~~] 10-1-203.5.

381 Section 5. Section **57-22-7** is amended to read:

382 **57-22-7. Limitation on counties and municipalities.**

383 (1) A county or municipality may not adopt an ordinance, resolution, or regulation that
384 is inconsistent with this chapter.

385 (2) (a) Subsection (1) may not be construed to limit the ability of a county or
386 municipality to enforce an applicable administrative remedy with respect to a residential rental
387 unit for a violation of a county or municipal ordinance, subject to Subsection (2)(b).

388 (b) A county or municipality's enforcement of an administrative remedy may not have
389 the effect of:

390 (i) modifying the time requirements of a corrective period, as defined in Section
391 57-22-6;

392 (ii) limiting or otherwise affecting a tenant's remedies under Section 57-22-6; or

393 (iii) modifying an owner's obligation under this chapter to a tenant relating to the

394 habitability of a residential rental unit.

395 (3) A municipality with a good landlord program under [~~Subsection 10-1-203(5)(e)~~
396 Section 10-1-203.5] may not limit an owner's participation in the program or reduce program
397 benefits to the owner because of renter or crime victim action that the owner is prohibited
398 under Subsection 57-22-5.1(5) from restricting or penalizing.

399 Section 6. Section **72-7-102** is amended to read:

400 **72-7-102. Excavations, structures, or objects prohibited within right-of-way**
401 **except in accordance with law -- Permit and fee requirements -- Rulemaking -- Penalty**
402 **for violation.**

403 (1) As used in this section, "management costs" means the reasonable, direct, and
404 actual costs a highway authority incurs in exercising authority over the highways under its
405 jurisdiction.

406 (2) Except as provided in Subsection (3) and Section 54-4-15, a person may not:

407 (a) dig or excavate, within the right-of-way of any state highway, county road, or city
408 street; or

409 (b) place, construct, or maintain any approach road, driveway, pole, pipeline, conduit,
410 sewer, ditch, culvert, billboard, advertising sign, or any other structure or object of any kind or
411 character within the right-of-way.

412 (3) (a) A highway authority having jurisdiction over the right-of-way may allow
413 excavating, installation of utilities and other facilities or access under rules made by the
414 highway authority and in compliance with federal, state, and local law as applicable.

415 (b) (i) The rules may require a permit for any excavation or installation and may
416 require a surety bond or other security.

417 (ii) The application for a permit for excavation or installation on a state highway shall
418 be accompanied by a fee established under Subsection (4)(f).

419 (iii) The permit may be revoked and the surety bond or other security may be forfeited
420 for cause.

421 (4) (a) Except as provided in Section 72-7-108 with respect to the department

422 concerning the interstate highway system, a highway authority may require compensation from
423 a utility service provider for access to the right-of-way of a highway only as provided in this
424 section.

425 (b) A highway authority may recover from a utility service provider, only those
426 management costs caused by the utility service provider's activities in the right-of-way of a
427 highway under the jurisdiction of the highway authority.

428 (c) (i) A fee or other compensation under this Subsection (4) shall be imposed on a
429 competitively neutral basis.

430 (ii) If a highway authority's management costs cannot be attributed to only one entity,
431 the management costs shall be allocated among all privately owned and government agencies
432 using the highway right-of-way for utility service purposes, including the highway authority
433 itself. The allocation shall reflect proportionately the management costs incurred by the
434 highway authority as a result of the various utility uses of the highway.

435 (d) A highway authority may not use the compensation authority granted under this
436 Subsection (4) as a basis for generating revenue for the highway authority that is in addition to
437 its management costs.

438 (e) (i) A utility service provider that is assessed management costs or a franchise fee by
439 a highway authority is entitled to recover those management costs.

440 (ii) If the highway authority that assesses the management costs or franchise fees is a
441 political subdivision of the state and the utility service provider serves customers within the
442 boundaries of that highway authority, the management costs may be recovered from those
443 customers.

444 (f) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
445 department shall adopt a schedule of fees to be assessed for management costs incurred in
446 connection with issuing and administering a permit on a state highway under this section.

447 (g) In addition to the requirements of this Subsection (4), a telecommunications tax or
448 fee imposed by a municipality on a telecommunications provider, as defined in Section
449 10-1-402, is subject to Section 10-1-406.

450 (5) Permit fees collected by the department under this section shall be deposited with
451 the state treasurer and credited to the Transportation Fund.

452 (6) Nothing in this section shall affect the authority of a municipality under:

453 (a) Section [~~10-1-203~~] or 10-1-203.5;

454 (b) Section 11-26-1;

455 (c) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act; or

456 (d) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act.

457 (7) A person who violates the provisions of Subsection (2) is guilty of a class B
458 misdemeanor.