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POLITICAL SUBDIVISION RESIDENTIAL RENTAL AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kenneth W. Sumsion

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends language related to municipal or county regulation of a residential rental dwelling.

Highlighted Provisions:

This bill:

- amends the definition of "good landlord program";
- defines terms;
- prohibits a municipality or county from:
  - in certain circumstances, requiring an owner of a rental dwelling from obtaining a business license;
  - conducting an inspection of a rental dwelling;
  - requiring an owner to attend an owner training program;
  - requiring an owner to meet with a renter; and
  - requiring an owner to include certain conditions in a rental agreement; and
- makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

H.B. 216

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

ENACTS:

17-50-503, Utah Code Annotated 1953

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

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

10-1-203. License fees and taxes -- Disproportionate rental fee -- Application information to be transmitted to the county assessor.

(1) As used in this section:

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

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

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

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

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

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

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

(c) A municipality that collects a contractual franchise fee pursuant to a franchise agreement as defined in Subsection 10-1-303(6) with an energy supplier that is in effect on July

1, 1997, may continue to collect that fee as provided in Subsection 10-1-310(2).

(d) (i) Subject to the requirements of Subsection (3)(d)(ii), a franchise agreement as defined in Subsection 10-1-303(6) between a municipality and an energy supplier may contain a provision that:

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

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

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

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

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

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

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

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

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

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

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

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

(C) subject to the limitations of Subsections (5)(c), (d), and (e):

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

(II) a purchaser from a business for which the municipality provides an enhanced level

of municipal services.

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

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

(i) "Municipal services" includes:

(A) public utilities; and

(B) services for:

(I) police;

(II) fire;

(III) storm water runoff;

(IV) traffic control;

(V) parking;

(VI) transportation;

(VII) beautification; or

(VIII) snow removal.

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

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

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

(C) that charges a fee for parking.

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

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

(B) is operated by a business; and

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

(c) (i) Before the legislative body of a municipality imposes a license fee on a business that causes disproportionate costs of municipal services under Subsection (5)(a)(i)(C)(I), the legislative body of the municipality shall adopt an ordinance defining for purposes of the tax under Subsection (5)(a)(i)(C)(I):

(A) the costs that constitute disproportionate costs; and

(B) the amounts that are reasonably related to the costs of the municipal services provided by the municipality.

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

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

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

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

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

(e) (i) As used in this Subsection (5)(e):

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

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

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

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

[~~(II)~~] (I) implements measures to reduce crime in rental housing as specified in municipal ordinances; and

[~~(III)~~] (II) operates and manages rental housing in accordance with applicable municipal ordinances.

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

(E) "Rental housing cost" means the municipality's cost:

(I) of providing municipal services to the rental housing;

(II) that is reasonably attributable to the rental housing; and

(III) that would not have occurred in the absence of the rental housing.

(ii) A municipality may impose and collect a disproportionate rental fee if:

(A) the municipality:

(I) adopts the ordinances required under Subsections (5)(c) and (d), as applicable;

(II) conducts a municipal services study;

(III) updates the municipal services study:

(Aa) before increasing the amount of the disproportionate rental fee; and

(Bb) before decreasing the amount of the disproportionate rental fee reduction; and

(IV) establishes a good landlord program; and

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

(iii) (A) The requirement under Subsection (5)(e)(ii)(A)(IV) to establish a good landlord program does not apply to a municipality that imposed and collected a disproportionate rental fee on January 1, 2009.

(B) A municipality claiming an exemption under Subsection (5)(e)(iii)(A) shall conduct an updated municipal services study at least every four years.

(iv) The requirement under Subsection (5)(e)(ii)(A)(II) to conduct a municipal services study does not apply to a municipality that:

(A) imposed and collected a disproportionate rental fee on May 2, 2005, of $17 or less per unit per year;

(B) does not increase the amount of its disproportionate rental fee; and

(C) does not decrease the amount of its disproportionate rental fee reduction.

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

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

(B) does not increase the amount of its disproportionate rental fee; and

(C) does not decrease the amount of its disproportionate rental fee reduction.

(vi) Until May 2, 2012, the requirement under Subsection (5)(e)(ii)(A)(II) to conduct a

municipal services study before imposing and collecting a disproportionate rental fee, does not apply to a municipality that:

(A) on May 2, 2005, imposed and collected a disproportionate rental fee that exceeds $17 per unit per year;

(B) had implemented, before January 1, 2005, a good landlord program;

(C) does not decrease the amount of the disproportionate rental fee reduction; and

(D) does not increase the amount of its disproportionate rental fee.

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

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

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

Section 2. Section **10-8-85.5** is amended to read:

10-8-85.5. Rental terms defined -- Municipality may require a business license or a regulatory business license -- Exception.

(1) As used in this section[~~, "rental dwelling"~~]:

(a) (i) "Owner" means the owner, lessor, or sublessor of a rental dwelling.

(ii) A managing agent, leasing agent, or resident manager is considered an owner for purposes of:

(A) notice and other communication required or allowed under this section unless the agent or manager specifies otherwise in writing in the rental agreement; and

(B) an owner training program.

(b) "Rental agreement" means an agreement, written or oral, which establishes or modifies the terms, conditions, rules, or any other provisions regarding the use and occupancy of a rental dwelling.

(c) "Rental dwelling means a building or portion of a building that is:

[~~(a)~~] (i) used or designated for use as a residence by one or more [~~persons~~] renters; and

[~~(b) (i)~~] (ii) (A) available to be rented, loaned, leased, or hired out for a period of one

month or longer; or

[~~(ii)~~] (B) arranged, designed, or built to be rented, loaned, leased, or hired out for a period of one month or longer.

(d) "Renter" means a person entitled under a rental agreement to occupy a rental dwelling to the exclusion of others.

(2) (a) [~~The~~] Except as provided in Subsection (2)(b), a legislative body of a municipality may by ordinance require the owner of a rental dwelling located within the municipality:

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

(ii) [~~(A)~~] to obtain a regulatory business license to operate and maintain the rental dwelling[~~; and~~].

[~~(B) to allow inspections of the rental dwelling as a condition of obtaining a regulatory business license.~~]

(b) A municipality may not:

(i) require the owner of a rental dwelling of five units or less to obtain a business license in accordance with Subsection (2)(a)(i) or a regulatory business license in accordance with Subsection (2)(a)(ii); or

(ii) require an owner of multiple rental dwellings or multiple buildings containing rental dwellings other than an owner described in Subsection (2)(b)(i) to obtain more than one regulatory business license for the operation and maintenance of those rental dwellings.

[~~(c) (i) Notwithstanding Subsection (2)(b), a municipality may, until August 31, 2008, impose upon an owner subject to Subsection (2)(a) a reasonable inspection fee for the inspection of each rental dwelling owned by that owner.~~]

[~~(ii) Beginning September 1, 2008, a municipality may not charge a fee for the inspection of a rental dwelling.~~]

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

(c) (i) A municipality may not:

(A) require the inspection of a rental dwelling as a condition of obtaining a business license or a regulatory business license; or

(B) except as provided in Subsection (2)(c)(ii), inspect a rental dwelling without the permission of the owner and, if the rental dwelling is occupied, the renter.

(ii) Subsection (2)(c)(i)(B) does not apply to an inspection of rental dwelling grounds in accordance with Section 10-11-2.

(3) A municipality may not:

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

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

(c) require an owner to:

(i) attend an owner training program;

(ii) meet with a renter; or

(iii) include a condition in a rental agreement unless the condition is require by state law.

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

Section 3. Section **17-50-503** is enacted to read:

17-50-503. "Rental dwelling" defined -- County prohibited from making certain requirements of owner.

(1) As used in this section:

(a) (i) "Owner" means the owner, lessor, or sublessor of a rental dwelling.

(ii) A managing agent, leasing agent, or resident manager is considered an owner for

purposes of:

(A) notice and other communication required or allowed under this section unless the agent or manager specifies otherwise in writing in the rental agreement; and

(B) an owner training program.

(b) "Rental agreement" means an agreement, written or oral, which establishes or modifies the terms, conditions, rules, or any other provisions regarding the use and occupancy of a rental dwelling.

(c) "Rental dwelling" means a building or portion of a building that is:

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

(ii) (A) available to be rented, loaned, leased, or hired out for a period of one month or longer; or

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

(d) "Renter" means a person entitled under a rental agreement to occupy a rental dwelling to the exclusion of others.

(2) A county may not:

(a) require the owner of a rental dwelling of five units or less to obtain a business license described in Section 17-36-216;

(b) (i) require the inspection of a rental dwelling as a condition of obtaining a business license; or

(ii) subject to Subsection (3), inspect a rental dwelling without the permission of the owner and, if the rental dwelling is occupied, the renter; or

(c) require an owner to:

(i) attend an owner training program;

(ii) meet with a renter; or

(iii) include a condition in a rental agreement unless the condition is required by state law.

(3) Subsection (2)(b)(ii) does not apply to an inspection of rental dwelling grounds.

(4) Nothing in this section shall be construed to affect the rights and duties established under Title 57, Chapter 22, Utah Fit Premises Act, or to restrict a county's ability to enforce its generally applicable health ordinances or building code, a local health department's authority

under Title 26A, Chapter 1, Local Health Departments, or the Utah Department of Health's authority under Title 26, Utah Health Code.

Legislative Review Note
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Office of Legislative Research and General Counsel