

HB0322S01 compared with HB0322

~~{deleted text}~~ shows text that was in HB0322 but was deleted in HB0322S01.

inserted text shows text that was not in HB0322 but was inserted into HB0322S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Eric K. Hutchings proposes the following substitute bill:

LOCAL GOVERNMENT CLEAN-UP FEES

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Eric K. Hutchings

Senate Sponsor: _____

LONG TITLE

General Description:

This bill enacts language governing a municipality ~~{or county}~~ that charges a fee for residential clean-up service.

Highlighted Provisions:

This bill:

- ▶ enacts language limiting a fee a municipality ~~{or county}~~ may charge for a residential clean-up service;
- ▶ requires a municipality ~~{or county}~~ to provide a property owner with a statement showing the ~~{municipality's or county's}~~ municipality's calculation method of a clean-up fee;

~~{ } requires a municipality or county to record with the county recorder and mail to a property owner a notice of a lien if the municipality or county plans to record a lien~~

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~~against the property;~~

- ‡ ▶ enacts language governing a lien recorded for clean-up costs; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-11-3, as last amended by Laws of Utah 2011, Chapter 172

~~{ENACTS:~~

~~———— **10-11-5**, Utah Code Annotated 1953~~

~~———— **17-50-335**, Utah Code Annotated 1953~~

~~}~~

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

Section 1. 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 an owner of, occupant of, or other person responsible for real property described in the notice delivered in accordance with Section 10-11-2 fails to comply with Section 10-11-2, a municipal inspector ~~[may]~~ shall:

(i) at the expense of the municipality, employ necessary assistance 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 in accordance with Subsection (1)(b); and

(B) mail to the owner of record according to the records of the county recorder a copy of the statement demanding payment within 30 days 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 in a specified amount for all expenses,

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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 in accordance with Section ~~10-11-4~~ 10-11-5;

(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.

(c) A statement mailed in accordance with Subsection (1)(a) 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]] No later than 30 days before recording a lien on the property, a municipality [may] shall:~~

~~——~~ [[A]] 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 ~~[[]]~~ [[]] ~~and~~

~~{ ——~~ [[B]] mail a copy of the notice of the lien to the property owner's of record last known address.

~~†~~ (ii) If a municipality files a notice of a lien indicating that the municipality intends to ~~[[]]~~ certify [[]] record a lien against the property for the unpaid costs and expenses in accordance with Subsection (2)(a)(ii) and Section ~~10-11-4~~ 10-11-5, 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 an owner fails to file a timely written objection as described in Subsection (1)(b)(ii)(B) or to pay the amount set forth in the statement under Subsection (1)(b)(i)(B), the municipality may, subject to Subsection (5):

(i) file an action in district court; or

~~[[]]~~ (ii) 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. ~~[[]]~~

~~{ ——~~ [[ii]] record a lien against the property in accordance with Section 10-11-5.

~~†~~ (b) If a municipality pursues collection of the costs in accordance with Subsection

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(2)(a)(i) or (4)(a), the municipality may:

(i) sue for and receive judgment for, subject to Subsection (5), all removal and destruction costs, including administrative costs, and reasonable attorney fees, interest, and court costs; and

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

(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 (3)(b) and an expense, fee, or cost described in Subsection (2)(b)(i); 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. ~~††~~

~~†~~ ~~(b) subject to Subsection (5), record a lien against the property in accordance with Section 10-11-5.~~

~~†~~ (5) (a) If the municipality files an action in district court under Subsection (2)(a)(i) or (4)(a), or ~~†records†~~ certifies a lien for the past due costs and expenses under Subsection (2)(a)(ii) or (4)(b), the sum total of remittance for administrative expenses authorized in Subsection (1)(b)(i)(B), or a cost, fee, or interest charge authorized in Subsection (2)(b)(i), that the municipality may claim or certify may not exceed 100% of the actual cost of abatement incurred by the municipality under Subsection (1)(a)(i).

(b) A municipality described in Subsection (5)(a) shall provide the owner with an itemized statement that shows the calculation method of an expense, cost, fee, or charge made

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in accordance with Subsection (5)(a).

~~[(5)]~~ (6) 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 2. Section 10-11-5 is enacted to read:~~

~~Section 2. Section 10-11-5 is enacted to read:~~
~~**10-11-5. Lien recorded -- Priority.**~~

~~(1) A municipality may record a lien with the county recorder of the county in which a property described in Section 10-11-3 is located for the unpaid costs and expenses that the municipality has incurred under Section 10-11-3 with regard to the property.~~

~~(2) A lien imposed under this section:~~

~~(a) has priority over any lien, mortgage, security interest, or other encumbrance arising after the day on which the lien is recorded; and~~

~~(b) does not have priority over:~~

~~(i) a lien imposed pursuant to Title 59, Chapter 2, Property Tax Act; or~~

~~(ii) any other previously recorded lien.~~

~~(3) This section does not apply to any public building, public structure, or public improvement.~~

~~Section 3. Section 17-50-335 is enacted to read:~~

~~**17-50-335. Limit on fees for residential service -- Notice of fee calculation -- Lien.**~~

~~(1) If a county directs a county inspector to inspect and clean up or abate real property for the growth and spread of injurious and noxious weeds, garbage and refuse, a public nuisance, or an illegal object or structure, the county may not file an action against the owner of or record a lien against an inspected property for payment due for a sum total amount in expenses, fees, costs, or interest charges that exceeds 100% of the actual cost of the inspection or abatement incurred by the county.~~

~~(2) A county described in Subsection (1) shall provide the owner with an itemized statement that shows the calculation method of an expense, cost, fee, or charge made in accordance with Subsection (1).~~

~~(3) If a county records a lien with the county recorder of the county in which a property~~

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~~described in Subsection (1) is located for the unpaid costs and expenses that the county has incurred for an inspection, clean up, or abatement with regard to the property, the county shall no later than 30 days before recording a lien on the property:~~

~~—— (a) file a notice of a lien, including a copy of the statement described in Subsection (2), in the records of the county recorder; and~~

~~—— (b) mail a copy of the notice of the lien to the property owner's of record last known address:~~

~~—— (4) A lien imposed under this section:~~

~~—— (a) has priority over any lien, mortgage, security interest, or other encumbrance arising after the day on which the lien is recorded; and~~

~~—— (b) does not have priority over:~~

~~—— (i) a lien imposed pursuant to Title 59, Chapter 2, Property Tax Act; or~~

~~—— (ii) any other previously recorded lien.~~

~~—— (5) The county shall file for record in the county recorder's office a release of the lien after all amounts owing are paid.~~

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

Legislative Review Note

~~—— as of 2-14-13 3:00 PM~~

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