

Senator Wayne A. Harper proposes the following substitute bill:

PROPERTY DECONTAMINATION AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Mayne

House Sponsor: Clare Collard

Cosponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill modifies the authority of a municipality to regulate the abatement of certain conditions on the property of an owner or occupant.

Highlighted Provisions:

This bill:

- ▶ defines the term "hazardous materials";
- ▶ authorizes a municipality to designate and regulate the abatement of hazardous materials;
- ▶ modifies a municipality's authority regarding municipal inspectors and enforcement of abatement ordinances; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



25 AMENDS:

26 **10-11-1**, as last amended by Laws of Utah 2011, Chapters 144, 172 and last amended
27 by Coordination Clause, Laws of Utah 2011, Chapter 144

28 **10-11-2**, as repealed and reenacted by Laws of Utah 2011, Chapter 172

29 **10-11-3**, as last amended by Laws of Utah 2011, Chapter 172



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

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

33 **10-11-1. Abatement of weeds, garbage, refuse, and unsightly objects -- Selection**
34 **of service provider.**

35 (1) As used in this chapter, "hazardous materials" means the same as that term is
36 defined in Section 19-6-902.

37 [~~1~~] (2) A municipal legislative body may:

38 (a) designate and regulate the abatement of:

39 (i) the growth and spread of injurious and noxious weeds;

40 (ii) garbage and refuse;

41 (iii) a public nuisance; [~~or~~]

42 (iv) an illegal object or structure; [~~and~~] or

43 (v) hazardous materials; and

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

46 [~~2~~] (3) A municipal legislative body may not:

47 (a) prohibit an owner or occupant of real property within the municipality's
48 jurisdiction, including an owner or occupant who receives a notice in accordance with Section
49 **10-11-2**, from selecting a person, as defined in Section **10-1-104**, to provide an abatement
50 service for injurious and noxious weeds, garbage and refuse, a public nuisance, or an illegal
51 object or structure; or

52 (b) require that an owner or occupant described in Subsection [~~2~~] (3)(a) use the
53 services of the municipal inspector or any assistance employed by the municipal inspector
54 described in Section **10-11-3** to provide an abatement service described in Subsection [~~2~~]
55 (3)(a).

56 ~~[(3)]~~ (4) A municipality may require that an owner or occupant described in Subsection
57 ~~[(2)]~~ (3)(a) use the abatement services, as described in Section 10-11-3, of the municipal
58 inspector, including the use of a certified decontamination specialist as described in Section
59 19-6-906, or any assistance employed by the municipal inspector if:

60 (a) the municipality adopts an ordinance providing a reasonable period of time of at
61 least 10 days for an owner or occupant to abate the owner's or occupant's property after
62 receiving a notice described in Section 10-11-2; and

63 (b) the owner or occupant fails to abate the property within the reasonable period of
64 time and in accordance with the notice.

65 (5) A municipality may require that an owner or occupant use the abatement services of
66 a certified decontamination specialist to abate hazardous materials.

67 (6) Nothing in this chapter may be construed as authorizing a municipality to regulate
68 items that are within the exclusive jurisdiction of the Department of Agriculture and Food as
69 provided in Section 4-2-305, including commercial feed, fertilizer, pesticides, and seeds.

70 Section 2. Section 10-11-2 is amended to read:

71 **10-11-2. Inspection of property -- Notice.**

72 (1) (a) If a municipality adopts an ordinance describing the duties of a municipal
73 inspector appointed under Section 10-11-1, the ordinance:

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

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

77 (B) garbage and refuse;

78 (C) a public nuisance; ~~[or]~~

79 (D) an illegal object or structure; ~~[and]~~ or

80 (E) hazardous materials; and

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

84 (b) An ordinance described in Subsection (1)(a) may not direct an inspector or
85 authorize a municipality to abate conditions solely associated with the interior of a structure,
86 unless required;

- 87 (i) for the demolition and removal of the structure[-]; or
- 88 (ii) to eliminate or remove hazardous materials within the structure.
- 89 (c) An ordinance described in Subsection (1)(a) may direct an inspector or authorize a
- 90 municipality to issue an order limiting or restricting access to a structure and the real property
- 91 appurtenant to the structure while the municipal inspector or a certified decontamination
- 92 specialist destroys, removes, or abates hazardous materials within the structure.

93 (d) For a violation of an order issued under Subsection (1)(c), a governing body of a

94 municipality may adopt an ordinance imposing:

- 95 (i) a civil penalty in accordance with Subsection [10-3-703\(2\)](#); or
- 96 (ii) in accordance with Subsection [10-3-703\(1\)](#), a criminal penalty, including by a fine
- 97 not to exceed the maximum class B misdemeanor fine under Section [76-3-301](#), by a term of
- 98 imprisonment up to six months, or by both the fine and term of imprisonment.

99 (2) (a) (i) The municipal inspector shall serve written notice to a property owner of

100 record according to the records of the county recorder in accordance with Subsection (2)(b).

101 (ii) The municipal inspector may serve written notice in accordance with Subsection

102 (2)(b) to a non-owner occupant of the property or another person responsible for the property

103 who is not the owner of record, including a manager or agent of the owner, if:

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

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

109 (i) in person or by mail to the property owner of record as described in Subsection

110 (2)(a)(i), if mailed to the last-known address of the owner according to the records of the

111 county recorder; or

112 (ii) in person or by mail to a non-owner occupant or another person responsible for the

113 property who is not the owner of record as described in Subsection (2)(a)(ii), if mailed to the

114 property address.

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

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

117 recorder;

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

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

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

124 (B) comply with Subsection (2)(c)(iii)(A) in a time period designated by the municipal
125 inspector but no less than 10 days after the day on which notice is delivered in person or
126 post-marked.

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

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

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

133 **10-11-3. Neglect of property owners -- Removal by municipality -- Costs of**
134 **removal -- Notice -- File action or lien -- Property owner objection.**

135 (1) (a) If an owner of, occupant of, or other person responsible for real property
136 described in the notice delivered in accordance with Section [10-11-2](#) fails to comply with
137 Section [10-11-2](#), a municipal inspector may:

138 (i) at the expense of the municipality, employ necessary assistance to enter the property
139 and [~~destroy or remove an item~~] destroy, remove, or abate one or more items or conditions
140 identified in a written notice described in Section [10-11-2](#); and

141 (ii) (A) prepare an itemized statement in accordance with Subsection (1)(b); and

142 (B) mail to the owner of record according to the records of the county recorder a copy
143 of the statement demanding payment within 30 days after the day on which the statement is
144 post-marked.

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

146 (i) include:

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

148 (B) an itemized list of and demand for payment for all expenses, including

149 administrative expenses, incurred by the municipality under Subsection (1)(a)(i); and
150 (C) the address of the municipal treasurer where payment may be made for the
151 expenses; and
152 (ii) notify the property owner:
153 (A) that failure to pay the expenses described in Subsection (1)(b)(i)(B) may result in a
154 lien on the property in accordance with Section 10-11-4;
155 (B) that the owner may file a written objection to all or part of the statement within 20
156 days after the day of the statement post-mark; and
157 (C) where the owner may file the objection, including the municipal office and address.
158 (c) A statement mailed in accordance with Subsection (1)(a) is delivered when mailed
159 by certified mail addressed to the property owner's of record last-known address according to
160 the records of the county recorder.
161 (d) (i) A municipality may file a notice of a lien, including a copy of the statement
162 described in Subsection (1)(a)(ii)(A) or a summary of the statement, in the records of the
163 county recorder of the county in which the property is located.
164 (ii) If a municipality files a notice of a lien indicating that the municipality intends to
165 certify the unpaid costs and expenses in accordance with Subsection (2)(a)(ii) and Section
166 10-11-4, the municipality shall file for record in the county recorder's office a release of the lien
167 after all amounts owing are paid.
168 (2) (a) If an owner fails to file a timely written objection as described in Subsection
169 (1)(b)(ii)(B) or to pay the amount set forth in the statement under Subsection (1)(b)(i)(B), the
170 municipality may:
171 (i) file an action in district court; or
172 (ii) certify the past due costs and expenses to the county treasurer of the county in
173 which the property is located in accordance with Section 10-11-4.
174 (b) If a municipality pursues collection of the costs in accordance with Subsection
175 (2)(a)(i) or (4)(a), the municipality may:
176 (i) sue for and receive judgment for all removal and destruction costs, including
177 administrative costs, and reasonable attorney fees, interest, and court costs; and
178 (ii) execute on the judgment in the manner provided by law.
179 (3) (a) If a property owner files an objection in accordance with Subsection (1)(b)(ii),

180 the municipality shall:

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

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

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

186 (c) The property owner shall pay any actual cost due after a decision by the
187 municipality at the hearing described in Subsection (3)(a)(i) to the municipal treasurer within
188 30 days after the day on which the hearing is held.

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

191 (a) file an action in district court for the actual cost determined under Subsection
192 (3)(b); or

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

195 (5) This section does not affect or limit:

196 (a) a municipal governing body's power to pass an ordinance as described in Section
197 10-3-702; or

198 (b) a criminal or civil penalty imposed by a municipality in accordance with Section
199 10-3-703.