

SB0137S03 compared with SB0137S02

~~text~~ shows text that was in SB0137S02 but was deleted in SB0137S03.

text shows text that was not in SB0137S02 but was inserted into SB0137S03.

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Senator Wayne A. Harper proposes the following substitute bill:

PROPERTY DECONTAMINATION AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Mayne

House Sponsor: _____

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

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- ▶ makes technical changes.

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 2011, Chapters 144, 172 and last amended by Coordination Clause, Laws of Utah 2011, Chapter 144

10-11-2, as repealed and reenacted by Laws of Utah 2011, Chapter 172

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

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 -- Selection of service provider.

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

~~(1)~~ (2) A municipal legislative body may:

(a) designate and regulate the abatement of:

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

(ii) garbage and refuse;

(iii) a public nuisance; ~~or~~

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

(v) for a structure or any real property closed to occupancy or entry by a local health department, hazardous materials; and

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

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

(a) prohibit an owner or occupant of real property within the municipality's jurisdiction, including an owner or occupant who receives a notice in accordance with Section

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10-11-2, from selecting a person, as defined in Section 10-1-104, to provide an abatement service for injurious and noxious weeds, garbage and refuse, a public nuisance, or an illegal object or structure; or

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

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

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

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

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

(6) Nothing in this chapter may be construed:

(a) as authorizing a municipality to regulate items that are within the exclusive jurisdiction of the Department of Agriculture and Food as provided in Section 4-2-305, including commercial feed, fertilizer, pesticides, and seeds~~[(1)]~~; or

(b) as limiting or abrogating the authority of a local health department under Section 19-6-905.

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

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

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

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- (B) garbage and refuse;
- (C) a public nuisance; [or]
- (D) an illegal object or structure; [~~and~~] or
- (E) hazardous materials; 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:

(i) for the demolition and removal of the structure[~~;~~]; or

(ii) to eliminate or remove hazardous materials within ~~the~~ a structure ~~that has been closed to occupancy or entry by a local health department or fire department.~~

(c) An ordinance described in Subsection (1)(a) may direct an inspector or authorize a municipality to issue an order limiting or restricting access to a structure and the real property appurtenant to the structure while the municipal inspector or a certified decontamination specialist destroys, removes, or abates hazardous materials within the structure.

(d) ~~For~~ If a municipality has adopted an ordinance establishing an administrative proceeding process for the violation of a municipal ordinance in accordance with the requirements of Section 10-3-703.7, the municipality may adopt an ordinance imposing the following for a violation of an order issued under Subsection (1)(c) ~~, a governing body of a municipality may adopt an ordinance imposing~~:

(i) a civil penalty in accordance with Subsection 10-3-703(2); or

(ii) in accordance with Subsection 10-3-703(1), a criminal penalty, including by a fine not to exceed the maximum class B misdemeanor fine under Section 76-3-301, by a term of imprisonment up to six months, or by both the fine and term of imprisonment.

(e) An ordinance adopted in accordance with (1)(d) shall provide 180 days after the day on which the written notice from an inspector is delivered in person or the date the notice is post-marked for the recipient of the notice to:

(i) abate the hazardous materials; or

(ii) appeal the notice and begin the administrative proceeding process.

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(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:

(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); and~~

(iii) identify the relevant regulation or ordinance at issue and describe the violation of the relevant regulation or ordinance;

(iv) describe each order, fine, or penalty that may be imposed;

(v) for a structure or any real property closed to occupancy or entry by a local health department because of hazardous materials, explain the right of a property owner, occupant, or, if applicable, another person responsible for the property to abate the hazardous materials or appeal the notice within 180 days after the day on which notice is delivered in person or the date the notice is post-marked;

[(iii)] (vi) require the property owner, occupant, or, if applicable, another person

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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 or post-marked, or for a notice related to hazardous materials, no less than 180 days after the day on which notice is delivered in person or post-marked.

(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.

(f) For a structure or any real property closed to occupancy or entry by a local health department because of hazardous materials, unless an order issued by a court of competent jurisdiction states otherwise, a municipality may not impose a fine or penalty on a property owner, occupant, or another person responsible for the structure or real property, and may not authorize a municipal inspector or a certified decontamination specialist to begin abatement of the hazardous materials, until:

(i) the appeal and administrative proceeding process is completed; or

(ii) the property owner, occupant, or another person responsible for the property has missed the deadline for filing the appeal.

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 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:

(i) at the expense of the municipality, employ necessary assistance to enter the property and [~~destroy or remove an item~~] destroy, remove, or abate one or more items or conditions 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

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(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 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 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.

(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 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 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:

(i) file an action in district court; or

(ii) certify the past due costs and expenses to the county treasurer of the county in

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which the property is located in accordance with Section 10-11-4.

(b) If a municipality pursues collection of the costs in accordance with Subsection (2)(a)(i) or (4)(a), the municipality may:

(i) sue for and receive judgment for 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); 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.