

11-36a-701 Impact fee challenge.

- (1) A person or an entity residing in or owning property within a service area, or an organization, association, or a corporation representing the interests of persons or entities owning property within a service area, has standing to file a declaratory judgment action challenging the validity of an impact fee.
- (2)
 - (a) A person or an entity required to pay an impact fee who believes the impact fee does not meet the requirements of law may file a written request for information with the local political subdivision who established the impact fee.
 - (b) Within two weeks after the receipt of the request for information under Subsection (2)(a), the local political subdivision shall provide the person or entity with the impact fee analysis, the impact fee facilities plan, and any other relevant information relating to the impact fee.
- (3)
 - (a) Subject to the time limitations described in Section 11-36a-702 and procedures set forth in Section 11-36a-703, a person or an entity that has paid an impact fee that was imposed by a local political subdivision may challenge:
 - (i) if the impact fee enactment was adopted on or after July 1, 2000:
 - (A) subject to Subsection (3)(b)(i) and except as provided in Subsection (3)(b)(ii), whether the local political subdivision complied with the notice requirements of this chapter with respect to the imposition of the impact fee; and
 - (B) whether the local political subdivision complied with other procedural requirements of this chapter for imposing the impact fee; and
 - (ii) except as limited by Subsection (3)(c), the impact fee.
 - (b)
 - (i) The sole remedy for a challenge under Subsection (3)(a)(i)(A) is the equitable remedy of requiring the local political subdivision to correct the defective notice and repeat the process.
 - (ii) The protections given to a municipality under Section 10-9a-801 and to a county under Section 17-27a-801 do not apply in a challenge under Subsection (3)(a)(i)(A).
 - (c) The sole remedy for a challenge under Subsection (3)(a)(ii) is a refund of the difference between what the person or entity paid as an impact fee and the amount the impact fee should have been if it had been correctly calculated.
- (4)
 - (a) Subject to Subsection (4)(d), if an impact fee that is the subject of an advisory opinion under Section 13-43-205 is listed as a cause of action in litigation, and that cause of action is litigated on the same facts and circumstances and is resolved consistent with the advisory opinion:
 - (i) the substantially prevailing party on that cause of action:
 - (A) may collect reasonable attorney fees and court costs pertaining to the development of that cause of action from the date of the delivery of the advisory opinion to the date of the court's resolution; and
 - (B) shall be refunded an impact fee held to be in violation of this chapter, based on the difference between the impact fee paid and what the impact fee should have been if the government entity had correctly calculated the impact fee; and
 - (ii) in accordance with Section 13-43-206, a government entity shall refund an impact fee held to be in violation of this chapter to the person who was in record title of the property on the day on which the impact fee for the property was paid if:

- (A) the impact fee was paid on or after the day on which the advisory opinion on the impact fee was issued but before the day on which the final court ruling on the impact fee is issued; and
- (B) the person described in Subsection (3)(a)(ii) requests the impact fee refund from the government entity within 30 days after the day on which the court issued the final ruling on the impact fee.
- (b) A government entity subject to Subsection (3)(a)(ii) shall refund the impact fee based on the difference between the impact fee paid and what the impact fee should have been if the government entity had correctly calculated the impact fee.
- (c) Subsection (4) may not be construed to create a new cause of action under land use law.
- (d) Subsection (3)(a) does not apply unless the resolution described in Subsection (3)(a) is final.

Enacted by Chapter 47, 2011 General Session