

IMPACT FEE AMENDMENTS

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: L. Steven Poulton

AN ACT RELATING TO CITIES, COUNTIES, AND LOCAL TAXING UNITS; MODIFYING THE PROVISION REGARDING THE MAXIMUM ALLOWABLE IMPACT FEE; PROVIDING A BINDING ARBITRATION PROCESS FOR CHALLENGING AN IMPACT FEE; AND MAKING TECHNICAL CORRECTIONS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

11-36-202, as enacted by Chapter 11, Laws of Utah 1995, First Special Session

ENACTS:

11-36-402, Utah Code Annotated 1953

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

Section 1. Section **11-36-202** is amended to read:

11-36-202. Impact fees -- Enactment -- Required provisions.

(1) (a) Each local political subdivision wishing to impose impact fees shall pass an impact fee enactment.

(b) ~~[The]~~ (i) Subject to Subsections (1)(b)(ii) and (iii), the impact fee imposed by that enactment for any individual local political subdivision may not exceed the highest fee justified by the impact fee analysis performed by that local political subdivision pursuant to Section 11-36-201.

(ii) For any individual building lot, the total of all impact fees imposed by all local political subdivisions may not exceed 2% of the total of:

(A) the value of the lot; and

(B) the costs, including labor and materials, of constructing the building, as indicated by the builder in an application for a building permit from the local political subdivision that issues

1 the building permit.

2 (iii) If the total of all impact fees imposed by all local political subdivisions as to any
3 individual lot exceeds the 2% amount in Subsection (1)(b)(ii), the impact fee imposed by each
4 local political subdivision shall be reduced proportionately until the total of all impact fees equals
5 2% of the amount in Subsection (1)(b)(ii).

6 (c) In calculating the impact fee, each local political subdivision may include:

7 (i) the construction contract price;

8 (ii) the cost of acquiring land, improvements, materials, and fixtures;

9 (iii) the cost for planning, surveying, and engineering fees for services provided for and
10 directly related to the construction of the system improvements; and

11 (iv) debt service charges, if the political subdivision might use impact fees as a revenue
12 stream to pay the principal and interest on bonds, notes, or other obligations issued to finance the
13 costs of the system improvements.

14 (d) In enacting an impact fee enactment:

15 (i) municipalities shall:

16 (A) make a copy of the impact fee enactment available to the public at least 14 days before
17 the date of the public hearing; and

18 (B) comply with the notice and hearing requirements of, and receive the protections of,
19 Subsections 10-9-103(2) and 10-9-802(2);

20 (ii) counties shall:

21 (A) make a copy of the impact fee enactment available to the public at least 14 days before
22 the date of the public hearing; and

23 (B) comply with the notice and hearing requirements of, and receive the protections of,
24 Subsections 17-27-103(2) and 17-27-802(2); and

25 (iii) special districts shall:

26 (A) make a copy of the impact fee enactment available to the public at least 14 days
27 before the date of the public hearing; and

28 (B) comply with the notice and hearing requirements of, and receive the protections of,
29 Section 17A-1-203.

30 (e) Nothing contained in Subsection (1)(d) or in the subsections referenced in Subsections
31 (1)(d)(i)(B) and (ii)(B) may be construed to require involvement by a planning commission in the

1 impact fee enactment process.

2 (2) The local political subdivision shall ensure that the impact fee enactment contains:

3 (a) a provision establishing one or more service areas within which it shall calculate and
4 impose impact fees for various land use categories;

5 (b) either:

6 (i) a schedule of impact fees for each type of development activity that specifies the
7 amount of the impact fee to be imposed for each type of system improvement; or

8 (ii) the formula that the local political subdivision will use to calculate each impact fee;

9 (c) a provision authorizing the local political subdivision to adjust the standard impact fee
10 at the time the fee is charged to:

11 (i) respond to unusual circumstances in specific cases; and

12 (ii) ensure that the impact fees are imposed fairly; and

13 (d) a provision governing calculation of the amount of the impact fee to be imposed on a
14 particular development that permits adjustment of the amount of the fee based upon studies and
15 data submitted by the developer.

16 (3) The local political subdivision may include a provision in the impact fee enactment
17 that:

18 (a) exempts low income housing and other development activities with broad public
19 purposes from impact fees and establishes one or more sources of funds other than impact fees to
20 pay for that development activity;

21 (b) imposes an impact fee for public facility costs previously incurred by a local political
22 subdivision to the extent that new growth and development will be served by the previously
23 constructed improvement; and

24 (c) allows a credit against impact fees for any dedication of land for, improvement to, or
25 new construction of, any system improvements provided by the developer if the facilities:

26 (i) are identified in the capital facilities plan; and

27 (ii) are required by the local political subdivision as a condition of approving the
28 development activity.

29 (4) Except as provided in Subsection (3)(b), the local political subdivision may not impose
30 an impact fee to cure deficiencies in public facilities serving existing development.

31 (5) Notwithstanding the requirements and prohibitions of this chapter, a local political

subdivision may impose and assess an impact fee for environmental mitigation when:

(a) the local political subdivision has formally agreed to fund a Habitat Conservation Plan to resolve conflicts with the Endangered Species Act of 1973, 16 U.S.C. Sec 1531, et seq. or other state or federal environmental law or regulation; and

(b) the impact fee bears a reasonable relationship to the environmental mitigation required by the Habitat Conservation Plan;

(c) the legislative body of the local political subdivision adopts an ordinance or resolution:

(i) declaring that an impact fee is required to finance the Habitat Conservation Plan;

(ii) establishing periodic sunset dates for the impact fee; and

(iii) requiring the legislative body to:

(A) review the impact fee on those sunset dates;

(B) determine whether or not the impact fee is still required to finance the Habitat Conservation Plan; and

(C) affirmatively reauthorize the impact fee if the legislative body finds that the impact fee must remain in effect.

(6) Each political subdivision shall ensure that any existing impact fee for environmental mitigation meets the requirements of Subsection (5) by July 1, 1995.

(7) Notwithstanding any other provision of this chapter, municipalities imposing impact fees to fund fire trucks as of the effective date of this act may impose impact fees for fire trucks until July 1, 1997.

(8) Notwithstanding any other provision of this chapter, a local political subdivision may impose and collect impact fees on behalf of a school district if authorized by Section 53A-20-100.5.

Section 2. Section **11-36-402** is enacted to read:

11-36-402. Challenging impact fees by arbitration -- Procedure -- Costs.

(1) (a) As an alternative to the procedure under Section 11-36-401 to challenge an impact fee, a person or entity residing in or owning property within a service area, or an organization, association, or corporation representing the interests of a person or entity owning property within a service area, may submit an impact fee challenge to binding arbitration by filing a written request for arbitration with the local political subdivision that imposed the impact fee.

(b) A request for arbitration under Subsection (1)(a) may be filed at any time after the local

1 political subdivision has imposed the impact fee, whether before or after the impact fee that is the
2 subject of the request has been paid, but no later than 30 days after the impact fee has been paid.

3 (2) If the parties do not agree on an arbitrator within 20 days after the request for
4 arbitration is filed, either party may seek appointment of an arbitrator under Section 78-31a-5.

5 (3) Except as otherwise provided in this section, each arbitration under this section shall
6 be governed by the provisions of Title 78, Chapter 31a, Utah Arbitration Act.

7 (4) If the arbitrator determines that the local political subdivision imposed an impact fee
8 higher than the maximum allowed under Section 11-36-202, the local political subdivision shall:

9 (a) pay the costs and reasonable attorney's fees of the person or firm that filed the request
10 for arbitration; and

11 (b) pay to the person or firm that filed the request for arbitration triple the amount of the
12 difference between the impact fee imposed by the local political subdivision and the highest
13 maximum allowable impact fee under Section 11-36-202, as determined by the arbitrator.

14 (5) Subject to the right to appeal as provided under Title 78, Chapter 31a, Utah Arbitration
15 Act, each arbitration award shall be binding on the parties to the arbitration.

Legislative Review Note
as of 2-27-98 3:14 PM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel