

**Representative Gerry A. Adair** proposes to substitute the following bill:

**IMPACT FEES AMENDMENTS**

1999 GENERAL SESSION

STATE OF UTAH

**Sponsor: Gerry A. Adair**

AN ACT RELATING TO CITIES, COUNTIES, AND LOCAL TAXING UNITS; MODIFYING THE REQUIREMENTS FOR IMPOSING IMPACT FEES; MODIFYING THE PROCESS FOR CHALLENGING AN IMPACT FEE; AND MAKING TECHNICAL CHANGES.

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

AMENDS:

**11-36-201**, as enacted by Chapter 11, Laws of Utah 1995, First Special Session

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

**11-36-401**, as enacted by Chapter 11, Laws of Utah 1995, First Special Session

ENACTS:

**11-36-103**, Utah Code Annotated 1953

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

Section 1. Section **11-36-103** is enacted to read:

**11-36-103. Allowable fees for providing documents.**

If a provision of this chapter allows or requires a local political subdivision to provide or make available a document to the public, the local political subdivision may charge a fee, as provided in Section 63-2-203, for providing or making available that document.

Section 2. Section **11-36-201** is amended to read:

**11-36-201. Impact fees -- Analysis -- Capital facilities plan -- Exemptions.**

(1) (a) Each local political subdivision shall comply with the requirements of this chapter before establishing or modifying any impact fee.

(b) A local political subdivision may not:

26 (i) establish any new impact fees that are not authorized by this chapter; or  
 27 (ii) impose or charge any other fees as a condition of development approval unless those  
 28 fees are a reasonable charge for the service provided.

29 (c) Notwithstanding any other requirements of this chapter, each local political subdivision  
 30 shall ensure that each existing impact fee that is charged for any public facility not authorized by  
 31 Subsection 11-36-102(11) is repealed by July 1, 1995.

32 (d) (i) Existing impact fees for public facilities authorized in Subsection 11-36-102(11)  
 33 that are charged by local political subdivisions need not comply with the requirements of this  
 34 chapter until July 1, 1997.

35 (ii) By July 1, 1997, each local political subdivision shall:

36 (A) review any impact fees in existence as of the effective date of this act, and prepare and  
 37 approve the analysis required by this section for each of those impact fees; and

38 (B) ensure that the impact fees comply with the requirements of this chapter.

39 (2) (a) Before imposing impact fees, each local political subdivision shall prepare a capital  
 40 facilities plan.

41 (b) The plan shall ~~identify~~:

42 (i) include an inventory of all existing public facilities within the service area;

43 ~~(i)~~ (ii) identify demands placed upon existing public facilities by new development  
 44 activity; ~~and~~

45 ~~(ii)~~ (iii) identify the proposed means by which the local political subdivision will meet  
 46 those demands; and

47 (iv) include a detailed estimate of the capital costs for any proposed system improvements.

48 (c) Municipalities and counties need not prepare a separate capital facilities plan if the  
 49 general plan required by Sections 10-9-301 and 17-27-301 contains the elements required by this  
 50 subsection.

51 (d) (i) If a local political subdivision prepares an independent capital facilities plan rather  
 52 than including a capital facilities element in the general plan, the local political subdivision  
 53 shall~~;~~:

54 (A) before adopting the capital facilities plan, give public notice of the plan according to  
 55 this ~~subsection, make a copy of the plan available to the public~~ Subsection (2)(d);

56 (B) at least 14 days before the date of the public hearing~~;~~;

57           (I) make a copy of the plan, together with a summary easily understood by the general  
58 public, available to the public; and

59           (II) place a copy of the plan and summary in each public library within the local political  
60 subdivision; and

61           (C) hold a public hearing to hear public comment on the plan.

62           (ii) Municipalities shall comply with the notice and hearing requirements of, and receive  
63 the protections of, Subsections 10-9-103(2) and 10-9-402(2).

64           (iii) Counties shall comply with the notice and hearing requirements of, and receive the  
65 protections of, Subsections 17-27-103(2) and 17-27-402(2).

66           (iv) Special districts shall comply with the notice and hearing requirements of, and receive  
67 the protections of, Section 17A-1-203.

68           (v) Nothing contained in Subsection (2)(d) or in the subsections referenced in Subsections  
69 (2)(d)(ii) and (iii) may be construed to require involvement by a planning commission in the  
70 capital facilities planning process.

71           (e) Local political subdivisions with a population or serving a population of less than 5000  
72 as of the last federal census need not comply with the capital facilities plan requirements of this  
73 part, but shall ensure that the impact fees imposed by them are based upon a reasonable plan.

74           (3) In preparing the plan, each local political subdivision shall [~~generally~~]:

75           (a) consider all revenue sources, including impact fees, to finance the impacts on system  
76 improvements; and

77           (b) specifically explain the effect that other revenue sources would have on the average  
78 household if the other revenue sources were used instead of impact fees.

79           (4) A local political subdivision may only impose impact fees on development activities  
80 when its plan for financing system improvements establishes that impact fees are necessary to  
81 achieve an equitable allocation to the costs borne in the past and to be borne in the future, in  
82 comparison to the benefits already received and yet to be received.

83           (5) (a) Each local political subdivision imposing impact fees shall prepare a written  
84 analysis of each impact fee that:

85           (i) identifies the impact on system improvements required by the development activity;

86           (ii) demonstrates how those impacts on system improvements are reasonably related to the  
87 development activity;

88 (iii) estimates the proportionate share of the costs of impacts on system improvements  
89 that are reasonably related to the new development activity; and

90 (iv) based upon those factors and the requirements of this chapter, identifies how the  
91 impact fee was calculated.

92 (b) In analyzing whether or not the proportionate share of the costs of public facilities are  
93 reasonably related to the new development activity, the local political subdivision shall identify[;  
94 if applicable]:

95 (i) the original cost of all existing public facilities or, if the original cost is not readily  
96 ascertainable, a good faith estimate of the original cost;

97 (ii) the manner of financing existing public facilities, such as user charges, special  
98 assessments, bonded indebtedness, general taxes, or federal grants;

99 (iii) the relative extent to which the newly developed properties and the other properties  
100 in the municipality have already contributed to the cost of existing public facilities, by such means  
101 as user charges, special assessments, or payment from the proceeds of general taxes;

102 (iv) the relative extent to which the newly developed properties and the other properties  
103 in the municipality will contribute to the cost of existing public facilities in the future;

104 (v) the extent to which the newly developed properties are entitled to a credit because the  
105 municipality is requiring their developers or owners, by contractual arrangement or otherwise, to  
106 provide common facilities, inside or outside the proposed development, that have been provided  
107 by the municipality and financed through general taxation or other means, apart from user charges,  
108 in other parts of the municipality;

109 (vi) extraordinary costs, if any, in servicing the newly developed properties; and

110 (vii) the time-price differential inherent in fair comparisons of amounts paid at different  
111 times.

112 (c) In identifying all items in Subsection (5)(b), each local political subdivision shall, in  
113 its written analysis, explain the information on which the local political subdivision bases its  
114 determination of the equitable allocation of the costs borne by existing and new development in  
115 comparison to the benefits already received and yet to be received by both.

116 (d) A local political subdivision may not begin to prepare a written analysis required under  
117 this Subsection (5) until 14 days after adoption of a capital facilities plan.

118 (e) (i) Before adopting a written analysis under this Subsection (5), each local political

119 subdivision shall:

120 (A) give public notice of the written analysis according to this Subsection (5)(e);

121 (B) at least 14 days before the date of the public hearing;

122 (I) make a copy of the written analysis, with a brief summary easily understood by the  
123 general public, available to the public; and

124 (II) place a copy of the written analysis and summary in each public library within the local  
125 political subdivision; and

126 (C) hold a public hearing to obtain public comment on the analysis.

127 (ii) Each municipality shall comply with the notice and hearing requirements and receive  
128 the protections of Subsections 10-9-103(2) and 10-9-402(2).

129 (iii) Each county shall comply with the notice and hearing requirements and receive the  
130 protections of Subsections 17-27-103(2) and 17-27-402(2).

131 (iv) Each special district shall comply with the notice and hearing requirements and  
132 receive the protections of Section 17A-1-203.

133 (6) Nothing in this chapter may be construed to repeal or otherwise eliminate any impact  
134 fee in effect on the effective date of this act that is pledged as a source of revenues to pay bonded  
135 indebtedness that was incurred before the effective date of this act.

136 Section 3. Section **11-36-202** is amended to read:

137 **11-36-202. Impact fees -- Enactment -- Required provisions.**

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

140 (b) The impact fee imposed by that enactment may not exceed the highest fee justified by  
141 the impact fee analysis performed pursuant to Section 11-36-201.

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

143 (i) the construction contract price;

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

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

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

- 150 (d) In enacting an impact fee enactment:
- 151 (i) municipalities shall:
- 152 (A) make a copy of the impact fee enactment available to the public at least 14 days before
- 153 the date of the public hearing; and
- 154 (B) comply with the notice and hearing requirements of, and receive the protections of,
- 155 Subsections 10-9-103(2) and 10-9-802(2);
- 156 (ii) counties shall:
- 157 (A) make a copy of the impact fee enactment available to the public at least 14 days before
- 158 the date of the public hearing; and
- 159 (B) comply with the notice and hearing requirements of, and receive the protections of,
- 160 Subsections 17-27-103(2) and 17-27-802(2); and
- 161 (iii) special districts shall:
- 162 (A) make a copy of the impact fee enactment available to the public at least 14 days before
- 163 the date of the public hearing; and
- 164 (B) comply with the notice and hearing requirements of, and receive the protections of,
- 165 Section 17A-1-203.
- 166 (e) Nothing contained in Subsection (1)(d) or in the subsections referenced in Subsections
- 167 (d)(i)(B) and (ii)(B) may be construed to require involvement by a planning commission in the
- 168 impact fee enactment process.
- 169 (f) A local political subdivision may not begin to prepare an impact fee enactment until
- 170 14 days after adoption of the written analysis required under Subsection 11-36-201(5).
- 171 (2) The local political subdivision shall ensure that the impact fee enactment contains:
- 172 (a) a provision establishing one or more service areas within which it shall calculate and
- 173 impose impact fees for various land use categories;
- 174 (b) either:
- 175 (i) a schedule of impact fees for each type of development activity that specifies the
- 176 amount of the impact fee to be imposed for each type of system improvement; or
- 177 (ii) the formula that the local political subdivision will use to calculate each impact fee;
- 178 (c) a provision authorizing the local political subdivision to adjust the standard impact fee
- 179 at the time the fee is charged to:
- 180 (i) respond to unusual circumstances in specific cases; and

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

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

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

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

190 (b) imposes an impact fee for public facility costs previously incurred by a local political  
191 subdivision to the extent that new growth and development will be served by the previously  
192 constructed improvement[; ~~and (c) allows~~].

193 (4) Each impact fee enactment shall include a provision that gives a fair market value  
194 credit against impact fees for any dedication of land for, improvement to, or new construction of,  
195 any system improvements provided by the developer if the facilities:

196 ~~(i)~~ (a) are identified in the capital facilities plan; and

197 ~~(ii)~~ (b) are required by the local political subdivision as a condition of approving the  
198 development activity.

199 ~~(4) Except as provided in Subsection (3)(b), the]~~

200 (5) A local political subdivision may not impose an impact fee to cure deficiencies in  
201 public facilities serving existing development.

202 ~~(5)~~ (6) Notwithstanding the requirements and prohibitions of this chapter, a local  
203 political subdivision may impose and assess an impact fee for environmental mitigation when:

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

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

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

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

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

212 (iii) requiring the legislative body to:

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

214 (B) determine whether or not the impact fee is still required to finance the Habitat

215 Conservation Plan; and

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

218 ~~[(6)]~~ (7) Each political subdivision shall ensure that any existing impact fee for  
219 environmental mitigation meets the requirements of Subsection (5) by July 1, 1995.

220 ~~[(7)]~~ (8) Notwithstanding any other provision of this chapter, municipalities imposing  
221 impact fees to fund fire trucks as of the effective date of this act may impose impact fees for fire  
222 trucks until July 1, 1997.

223 ~~[(8)]~~ (9) Notwithstanding any other provision of this chapter, a local political subdivision  
224 may impose and collect impact fees on behalf of a school district if authorized by Section  
225 53A-20-100.5.

226 Section 4. Section **11-36-401** is amended to read:

227 **11-36-401. Impact fees -- Challenges -- Appeals.**

228 (1) Any person or entity residing in or owning property within a service area, and any  
229 organization, association, or corporation representing the interests of persons or entities owning  
230 property within a service area, may file a declaratory judgment action challenging the validity of  
231 the fee.

232 (2) (a) Any person or entity required to pay an impact fee who believes the fee does not  
233 meet the requirements of law may file a written request for information with the local political  
234 subdivision who established the fee.

235 (b) Within two weeks of the receipt of the request for information, the local political  
236 subdivision shall provide the person or entity with the written analysis required by Section  
237 11-36-201, the capital facilities plan, and with any other relevant information relating to the impact  
238 fee.

239 ~~[(3) Within 30 days after paying an impact fee, any person or entity who has paid the fee  
240 and wishes to challenge the fee shall:]~~

241 ~~[(a) file a written request for information and pursue administrative remedies, if the local  
242 political subdivision has adopted an ordinance establishing an administrative appeals procedure;~~

243 or]

244 ~~[(b) file an action challenging the impact fees with the district court, if the local political~~  
245 ~~subdivision has not adopted an ordinance establishing an administrative appeals procedure.]~~

246 ~~[(4) (a) Any local political subdivision may establish, by ordinance, an administrative~~  
247 ~~appeals procedure to consider and decide challenges to impact fees.]~~

248 ~~[(b) If the local political subdivision establishes an administrative appeals procedure, the~~  
249 ~~local political subdivision shall ensure that the procedure includes a requirement that the local~~  
250 ~~political subdivision make its decision no later than 30 days after the date the challenge to the~~  
251 ~~impact fee is filed.]~~

252 ~~[(c) A person or entity who has failed to comply with the administrative remedies~~  
253 ~~established by this section may not file or join an action challenging the validity of any impact fee.]~~

254 ~~[(5) (a) If the local political subdivision establishes an administrative appeals procedure,~~  
255 ~~within 90 days of a decision upholding an impact fee by a local political subdivision or within 120~~  
256 ~~days after the date the challenge to the impact fee was filed, whichever is earlier, any party to the~~  
257 ~~administrative action who is adversely affected by the local political subdivision's decision may~~  
258 ~~petition the district court for a review of the decision.]~~

259 ~~[(b) (i) The local political subdivision shall transmit to the reviewing court the record of~~  
260 ~~its proceedings including its minutes, findings, orders and, if available, a true and correct transcript~~  
261 ~~of its proceedings.]~~

262 ~~[(ii) If the proceeding was tape recorded, a transcript of that tape recording is a true and~~  
263 ~~correct transcript for purposes of Subsection (b).]~~

264 ~~[(c) (i) If there is a record:]~~

265 ~~[(A) the district court's review is limited to the record provided by the local political~~  
266 ~~subdivision; and]~~

267 ~~[(B) the court may not accept or consider any evidence outside the local political~~  
268 ~~subdivision's record unless that evidence was offered to the local political subdivision and the~~  
269 ~~court determines that it was improperly excluded by the local political subdivision.]~~

270 ~~[(ii) If there is an inadequate record, the court may call witnesses and take evidence.]~~

271 ~~[(d) The court shall affirm the decision of the local political subdivision if the decision is~~  
272 ~~supported by substantial evidence in the record.]~~

273 (3) At any time within one year after a certificate of occupancy is issued, a person or entity

274 may file an action in district court challenging an impact fee as not meeting all the requirements  
275 of this chapter.

276           [(6)] (4) The judge <sup>h</sup> [~~may~~] **SHALL** <sup>h</sup> award reasonable attorneys' fees and costs to the  
276a prevailing <sup>h</sup> [~~party~~] **PERSON OR ENTITY CHALLENGING AN IMPACT FEE** <sup>h</sup>  
277 in any action brought under this section.

278           [(7)] (5) Nothing in this chapter may be construed as restricting or limiting any rights to  
279 challenge impact fees that were paid before the effective date of this [~~act~~] chapter.