



28 (ii) By July 1, 1997, each local political subdivision shall:  
29 (A) review any impact fees in existence as of the effective date of this act, and prepare and  
30 approve the analysis required by this section for each of those impact fees; and  
31 (B) ensure that the impact fees comply with the requirements of this chapter.  
32 (2) (a) Before imposing impact fees, each local political subdivision shall prepare a capital  
33 facilities plan.  
34 (b) The plan shall [identify]:  
35 (i) include an inventory of all existing public facilities;  
36 ~~[(i)]~~ (ii) identify demands placed upon existing public facilities by new development  
37 activity; [and]  
38 ~~[(ii)]~~ (iii) identify the proposed means by which the local political subdivision will meet  
39 those demands; and  
40 (iv) include a detailed estimate of the capital costs for any proposed system improvements.  
41 (c) Municipalities and counties need not prepare a separate capital facilities plan if the  
42 general plan required by Sections 10-9-301 and 17-27-301 contains the elements required by this  
43 subsection.  
44 (d) (i) If a local political subdivision prepares an independent capital facilities plan rather  
45 than including a capital facilities element in the general plan, the local political subdivision  
46 shall[-];  
47 (A) before adopting the capital facilities plan, give public notice of the plan according to  
48 this [subsection, make a copy of the plan available to the public] Subsection (2)(d);  
49 (B) at least 14 days before the date of the public hearing[-];  
50 (I) make a copy of the plan, together with a summary easily understood by the general  
51 public, available to the public at no cost; and  
52 (II) place a copy of the plan and summary in each public library within the local political  
53 subdivision; and  
54 (C) hold a public hearing to hear public comment on the plan.  
55 (ii) Municipalities shall comply with the notice and hearing requirements of, and receive  
56 the protections of, Subsections 10-9-103(2) and 10-9-402(2).  
57 (iii) Counties shall comply with the notice and hearing requirements of, and receive the  
58 protections of, Subsections 17-27-103(2) and 17-27-402(2).

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

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

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

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

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

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

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

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

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

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

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

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

85 (b) In establishing that impact fees are necessary to achieve an equitable allocation to the  
86 costs borne in the past and to be borne in the future, in comparison to the benefits already received  
87 and yet to be received, and in analyzing whether or not the proportionate share of the costs of  
88 public facilities are reasonably related to the new development activity, the local political  
89 subdivision shall identify[, if applicable]:

- 90 (i) the original cost of all existing public facilities;
- 91 (ii) the manner of financing existing public facilities, such as user charges, special  
92 assessments, bonded indebtedness, general taxes, or federal grants;
- 93 (iii) the relative extent to which the newly developed properties and the other properties  
94 in the municipality have already contributed to the cost of existing public facilities, by such means  
95 as user charges, special assessments, or payment from the proceeds of general taxes;
- 96 (iv) the relative extent to which the newly developed properties and the other properties  
97 in the municipality will contribute to the cost of existing public facilities in the future;
- 98 (v) the extent to which the newly developed properties are entitled to a credit because the  
99 municipality is requiring their developers or owners, by contractual arrangement or otherwise, to  
100 provide common facilities, inside or outside the proposed development, that have been provided  
101 by the municipality and financed through general taxation or other means, apart from user charges,  
102 in other parts of the municipality;
- 103 (vi) extraordinary costs, if any, in servicing the newly developed properties; and
- 104 (vii) the time-price differential inherent in fair comparisons of amounts paid at different  
105 times.
- 106 (c) In identifying the items in Subsection (5)(b), each local political subdivision shall, in  
107 its written analysis, explain in detail the information on which the local political subdivision bases  
108 its determination of the equitable allocation of the costs borne by existing and new development  
109 in comparison to the benefits already received and yet to be received by both.
- 110 (d) A local political subdivision may not adopt an impact fee enactment if any of the items  
111 in Subsection (5)(b) is not expressly identified or if the explanation required under Subsection  
112 (5)(c) is not provided for any of those items.
- 113 (e) A local political subdivision may not prepare, consider, or adopt a written analysis  
114 required under this Subsection (5) until 60 days after adoption of a capital facilities plan.
- 115 (f) (i) Before adopting a written analysis under this Subsection (5), each local political  
116 subdivision shall:
  - 117 (A) give public notice of the written analysis according to this Subsection (5)(f);
  - 118 (B) at least 14 days before the date of the public hearing;
  - 119 (I) make a copy of the written analysis, with a summary easily understood by the general  
120 public, available to the public at no cost; and

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

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

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

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

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

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

133 Section 2. Section **11-36-202** is amended to read:

134 **11-36-202. Impact fees -- Enactment -- Required provisions.**

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

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

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

140 (i) the construction contract price;

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

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

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

147 (d) In enacting an impact fee enactment:

148 (i) municipalities shall:

149 (A) make a copy of the impact fee enactment available to the public at not cost at least 14  
150 days before the date of the public hearing; and

151 (B) comply with the notice and hearing requirements of, and receive the protections of,

152 Subsections 10-9-103(2) and 10-9-802(2);

153 (ii) counties shall:

154 (A) make a copy of the impact fee enactment available to the public at not cost at least 14  
155 days before the date of the public hearing; and

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

158 (iii) special districts shall:

159 (A) make a copy of the impact fee enactment available to the public at not cost at least  
160 14 days before the date of the public hearing; and

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

163 (e) Nothing contained in Subsection (1)(d) or in the subsections referenced in Subsections  
164 (d)(i)(B) and (ii)(B) may be construed to require involvement by a planning commission in the  
165 impact fee enactment process.

166 (f) A local political subdivision may not prepare, consider, or adopt an impact fee  
167 enactment until 30 days after adoption of the written analysis required under Subsection  
168 11-36-201(5).

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

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

172 (b) either:

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

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

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

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

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

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

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

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

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

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

194 [(i)] (a) are identified in the capital facilities plan; and

195 [(ii)] (b) are required by the local political subdivision as a condition of approving the  
196 development activity.

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

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

200 [(5)] (6) Notwithstanding the requirements and prohibitions of this chapter, a local  
201 political subdivision may impose and assess an impact fee for environmental mitigation when:

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

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

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

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

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

210 (iii) requiring the legislative body to:

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

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

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

216 ~~[(6)]~~ (7) Each political subdivision shall ensure that any existing impact fee for  
217 environmental mitigation meets the requirements of Subsection (5) by July 1, 1995.

218 ~~[(7)]~~ (8) Notwithstanding any other provision of this chapter, municipalities imposing  
219 impact fees to fund fire trucks as of the effective date of this act may impose impact fees for fire  
220 trucks until July 1, 1997.

221 ~~[(8)]~~ (9) Notwithstanding any other provision of this chapter, a local political subdivision  
222 may impose and collect impact fees on behalf of a school district if authorized by Section  
223 53A-20-100.5.

224 Section 3. Section **11-36-401** is amended to read:

225 **11-36-401. Impact fees -- Challenges -- Appeals.**

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

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

233 (b) Within two weeks of the receipt of the request for information, the local political  
234 subdivision shall at no cost provide the person or entity with the written analysis required by  
235 Section 11-36-201, the capital facilities plan, and with any other relevant information relating to  
236 the impact fee.

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

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

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

244 ~~[(4) (a) Any local political subdivision may establish, by ordinance, an administrative~~

245 ~~appeals procedure to consider and decide challenges to impact fees.]~~

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

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

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

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

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

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

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

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

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

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

271 (3) A person or entity may file an action in district court challenging an impact fee as not  
272 meeting all the requirements of this chapter if the person or entity:

273 (a) resides in, owns, or has an interest in property within the service area affected by the  
274 impact fee; or

275 (b) is required to pay the impact fee.

276            (4) In an action under Subsection (3) or in an arbitration proceeding challenging the  
277 validity of an impact fee:

278            (a) no presumption of validity attaches to the actions of the local political subdivision; and

279            (b) the local political subdivision bears the burden of demonstrating that the fee is an  
280 equitable allocation of the costs borne by new and existing development, as required under  
281 Subsection 11-36-201(4).

282            [~~6~~] (5) The judge may award reasonable attorneys' fees and costs to the prevailing party  
283 in any action brought under this section.

284            [~~7~~] (6) Nothing in this chapter may be construed as restricting or limiting any rights to  
285 challenge impact fees that were paid before the effective date of this [act] chapter.

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**Legislative Review Note**  
**as of 1-25-99 6:47 PM**

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

**Office of Legislative Research and General Counsel**