

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31 Subsection 11-36-102(11) is repealed by July 1, 1995.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 establishing that impact fees are necessary to achieve an equitable allocation to the
93 costs borne in the past and to be borne in the future, in comparison to the benefits already received
94 and yet to be received, and in analyzing whether or not the proportionate share of the costs of
95 public facilities are reasonably related to the new development activity, the local political
96 subdivision shall identify[-if applicable]:

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

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

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

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

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

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

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

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

118 (d) A local political subdivision may not adopt an impact fee enactment if any of the items

119 in Subsection (5)(b) is not expressly identified or if the explanation required under Subsection
120 (5)(c) is not provided for any of those items.

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

123 (f) (i) Before adopting a written analysis under this Subsection (5), each local political
124 subdivision shall:

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

126 (B) at least 14 days before the date of the public hearing:

127 (I) make a copy of the written analysis, with a brief summary, available to the public; and

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

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

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

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

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

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

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

141 **11-36-202. Impact fees -- Enactment -- Required provisions.**

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

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

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

147 (i) the construction contract price;

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

149 (iii) the cost for planning, surveying, and engineering fees for services provided for and

150 directly related to the construction of the system improvements; and

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

154 (d) In enacting an impact fee enactment:

155 (i) municipalities shall:

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

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

160 (ii) counties shall:

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

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

165 (iii) special districts shall:

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

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

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

173 (f) A local political subdivision may not begin to prepare an impact fee enactment until
174 14 days after adoption of the written analysis required under Subsection 11-36-201(5).

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

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

178 (b) either:

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

- 181 (ii) the formula that the local political subdivision will use to calculate each impact fee;
- 182 (c) a provision authorizing the local political subdivision to adjust the standard impact fee
- 183 at the time the fee is charged to:
- 184 (i) respond to unusual circumstances in specific cases; and
- 185 (ii) ensure that the impact fees are imposed fairly; and
- 186 (d) a provision governing calculation of the amount of the impact fee to be imposed on a
- 187 particular development that permits adjustment of the amount of the fee based upon studies and
- 188 data submitted by the developer.
- 189 (3) The local political subdivision may include a provision in the impact fee enactment
- 190 that:
- 191 (a) exempts low income housing and other development activities with broad public
- 192 purposes from impact fees and establishes one or more sources of funds other than impact fees to
- 193 pay for that development activity; and
- 194 (b) imposes an impact fee for public facility costs previously incurred by a local political
- 195 subdivision to the extent that new growth and development will be served by the previously
- 196 constructed improvement[; ~~and (c) allows

197 (4) Each impact fee enactment shall include a provision that gives a fair market value

198 credit against impact fees for any dedication of land for, improvement to, or new construction of,

199 any system improvements provided by the developer if the facilities:

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

201 [(ii)] (b) are required by the local political subdivision as a condition of approving the

202 development activity.

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

204 (5) A local political subdivision may not impose an impact fee to cure deficiencies in

205 public facilities serving existing development.

206 [~~(5)] (6) Notwithstanding the requirements and prohibitions of this chapter, a local~~

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

208 (a) the local political subdivision has formally agreed to fund a Habitat Conservation Plan

209 to resolve conflicts with the Endangered Species Act of 1973, 16 U.S.C. Sec 1531, et seq. or other

210 state or federal environmental law or regulation; [~~and~~]

211 (b) the impact fee bears a reasonable relationship to the environmental mitigation required~~

212 by the Habitat Conservation Plan; and

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

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

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

216 (iii) requiring the legislative body to:

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

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

219 Conservation Plan; and

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

222 [~~(6)~~] (7) Each political subdivision shall ensure that any existing impact fee for
223 environmental mitigation meets the requirements of Subsection (5) by July 1, 1995.

224 [~~(7)~~] (8) Notwithstanding any other provision of this chapter, municipalities imposing
225 impact fees to fund fire trucks as of the effective date of this act may impose impact fees for fire
226 trucks until July 1, 1997.

227 [~~(8)~~] (9) Notwithstanding any other provision of this chapter, a local political subdivision
228 may impose and collect impact fees on behalf of a school district if authorized by Section
229 53A-20-100.5.

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

231 **11-36-401. Impact fees -- Challenges -- Appeals.**

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

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

239 (b) Within two weeks of the receipt of the request for information, the local political
240 subdivision shall provide the person or entity with the written analysis required by Section
241 11-36-201, the capital facilities plan, and with any other relevant information relating to the impact
242 fee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

277 (3) At any time within two years after imposition of an impact fee, a person or entity may
278 file an action in district court challenging an impact fee as not meeting all the requirements of this
279 chapter if the person or entity:

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

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

283 ~~[(6)]~~ (4) The judge may award reasonable attorneys' fees and costs to the prevailing party
284 in any action brought under this section.

285 ~~[(7)]~~ (5) Nothing in this chapter may be construed as restricting or limiting any rights to
286 challenge impact fees that were paid before the effective date of this [act] chapter.