

IMPACT FEE ARBITRATION

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: L. Steven Poulton

AN ACT RELATING TO CITIES, COUNTIES, AND LOCAL TAXING UNITS; PROVIDING AN ARBITRATION PROCESS FOR CHALLENGING AN IMPACT FEE.

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

ENACTS:

11-36-402, Utah Code Annotated 1953

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

Section 1. Section **11-36-402** is enacted to read:

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

(1) In addition to the procedure under Section 11-36-401 to challenge an impact fee, a person or entity may submit an impact fee challenge to arbitration if the person or entity:

- (a) (i) resides in or owns property within a service area; or
- (ii) is an organization, association, or corporation representing the interests of a person or entity owning property within a service area; and
- (b) files a written request for arbitration with the local political subdivision within 30 days after the day the impact fee is paid.

(2) If a person or entity files a written request for arbitration under Subsection (1), an arbitrator or arbitration panel shall be selected as follows:

(a) the local political subdivision and the person or entity filing the request may agree on a single arbitrator within ten days after the day the request for arbitration is filed; or

(b) if a single arbitrator is not agreed to in accordance with Subsection (2)(a), an arbitration panel shall be created with the following members:

- (i) each party shall select an arbitrator within 20 days after the date the request is filed; and
- (ii) the arbitrators selected under Subsection (2)(b)(i) shall select a third arbitrator.
- (3) The arbitration panel shall hold a hearing on the challenge within 30 days after the date:

(a) the single arbitrator is agreed on under Subsection (2)(a); or

(b) the two arbitrators are selected under Subsection (2)(b)(i).

(4) The arbitrator or arbitration panel shall issue a decision in writing within ten days from the date the hearing under Subsection (3) is completed.

(5) Except as provided in this section, each arbitration shall be governed by Title 78, Chapter 31a, Utah Arbitration Act.

(6) The parties may agree to:

(a) binding arbitration;

(b) formal, nonbinding arbitration; or

(c) informal, nonbinding arbitration.

(7) If the parties agree in writing to binding arbitration:

(a) the arbitration shall be binding;

(b) the decision of the arbitration panel shall be final;

(c) neither party may appeal the decision of the arbitration panel; and

(d) notwithstanding Subsection (10), the person or entity challenging the impact fee may not file an action under Section 11-36-401.

(8) (a) Except as provided in Subsection (8)(b), if the parties agree to formal, nonbinding arbitration, the arbitration shall be governed by the provisions of Title 63, Chapter 46b, Administrative Procedures Act.

(b) For purposes of applying Title 63, Chapter 46b, Administrative Procedures Act, to a formal, nonbinding arbitration under this section, notwithstanding Section 63-46b-20, "agency" means a local political subdivision.

(9) (a) An appeal from a decision in an informal, nonbinding arbitration may be filed with the district court in which the local political subdivision is located.

(b) Each appeal under Subsection (9)(a) shall be filed within 30 days after the date the arbitration panel issues a decision under Subsection (4).

(c) The district court shall consider de novo each appeal filed under this Subsection (9).

(d) Notwithstanding Subsection (10), a person or entity that files an appeal under this

Subsection (9) may not file an action under Section 11-36-401.

(10) (a) Except as provided in Subsections (7)(d) and (9)(d), this section may not be construed to prohibit a person or entity from challenging an impact fee as provided in Section 11-36-401.

(b) The filing of a written request for arbitration within 30 days after the date the impact fee is paid in accordance with Subsection (1) tolls all time limitations under Section 11-36-401 until the date the arbitration panel issues a decision.

(11) The person or entity filing a request for arbitration and the local political subdivision shall equally share all costs of an arbitration proceeding under this section.