IMPACT FEE AMENDMENTS

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Gerry A. Adair

AN ACT RELATING TO CITIES, COUNTIES, AND LOCAL TAXING UNITS; MODIFYING THE PROCEDURE 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

11-36-402, as enacted by Chapter 148, Laws of Utah 1999

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

Section 1. Section **11-36-201** is amended to read:

11-36-201. Impact fees -- Analysis -- Capital facilities plan -- Notice of plan -- Summary -- 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:

(i) establish any new impact fees that are not authorized by this chapter; or

(ii) impose or charge any other fees as a condition of development approval unless those fees are a reasonable charge for the service provided.

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that each existing impact fee that is charged for any public facility not authorized by Subsection 11-36-102(11) is repealed by July 1, 1995.

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

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

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

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

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

(b) The plan shall identify:

(i) demands placed upon existing public facilities by new development activity; and

(ii) the proposed means by which the local political subdivision will meet those demands.

(c) Municipalities and counties need not prepare a separate capital facilities plan if the general plan required by Sections 10-9-301 and 17-27-301 contains the elements required by [~~this~~] Subsection (2)(b).

(d) (i) If a local political subdivision prepares an independent capital facilities plan rather than including a capital facilities element in the general plan, the local political subdivision shall, before adopting the capital facilities plan[~~,~~]:

(A) give public notice of the plan according to this [~~subsection, make a copy of the plan available to the public~~] Subsection (2)(d);

(B) at least 14 days before the date of the public hearing[~~,~~]:

(I) make a copy of the plan, together with a summary designed to be understood by a lay person, available to the public; and

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

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

(ii) Municipalities shall comply with the notice and hearing requirements of, and, except as provided in Subsection 11-36-401(4)(f), receive the protections of, Subsections 10-9-103(2) and 10-9-402(2).

(iii) Counties shall comply with the notice and hearing requirements of, and, except as provided in Subsection 11-36-401(4)(f), receive the protections of, Subsections 17-27-103(2) and

17-27-402(2).

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

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

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

(3) In preparing the plan, each local political subdivision shall generally consider all revenue sources, including impact fees, to finance the impacts on system improvements.

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

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

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

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

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

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

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

(i) the cost of existing public facilities;

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

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

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

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

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

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

(c) Each local political subdivision that prepares a written analysis under this Subsection (5) on or after July 1, 2000 shall also prepare a summary of the written analysis, designed to be understood by a lay person.

(6) Each local political subdivision that adopts an impact fee enactment under Section 11-36-202 on or after July 1, 2000 shall, at least 14 days before adopting the enactment, submit to each public library within the local political subdivision:

(a) a copy of the written analysis required by Subsection (5)(a); and

(b) a copy of the summary required by Subsection (5)(c).

[~~(6)~~] (7) Nothing in this chapter may be construed to repeal or otherwise eliminate any impact fee in effect on the effective date of this act that is pledged as a source of revenues to pay bonded indebtedness that was incurred before the effective date of this act.

Section 2. 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 impact fee imposed by that enactment may not exceed the highest fee justified by the impact fee analysis performed pursuant to Section 11-36-201.

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

(i) the construction contract price;

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

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

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

(d) In enacting an impact fee enactment:

(i) municipalities shall:

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

(B) comply with the notice and hearing requirements of, and, except as provided in Subsection 11-36-401(4)(f), receive the protections of, Subsections 10-9-103(2) and 10-9-802(2);

(ii) counties shall:

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

(B) comply with the notice and hearing requirements of, and, except as provided in Subsection 11-36-401(4)(f), receive the protections of, Subsections 17-27-103(2) and 17-27-802(2); and

(iii) special districts shall:

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

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

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

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

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

(b) either:

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

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

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

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

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

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

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

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

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

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

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

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

activity.

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

(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; and

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

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

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

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

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

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

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

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

[~~(4)~~] (3) (a) Any local political subdivision may establish, by ordinance, an administrative appeals procedure to consider and decide challenges to impact fees.

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

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

[~~(5) (a) If the local political subdivision establishes an administrative appeals procedure, within 90 days of a decision upholding an impact fee by a local political subdivision or within 120 days after the date the challenge to the impact fee was filed, whichever is earlier, any party to the administrative action who is adversely affected by the local political subdivision's decision may~~

~~petition the district court for a review of the decision.~~]

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

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

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

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

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

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

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

(4) (a) In addition to the method of challenging an impact fee under Subsection (1), a person or entity that has paid an impact fee that was imposed by a local political subdivision may challenge:

(i) if the impact fee enactment was adopted on or after July 1, 2000:

(A) whether the local political subdivision complied with the notice requirements of this chapter with respect to the imposition of the impact fee; and

(B) whether the local political subdivision complied with other procedural requirements of this chapter for imposing the impact fee; and

(ii) except as limited by Subsection (4)(a)(i), the impact fee.

(b) A challenge under Subsection (4)(a) may not be initiated unless it is initiated within:

(i) for a challenge under Subsection (4)(a)(i)(A), 30 days after the person or entity pays the impact fee;

(ii) for a challenge under Subsection (4)(a)(i)(B), 180 days after the person or entity pays the impact fee; or

(iii) for a challenge under Subsection (4)(a)(ii), one year after the person or entity pays the impact fee.

(c) A challenge under Subsection (4)(a) is initiated by filing:

(i) if the local political subdivision has established an administrative appeals procedure under Subsection (3), the necessary document, under the administrative appeals procedure, for initiating the administrative appeal;

(ii) a request for arbitration as provided in Subsection 11-36-402(1); or

(iii) an action in district court.

(d) (i) The sole remedy for a challenge under Subsection (4)(a)(i)(A) is the equitable remedy of requiring the local political subdivision to correct the defective notice and repeat the process.

(ii) The sole remedy for a challenge under Subsection (4)(a)(i)(B) is the equitable remedy of requiring the local political subdivision to correct the defective process.

(iii) The sole remedy for a challenge under Subsection (4)(a)(ii) is a refund of the difference between what the person or entity paid as an impact fee and the amount the impact fee should have been if it had been correctly calculated.

(e) Nothing in this Subsection (4) may be construed as requiring a person or entity to exhaust administrative remedies with the local political subdivision before filing an action in district court under this Subsection (4).

(f) The protections given to a municipality under Subsection 10-9-103(2) and to a county under Subsection 17-27-103(2) do not apply in a challenge under Subsection (4)(a)(i)(A).

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

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

Section 4. Section **11-36-402** is amended to read:

11-36-402. Challenging an impact fee 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~~] (1) Each person or entity intending to challenge an impact fee under Subsection 11-36-401(4)(c)(ii) shall file a written request for arbitration with the local political subdivision within [~~30 days after the day the impact fee is paid~~] the time limitation provided in Subsection 11-36-401(4)(b) for the applicable type of challenge.

(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~~] also challenge the impact fee under [~~Section~~] Subsection 11-36-401(1), (4)(c)(i), or (4)(c)(iii).

(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~~] also challenge the impact fee under [~~Section~~] Subsection 11-36-401(1), (4)(c)(i), or (4)(c)(iii).

(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~~] Subsection 11-36-401(1), (4)(c)(i), or (4)(c)(iii).

(b) The filing of a written request for arbitration within [~~30 days after the date the impact fee is paid~~] the required time 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.