

**Senator Gregory S. Bell** proposes the following substitute bill:

**IMPACT FEES REVISIONS**

2009 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Gregory S. Bell**

House Sponsor: Kraig Powell

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**LONG TITLE**

**General Description:**

This bill modifies provisions related to impact fees.

**Highlighted Provisions:**

This bill:

~~§→ [ ▶ modifies the definition of "development approval" for public entities that may develop without written authorization;] ←§~~

▶ modifies the definition of "public safety facility";

▶ repeals obsolete language;

▶ shortens from 14 to ten days the period of time before a public hearing date that a notice of a capital facilities plan or amendment is required to be given;

▶ shortens from 14 to ten days the period of time before adoption of an impact fee enactment that a local political subdivision is required to submit a copy of the written impact fee analysis and applies that time period to a new requirement to obtain a written certification;

▶ modifies impact fee reporting requirements;

▶ requires a local political subdivision to obtain a written certification from the person or entity that prepares the written impact fee analysis and specifies the content of that certification;

**1st Sub. S.B. 84**



26           ▶ shortens from 14 to ten days the period of time before a public hearing that a local  
27 political subdivision and private entity is required to make a copy of the impact fee  
28 enactment available and to mail a copy of the enactment; and

29           ▶ modifies a provision restricting the imposition of an impact fee to pay for a public  
30 safety facility.

31 **Monies Appropriated in this Bill:**

32           None

33 **Other Special Clauses:**

34           ~~§~~→ [None] This bill coordinates with H.B. 259, Changes to Impact Fees, by technically  
34a superseding and merging amendments.

34b           This bill coordinates with H.B. 274, Local Government Fees and Charges, by  
34c technically superseding and merging amendments. ←~~§~~

35 **Utah Code Sections Affected:**

36 AMENDS:

37           **10-5-129**, as last amended by Laws of Utah 2006, Chapter 257

38           **10-6-150**, as last amended by Laws of Utah 2006, Chapter 257

39           **11-36-102**, as last amended by Laws of Utah 2008, Chapters 70 and 360

40           **11-36-201**, as last amended by Laws of Utah 2008, Chapters 70, 360, and 382

41           **11-36-202**, as last amended by Laws of Utah 2008, Chapter 70

42           **11-36-301**, as enacted by Laws of Utah 1995, First Special Session, Chapter 11

43           **17-36-37**, as last amended by Laws of Utah 2006, Chapter 257

44           **17B-1-639**, as renumbered and amended by Laws of Utah 2007, Chapter 329



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

47           Section 1. Section **10-5-129** is amended to read:

48           **10-5-129. Annual financial report.**

49           (1) [~~(a)~~] Within 180 days after the close of each fiscal year the town clerk or other  
50 delegated person shall present to the council an annual financial report.

51           ~~[(b) Each annual financial report shall identify impact fee funds by the year in which~~  
52 ~~they were received, the project from which the funds were collected, the capital projects for~~  
53 ~~which the funds are budgeted, and the projected schedule for expenditure.]~~

54           (2) The requirement under Subsection (1)[~~(a)~~] to present an annual financial report may  
55 be satisfied by an audit report or annual financial report of an independent auditor.

56           Section 2. Section **10-6-150** is amended to read:

57 **10-6-150. Annual financial reports -- Independent audit reports.**

58 (1) [(a)] Within 180 days after the close of each fiscal period or, for a city that has  
59 adopted a fiscal period that is a biennial period, within 180 days after both the mid-point and  
60 the close of the fiscal period, the city recorder or other delegated person shall present to the  
61 governing body an annual financial report prepared in conformity with generally accepted  
62 accounting principles, as prescribed in the Uniform Accounting Manual for Utah Cities.

63 [~~(b) Each annual financial report shall identify impact fee funds by the year in which  
64 they were received, the project from which the funds were collected, the capital projects for  
65 which the funds are budgeted, and the projected schedule for expenditure.]~~

66 (2) (a) The requirement under Subsection (1)[(a)] to present an annual financial report  
67 may be satisfied by presentation of the audit report furnished by the independent auditor, if the  
68 financial statements included are appropriately prepared and reviewed with the governing body.

69 (b) Notwithstanding the acceptability of the audit report furnished by the independent  
70 auditor in substitution for financial statements prepared by an officer of the city, the governing  
71 body has the responsibility for those financial statements.

72 (c) The independent auditor has the responsibility of reporting whether the governing  
73 body's financial statements are prepared in conformity with generally accepted accounting  
74 principles.

75 (3) Copies of the annual financial report or the audit report furnished by the  
76 independent auditor shall be filed with the state auditor and shall be filed as a public document  
77 in the office of the city recorder.

78 Section 3. Section **11-36-102** is amended to read:

79 **11-36-102. Definitions.**

80 As used in this chapter:

81 (1) "Building permit fee" means the fees charged to enforce the uniform codes adopted  
82 pursuant to Title 58, Chapter 56, Utah Uniform Building Standards Act, that are not greater  
83 than the fees indicated in the appendix to the International Building Code.

84 (2) "Capital facilities plan" means the plan required by Section 11-36-201.

85 (3) "Development activity" means any construction or expansion of a building,  
86 structure, or use, any change in use of a building or structure, or any changes in the use of land  
87 that creates additional demand and need for public facilities.

- 88 (4) "Development approval" means ~~§~~ [; ]  
 89 ~~— (a) except as provided in Subsection (4)(b);~~ ~~←§~~ any written authorization from a local  
 90 political subdivision that authorizes the commencement of development activity ~~§~~ [f] . [h] [; or  
 91 ~~— (b) development activity, for a public entity that may develop without written~~  
 92 ~~authorization from a local political subdivision.] ←§~~
- 93 (5) "Enactment" means:  
 94 (a) a municipal ordinance, for a municipality;  
 95 (b) a county ordinance, for a county; and  
 96 (c) a governing board resolution, for a local district, special service district, or private  
 97 entity.
- 98 (6) "Hookup fees" means reasonable fees, not in excess of the approximate average  
 99 costs to the political subdivision, for services provided for and directly attributable to the  
 100 connection to utility services, including gas, water, sewer, power, or other municipal, county,  
 101 local district, or special service district utility services.
- 102 (7) (a) "Impact fee" means a payment of money imposed upon development activity as  
 103 a condition of development approval.  
 104 (b) "Impact fee" does not mean a tax, a special assessment, a building permit fee, a  
 105 hookup fee, a fee for project improvements, or other reasonable permit or application fee.
- 106 (8) (a) "Local political subdivision" means a county, a municipality, a local district  
 107 under Title 17B, Limited Purpose Local Government Entities - Local Districts, or a special  
 108 service district under Title 17D, Chapter 1, Special Service District Act.  
 109 (b) "Local political subdivision" does not mean a school district, whose impact fee  
 110 activity is governed by Section 53A-20-100.5.
- 111 (9) "Private entity" means an entity with private ownership that provides culinary water  
 112 that is required to be used as a condition of development.
- 113 (10) (a) "Project improvements" means site improvements and facilities that are:  
 114 (i) planned and designed to provide service for development resulting from a  
 115 development activity; and  
 116 (ii) necessary for the use and convenience of the occupants or users of development  
 117 resulting from a development activity.  
 118 (b) "Project improvements" does not mean system improvements.

119 (11) "Proportionate share" means the cost of public facility improvements that are  
120 roughly proportionate and reasonably related to the service demands and needs of any  
121 development activity.

122 (12) "Public facilities" means only the following capital facilities that have a life  
123 expectancy of ten or more years and are owned or operated by or on behalf of a local political  
124 subdivision or private entity:

125 (a) water rights and water supply, treatment, and distribution facilities;

126 (b) wastewater collection and treatment facilities;

127 (c) storm water, drainage, and flood control facilities;

128 (d) municipal power facilities;

129 (e) roadway facilities;

130 (f) parks, recreation facilities, open space, and trails; and

131 (g) public safety facilities.

132 (13) (a) "Public safety facility" means:

133 (i) a building constructed or leased to house police, fire, or other public safety entities;

134 or

135 (ii) a fire suppression vehicle [~~with a ladder reach of at least 75 feet,~~] costing in excess  
136 of [~~\$1,250,000, that is necessary for fire suppression in commercial areas with one or more~~  
137 ~~buildings at least five stories high~~] \$500,000.

138 (b) "Public safety facility" does not mean a jail, prison, or other place of involuntary  
139 incarceration.

140 (14) (a) "Roadway facilities" means streets or roads that have been designated on an  
141 officially adopted subdivision plat, roadway plan, or general plan of a political subdivision,  
142 together with all necessary appurtenances.

143 (b) "Roadway facilities" includes associated improvements to federal or state roadways  
144 only when the associated improvements:

145 (i) are necessitated by the new development; and

146 (ii) are not funded by the state or federal government.

147 (c) "Roadway facilities" does not mean federal or state roadways.

148 (15) (a) "Service area" means a geographic area designated by a local political  
149 subdivision on the basis of sound planning or engineering principles in which a defined set of

150 public facilities provide service within the area.

151 (b) "Service area" may include the entire local political subdivision.

152 (16) (a) "System improvements" means:

153 (i) existing public facilities that are designed to provide services to service areas within  
154 the community at large; and

155 (ii) future public facilities identified in a capital facilities plan that are intended to  
156 provide services to service areas within the community at large.

157 (b) "System improvements" does not mean project improvements.

158 Section 4. Section **11-36-201** is amended to read:

159 **11-36-201. Impact fees -- Analysis -- Capital facilities plan -- Notice of plan --**  
160 **Summary -- Exemptions.**

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

163 (b) A local political subdivision may not:

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

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

167 (c) [~~Notwithstanding any other requirements of this chapter, each~~] Each local political  
168 subdivision shall [~~ensure that each existing impact fee that is charged for any public facility not~~  
169 ~~authorized by Subsection 11-36-102(12) is repealed by July 1, 1995.~~] (d) (i) Existing impact  
170 fees that a local political subdivision charges for public facilities authorized in Subsection  
171 ~~11-36-102(12) need not comply with the requirements of this chapter until July 1, 1997.~~ (ii) ~~By~~  
172 ~~July 1, 1997, each local political subdivision shall: (A) review any impact fees in existence as~~  
173 ~~of the effective date of this act, and prepare and approve the analysis required by this section~~  
174 ~~for each of those impact fees; and (B)] ensure that the impact fees comply with the~~  
175 requirements of this chapter.

176 (2) (a) Before imposing impact fees, each local political subdivision and private entity  
177 shall, except as provided in Subsection (2)(f), prepare a capital facilities plan.

178 (b) (i) As used in this Subsection (2)(b):

179 (A) (I) "Affected entity" means each county, municipality, local district under Title  
180 17B, Limited Purpose Local Government Entities - Local Districts, special service district

181 under Title 17D, Chapter 1, Special Service District Act, school district, interlocal cooperation  
182 entity established under Chapter 13, Interlocal Cooperation Act, and specified public utility:

183 (Aa) whose services or facilities are likely to require expansion or significant  
184 modification because of the facilities proposed in the proposed capital facilities plan; or

185 (Bb) that has filed with the local political subdivision or private entity a copy of the  
186 general or long-range plan of the county, municipality, local district, special service district,  
187 school district, interlocal cooperation entity, or specified public utility.

188 (II) "Affected entity" does not include the local political subdivision or private entity  
189 that is required under this Subsection (2) to provide notice.

190 (B) "Specified public utility" means an electrical corporation, gas corporation, or  
191 telephone corporation, as those terms are defined in Section 54-2-1.

192 (ii) Before preparing or amending a capital facilities plan, each local political  
193 subdivision and each private entity shall provide written notice, as provided in this Subsection  
194 (2)(b), of its intent to prepare or amend a capital facilities plan.

195 (iii) Each notice under Subsection (2)(b)(ii) shall:

196 (A) indicate that the local political subdivision or private entity intends to prepare or  
197 amend a capital facilities plan;

198 (B) describe or provide a map of the geographic area where the proposed capital  
199 facilities will be located;

200 (C) be sent to:

201 (I) each county in whose unincorporated area and each municipality in whose  
202 boundaries is located the land on which the proposed facilities will be located;

203 (II) each affected entity;

204 (III) the Automated Geographic Reference Center created in Section 63F-1-506;

205 (IV) the association of governments, established pursuant to an interlocal agreement  
206 under [~~Title 17;~~] Chapter 13, Interlocal Cooperation Act, in which the facilities are proposed to  
207 be located;

208 (V) the state planning coordinator appointed under Section 63J-4-202;

209 (VI) the registered agent of the Utah Home Builders Association;

210 (VII) the registered agent of the Utah Association of Realtors; and

211 (VIII) the registered agent of the Utah Chapter of the Associated General Contractors

212 of America; and

213 (D) with respect to the notice to an affected entity, invite the affected entity to provide  
214 information for the local political subdivision or private entity to consider in the process of  
215 preparing, adopting, and implementing or amending a capital facilities plan concerning:

216 (I) impacts that the facilities proposed in the capital facilities plan may have on the  
217 affected entity; and

218 (II) facilities or uses of land that the affected entity is planning or considering that may  
219 conflict with the facilities proposed in the capital facilities plan.

220 (c) The plan shall identify:

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

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

224 (d) A municipality or county need not prepare a separate capital facilities plan if the  
225 general plan required by Section 10-9a-401 or 17-27a-401, respectively, contains the elements  
226 required by Subsection (2)(c).

227 (e) (i) If a local political subdivision chooses to prepare an independent capital  
228 facilities plan rather than include a capital facilities element in the general plan, the local  
229 political subdivision shall:

230 (A) before preparing or contracting to prepare or amending or contracting to amend the  
231 independent capital facilities plan, send written notice:

232 (I) to:

233 (Aa) the registered agent of the Utah Home Builders Association;

234 (Bb) the registered agent of the Utah Association of Realtors; and

235 (Cc) the registered agent of the Utah Chapter of the Associated General Contractors of  
236 America;

237 (II) stating the local political subdivision's intent to prepare or amend a capital facilities  
238 plan; and

239 (III) inviting each of the notice recipients to participate in the preparation of or  
240 amendment to the capital facilities plan; and

241 (B) before adopting or amending the capital facilities plan:

242 (I) give public notice of the plan or amendment according to Subsection (2)(e)(ii)(A),

243 (B), or (C), as the case may be, at least [~~14~~] ten days before the date of the public hearing;

244 (II) make a copy of the plan or amendment, together with a summary designed to be  
245 understood by a lay person, available to the public;

246 (III) place a copy of the plan or amendment and summary in each public library within  
247 the local political subdivision; and

248 (IV) hold a public hearing to hear public comment on the plan or amendment.

249 (ii) With respect to the public notice required under Subsection (2)(e)(i)(B)(I):

250 (A) each municipality shall comply with the notice and hearing requirements of, and,  
251 except as provided in Subsection 11-36-401(4)(f), receive the protections of Sections  
252 10-9a-205 and 10-9a-801 and Subsection 10-9a-502(2);

253 (B) each county shall comply with the notice and hearing requirements of, and, except  
254 as provided in Subsection 11-36-401(4)(f), receive the protections of Sections 17-27a-205 and  
255 17-27a-801 and Subsection 17-27a-502(2); and

256 (C) each local district, special service district, and private entity shall comply with the  
257 notice and hearing requirements of, and receive the protections of, Section 17B-1-111.

258 (iii) Nothing contained in this Subsection (2)(e) or in the subsections referenced in  
259 Subsections (2)(e)(ii)(A) and (B) may be construed to require involvement by a planning  
260 commission in the capital facilities planning process.

261 (f) (i) A local political subdivision with a population or serving a population of less  
262 than 5,000 as of the last federal census need not comply with the capital facilities plan  
263 requirements of this part, but shall ensure that:

264 (A) the impact fees that the local political subdivision imposes are based upon a  
265 reasonable plan; and

266 (B) each applicable notice required by this chapter is given.

267 (ii) Subsection (2)(f)(i) does not apply to private entities.

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

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

274 (5) (a) Subject to the notice requirement of Subsection (5)(b), each local political  
275 subdivision and private entity intending to impose an impact fee shall prepare a written analysis  
276 of each impact fee that:

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

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

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

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

284 (b) Before preparing or contracting to prepare the written analysis required under  
285 Subsection (5)(a), each local political subdivision or private entity shall provide:

286 (i) public notice; and

287 (ii) written notice:

288 (A) to:

289 (I) the registered agent of the Utah Home Builders Association;

290 (II) the registered agent of the Utah Association of Realtors; and

291 (III) the registered agent of the Utah Chapter of the Associated General Contractors of  
292 America;

293 (B) indicating the local political subdivision or private entity's intent to prepare or  
294 contract to prepare a written analysis of an impact fee; and

295 (C) inviting each notice recipient to participate in the preparation of the written  
296 analysis.

297 (c) In analyzing whether or not the proportionate share of the costs of public facilities  
298 are reasonably related to the new development activity, the local political subdivision or private  
299 entity, as the case may be, shall identify, if applicable:

300 (i) the cost of existing public facilities;

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

303 (iii) the relative extent to which the newly developed properties and other properties  
304 have already contributed to the cost of existing public facilities, by such means as user charges,

305 special assessments, or payment from the proceeds of general taxes;

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

308 (v) the extent to which the newly developed properties are entitled to a credit because  
309 the local political subdivision or private entity, as the case may be, requires its developers or  
310 owners, by contractual arrangement or otherwise, to provide common facilities, inside or  
311 outside the proposed development, that have been provided by the local political subdivision or  
312 private entity, respectively, and financed through general taxation or other means, apart from  
313 user charges, in other parts of the service area;

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

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

317 (d) Each local political subdivision and private entity that prepares a written analysis  
318 under this Subsection (5) [~~on or after July 1, 2000~~] shall also prepare a summary of the written  
319 analysis, designed to be understood by a lay person.

320 (6) Each local political subdivision that adopts an impact fee enactment under Section  
321 11-36-202 on or after July 1, 2000 shall, at least [~~14~~] ten days before adopting the enactment[~~;~~];

322 (a) submit a copy of the written analysis required by Subsection (5)(a) and a copy of  
323 the summary required by Subsection (5)(d) to:

324 [~~(a)~~] (i) each public library within the local political subdivision;

325 [~~(b)~~] (ii) the registered agent of the Utah Home Builders Association;

326 [~~(c)~~] (iii) the registered agent of the Utah Association of Realtors; and

327 [~~(d)~~] (iv) the registered agent of the Utah Chapter of the Associated General  
328 Contractors of America[~~;~~]; and

329 (b) obtain a written certification from the person or entity that prepares the written  
330 analysis which states as follows:

331 "I certify that the attached impact fee analysis:

332 1. includes only the costs for qualifying public facilities that are:

333 a. allowed under the Impact Fees Act; and

334 b. projected to be incurred or encumbered within six years after each  
335 impact fee is paid;

- 336 2. contains no cost for operation and maintenance of public facilities;
- 337 3. offsets costs with grants or other alternate sources of payment;
- 338 4. does not include costs for qualifying public facilities that will raise the level
- 339 of service for the facilities, through impact fees, above the level of service that
- 340 is supported by existing residents; and
- 341 5. complies in each and every relevant respect with the Impact Fees Act."

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

345 Section 5. Section **11-36-202** is amended to read:

346 **11-36-202. Impact fees -- Enactment -- Required provisions -- Effective date.**

347 (1) (a) Each local political subdivision and private entity wishing to impose impact fees  
348 shall pass an impact fee enactment.

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

351 (c) In calculating the impact fee, a local political subdivision or private entity may  
352 include:

- 353 (i) the construction contract price;
- 354 (ii) the cost of acquiring land, improvements, materials, and fixtures;
- 355 (iii) the cost for planning, surveying, and engineering fees for services provided for and  
356 directly related to the construction of the system improvements; and
- 357 (iv) debt service charges, if the political subdivision might use impact fees as a revenue  
358 stream to pay the principal and interest on bonds, notes, or other obligations issued to finance  
359 the costs of the system improvements.

360 (d) In calculating an impact fee, a local political subdivision may not include an  
361 expense for overhead unless the expense is calculated pursuant to a methodology that is  
362 consistent with:

- 363 (i) generally accepted cost accounting practices; and
- 364 (ii) the methodological standards set forth by the federal Office of Management and  
365 Budget for federal grant reimbursement.

366 (e) In calculating an impact fee, each local political subdivision shall base amounts

367 calculated under Subsection (1)(c) on realistic estimates, and the assumptions underlying those  
368 estimates shall be disclosed in the impact fee analysis.

369 (f) Each local political subdivision and private entity that intends to enact an impact fee  
370 enactment shall:

371 (i) at least [~~14~~] ten days before the date of the public hearing:

372 (A) make a copy of the impact fee enactment available to the public; and

373 (B) mail a written copy of the impact fee enactment to:

374 (I) the registered agent of the Utah Home Builders Association;

375 (II) the registered agent of the Utah Association of Realtors; and

376 (III) the registered agent of the Utah Chapter of the Associated General Contractors of  
377 America; and

378 (ii) (A) for a municipality, comply with the notice and hearing requirements of, and,  
379 except as provided in Subsection 11-36-401(4)(f), receive the protections of Sections  
380 10-9a-205 and 10-9a-801;

381 (B) for a county, comply with the notice and hearing requirements of, and, except as  
382 provided in Subsection 11-36-401(4)(f), receive the protections of Sections 17-27a-205 and  
383 17-27a-801; and

384 (C) for a local district or special service district, comply with the notice and hearing  
385 requirements of, and receive the protections of, Section 17B-1-111.

386 (g) Nothing contained in Subsection (1)(f) may be construed to require involvement by  
387 a planning commission in the impact fee enactment process.

388 (2) The local political subdivision or private entity shall ensure that the impact fee  
389 enactment:

390 (a) contains:

391 (i) a provision establishing one or more service areas within which the local political  
392 subdivision or private entity calculates and imposes impact fees for various land use categories;

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

395 (B) the formula that the local political subdivision or private entity, as the case may be,  
396 will use to calculate each impact fee;

397 (iii) a provision authorizing the local political subdivision or private entity, as the case

398 may be, to adjust the standard impact fee at the time the fee is charged to:

399 (A) respond to unusual circumstances in specific cases; and

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

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

404 (b) allows a developer to receive a credit against or proportionate reimbursement of an  
405 impact fee if:

406 (i) the developer is required by the local political subdivision, as a condition of  
407 development activity approval, to:

408 (A) dedicate land for a system improvement;

409 (B) improve a system improvement; or

410 (C) provide new construction for a system improvement;

411 (ii) the system improvement is included in the impact fee analysis; and

412 (iii) the land, improvement, or new construction provides a system improvement that  
413 exceeds the requirements for the project.

414 (3) A local political subdivision or private entity may include a provision in an impact  
415 fee enactment that:

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

419 (b) imposes an impact fee for public facility costs previously incurred by a local  
420 political subdivision or private entity, as the case may be, to the extent that new growth and  
421 development will be served by the previously constructed improvement; and

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

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

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

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

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

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

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

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

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

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

440 (iii) requiring the legislative body to:

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

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

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

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

448 [~~(7) (6) Notwithstanding any other provision of this chapter[: (a) a municipality  
449 imposing impact fees to fund fire trucks as of the effective date of this act may impose impact  
450 fees for fire trucks until July 1, 1997; and (b)],~~ an impact fee to pay for a public safety facility  
451 that is a fire suppression vehicle may not be imposed [~~with respect to land that has a zoning  
452 designation other than commercial] on residential components of development.~~

453 [~~(8) (7) Notwithstanding any other provision of this chapter, a local political  
454 subdivision may impose and collect impact fees on behalf of a school district if authorized by  
455 Section 53A-20-100.5.~~

456 [~~(9) (8) An impact fee enactment may not take effect until 90 days after it is enacted.~~

457 Section 6. Section **11-36-301** is amended to read:

458 **11-36-301. Impact fees -- Accounting.**

459 Each local political subdivision collecting impact fees shall:

- 460 (1) establish separate interest bearing ledger accounts for each type of public facility  
 461 for which an impact fee is collected;
- 462 (2) deposit impact fee receipts in the appropriate ledger account;
- 463 (3) retain the interest earned on each fund or account in the fund or account; and
- 464 (4) at the end of each fiscal year, prepare a report on each fund or account showing:
- 465 (a) the source and amount of all monies collected, earned, and received by the fund or  
 466 account; and
- 467 (b) each expenditure from the fund or account[-]; and
- 468 (5) establish a report that:
- 469 (a) identifies impact fee funds by the year in which they were received, the project  
 470 from which the funds were collected, the capital projects for which the funds were budgeted,  
 471 and the projected schedule for expenditure;
- 472 (b) is ~~in~~ ~~in~~ a ~~form~~ format ~~developed~~ developed by the state auditor;
- 473 (c) is certified by the local political subdivision's chief financial officer; and
- 474 (d) is transmitted annually to the state auditor.

475 Section 7. Section 17-36-37 is amended to read:

476 **17-36-37. Budget officer -- Annual financial statement -- Contents.**

- 477 (1) The budget officer of each county, within 180 days after the close of each fiscal  
 478 period or, for a county that has adopted a fiscal period that is a biennial period, within 180 days  
 479 after both the midpoint and the close of the fiscal period, except as provided by Section  
 480 17-36-38, shall prepare and make available to the governing body an annual financial report  
 481 which shall contain:
- 482 (a) a statement of revenues and expenditures and a comparison with the budget of the  
 483 general fund, similar statements of all other funds for which budgets are required, and  
 484 statements of revenues and expenditures or of income and expense, as the case may be, of all  
 485 other operating funds of the county;
- 486 (b) a balance sheet of each fund and a combined balance sheet of all funds as of:
- 487 (i) for a county that has adopted a fiscal period that is a biennial period, the midpoint  
 488 and the close of the fiscal period; and
- 489 (ii) for each other county, the close of the fiscal period; or
- 490 (c) any other reports the governing body may require, including work performance

491 data, tax levies, taxable values, details of bonded indebtedness, and historical facts of interest  
492 to the governing body and the public.

493 ~~[(2) Each annual financial report required under Subsection (1) shall identify impact~~  
494 ~~fee funds by the year in which they were received, the project from which the funds were~~  
495 ~~collected, the capital projects for which the funds are budgeted, and the projected schedule for~~  
496 ~~expenditure.]~~

497 ~~[(3)]~~ (2) Copies of the annual report shall be furnished to the state auditor and made a  
498 matter of public record in the office of the budget officer.

499 Section 8. Section **17B-1-639** is amended to read:

500 **17B-1-639. Annual financial reports -- Independent audit reports.**

501 (1) ~~[(a)]~~ Within 180 days after the close of each fiscal year, the district shall prepare an  
502 annual financial report in conformity with generally accepted accounting principles as  
503 prescribed in the Uniform Accounting Manual for Local Districts.

504 ~~[(b) Each annual financial report shall identify impact fee funds by the year in which~~  
505 ~~they were received, the project from which the funds were collected, the capital projects for~~  
506 ~~which the funds are budgeted, and the projected schedule for expenditure.]~~

507 (2) The requirement under Subsection (1)~~[(a)]~~ to prepare an annual financial report  
508 may be satisfied by presentation of the audit report furnished by the independent auditor.

509 (3) Copies of the annual financial report or the audit report furnished by the  
510 independent auditor shall be filed with the state auditor and shall be filed as a public document  
511 in the district office.

511a **§→ Section 9. Coordinating S.B. 84 with H.B. 259 -- Technically superseding and merging**  
511b **amendments.**

511c **If this S.B. 84 and H.B. 259, Changes to Impact Fees, both pass, it is the intent of the**  
511d **Legislature that:**

511e **(1) the amendments to Subsections 11-36-201(1)(c) and (d) in this bill supersede the**  
511f **amendments to Subsections 11-36-201(1)(c) and (d) in H.B. 259, when the Office of Legislative**  
511g **Research and General Counsel prepares the Utah Code database for publication; and**

511h **(2) the Office of Legislative Research and General Counsel, in preparing the Utah Code**  
511i **database for publication, modify Subsection 11-36-202(6) to read:**

511j ~~"[(7)]~~ (6) Notwithstanding any other provision of this chapter:

511k (a) ~~[a municipality imposing impact fees to fund fire trucks as of the effective date of~~  
511l ~~this act may impose impact fees for fire trucks until July 1, 1997; and (b)]~~ an impact fee to pay  
511m for a public safety facility that is a fire suppression vehicle may not be imposed ~~[with respect to~~  
511n ~~land that has a zoning designation other than commercial]~~ on residential components

511o of development[-];

511p (b) an impact fee may not be imposed on a school district or charter school for a park,

511q recreation facility, open space, or trail;

511r (c) an impact fee may not be imposed on development activity that consists of the

511s construction of a school, whether by a school district or a charter school, if:

511t (i) the school is intended to replace another school, whether on the same or a different

511u parcel; and

511v (ii) the new school and the school being replaced are both within:

511w (A) the boundary of the local political subdivision; or

511x (B) the jurisdiction of the private entity; and

511y (d) an impact fee may not be imposed on a school district or charter school unless:

511z (i) the development resulting from the school district or charter school's development

511aa activity directly results in a need for additional system improvements for which the impact fee

511ab is imposed; and

511ac (ii) the impact fee is calculated to cover only the school district or charter school's

511ad proportionate share of the cost of those additional system improvements."

511ae **Section 10. Coordinating S.B. 84 with H.B. 274 -- Technically superseding and merging**  
511af **amendments.**

511ag **If this S.B. 84 and H.B. 274, Local Government Fees and Charges, both pass, it is the**  
511ah **intent of the Legislature that:**

511ai **(1) the amendments to Subsections 11-36-201(1)(c) and (d) in this bill supersede the**

511aj **amendments to Subsections 11-36-201(1)(c) and (d) in H.B. 274, when the Office of Legislative**

511ak **Research and General Counsel prepares the Utah Code database for publication; and**

511al **(2) the Office of Legislative Research and General Counsel, in preparing the Utah**

511am **Code database for publication, modify Subsection 11-36-202(6) to read:**

511an "[(7)] (6) Notwithstanding any other provision of this chapter:

511ao (a) [a municipality imposing impact fees to fund fire trucks as of the effective date of this act may

511ap impose impact fees for fire trucks until July 1, 1997; and (b) an impact fee to pay for a public safety facility

511aq that is a fire suppression vehicle may not be imposed [with respect to land that has a zoning designation other

511ar than commercial] on residential components of development[-];

511as (b) an impact fee for a road facility may be imposed on the state only if and to the extent that:

511at (i) the state's development causes an impact on the road facility; and

511au (ii) the portion of the road facility related to an impact fee is not funded by the state or by the federal

511av government; and

511aw (c) to the extent that the impact fee includes a component for a law enforcement facility, the

511ax impact fee may not be imposed on development activity for:

511ay (i) the Utah National Guard;

511az (ii) the Utah Highway Patrol; or

511ba (iii) a state institution of higher education that has its own police force." ←§

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**S.B. 84 1st Sub. (Green) - Impact Fees Revisions**

**Fiscal Note**

2009 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals and local governments. Businesses may be impacted due changes in the proposed statute.

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