

IMPACT FEE AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jerry W. Stevenson

House Sponsor: Brad J. Galvez

LONG TITLE

General Description:

This bill recodifies the Impact Fees Act.

Highlighted Provisions:

This bill:

▶ repeals Title 11, Chapter 36, Impact Fees Act, and replaces it with Title 11, Chapter 36a, Impact Fees Act, including:

- enacting general provisions;
- enacting provisions related to an impact fee;
- enacting provisions regulating the establishment of an impact fee;
- enacting provisions related to an impact fee enactment;
- enacting notice provisions;
- enacting provisions regulating the accounting of and expenditure of an impact fee; and

- enacting provisions related to challenging an impact fee; and

▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on May 11, 2011.

Utah Code Sections Affected:



28 AMENDS:

- 29 **10-9a-103**, as last amended by Laws of Utah 2010, Chapters 269 and 330
- 30 **10-9a-305**, as last amended by Laws of Utah 2010, Chapters 203 and 330
- 31 **10-9a-510**, as last amended by Laws of Utah 2010, Chapter 203
- 32 **13-43-205**, as enacted by Laws of Utah 2006, Chapter 258
- 33 **13-43-206**, as last amended by Laws of Utah 2010, Chapter 203
- 34 **17-27a-103**, as last amended by Laws of Utah 2010, Chapters 269 and 330
- 35 **17-27a-305**, as last amended by Laws of Utah 2010, Chapters 203 and 330
- 36 **17-27a-509**, as last amended by Laws of Utah 2010, Chapter 203
- 37 **17B-1-111**, as renumbered and amended by Laws of Utah 2007, Chapter 329
- 38 **17B-1-118**, as last amended by Laws of Utah 2010, Chapter 203
- 39 **17B-1-643**, as last amended by Laws of Utah 2009, First Special Session, Chapter 5
- 40 **17B-2a-1004**, as enacted by Laws of Utah 2007, Chapter 329

41 ENACTS:

- 42 **11-36a-101**, Utah Code Annotated 1953
- 43 **11-36a-102**, Utah Code Annotated 1953
- 44 **11-36a-201**, Utah Code Annotated 1953
- 45 **11-36a-202**, Utah Code Annotated 1953
- 46 **11-36a-203**, Utah Code Annotated 1953
- 47 **11-36a-204**, Utah Code Annotated 1953
- 48 **11-36a-205**, Utah Code Annotated 1953
- 49 **11-36a-301**, Utah Code Annotated 1953
- 50 **11-36a-302**, Utah Code Annotated 1953
- 51 **11-36a-303**, Utah Code Annotated 1953
- 52 **11-36a-304**, Utah Code Annotated 1953
- 53 **11-36a-305**, Utah Code Annotated 1953
- 54 **11-36a-306**, Utah Code Annotated 1953
- 55 **11-36a-401**, Utah Code Annotated 1953
- 56 **11-36a-402**, Utah Code Annotated 1953
- 57 **11-36a-403**, Utah Code Annotated 1953
- 58 **11-36a-501**, Utah Code Annotated 1953

- 59 **11-36a-502**, Utah Code Annotated 1953
- 60 **11-36a-503**, Utah Code Annotated 1953
- 61 **11-36a-504**, Utah Code Annotated 1953
- 62 **11-36a-601**, Utah Code Annotated 1953
- 63 **11-36a-602**, Utah Code Annotated 1953
- 64 **11-36a-603**, Utah Code Annotated 1953
- 65 **11-36a-701**, Utah Code Annotated 1953
- 66 **11-36a-702**, Utah Code Annotated 1953
- 67 **11-36a-703**, Utah Code Annotated 1953
- 68 **11-36a-704**, Utah Code Annotated 1953
- 69 **11-36a-705**, Utah Code Annotated 1953

70 REPEALS:

- 71 **11-36-101**, as enacted by Laws of Utah 1995, First Special Session, Chapter 11
- 72 **11-36-102 (Superseded 05/11/11)**, as last amended by Laws of Utah 2009, Chapters
- 73 181, 286, and 323
- 74 **11-36-102 (Effective 05/11/11)**, as last amended by Laws of Utah 2010, Chapter 203
- 75 **11-36-201**, as last amended by Laws of Utah 2010, Chapters 203 and 315
- 76 **11-36-202**, as last amended by Laws of Utah 2010, Chapter 315
- 77 **11-36-301**, as last amended by Laws of Utah 2009, Chapter 323
- 78 **11-36-302**, as last amended by Laws of Utah 2009, Chapter 181
- 79 **11-36-303**, as enacted by Laws of Utah 1995, First Special Session, Chapter 11
- 80 **11-36-401**, as last amended by Laws of Utah 2010, Chapter 378
- 81 **11-36-401.5**, as enacted by Laws of Utah 2009, Chapters 181 and 286
- 82 **11-36-402**, as last amended by Laws of Utah 2008, Chapters 3 and 382
- 83 **11-36-501**, as last amended by Laws of Utah 2007, Chapter 329



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

86 Section 1. Section **10-9a-103** is amended to read:

87 **10-9a-103. Definitions.**

88 As used in this chapter:

89 (1) "Affected entity" means a county, municipality, local district, special service

90 district under Title 17D, Chapter 1, Special Service District Act, school district, interlocal
91 cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, specified
92 public utility, a property owner, a property owners association, or the Utah Department of
93 Transportation, if:

94 (a) the entity's services or facilities are likely to require expansion or significant
95 modification because of an intended use of land;

96 (b) the entity has filed with the municipality a copy of the entity's general or long-range
97 plan; or

98 (c) the entity has filed with the municipality a request for notice during the same
99 calendar year and before the municipality provides notice to an affected entity in compliance
100 with a requirement imposed under this chapter.

101 (2) "Appeal authority" means the person, board, commission, agency, or other body
102 designated by ordinance to decide an appeal of a decision of a land use application or a
103 variance.

104 (3) "Billboard" means a freestanding ground sign located on industrial, commercial, or
105 residential property if the sign is designed or intended to direct attention to a business, product,
106 or service that is not sold, offered, or existing on the property where the sign is located.

107 (4) "Charter school" includes:

108 (a) an operating charter school;

109 (b) a charter school applicant that has its application approved by a chartering entity in
110 accordance with Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act; and

111 (c) an entity who is working on behalf of a charter school or approved charter applicant
112 to develop or construct a charter school building.

113 (5) "Conditional use" means a land use that, because of its unique characteristics or
114 potential impact on the municipality, surrounding neighbors, or adjacent land uses, may not be
115 compatible in some areas or may be compatible only if certain conditions are required that
116 mitigate or eliminate the detrimental impacts.

117 (6) "Constitutional taking" means a governmental action that results in a taking of
118 private property so that compensation to the owner of the property is required by the:

119 (a) Fifth or Fourteenth Amendment of the Constitution of the United States; or

120 (b) Utah Constitution Article I, Section 22.

121 (7) "Culinary water authority" means the department, agency, or public entity with
122 responsibility to review and approve the feasibility of the culinary water system and sources for
123 the subject property.

124 (8) "Development activity" means:

125 (a) any construction or expansion of a building, structure, or use that creates additional
126 demand and need for public facilities;

127 (b) any change in use of a building or structure that creates additional demand and need
128 for public facilities; or

129 (c) any change in the use of land that creates additional demand and need for public
130 facilities.

131 (9) (a) "Disability" means a physical or mental impairment that substantially limits one
132 or more of a person's major life activities, including a person having a record of such an
133 impairment or being regarded as having such an impairment.

134 (b) "Disability" does not include current illegal use of, or addiction to, any federally
135 controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C.
136 802.

137 (10) "Educational facility":

138 (a) means:

139 (i) a school district's building at which pupils assemble to receive instruction in a
140 program for any combination of grades from preschool through grade 12, including
141 kindergarten and a program for children with disabilities;

142 (ii) a structure or facility:

143 (A) located on the same property as a building described in Subsection (10)(a)(i); and

144 (B) used in support of the use of that building; and

145 (iii) a building to provide office and related space to a school district's administrative
146 personnel; and

147 (b) does not include land or a structure, including land or a structure for inventory
148 storage, equipment storage, food processing or preparing, vehicle storage or maintenance, or
149 similar use that is:

150 (i) not located on the same property as a building described in Subsection (10)(a)(i);

151 and

152 (ii) used in support of the purposes of a building described in Subsection (10)(a)(i).

153 (11) "Elderly person" means a person who is 60 years old or older, who desires or
154 needs to live with other elderly persons in a group setting, but who is capable of living
155 independently.

156 (12) "Fire authority" means the department, agency, or public entity with responsibility
157 to review and approve the feasibility of fire protection and suppression services for the subject
158 property.

159 (13) "Flood plain" means land that:

160 (a) is within the 100-year flood plain designated by the Federal Emergency
161 Management Agency; or

162 (b) has not been studied or designated by the Federal Emergency Management Agency
163 but presents a likelihood of experiencing chronic flooding or a catastrophic flood event because
164 the land has characteristics that are similar to those of a 100-year flood plain designated by the
165 Federal Emergency Management Agency.

166 (14) "General plan" means a document that a municipality adopts that sets forth general
167 guidelines for proposed future development of the land within the municipality.

168 (15) "Geologic hazard" means:

169 (a) a surface fault rupture;

170 (b) shallow groundwater;

171 (c) liquefaction;

172 (d) a landslide;

173 (e) a debris flow;

174 (f) unstable soil;

175 (g) a rock fall; or

176 (h) any other geologic condition that presents a risk:

177 (i) to life;

178 (ii) of substantial loss of real property; or

179 (iii) of substantial damage to real property.

180 (16) "Hookup fee" means a fee for the installation and inspection of any pipe, line,
181 meter, or appurtenance that connects to a municipal water, sewer, storm water, power, or other
182 utility system.

183 (17) "Identical plans" means building plans submitted to a municipality that are
184 substantially identical to building plans that were previously submitted to and reviewed and
185 approved by the municipality and describe a building that is:

186 (a) located on land zoned the same as the land on which the building described in the
187 previously approved plans is located; and

188 (b) subject to the same geological and meteorological conditions and the same law as
189 the building described in the previously approved plans.

190 (18) "Impact fee" means a payment of money imposed under Title 11, Chapter [36]
191 36a, Impact Fees Act.

192 (19) "Improvement assurance" means a surety bond, letter of credit, cash, or other
193 security:

194 (a) to guaranty the proper completion of an improvement;

195 (b) that is required as a condition precedent to:

196 (i) recording a subdivision plat; or

197 (ii) beginning development activity; and

198 (c) that is offered to a land use authority to induce the land use authority, before actual
199 construction of required improvements, to:

200 (i) consent to the recording of a subdivision plat; or

201 (ii) issue a permit for development activity.

202 (20) "Improvement assurance warranty" means a promise that the materials and
203 workmanship of improvements:

204 (a) comport with standards that the municipality has officially adopted; and

205 (b) will not fail in any material respect within a warranty period.

206 (21) "Internal lot restriction" means a platted note, platted demarcation, or platted
207 designation that:

208 (a) runs with the land; and

209 (b) (i) creates a restriction that is enclosed within the perimeter of a lot described on
210 the plat; or

211 (ii) designates a development condition that is enclosed within the perimeter of a lot
212 described on the plat.

213 (22) "Land use application" means an application required by a municipality's land use

214 ordinance.

215 (23) "Land use authority" means a person, board, commission, agency, or other body
216 designated by the local legislative body to act upon a land use application.

217 (24) "Land use ordinance" means a planning, zoning, development, or subdivision
218 ordinance of the municipality, but does not include the general plan.

219 (25) "Land use permit" means a permit issued by a land use authority.

220 (26) "Legislative body" means the municipal council.

221 (27) "Local district" means an entity under Title 17B, Limited Purpose Local
222 Government Entities - Local Districts, and any other governmental or quasi-governmental
223 entity that is not a county, municipality, school district, or the state.

224 (28) "Lot line adjustment" means the relocation of the property boundary line in a
225 subdivision between two adjoining lots with the consent of the owners of record.

226 (29) "Moderate income housing" means housing occupied or reserved for occupancy
227 by households with a gross household income equal to or less than 80% of the median gross
228 income for households of the same size in the county in which the city is located.

229 (30) "Nominal fee" means a fee that reasonably reimburses a municipality only for time
230 spent and expenses incurred in:

231 (a) verifying that building plans are identical plans; and

232 (b) reviewing and approving those minor aspects of identical plans that differ from the
233 previously reviewed and approved building plans.

234 (31) "Noncomplying structure" means a structure that:

235 (a) legally existed before its current land use designation; and

236 (b) because of one or more subsequent land use ordinance changes, does not conform
237 to the setback, height restrictions, or other regulations, excluding those regulations, which
238 govern the use of land.

239 (32) "Nonconforming use" means a use of land that:

240 (a) legally existed before its current land use designation;

241 (b) has been maintained continuously since the time the land use ordinance governing
242 the land changed; and

243 (c) because of one or more subsequent land use ordinance changes, does not conform
244 to the regulations that now govern the use of the land.

245 (33) "Official map" means a map drawn by municipal authorities and recorded in a
246 county recorder's office that:

247 (a) shows actual and proposed rights-of-way, centerline alignments, and setbacks for
248 highways and other transportation facilities;

249 (b) provides a basis for restricting development in designated rights-of-way or between
250 designated setbacks to allow the government authorities time to purchase or otherwise reserve
251 the land; and

252 (c) has been adopted as an element of the municipality's general plan.

253 (34) "Person" means an individual, corporation, partnership, organization, association,
254 trust, governmental agency, or any other legal entity.

255 (35) "Plan for moderate income housing" means a written document adopted by a city
256 legislative body that includes:

257 (a) an estimate of the existing supply of moderate income housing located within the
258 city;

259 (b) an estimate of the need for moderate income housing in the city for the next five
260 years as revised biennially;

261 (c) a survey of total residential land use;

262 (d) an evaluation of how existing land uses and zones affect opportunities for moderate
263 income housing; and

264 (e) a description of the city's program to encourage an adequate supply of moderate
265 income housing.

266 (36) "Plat" means a map or other graphical representation of lands being laid out and
267 prepared in accordance with Section 10-9a-603, 17-23-17, or 57-8-13.

268 (37) "Potential geologic hazard area" means an area that:

269 (a) is designated by a Utah Geological Survey map, county geologist map, or other
270 relevant map or report as needing further study to determine the area's potential for geologic
271 hazard; or

272 (b) has not been studied by the Utah Geological Survey or a county geologist but
273 presents the potential of geologic hazard because the area has characteristics similar to those of
274 a designated geologic hazard area.

275 (38) "Public agency" means:

- 276 (a) the federal government;
- 277 (b) the state;
- 278 (c) a county, municipality, school district, local district, special service district, or other
279 political subdivision of the state; or
- 280 (d) a charter school.

281 (39) "Public hearing" means a hearing at which members of the public are provided a
282 reasonable opportunity to comment on the subject of the hearing.

283 (40) "Public meeting" means a meeting that is required to be open to the public under
284 Title 52, Chapter 4, Open and Public Meetings Act.

285 (41) "Record of survey map" means a map of a survey of land prepared in accordance
286 with Section 17-23-17.

287 (42) "Receiving zone" means an area of a municipality that the municipality's land use
288 authority designates as an area in which an owner of land may receive transferrable
289 development rights.

290 (43) "Residential facility for elderly persons" means a single-family or multiple-family
291 dwelling unit that meets the requirements of Section 10-9a-516, but does not include a health
292 care facility as defined by Section 26-21-2.

293 (44) "Residential facility for persons with a disability" means a residence:

294 (a) in which more than one person with a disability resides; and

295 (b) (i) is licensed or certified by the Department of Human Services under Title 62A,
296 Chapter 2, Licensure of Programs and Facilities; or

297 (ii) is licensed or certified by the Department of Health under Title 26, Chapter 21,
298 Health Care Facility Licensing and Inspection Act.

299 (45) "Sanitary sewer authority" means the department, agency, or public entity with
300 responsibility to review and approve the feasibility of sanitary sewer services or onsite
301 wastewater systems.

302 (46) "Sending zone" means an area of a municipality that the municipality's land use
303 authority designates as an area from which an owner of land may transfer transferrable
304 development rights to an owner of land in a receiving zone.

305 (47) "Specified public agency" means:

306 (a) the state;

307 (b) a school district; or

308 (c) a charter school.

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

311 (49) "State" includes any department, division, or agency of the state.

312 (50) "Street" means a public right-of-way, including a highway, avenue, boulevard,
313 parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement, or other
314 way.

315 (51) (a) "Subdivision" means any land that is divided, resubdivided or proposed to be
316 divided into two or more lots, parcels, sites, units, plots, or other division of land for the
317 purpose, whether immediate or future, for offer, sale, lease, or development either on the
318 installment plan or upon any and all other plans, terms, and conditions.

319 (b) "Subdivision" includes:

320 (i) the division or development of land whether by deed, metes and bounds description,
321 devise and testacy, map, plat, or other recorded instrument; and

322 (ii) except as provided in Subsection (51)(c), divisions of land for residential and
323 nonresidential uses, including land used or to be used for commercial, agricultural, and
324 industrial purposes.

325 (c) "Subdivision" does not include:

326 (i) a bona fide division or partition of agricultural land for the purpose of joining one of
327 the resulting separate parcels to a contiguous parcel of unsubdivided agricultural land, if
328 neither the resulting combined parcel nor the parcel remaining from the division or partition
329 violates an applicable land use ordinance;

330 (ii) a recorded agreement between owners of adjoining unsubdivided properties
331 adjusting their mutual boundary if:

332 (A) no new lot is created; and

333 (B) the adjustment does not violate applicable land use ordinances;

334 (iii) a recorded document, executed by the owner of record:

335 (A) revising the legal description of more than one contiguous unsubdivided parcel of
336 property into one legal description encompassing all such parcels of property; or

337 (B) joining a subdivided parcel of property to another parcel of property that has not

338 been subdivided, if the joinder does not violate applicable land use ordinances;

339 (iv) a recorded agreement between owners of adjoining subdivided properties adjusting
340 their mutual boundary if:

341 (A) no new dwelling lot or housing unit will result from the adjustment; and

342 (B) the adjustment will not violate any applicable land use ordinance; or

343 (v) a bona fide division or partition of land by deed or other instrument where the land
344 use authority expressly approves in writing the division in anticipation of further land use
345 approvals on the parcel or parcels.

346 (d) The joining of a subdivided parcel of property to another parcel of property that has
347 not been subdivided does not constitute a subdivision under this Subsection (51) as to the
348 unsubdivided parcel of property or subject the unsubdivided parcel to the municipality's
349 subdivision ordinance.

350 (52) "Transferrable development right" means the entitlement to develop land within a
351 sending zone that would vest according to the municipality's existing land use ordinances on
352 the date that a completed land use application is filed seeking the approval of development
353 activity on the land.

354 (53) "Unincorporated" means the area outside of the incorporated area of a city or
355 town.

356 (54) "Water interest" means any right to the beneficial use of water, including:

357 (a) each of the rights listed in Section 73-1-11; and

358 (b) an ownership interest in the right to the beneficial use of water represented by:

359 (i) a contract; or

360 (ii) a share in a water company, as defined in Section 73-3-3.5.

361 (55) "Zoning map" means a map, adopted as part of a land use ordinance, that depicts
362 land use zones, overlays, or districts.

363 Section 2. Section **10-9a-305** is amended to read:

364 **10-9a-305. Other entities required to conform to municipality's land use**
365 **ordinances -- Exceptions -- School districts and charter schools -- Submission of**
366 **development plan and schedule.**

367 (1) (a) Each county, municipality, school district, charter school, local district, special
368 service district, and political subdivision of the state shall conform to any applicable land use

369 ordinance of any municipality when installing, constructing, operating, or otherwise using any
370 area, land, or building situated within that municipality.

371 (b) In addition to any other remedies provided by law, when a municipality's land use
372 ordinance is violated or about to be violated by another political subdivision, that municipality
373 may institute an injunction, mandamus, abatement, or other appropriate action or proceeding to
374 prevent, enjoin, abate, or remove the improper installation, improvement, or use.

375 (2) (a) Notwithstanding Subsection (1), a public transit district under Title 17B,
376 Chapter 2a, Part 8, Public Transit District Act, is not required to conform to any applicable
377 land use ordinance of a municipality located within the boundaries of a county of the first class
378 when constructing a:

379 (i) rail fixed guideway public transit facility that extends across two or more counties;
380 or

381 (ii) structure that serves a rail fixed guideway public transit facility that extends across
382 two or more counties, including:

383 (A) platforms;

384 (B) passenger terminals or stations;

385 (C) park and ride facilities;

386 (D) maintenance facilities;

387 (E) all related utility lines, roadways, and other facilities serving the public transit
388 facility; or

389 (F) other auxiliary facilities.

390 (b) The exemption from municipal land use ordinances under this Subsection (2) does
391 not extend to any property not necessary for the construction or operation of a rail fixed
392 guideway public transit facility.

393 (c) A municipality located within the boundaries of a county of the first class may not,
394 through an agreement under Title 11, Chapter 13, Interlocal Cooperation Act, require a public
395 transit district under Title 17B, Chapter 2a, Part 8, Public Transit District Act, to obtain
396 approval from the municipality prior to constructing a:

397 (i) rail fixed guideway public transit facility that extends across two or more counties;
398 or

399 (ii) structure that serves a rail fixed guideway public transit facility that extends across

400 two or more counties, including:

401 (A) platforms;

402 (B) passenger terminals or stations;

403 (C) park and ride facilities;

404 (D) maintenance facilities;

405 (E) all related utility lines, roadways, and other facilities serving the public transit
406 facility; or

407 (F) other auxiliary facilities.

408 (3) (a) Except as provided in Subsection (4), a school district or charter school is
409 subject to a municipality's land use ordinances.

410 (b) (i) Notwithstanding Subsection (4), a municipality may:

411 (A) subject a charter school to standards within each zone pertaining to setback, height,
412 bulk and massing regulations, off-site parking, curb cut, traffic circulation, and construction
413 staging; and

414 (B) impose regulations upon the location of a project that are necessary to avoid
415 unreasonable risks to health or safety, as provided in Subsection (4)(f).

416 (ii) The standards to which a municipality may subject a charter school under
417 Subsection (3)(b)(i) shall be objective standards only and may not be subjective.

418 (iii) Except as provided in Subsection (8)(d), the only basis upon which a municipality
419 may deny or withhold approval of a charter school's land use application is the charter school's
420 failure to comply with a standard imposed under Subsection (3)(b)(i).

421 (iv) Nothing in Subsection (3)(b)(iii) may be construed to relieve a charter school of an
422 obligation to comply with a requirement of an applicable building or safety code to which it is
423 otherwise obligated to comply.

424 (4) A municipality may not:

425 (a) impose requirements for landscaping, fencing, aesthetic considerations,
426 construction methods or materials, additional building inspections, municipal building codes,
427 building use for educational purposes, or the placement or use of temporary classroom facilities
428 on school property;

429 (b) except as otherwise provided in this section, require a school district or charter
430 school to participate in the cost of any roadway or sidewalk, or a study on the impact of a

431 school on a roadway or sidewalk, that is not reasonably necessary for the safety of school
432 children and not located on or contiguous to school property, unless the roadway or sidewalk is
433 required to connect an otherwise isolated school site to an existing roadway;

434 (c) require a district or charter school to pay fees not authorized by this section;

435 (d) provide for inspection of school construction or assess a fee or other charges for
436 inspection, unless the school district or charter school is unable to provide for inspection by an
437 inspector, other than the project architect or contractor, who is qualified under criteria
438 established by the state superintendent;

439 (e) require a school district or charter school to pay any impact fee for an improvement
440 project unless the impact fee is imposed as provided in Title 11, Chapter [36] 36a, Impact Fees
441 Act;

442 (f) impose regulations upon the location of an educational facility except as necessary
443 to avoid unreasonable risks to health or safety; or

444 (g) for a land use or a structure owned or operated by a school district or charter school
445 that is not an educational facility but is used in support of providing instruction to pupils,
446 impose a regulation that:

447 (i) is not imposed on a similar land use or structure in the zone in which the land use or
448 structure is approved; or

449 (ii) uses the tax exempt status of the school district or charter school as criteria for
450 prohibiting or regulating the land use or location of the structure.

451 (5) Subject to Section 53A-20-108, a school district or charter school shall coordinate
452 the siting of a new school with the municipality in which the school is to be located, to:

453 (a) avoid or mitigate existing and potential traffic hazards, including consideration of
454 the impacts between the new school and future highways; and

455 (b) maximize school, student, and site safety.

456 (6) Notwithstanding Subsection (4)(d), a municipality may, at its discretion:

457 (a) provide a walk-through of school construction at no cost and at a time convenient to
458 the district or charter school; and

459 (b) provide recommendations based upon the walk-through.

460 (7) (a) Notwithstanding Subsection (4)(d), a school district or charter school shall use:

461 (i) a municipal building inspector;

462 (ii) (A) for a school district, a school district building inspector from that school
463 district; or

464 (B) for a charter school, a school district building inspector from the school district in
465 which the charter school is located; or

466 (iii) an independent, certified building inspector who is:

467 (A) not an employee of the contractor;

468 (B) approved by:

469 (I) a municipal building inspector; or

470 (II) (Aa) for a school district, a school district building inspector from that school
471 district; or

472 (Bb) for a charter school, a school district building inspector from the school district in
473 which the charter school is located; and

474 (C) licensed to perform the inspection that the inspector is requested to perform.

475 (b) The approval under Subsection (7)(a)(iii)(B) may not be unreasonably withheld.

476 (c) If a school district or charter school uses a school district or independent building
477 inspector under Subsection (7)(a)(ii) or (iii), the school district or charter school shall submit to
478 the state superintendent of public instruction and municipal building official, on a monthly
479 basis during construction of the school building, a copy of each inspection certificate regarding
480 the school building.

481 (8) (a) A charter school shall be considered a permitted use in all zoning districts
482 within a municipality.

483 (b) Each land use application for any approval required for a charter school, including
484 an application for a building permit, shall be processed on a first priority basis.

485 (c) Parking requirements for a charter school may not exceed the minimum parking
486 requirements for schools or other institutional public uses throughout the municipality.

487 (d) If a municipality has designated zones for a sexually oriented business, or a
488 business which sells alcohol, a charter school may be prohibited from a location which would
489 otherwise defeat the purpose for the zone unless the charter school provides a waiver.

490 (e) (i) A school district or a charter school may seek a certificate authorizing permanent
491 occupancy of a school building from:

492 (A) the state superintendent of public instruction, as provided in Subsection

493 53A-20-104(3), if the school district or charter school used an independent building inspector
494 for inspection of the school building; or

495 (B) a municipal official with authority to issue the certificate, if the school district or
496 charter school used a municipal building inspector for inspection of the school building.

497 (ii) A school district may issue its own certificate authorizing permanent occupancy of
498 a school building if it used its own building inspector for inspection of the school building,
499 subject to the notification requirement of Subsection 53A-20-104(3)(a)(ii).

500 (iii) A charter school may seek a certificate authorizing permanent occupancy of a
501 school building from a school district official with authority to issue the certificate, if the
502 charter school used a school district building inspector for inspection of the school building.

503 (iv) A certificate authorizing permanent occupancy issued by the state superintendent
504 of public instruction under Subsection 53A-20-104(3) or a school district official with authority
505 to issue the certificate shall be considered to satisfy any municipal requirement for an
506 inspection or a certificate of occupancy.

507 (9) (a) A specified public agency intending to develop its land shall submit to the land
508 use authority a development plan and schedule:

509 (i) as early as practicable in the development process, but no later than the
510 commencement of construction; and

511 (ii) with sufficient detail to enable the land use authority to assess:

512 (A) the specified public agency's compliance with applicable land use ordinances;

513 (B) the demand for public facilities listed in Subsections [~~11-36-102(14)~~]

514 11-36a-102(15)(a), (b), (c), (d), (e), and (g) caused by the development;

515 (C) the amount of any applicable fee listed in Subsection 10-9a-510(5);

516 (D) any credit against an impact fee; and

517 (E) the potential for waiving an impact fee.

518 (b) The land use authority shall respond to a specified public agency's submission
519 under Subsection (9)(a) with reasonable promptness in order to allow the specified public
520 agency to consider information the municipality provides under Subsection (9)(a)(ii) in the
521 process of preparing the budget for the development.

522 (10) Nothing in this section may be construed to modify or supersede Section
523 10-9a-304.

524 Section 3. Section **10-9a-510** is amended to read:

525 **10-9a-510. Limit on fees -- Requirement to itemize fees.**

526 (1) A municipality may not impose or collect a fee for reviewing or approving the
527 plans for a commercial or residential building that exceeds the lesser of:

528 (a) the actual cost of performing the plan review; and

529 (b) 65% of the amount the municipality charges for a building permit fee for that
530 building.

531 (2) Subject to Subsection (1), a municipality may impose and collect only a nominal
532 fee for reviewing and approving identical plans.

533 (3) A municipality may not impose or collect a hookup fee that exceeds the reasonable
534 cost of installing and inspecting the pipe, line, meter, and appurtenance to connect to the
535 municipal water, sewer, storm water, power, or other utility system.

536 (4) A municipality may not impose or collect:

537 (a) a land use application fee that exceeds the reasonable cost of processing the
538 application; or

539 (b) an inspection or review fee that exceeds the reasonable cost of performing the
540 inspection or review.

541 (5) Upon the request of an applicant or an owner of residential property, the
542 municipality shall itemize each fee that the municipality imposes on the applicant or on the
543 residential property, respectively, showing the basis of each calculation for each fee imposed.

544 (6) A municipality may not impose on or collect from a public agency any fee
545 associated with the public agency's development of its land other than:

546 (a) subject to Subsection (4), a fee for a development service that the public agency
547 does not itself provide;

548 (b) subject to Subsection (3), a hookup fee; and

549 (c) an impact fee for a public facility listed in Subsection [~~11-36-102(14)~~]

550 11-36a-102(15)(a), (b), (c), (d), (e), or (g), subject to any applicable credit under Subsection
551 [~~11-36-202(2)(b)~~] 11-36a-402(2).

552 Section 4. Section **11-36a-101** is enacted to read:

553 **CHAPTER 36a. IMPACT FEES ACT**

554 **Part 1. General Provisions**

555 **11-36a-101. Title.**556 This chapter is known as the "Impact Fees Act."557 Section 5. Section **11-36a-102** is enacted to read:558 **11-36a-102. Definitions.**559 As used in this chapter:560 (1) (a) "Affected entity" means each county, municipality, local district under Title
561 17B, Limited Purpose Local Government Entities - Local Districts, special service district
562 under Title 17D, Chapter 1, Special Service District Act, school district, interlocal cooperation
563 entity established under Chapter 13, Interlocal Cooperation Act, and specified public utility;564 (i) whose services or facilities are likely to require expansion or significant
565 modification because of the facilities proposed in the proposed impact fee facilities plan; or566 (ii) that has filed with the local political subdivision or private entity a copy of the
567 general or long-range plan of the county, municipality, local district, special service district,
568 school district, interlocal cooperation entity, or specified public utility.569 (b) "Affected entity" does not include the local political subdivision or private entity
570 that is required under Section 11-36a-501 to provide notice.571 (2) "Charter school" includes:572 (a) an operating charter school;573 (b) an applicant for a charter school whose application has been approved by a
574 chartering entity as provided in Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act;
575 and576 (c) an entity that is working on behalf of a charter school or approved charter applicant
577 to develop or construct a charter school building.578 (3) "Development activity" means any construction or expansion of a building,
579 structure, or use, any change in use of a building or structure, or any changes in the use of land
580 that creates additional demand and need for public facilities.581 (4) "Development approval" means:582 (a) except as provided in Subsection (4)(b), any written authorization from a local
583 political subdivision that authorizes the commencement of development activity;584 (b) development activity, for a public entity that may develop without written
585 authorization from a local political subdivision;

586 (c) a written authorization from a public water supplier, as defined in Section 73-1-4,
587 or a private water company:

588 (i) to reserve or provide:

589 (A) a water right;

590 (B) a system capacity; or

591 (C) a distribution facility; or

592 (ii) to deliver for a development activity:

593 (A) culinary water; or

594 (B) irrigation water; or

595 (d) a written authorization from a sanitary sewer authority, as defined in Section
596 10-9a-103:

597 (i) to reserve or provide:

598 (A) sewer collection capacity; or

599 (B) treatment capacity; or

600 (ii) to provide sewer service for a development activity.

601 (5) "Enactment" means:

602 (a) a municipal ordinance, for a municipality;

603 (b) a county ordinance, for a county; and

604 (c) a governing board resolution, for a local district, special service district, or private
605 entity.

606 (6) "Encumber" means:

607 (a) a pledge to retire a debt; or

608 (b) an allocation to a current purchase order or contract.

609 (7) "Hookup fee" means a fee for the installation and inspection of any pipe, line,
610 meter, or appurtenance to connect to a gas, water, sewer, storm water, power, or other utility
611 system of a municipality, county, local district, special service district, or private entity.

612 (8) (a) "Impact fee" means a payment of money imposed upon new development
613 activity as a condition of development approval to mitigate the impact of the new development
614 on public infrastructure.

615 (b) "Impact fee" does not mean a tax, a special assessment, a building permit fee, a
616 hookup fee, a fee for project improvements, or other reasonable permit or application fee.

617 (9) "Impact fee analysis" means the written analysis of each impact fee required by
618 Section 11-36a-303.

619 (10) "Impact fee facilities plan" means the plan required by Section 11-36a-301.

620 (11) (a) "Local political subdivision" means a county, a municipality, a local district
621 under Title 17B, Limited Purpose Local Government Entities - Local Districts, or a special
622 service district under Title 17D, Chapter 1, Special Service District Act.

623 (b) "Local political subdivision" does not mean a school district, whose impact fee
624 activity is governed by Section 53A-20-100.5.

625 (12) "Private entity" means an entity with private ownership that provides culinary
626 water that is required to be used as a condition of development.

627 (13) (a) "Project improvements" means site improvements and facilities that are:

628 (i) planned and designed to provide service for development resulting from a
629 development activity;

630 (ii) necessary for the use and convenience of the occupants or users of development
631 resulting from a development activity; and

632 (iii) not identified or reimbursed as a system improvement.

633 (b) "Project improvements" does not mean system improvements.

634 (14) "Proportionate share" means the cost of public facility improvements that are
635 roughly proportionate and reasonably related to the service demands and needs of any
636 development activity.

637 (15) "Public facilities" means only the following impact fee facilities that have a life
638 expectancy of 10 or more years and are owned or operated by or on behalf of a local political
639 subdivision or private entity:

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

641 (b) wastewater collection and treatment facilities;

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

643 (d) municipal power facilities;

644 (e) roadway facilities;

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

646 (g) public safety facilities; or

647 (h) environmental mitigation as provided in Section 11-36a-205.

648 (16) (a) "Public safety facility" means:
649 (i) a building constructed or leased to house police, fire, or other public safety entities;
650 or
651 (ii) a fire suppression vehicle costing in excess of \$500,000.
652 (b) "Public safety facility" does not mean a jail, prison, or other place of involuntary
653 incarceration.

654 (17) (a) "Roadway facilities" means a street or road that has been designated on an
655 officially adopted subdivision plat, roadway plan, or general plan of a political subdivision,
656 together with all necessary appurtenances.

657 (b) "Roadway facilities" includes associated improvements to a federal or state
658 roadway only when the associated improvements:

- 659 (i) are necessitated by the new development; and
- 660 (ii) are not funded by the state or federal government.
- 661 (c) "Roadway facilities" does not mean federal or state roadways.

662 (18) (a) "Service area" means a geographic area designated by a local political
663 subdivision on the basis of sound planning or engineering principles in which a defined set of
664 public facilities provides service within the area.

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

666 (19) "Specified public agency" means:

- 667 (a) the state;
- 668 (b) a school district; or
- 669 (c) a charter school.

670 (20) (a) "System improvements" means:

- 671 (i) existing public facilities that are:
 - 672 (A) identified in the impact fee analysis under Section 11-36a-304; and
 - 673 (B) designed to provide services to service areas within the community at large; and
- 674 (ii) future public facilities identified in the impact fee analysis under Section
675 11-36a-304 that are intended to provide services to service areas within the community at large.

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

677 Section 6. Section **11-36a-201** is enacted to read:

678 **Part 2. Impact Fees**

679 **11-36a-201. Impact fees.**

680 (1) A local political subdivision or private entity shall ensure that any imposed impact
681 fees comply with the requirements of this chapter.

682 (2) A local political subdivision and private entity may establish impact fees only for
683 those public facilities defined in Section 11-36a-102.

684 (3) Nothing in this chapter may be construed to repeal or otherwise eliminate an impact
685 fee in effect on the effective date of this chapter that is pledged as a source of revenues to pay
686 bonded indebtedness that was incurred before the effective date of this chapter.

687 Section 7. Section **11-36a-202** is enacted to read:

688 **11-36a-202. Prohibitions on impact fees.**

689 (1) A local political subdivision or private entity may not:

690 (a) impose an impact fee to:

691 (i) cure deficiencies in a public facility serving existing development;

692 (ii) raise the established level of service of a public facility serving existing
693 development;

694 (iii) recoup more than the local political subdivision's or private entity's costs actually
695 incurred for excess capacity in an existing system improvement; or

696 (iv) include an expense for overhead, unless the expense is calculated pursuant to a
697 methodology that is consistent with:

698 (A) generally accepted cost accounting practices; and

699 (B) the methodological standards set forth by the federal Office of Management and
700 Budget for federal grant reimbursement;

701 (b) delay the construction of a school or charter school because of a dispute with the
702 school or charter school over impact fees; or

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

705 (2) (a) Notwithstanding any other provision of this chapter, a political subdivision or
706 private entity may not impose an impact fee:

707 (i) on residential components of development to pay for a public safety facility that is a
708 fire suppression vehicle;

709 (ii) on a school district or charter school for a park, recreation facility, open space, or

710 trail;
711 (iii) on a school district or charter school unless:
712 (A) the development resulting from the school district's or charter school's
713 development activity directly results in a need for additional system improvements for which
714 the impact fee is imposed; and
715 (B) the impact fee is calculated to cover only the school district's or charter school's
716 proportionate share of the cost of those additional system improvements; or
717 (iv) to the extent that the impact fee includes a component for a law enforcement
718 facility, on development activity for:
719 (A) the Utah National Guard;
720 (B) the Utah Highway Patrol; or
721 (C) a state institution of higher education that has its own police force.
722 (b) (i) Notwithstanding any other provision of this chapter, a political subdivision or
723 private entity may not impose an impact fee on development activity that consists of the
724 construction of a school, whether by a school district or a charter school, if:
725 (A) the school is intended to replace another school, whether on the same or a different
726 parcel;
727 (B) the new school creates no greater demand or need for public facilities than the
728 school or school facilities, including any portable or modular classrooms that are on the site of
729 the replaced school at the time that the new school is proposed; and
730 (C) the new school and the school being replaced are both within the boundary of the
731 local political subdivision or the jurisdiction of the private entity.
732 (ii) If the imposition of an impact fee on a new school is not prohibited under
733 Subsection (2)(b)(i) because the new school creates a greater demand or need for public
734 facilities than the school being replaced, the impact fee shall be based only on the demand or
735 need that the new school creates for public facilities that exceeds the demand or need that the
736 school being replaced creates for those public facilities.
737 (c) Notwithstanding any other provision of this chapter, a political subdivision or
738 private entity may impose an impact fee for a road facility on the state only if and to the extent
739 that:
740 (i) the state's development causes an impact on the road facility; and

741 (ii) the portion of the road facility related to an impact fee is not funded by the state or
742 by the federal government.

743 (3) Notwithstanding any other provision of this chapter, a local political subdivision
744 may impose and collect impact fees on behalf of a school district if authorized by Section
745 53A-20-100.5.

746 Section 8. Section **11-36a-203** is enacted to read:

747 **11-36a-203. Private entity assessment of impact fees -- Charges for water rights,**
748 **physical infrastructure -- Notice -- Audit.**

749 (1) A private entity:

750 (a) shall comply with the requirements of this chapter before imposing an impact fee;
751 and

752 (b) except as otherwise specified in this chapter, is subject to the same requirements of
753 this chapter as a local political subdivision.

754 (2) A private entity may only impose a charge for water rights or physical infrastructure
755 necessary to provide water or sewer facilities by imposing an impact fee.

756 (3) Where notice and hearing requirements are specified, a private entity shall comply
757 with the notice and hearing requirements for local districts.

758 (4) A private entity that assesses an impact fee under this chapter is subject to the audit
759 requirements of Title 51, Chapter 2a, Accounting Reports from Political Subdivisions,
760 Interlocal Organizations, and Other Local Entities Act.

761 Section 9. Section **11-36a-204** is enacted to read:

762 **11-36a-204. Other names for impact fees.**

763 (1) A fee that meets the definition of impact fee under Section 11-36a-102 is an impact
764 fee subject to this chapter, regardless of what term the local political subdivision or private
765 entity uses to refer to the fee.

766 (2) A local political subdivision or private entity may not avoid application of this
767 chapter to a fee that meets the definition of an impact fee under Section 11-36a-102 by
768 referring to the fee by another name.

769 Section 10. Section **11-36a-205** is enacted to read:

770 **11-36a-205. Environmental mitigation impact fees.**

771 Notwithstanding the requirements and prohibitions of this chapter, a local political

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

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

776 (2) the impact fee bears a reasonable relationship to the environmental mitigation
777 required by the Habitat Conservation Plan; and

778 (3) the legislative body of the local political subdivision adopts an ordinance or
779 resolution:

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

781 (b) establishing periodic sunset dates for the impact fee; and

782 (c) requiring the legislative body to:

783 (i) review the impact fee on those sunset dates;

784 (ii) determine whether or not the impact fee is still required to finance the Habitat
785 Conservation Plan; and

786 (iii) affirmatively reauthorize the impact fee if the legislative body finds that the impact
787 fee must remain in effect.

788 Section 11. Section **11-36a-301** is enacted to read:

789 **Part 3. Establishing an Impact Fee**

790 **11-36a-301. Impact fee facilities plan.**

791 (1) Before imposing an impact fee, each local political subdivision or private entity
792 shall, except as provided in Subsection (3), prepare an impact fee facilities plan to determine
793 the public facilities required to serve development resulting from new development activity.

794 (2) A municipality or county need not prepare a separate impact fee facilities plan if the
795 general plan required by Section 10-9a-401 or 17-27a-401, respectively, contains the elements
796 required by Section 11-36a-302.

797 (3) (a) A local political subdivision with a population, or serving a population, of less
798 than 5,000 as of the last federal census need not comply with the impact fee facilities plan
799 requirements of this part, but shall ensure that:

800 (i) the impact fees that the local political subdivision imposes are based upon a
801 reasonable plan; and

802 (ii) each applicable notice required by this chapter is given.

803 (b) Subsection (3)(a) does not apply to a private entity.

804 Section 12. Section **11-36a-302** is enacted to read:

805 **11-36a-302. Impact fee facilities plan requirements -- Limitations -- School**
806 **district or charter school.**

807 (1) An impact fee facilities plan shall identify:

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

809 (b) the proposed means by which the local political subdivision will meet those
810 demands.

811 (2) In preparing an impact fee facilities plan, each local political subdivision shall
812 generally consider all revenue sources, including impact fees and anticipated dedication of
813 system improvements, to finance the impacts on system improvements.

814 (3) A local political subdivision or private entity may only impose impact fees on
815 development activities when the local political subdivision's or private entity's plan for
816 financing system improvements establishes that impact fees are necessary to achieve an
817 equitable allocation to the costs borne in the past and to be borne in the future, in comparison
818 to the benefits already received and yet to be received.

819 (4) (a) Subject to Subsection (4)(c), the impact fee facilities plan shall include a public
820 facility for which an impact fee may be charged or required for a school district or charter
821 school if the local political subdivision is aware of the planned location of the school district
822 facility or charter school:

823 (i) through the planning process; or

824 (ii) after receiving a written request from a school district or charter school that the
825 public facility be included in the impact fee facilities plan.

826 (b) If necessary, a local political subdivision or private entity shall amend the impact
827 fee facilities plan to reflect a public facility described in Subsection (4)(a).

828 (c) (i) In accordance with Subsections 10-9a-305(4) and 17-27a-305(4), a local
829 political subdivision may not require a school district or charter school to participate in the cost
830 of any roadway or sidewalk.

831 (ii) Notwithstanding Subsection (4)(c)(i), if a school district or charter school agrees to
832 build a roadway or sidewalk, the roadway or sidewalk shall be included in the impact fee
833 facilities plan if the local jurisdiction has an impact fee facilities plan for roads and sidewalks.

834 Section 13. Section **11-36a-303** is enacted to read:

835 **11-36a-303. Impact fee analysis.**

836 (1) Subject to the notice requirements of Section 11-36a-504, each local political
837 subdivision or private entity intending to impose an impact fee shall prepare a written analysis
838 of each impact fee.

839 (2) Each local political subdivision or private entity that prepares an impact fee
840 analysis under Subsection (1) shall also prepare a summary of the impact fee analysis designed
841 to be understood by a lay person.

842 Section 14. Section **11-36a-304** is enacted to read:

843 **11-36a-304. Impact fee analysis requirements.**

844 (1) An impact fee analysis shall:

845 (a) identify the anticipated impact on or consumption of any existing capacity of a
846 public facility by the anticipated development activity;

847 (b) identify the anticipated impact on system improvements required by the anticipated
848 development activity to maintain the established level of service for each public facility;

849 (c) subject to Subsection (2), demonstrate how the anticipated impacts described in
850 Subsections (1)(a) and (b) are reasonably related to the anticipated development activity;

851 (d) estimate the proportionate share of:

852 (i) the costs for existing capacity that will be recouped; and

853 (ii) the costs of impacts on system improvements that are reasonably related to the new
854 development activity; and

855 (e) based on the requirements of this chapter, identify how the impact fee was
856 calculated.

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

860 (a) the cost of each existing public facility that has excess capacity to serve the
861 anticipated development resulting from the new development activity;

862 (b) the cost of system improvements for each public facility;

863 (c) other than impact fees, the manner of financing for each public facility, such as user
864 charges, special assessments, bonded indebtedness, general taxes, or federal grants;

865 (d) the relative extent to which development activity will contribute to financing the
866 excess capacity of and system improvements for each existing public facility, by such means as
867 user charges, special assessments, or payment from the proceeds of general taxes;

868 (e) the relative extent to which development activity will contribute to the cost of
869 existing public facilities and system improvements in the future;

870 (f) the extent to which the development activity is entitled to a credit against impact
871 fees because the development activity will dedicate system improvements or public facilities
872 that will offset the demand for system improvements, inside or outside the proposed
873 development;

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

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

877 Section 15. Section **11-36a-305** is enacted to read:

878 **11-36a-305. Calculating impact fees.**

879 (1) In calculating an impact fee, a local political subdivision or private entity may
880 include:

881 (a) the construction contract price;

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

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

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

888 (2) In calculating an impact fee, each local political subdivision or private entity shall
889 base amounts calculated under Subsection (1) on realistic estimates, and the assumptions
890 underlying those estimates shall be disclosed in the impact fee analysis.

891 Section 16. Section **11-36a-306** is enacted to read:

892 **11-36a-306. Certification of impact fee analysis.**

893 (1) An impact fee facilities plan shall include a written certification from the person or
894 entity that prepares the impact fee facilities plan that states the following:

895 "I certify that the attached impact fee facilities plan:

- 896 1. includes only the costs of public facilities that are:
897 a. allowed under the Impact Fees Act; and
898 b. actually incurred; or
899 c. projected to be incurred or encumbered within six years after the day on which each
900 impact fee is paid;
901 2. does not include:
902 a. costs of operation and maintenance of public facilities;
903 b. costs for qualifying public facilities that will raise the level of service for the
904 facilities, through impact fees, above the level of service that is supported by existing residents;
905 c. an expense for overhead, unless the expense is calculated pursuant to a methodology
906 that is consistent with generally accepted cost accounting practices and the methodological
907 standards set forth by the federal Office of Management and Budget for federal grant
908 reimbursement; and
909 3. complies in each and every relevant respect with the Impact Fees Act."
910 (2) An impact fee analysis shall include a written certification from the person or entity
911 that prepares the impact fee analysis which states as follows:
912 "I certify that the attached impact fee analysis:
913 1. includes only the costs of public facilities that are:
914 a. allowed under the Impact Fees Act; and
915 b. actually incurred; or
916 c. projected to be incurred or encumbered within six years after the day on which each
917 impact fee is paid;
918 2. does not include:
919 a. costs of operation and maintenance of public facilities;
920 b. costs for qualifying public facilities that will raise the level of service for the
921 facilities, through impact fees, above the level of service that is supported by existing residents;
922 c. an expense for overhead, unless the expense is calculated pursuant to a methodology
923 that is consistent with generally accepted cost accounting practices and the methodological
924 standards set forth by the federal Office of Management and Budget for federal grant
925 reimbursement;
926 3. offsets costs with grants or other alternate sources of payment; and

927 4. complies in each and every relevant respect with the Impact Fees Act."

928 Section 17. Section **11-36a-401** is enacted to read:

929 **Part 4. Enactment of Impact Fees**

930 **11-36a-401. Impact fee enactment.**

931 (1) (a) A local political subdivision or private entity wishing to impose impact fees
932 shall pass an impact fee enactment in accordance with Section 11-36a-402.

933 (b) An impact fee imposed by an impact fee enactment may not exceed the highest fee
934 justified by the impact fee analysis.

935 (2) An impact fee enactment may not take effect until 90 days after the day on which
936 the impact fee enactment is approved.

937 Section 18. Section **11-36a-402** is enacted to read:

938 **11-36a-402. Required provisions of impact fee enactment.**

939 (1) A local political subdivision or private entity shall ensure, in addition to the
940 requirements described in Subsections (2) and (3), that an impact fee enactment contains:

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

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

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

947 (c) a provision authorizing the local political subdivision or private entity, as the case
948 may be, to adjust the standard impact fee at the time the fee is charged to:

949 (i) respond to:

950 (A) unusual circumstances in specific cases; or

951 (B) a request for a prompt and individualized impact fee review for the development
952 activity of the state, a school district, or a charter school and an offset or credit for a public
953 facility for which an impact fee has been or will be collected; and

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

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

958 (2) A local political subdivision or private entity shall ensure that an impact fee
959 enactment allows a developer, including a school district or a charter school, to receive a credit
960 against or proportionate reimbursement of an impact fee if the developer:

961 (a) dedicates land for a system improvement;

962 (b) builds and dedicates some or all of a system improvement; or

963 (c) dedicates a public facility that the local political subdivision or private entity and
964 the developer agree will reduce the need for a system improvement.

965 (3) A local political subdivision or private entity shall include a provision in an impact
966 fee enactment that requires a credit against impact fees for any dedication of land for,
967 improvement to, or new construction of, any system improvements provided by the developer
968 if the facilities:

969 (a) are system improvements; or

970 (b) (i) are dedicated to the public; and

971 (ii) offset the need for an identified system improvement.

972 Section 19. Section **11-36a-403** is enacted to read:

973 **11-36a-403. Other provisions of impact fee enactment.**

974 (1) A local political subdivision or private entity may include a provision in an impact
975 fee enactment that:

976 (a) provides an impact fee exemption for:

977 (i) development activity attributable to:

978 (A) low income housing;

979 (B) the state;

980 (C) subject to Subsection (2), a school district; or

981 (D) subject to Subsection (2), a charter school; or

982 (ii) other development activity with a broad public purpose; and

983 (b) except for an exemption under Section (1)(a)(i)(A), establishes one or more sources
984 of funds other than impact fees to pay for that development activity.

985 (2) An impact fee enactment that provides an impact fee exemption for development
986 activity attributable to a school district or charter school shall allow either a school district or a
987 charter school to qualify for the exemption on the same basis.

988 (3) An impact fee enactment that repeals or suspends the collection of impact fees is

989 exempt from the notice requirements of Section 11-36a-504.

990 Section 20. Section **11-36a-501** is enacted to read:

991 **Part 5. Notice**

992 **11-36a-501. Notice of intent to prepare an impact fee facilities plan.**

993 (1) Before preparing or amending an impact fee facilities plan, a local political
994 subdivision or private entity shall provide written notice of its intent to prepare or amend an
995 impact fee facilities plan.

996 (2) A notice required under Subsection (1) shall:

997 (a) indicate that the local political subdivision or private entity intends to prepare or
998 amend an impact fee facilities plan;

999 (b) describe or provide a map of the geographic area where the proposed impact fee
1000 facilities will be located; and

1001 (c) subject to Subsection (3), be posted on the Utah Public Notice Website created
1002 under Section 63F-1-701.

1003 (3) For a private entity required to post notice on the Utah Public Notice Website under
1004 Subsection (2)(c):

1005 (a) the private entity shall give notice to the general purpose local government in which
1006 the private entity's private business office is located; and

1007 (b) the general purpose local government described in Subsection (3)(a) shall post the
1008 notice on the Utah Public Notice Website.

1009 Section 21. Section **11-36a-502** is enacted to read:

1010 **11-36a-502. Notice to adopt or amend an impact fee facilities plan.**

1011 (1) If a local political subdivision chooses to prepare an independent impact fee
1012 facilities plan rather than include an impact fee facilities element in the general plan in
1013 accordance with Section 11-36a-301, the local political subdivision shall, before adopting or
1014 amending the impact fee facilities plan:

1015 (a) give public notice, in accordance with Subsection (2), of the plan or amendment at
1016 least 10 days before the day on which the public hearing described in Subsection (1)(d) is
1017 scheduled;

1018 (b) make a copy of the plan or amendment, together with a summary designed to be
1019 understood by a lay person, available to the public;

1020 (c) place a copy of the plan or amendment and summary in each public library within
1021 the local political subdivision; and

1022 (d) hold a public hearing to hear public comment on the plan or amendment.

1023 (2) With respect to the public notice required under Subsection (1)(a):

1024 (a) each municipality shall comply with the notice and hearing requirements of, and,
1025 except as provided in Subsection 11-36a-701(3)(b)(ii), receive the protections of Sections
1026 10-9a-205 and 10-9a-801 and Subsection 10-9a-502(2);

1027 (b) each county shall comply with the notice and hearing requirements of, and, except
1028 as provided in Subsection 11-36a-701(3)(b)(ii), receive the protections of Sections 17-27a-205
1029 and 17-27a-801 and Subsection 17-27a-502(2); and

1030 (c) each local district, special service district, and private entity shall comply with the
1031 notice and hearing requirements of, and receive the protections of, Section 17B-1-111.

1032 (3) Nothing contained in this section or Section 11-36a-503 may be construed to
1033 require involvement by a planning commission in the impact fee facilities planning process.

1034 Section 22. Section **11-36a-503** is enacted to read:

1035 **11-36a-503. Notice of preparation of an impact fee analysis.**

1036 (1) Before preparing or contracting to prepare an impact fee analysis, each local
1037 political subdivision or, subject to Subsection (2), private entity shall post a public notice on
1038 the Utah Public Notice Website created under Section 63F-1-701.

1039 (2) For a private entity required to post notice on the Utah Public Notice Website under
1040 Subsection (1):

1041 (a) the private entity shall give notice to the general purpose local government in which
1042 the private entity's primary business is located; and

1043 (b) the general purpose local government described in Subsection (2)(a) shall post the
1044 notice on the Utah Public Notice Website.

1045 Section 23. Section **11-36a-504** is enacted to read:

1046 **11-36a-504. Notice of intent to adopt impact fee enactment -- Hearing --**

1047 **Protections.**

1048 (1) Before adopting an impact fee enactment:

1049 (a) a municipality legislative body shall:

1050 (i) comply with the notice requirements of Section 10-9a-205 as if the impact fee

1051 enactment were a land use ordinance;
1052 (ii) hold a hearing in accordance with Section 10-9a-502 as if the impact fee enactment
1053 were a land use ordinance; and
1054 (iii) except as provided in Subsection 11-36a-701(3)(b)(ii), receive the protections of
1055 Section 10-9a-801 as if the impact fee were a land use ordinance;
1056 (b) a county legislative body shall:
1057 (i) comply with the notice requirements of Section 17-27a-205 as if the impact fee
1058 enactment were a land use ordinance;
1059 (ii) hold a hearing in accordance with Section 17-27a-502 as if the impact fee
1060 enactment were a land use ordinance; and
1061 (iii) except as provided in Subsection 11-36a-701(3)(b)(ii), receive the protections of
1062 Section 17-27a-801 as if the impact fee were a land use ordinance;
1063 (c) a local district or special service district shall:
1064 (i) comply with the notice and hearing requirements of Section 17B-1-111; and
1065 (ii) receive the protections of Section 17B-1-111;
1066 (d) a local political subdivision shall at least 10 days before the day on which a public
1067 hearing is scheduled in accordance with this section:
1068 (i) make a copy of the impact fee enactment available to the public; and
1069 (ii) post notice of the local political subdivision's intent to enact or modify the impact
1070 fee, specifying the type of impact fee being enacted or modified, on the Utah Public Notice
1071 Website created under Section 63F-1-701; and
1072 (e) a local political subdivision shall submit a copy of the impact fee analysis and a
1073 copy of the summary of the impact fee analysis prepared in accordance with Section
1074 11-36a-303 on its website or to each public library with the local political subdivision.
1075 (2) Subsection (1)(a) or (b) may not be construed to require involvement by a planning
1076 commission in the impact fee enactment process.

1077 Section 24. Section **11-36a-601** is enacted to read:

1078 **Part 6. Impact Fee Proceeds**

1079 **11-36a-601. Accounting of impact fees.**

1080 A local political subdivision that collects an impact fee shall:

1081 (1) establish a separate interest bearing ledger account for each type of public facility

1082 for which an impact fee is collected;

1083 (2) deposit a receipt for an impact fee in the appropriate ledger account established
1084 under Subsection (1);

1085 (3) retain the interest earned on each fund or ledger account in the fund or ledger
1086 account;

1087 (4) at the end of each fiscal year, prepare a report on each fund or ledger account
1088 showing:

1089 (a) the source and amount of all money collected, earned, and received by the fund or
1090 ledger account; and

1091 (b) each expenditure from the fund or ledger account; and

1092 (5) produce a report that:

1093 (a) identifies impact fee funds by the year in which they were received, the project
1094 from which the funds were collected, the impact fee projects for which the funds were
1095 budgeted, and the projected schedule for expenditure;

1096 (b) is in a format developed by the state auditor;

1097 (c) is certified by the local political subdivision's chief financial officer; and

1098 (d) is transmitted annually to the state auditor.

1099 Section 25. Section **11-36a-602** is enacted to read:

1100 **11-36a-602. Expenditure of impact fees.**

1101 (1) A local political subdivision may expend impact fees only for a system
1102 improvement:

1103 (a) identified in the impact fee facilities plan; and

1104 (b) for the specific public facility type for which the fee was collected.

1105 (2) (a) Except as provided in Subsection (2)(b), a local political subdivision shall
1106 expend or encumber the impact fees for a permissible use within six years of their receipt.

1107 (b) A local political subdivision may hold the fees for longer than six years if it
1108 identifies, in writing:

1109 (i) an extraordinary and compelling reason why the fees should be held longer than six
1110 years; and

1111 (ii) an absolute date by which the fees will be expended.

1112 Section 26. Section **11-36a-603** is enacted to read:

1113 **11-36a-603. Refunds.**

1114 A local political subdivision shall refund any impact fee paid by a developer, plus
 1115 interest earned, when:

1116 (1) the developer does not proceed with the development activity and has filed a
 1117 written request for a refund;

1118 (2) the fee has not been spent or encumbered; and

1119 (3) no impact has resulted.

1120 Section 27. Section **11-36a-701** is enacted to read:

1121 **Part 7. Challenges**1122 **11-36a-701. Impact fee challenge.**

1123 (1) A person or an entity residing in or owning property within a service area, or an
 1124 organization, association, or a corporation representing the interests of persons or entities
 1125 owning property within a service area, has standing to file a declaratory judgment action
 1126 challenging the validity of an impact fee.

1127 (2) (a) A person or an entity required to pay an impact fee who believes the impact fee
 1128 does not meet the requirements of law may file a written request for information with the local
 1129 political subdivision who established the impact fee.

1130 (b) Within two weeks after the receipt of the request for information under Subsection
 1131 (2)(a), the local political subdivision shall provide the person or entity with the impact fee
 1132 analysis, the impact fee facilities plan, and any other relevant information relating to the impact
 1133 fee.

1134 (3) (a) Subject to the time limitations described in Section ~~§~~→ [17] 11 ←~~§~~ -36a-702 and
 1134a procedures

1135 set forth in Section 11-36a-703, a person or an entity that has paid an impact fee that was
 1136 imposed by a local political subdivision may challenge:

1137 (i) if the impact fee enactment was adopted on or after July 1, 2000:

1138 (A) subject to Subsection (3)(b)(i) and except as provided in Subsection (3)(b)(ii),
 1139 whether the local political subdivision complied with the notice requirements of this chapter
 1140 with respect to the imposition of the impact fee; and

1141 (B) whether the local political subdivision complied with other procedural
 1142 requirements of this chapter for imposing the impact fee; and

1143 (ii) except as limited by Subsection (3)(c), the impact fee.

1144 (b) (i) The sole remedy for a challenge under Subsection (3)(a)(i)(A) is the equitable
1145 remedy of requiring the local political subdivision to correct the defective notice and repeat the
1146 process.

1147 (ii) The protections given to a municipality under Section 10-9a-801 and to a county
1148 under Section 17-27a-801 do not apply in a challenge under Subsection (3)(a)(i)(A).

1149 (c) The sole remedy for a challenge under Subsection (3)(a)(ii) is a refund of the
1150 difference between what the person or entity paid as an impact fee and the amount the impact
1151 fee should have been if it had been correctly calculated.

1152 (4) (a) Subject to Subsection (4)(d), if an impact fee that is the subject of an advisory
1153 opinion under Section 13-43-205 is listed as a cause of action in litigation, and that cause of
1154 action is litigated on the same facts and circumstances and is resolved consistent with the
1155 advisory opinion:

1156 (i) the substantially prevailing party on that cause of action:

1157 (A) may collect reasonable attorney fees and court costs pertaining to the development
1158 of that cause of action from the date of the delivery of the advisory opinion to the date of the
1159 court's resolution; and

1160 (B) shall be refunded an impact fee held to be in violation of this chapter, based on the
1161 difference between the impact fee paid and what the impact fee should have been if the
1162 government entity had correctly calculated the impact fee; and

1163 (ii) in accordance with Section 13-43-206, a government entity shall refund an impact
1164 fee held to be in violation of this chapter to the person who was in record title of the property
1165 on the day on which the impact fee for the property was paid if:

1166 (A) the impact fee was paid on or after the day on which the advisory opinion on the
1167 impact fee was issued but before the day on which the final court ruling on the impact fee is
1168 issued; and

1169 (B) the person described in Subsection (3)(a)(ii) requests the impact fee refund from
1170 the government entity within 30 days after the day on which the court issued the final ruling on
1171 the impact fee.

1172 (b) A government entity subject to Subsection (3)(a)(ii) shall refund the impact fee
1173 based on the difference between the impact fee paid and what the impact fee should have been
1174 if the government entity had correctly calculated the impact fee.

1175 (c) Subsection (4) may not be construed to create a new cause of action under land use
1176 law.

1177 (d) Subsection (3)(a) does not apply unless the resolution described in Subsection
1178 (3)(a) is final.

1179 Section 28. Section **11-36a-702** is enacted to read:

1180 **11-36a-702. Time limitations.**

1181 (1) A person or an entity that initiates a challenge under Subsection 11-36a-701(3)(a)
1182 may not initiate that challenge unless it is initiated within:

1183 (a) for a challenge under Subsection 11-36a-701(3)(a)(i)(A), 30 days after the day on
1184 which the person or entity pays the impact fee;

1185 (b) for a challenge under Subsection 11-36a-701(3)(a)(i)(B), 180 days after the day on
1186 which the person or entity pays the impact fee; or

1187 (c) for a challenge under Subsection 11-36a-701(3)(a)(ii), one year after the day on
1188 which the person or entity pays the impact fee.

1189 (2) The deadline to file an action in district court is tolled from the date that a challenge
1190 is filed using an administrative appeals procedure described in Section 11-36a-703 until 30
1191 days after the day on which a final decision is rendered in the administrative appeals procedure.

1192 Section 29. Section **11-36a-703** is enacted to read:

1193 **11-36a-703. Procedures for challenging an impact fee.**

1194 (1) (a) A local political subdivision may establish, by ordinance or resolution, an
1195 administrative appeals procedure to consider and decide a challenge to an impact fee.

1196 (b) If the local political subdivision establishes an administrative appeals procedure,
1197 the local political subdivision shall ensure that the procedure includes a requirement that the
1198 local political subdivision make its decision no later than 30 days after the day on which the
1199 challenge to the impact fee is filed.

1200 (2) A challenge under Subsection 11-36a-701(3)(a) is initiated by filing:

1201 (a) if the local political subdivision has established an administrative appeals procedure
1202 under Subsection (1), the necessary document, under the administrative appeals procedure, for
1203 initiating the administrative appeal;

1204 (b) a request for arbitration as provided in Subsection 11-36a-705; or

1205 (c) an action in district court.

1206 (3) The sole remedy for a successful challenge under Subsection 11-36a-701(1), which
1207 determines that an impact fee process was invalid, or an impact fee is in excess of the fee
1208 allowed under this act, is a declaration that, until the local political subdivision or private entity
1209 enacts a new impact fee study, from the date of the decision forward, the entity may charge an
1210 impact fee only as the court has determined would have been appropriate if it had been
1211 properly enacted.

1212 (4) Subsections (2), (3), 11-36a-701(3), and 11-36a-702(1) may not be construed as
1213 requiring a person or an entity to exhaust administrative remedies with the local political
1214 subdivision before filing an action in district court under Subsections (2), (3), 11-36a-701(3)
1215 and 11-36a-702(1).

1216 (5) The judge may award reasonable attorney fees and costs to the prevailing party in
1217 an action brought under this section.

1218 (6) This chapter may not be construed as restricting or limiting any rights to challenge
1219 impact fees that were paid before the effective date of this chapter.

1220 Section 30. Section **11-36a-704** is enacted to read:

1221 **11-36a-704. Mediation.**

1222 (1) In addition to the methods of challenging an impact fee under Section 11-36a-701,
1223 a specified public agency may require a local political subdivision or private entity to
1224 participate in mediation of any applicable impact fee.

1225 (2) To require mediation, the specified public agency shall submit a written request for
1226 mediation to the local political subdivision or private entity.

1227 (3) The specified public agency may submit a request for mediation under this section
1228 at any time, but no later than 30 days after the day on which an impact fee is paid.

1229 (4) Upon the submission of a request for mediation under this section, the local
1230 political subdivision or private entity shall:

1231 (a) cooperate with the specified public agency to select a mediator; and

1232 (b) participate in the mediation process.

1233 Section 31. Section **11-36a-705** is enacted to read:

1234 **11-36a-705. Arbitration.**

1235 (1) A person or entity intending to challenge an impact fee under Section 11-36a-703
1236 shall file a written request for arbitration with the local political subdivision within the time

- 1237 limitation described in Section 11-36a-702 for the applicable type of challenge.
- 1238 (2) If a person or an entity files a written request for arbitration under Subsection (1),
1239 an arbitrator or arbitration panel shall be selected as follows:
- 1240 (a) the local political subdivision and the person or entity filing the request may agree
1241 on a single arbitrator within 10 days after the day on which the request for arbitration is filed;
1242 or
- 1243 (b) if a single arbitrator is not agreed to in accordance with Subsection (2)(a), an
1244 arbitration panel shall be created with the following members:
- 1245 (i) each party shall select an arbitrator within 20 days after the date the request is filed;
1246 and
- 1247 (ii) the arbitrators selected under Subsection (2)(b)(i) shall select a third arbitrator.
- 1248 (3) The arbitration panel shall hold a hearing on the challenge no later than 30 days
1249 after the day on which:
- 1250 (a) the single arbitrator is agreed on under Subsection (2)(a); or
1251 (b) the two arbitrators are selected under Subsection (2)(b)(i).
- 1252 (4) The arbitrator or arbitration panel shall issue a decision in writing no later than 10
1253 days after the day on which the hearing described in Subsection (3) is completed.
- 1254 (5) Except as provided in this section, each arbitration shall be governed by Title 78B,
1255 Chapter 11, Utah Uniform Arbitration Act.
- 1256 (6) The parties may agree to:
- 1257 (a) binding arbitration;
1258 (b) formal, nonbinding arbitration; or
1259 (c) informal, nonbinding arbitration.
- 1260 (7) If the parties agree in writing to binding arbitration:
- 1261 (a) the arbitration shall be binding;
1262 (b) the decision of the arbitration panel shall be final;
1263 (c) neither party may appeal the decision of the arbitration panel; and
1264 (d) notwithstanding Subsection (10), the person or entity challenging the impact fee
1265 may not also challenge the impact fee under Subsection 11-36a-701(1) or Subsection
1266 11-36a-703(2)(a) or (2)(c).
- 1267 (8) (a) Except as provided in Subsection (8)(b), if the parties agree to formal,

1268 nonbinding arbitration, the arbitration shall be governed by the provisions of Title 63G,
1269 Chapter 4, Administrative Procedures Act.

1270 (b) For purposes of applying Title 63G, Chapter 4, Administrative Procedures Act, to a
1271 formal, nonbinding arbitration under this section, notwithstanding Section 63G-4-502,
1272 "agency" means a local political subdivision.

1273 (9) (a) An appeal from a decision in an informal, nonbinding arbitration may be filed
1274 with the district court in which the local political subdivision is located.

1275 (b) An appeal under Subsection (9)(a) shall be filed within 30 days after the day on
1276 which the arbitration panel issues a decision under Subsection (4).

1277 (c) The district court shall consider de novo each appeal filed under this Subsection (9).

1278 (d) Notwithstanding Subsection (10), a person or entity that files an appeal under this
1279 Subsection (9) may not also challenge the impact fee under Subsection 11-36a-701(1) or
1280 Subsection 11-36a-703(2)(a) or (2)(c).

1281 (10) (a) Except as provided in Subsections (7)(d) and (9)(d), this section may not be
1282 construed to prohibit a person or entity from challenging an impact fee as provided in
1283 Subsection 11-36a-701(1) or Subsection 11-36a-703(2)(a) or (2)(c).

1284 (b) The filing of a written request for arbitration within the required time in accordance
1285 with Subsection (1) tolls all time limitations under Section 11-36a-702 until the day on which
1286 the arbitration panel issues a decision.

1287 (11) The person or entity filing a request for arbitration and the local political
1288 subdivision shall equally share all costs of an arbitration proceeding under this section.

1289 Section 32. Section **13-43-205** is amended to read:

1290 **13-43-205. Advisory opinion.**

1291 At any time before a final decision on a land use application by a local appeal authority
1292 under Section 10-9a-708 or 17-27a-708, a local government or a potentially aggrieved person
1293 may, in accordance with Section 13-43-206, request a written advisory opinion from a neutral
1294 third party to determine compliance with:

- 1295 (1) Sections 10-9a-507 through 10-9a-511;
- 1296 (2) Sections 17-27a-506 through 17-27a-510; and
- 1297 (3) Title 11, Chapter [36] 36a, Impact Fees Act.

1298 Section 33. Section **13-43-206** is amended to read:

- 1299 **13-43-206. Advisory opinion -- Process.**
- 1300 (1) A request for an advisory opinion under Section 13-43-205 shall be:
- 1301 (a) filed with the Office of the Property Rights Ombudsman; and
- 1302 (b) accompanied by a filing fee of \$150.
- 1303 (2) The Office of the Property Rights Ombudsman may establish policies providing for
- 1304 partial fee waivers for a person who is financially unable to pay the entire fee.
- 1305 (3) A person requesting an advisory opinion need not exhaust administrative remedies,
- 1306 including remedies described under Section 10-9a-801 or 17-27a-801, before requesting an
- 1307 advisory opinion.
- 1308 (4) The Office of the Property Rights Ombudsman shall:
- 1309 (a) deliver notice of the request to opposing parties indicated in the request;
- 1310 (b) inquire of all parties if there are other necessary parties to the dispute; and
- 1311 (c) deliver notice to all necessary parties.
- 1312 (5) If a governmental entity is an opposing party, the Office of the Property Rights
- 1313 Ombudsman shall deliver the request in the manner provided for in Section 63G-7-401.
- 1314 (6) (a) The Office of the Property Rights Ombudsman shall promptly determine if the
- 1315 parties can agree to a neutral third party to issue an advisory opinion.
- 1316 (b) If no agreement can be reached within four business days after notice is delivered
- 1317 pursuant to Subsections (4) and (5), the Office of the Property Rights Ombudsman shall
- 1318 appoint a neutral third party to issue an advisory opinion.
- 1319 (7) All parties that are the subject of the request for advisory opinion shall:
- 1320 (a) share equally in the cost of the advisory opinion; and
- 1321 (b) provide financial assurance for payment that the neutral third party requires.
- 1322 (8) The neutral third party shall comply with the provisions of Section 78B-11-109,
- 1323 and shall promptly:
- 1324 (a) seek a response from all necessary parties to the issues raised in the request for
- 1325 advisory opinion;
- 1326 (b) investigate and consider all responses; and
- 1327 (c) issue a written advisory opinion within 15 business days after the appointment of
- 1328 the neutral third party under Subsection (6)(b), unless:
- 1329 (i) the parties agree to extend the deadline; or

1330 (ii) the neutral third party determines that the matter is complex and requires additional
1331 time to render an opinion, which may not exceed 30 calendar days.

1332 (9) An advisory opinion shall include a statement of the facts and law supporting the
1333 opinion's conclusions.

1334 (10) (a) Copies of any advisory opinion issued by the Office of the Property Rights
1335 Ombudsman shall be delivered as soon as practicable to all necessary parties.

1336 (b) A copy of the advisory opinion shall be delivered to the government entity in the
1337 manner provided for in Section 63G-7-401.

1338 (11) An advisory opinion issued by the Office of the Property Rights Ombudsman is
1339 not binding on any party to, nor admissible as evidence in, a dispute involving land use law
1340 except as provided in Subsection (12).

1341 (12) (a) Subject to Subsection (12)(d), if the same issue that is the subject of an
1342 advisory opinion is listed as a cause of action in litigation, and that cause of action is litigated
1343 on the same facts and circumstances and is resolved consistent with the advisory opinion:

1344 (i) the substantially prevailing party on that cause of action:

1345 (A) may collect reasonable attorney fees and court costs pertaining to the development
1346 of that cause of action from the date of the delivery of the advisory opinion to the date of the
1347 court's resolution; and

1348 (B) shall be refunded an impact fee held to be in violation of Title 11, Chapter [36]
1349 36a, Impact Fees Act, based on the difference between the impact fee paid and what the impact
1350 fee should have been if the government entity had correctly calculated the impact fee; and

1351 (ii) in accordance with Subsection (12)(b), a government entity shall refund an impact
1352 fee held to be in violation of Title 11, Chapter [36] 36a, Impact Fees Act, to the person who
1353 was in record title of the property on the day on which the impact fee for the property was paid
1354 if:

1355 (A) the impact fee was paid on or after the day on which the advisory opinion on the
1356 impact fee was issued but before the day on which the final court ruling on the impact fee is
1357 issued; and

1358 (B) the person described in Subsection (12)(a)(ii) requests the impact fee refund from
1359 the government entity within 30 days after the day on which the court issued the final ruling on
1360 the impact fee.

1361 (b) A government entity subject to Subsection (12)(a)(ii) shall refund the impact fee
1362 based on the difference between the impact fee paid and what the impact fee should have been
1363 if the government entity had correctly calculated the impact fee.

1364 (c) Nothing in this Subsection (12) is intended to create any new cause of action under
1365 land use law.

1366 (d) Subsection (12)(a) does not apply unless the resolution described in Subsection
1367 (12)(a) is final.

1368 (13) Unless filed by the local government, a request for an advisory opinion under
1369 Section 13-43-205 does not stay the progress of a land use application, or the effect of a land
1370 use decision.

1371 Section 34. Section **17-27a-103** is amended to read:

1372 **17-27a-103. Definitions.**

1373 As used in this chapter:

1374 (1) "Affected entity" means a county, municipality, local district, special service
1375 district under Title 17D, Chapter 1, Special Service District Act, school district, interlocal
1376 cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, specified
1377 property owner, property owners association, public utility, or the Utah Department of
1378 Transportation, if:

1379 (a) the entity's services or facilities are likely to require expansion or significant
1380 modification because of an intended use of land;

1381 (b) the entity has filed with the county a copy of the entity's general or long-range plan;
1382 or

1383 (c) the entity has filed with the county a request for notice during the same calendar
1384 year and before the county provides notice to an affected entity in compliance with a
1385 requirement imposed under this chapter.

1386 (2) "Appeal authority" means the person, board, commission, agency, or other body
1387 designated by ordinance to decide an appeal of a decision of a land use application or a
1388 variance.

1389 (3) "Billboard" means a freestanding ground sign located on industrial, commercial, or
1390 residential property if the sign is designed or intended to direct attention to a business, product,
1391 or service that is not sold, offered, or existing on the property where the sign is located.

- 1392 (4) "Charter school" includes:
- 1393 (a) an operating charter school;
- 1394 (b) a charter school applicant that has its application approved by a chartering entity in
1395 accordance with Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act; and
- 1396 (c) an entity who is working on behalf of a charter school or approved charter applicant
1397 to develop or construct a charter school building.
- 1398 (5) "Chief executive officer" means the person or body that exercises the executive
1399 powers of the county.
- 1400 (6) "Conditional use" means a land use that, because of its unique characteristics or
1401 potential impact on the county, surrounding neighbors, or adjacent land uses, may not be
1402 compatible in some areas or may be compatible only if certain conditions are required that
1403 mitigate or eliminate the detrimental impacts.
- 1404 (7) "Constitutional taking" means a governmental action that results in a taking of
1405 private property so that compensation to the owner of the property is required by the:
- 1406 (a) Fifth or Fourteenth Amendment of the Constitution of the United States; or
1407 (b) Utah Constitution Article I, Section 22.
- 1408 (8) "Culinary water authority" means the department, agency, or public entity with
1409 responsibility to review and approve the feasibility of the culinary water system and sources for
1410 the subject property.
- 1411 (9) "Development activity" means:
- 1412 (a) any construction or expansion of a building, structure, or use that creates additional
1413 demand and need for public facilities;
- 1414 (b) any change in use of a building or structure that creates additional demand and need
1415 for public facilities; or
- 1416 (c) any change in the use of land that creates additional demand and need for public
1417 facilities.
- 1418 (10) (a) "Disability" means a physical or mental impairment that substantially limits
1419 one or more of a person's major life activities, including a person having a record of such an
1420 impairment or being regarded as having such an impairment.
- 1421 (b) "Disability" does not include current illegal use of, or addiction to, any federally
1422 controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C.

1423 802.

1424 (11) "Educational facility":

1425 (a) means:

1426 (i) a school district's building at which pupils assemble to receive instruction in a
1427 program for any combination of grades from preschool through grade 12, including
1428 kindergarten and a program for children with disabilities;

1429 (ii) a structure or facility:

1430 (A) located on the same property as a building described in Subsection (11)(a)(i); and

1431 (B) used in support of the use of that building; and

1432 (iii) a building to provide office and related space to a school district's administrative
1433 personnel; and

1434 (b) does not include land or a structure, including land or a structure for inventory
1435 storage, equipment storage, food processing or preparing, vehicle storage or maintenance, or
1436 similar use that is:

1437 (i) not located on the same property as a building described in Subsection (11)(a)(i);
1438 and

1439 (ii) used in support of the purposes of a building described in Subsection (11)(a)(i).

1440 (12) "Elderly person" means a person who is 60 years old or older, who desires or
1441 needs to live with other elderly persons in a group setting, but who is capable of living
1442 independently.

1443 (13) "Fire authority" means the department, agency, or public entity with responsibility
1444 to review and approve the feasibility of fire protection and suppression services for the subject
1445 property.

1446 (14) "Flood plain" means land that:

1447 (a) is within the 100-year flood plain designated by the Federal Emergency
1448 Management Agency; or

1449 (b) has not been studied or designated by the Federal Emergency Management Agency
1450 but presents a likelihood of experiencing chronic flooding or a catastrophic flood event because
1451 the land has characteristics that are similar to those of a 100-year flood plain designated by the
1452 Federal Emergency Management Agency.

1453 (15) "Gas corporation" has the same meaning as defined in Section 54-2-1.

1454 (16) "General plan" means a document that a county adopts that sets forth general
1455 guidelines for proposed future development of the unincorporated land within the county.

1456 (17) "Geologic hazard" means:

1457 (a) a surface fault rupture;

1458 (b) shallow groundwater;

1459 (c) liquefaction;

1460 (d) a landslide;

1461 (e) a debris flow;

1462 (f) unstable soil;

1463 (g) a rock fall; or

1464 (h) any other geologic condition that presents a risk:

1465 (i) to life;

1466 (ii) of substantial loss of real property; or

1467 (iii) of substantial damage to real property.

1468 (18) "Internal lot restriction" means a platted note, platted demarcation, or platted
1469 designation that:

1470 (a) runs with the land; and

1471 (b) (i) creates a restriction that is enclosed within the perimeter of a lot described on
1472 the plat; or

1473 (ii) designates a development condition that is enclosed within the perimeter of a lot
1474 described on the plat.

1475 (19) "Hookup fee" means a fee for the installation and inspection of any pipe, line,
1476 meter, or appurtenance to connect to a county water, sewer, storm water, power, or other utility
1477 system.

1478 (20) "Identical plans" means building plans submitted to a county that are substantially
1479 identical building plans that were previously submitted to and reviewed and approved by the
1480 county and describe a building that is:

1481 (a) located on land zoned the same as the land on which the building described in the
1482 previously approved plans is located; and

1483 (b) subject to the same geological and meteorological conditions and the same law as
1484 the building described in the previously approved plans.

1485 (21) "Impact fee" means a payment of money imposed under Title 11, Chapter [36]
1486 36a, Impact Fees Act.

1487 (22) "Improvement assurance" means a surety bond, letter of credit, cash, or other
1488 security:

1489 (a) to guaranty the proper completion of an improvement;

1490 (b) that is required as a condition precedent to:

1491 (i) recording a subdivision plat; or

1492 (ii) beginning development activity; and

1493 (c) that is offered to a land use authority to induce the land use authority, before actual
1494 construction of required improvements, to:

1495 (i) consent to the recording of a subdivision plat; or

1496 (ii) issue a permit for development activity.

1497 (23) "Improvement assurance warranty" means a promise that the materials and
1498 workmanship of improvements:

1499 (a) comport with standards that the county has officially adopted; and

1500 (b) will not fail in any material respect within a warranty period.

1501 (24) "Interstate pipeline company" means a person or entity engaged in natural gas
1502 transportation subject to the jurisdiction of the Federal Energy Regulatory Commission under
1503 the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

1504 (25) "Intrastate pipeline company" means a person or entity engaged in natural gas
1505 transportation that is not subject to the jurisdiction of the Federal Energy Regulatory
1506 Commission under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

1507 (26) "Land use application" means an application required by a county's land use
1508 ordinance.

1509 (27) "Land use authority" means a person, board, commission, agency, or other body
1510 designated by the local legislative body to act upon a land use application.

1511 (28) "Land use ordinance" means a planning, zoning, development, or subdivision
1512 ordinance of the county, but does not include the general plan.

1513 (29) "Land use permit" means a permit issued by a land use authority.

1514 (30) "Legislative body" means the county legislative body, or for a county that has
1515 adopted an alternative form of government, the body exercising legislative powers.

1516 (31) "Local district" means any entity under Title 17B, Limited Purpose Local
1517 Government Entities - Local Districts, and any other governmental or quasi-governmental
1518 entity that is not a county, municipality, school district, or the state.

1519 (32) "Lot line adjustment" means the relocation of the property boundary line in a
1520 subdivision between two adjoining lots with the consent of the owners of record.

1521 (33) "Moderate income housing" means housing occupied or reserved for occupancy
1522 by households with a gross household income equal to or less than 80% of the median gross
1523 income for households of the same size in the county in which the housing is located.

1524 (34) "Nominal fee" means a fee that reasonably reimburses a county only for time spent
1525 and expenses incurred in:

1526 (a) verifying that building plans are identical plans; and

1527 (b) reviewing and approving those minor aspects of identical plans that differ from the
1528 previously reviewed and approved building plans.

1529 (35) "Noncomplying structure" means a structure that:

1530 (a) legally existed before its current land use designation; and

1531 (b) because of one or more subsequent land use ordinance changes, does not conform
1532 to the setback, height restrictions, or other regulations, excluding those regulations that govern
1533 the use of land.

1534 (36) "Nonconforming use" means a use of land that:

1535 (a) legally existed before its current land use designation;

1536 (b) has been maintained continuously since the time the land use ordinance regulation
1537 governing the land changed; and

1538 (c) because of one or more subsequent land use ordinance changes, does not conform
1539 to the regulations that now govern the use of the land.

1540 (37) "Official map" means a map drawn by county authorities and recorded in the
1541 county recorder's office that:

1542 (a) shows actual and proposed rights-of-way, centerline alignments, and setbacks for
1543 highways and other transportation facilities;

1544 (b) provides a basis for restricting development in designated rights-of-way or between
1545 designated setbacks to allow the government authorities time to purchase or otherwise reserve
1546 the land; and

1547 (c) has been adopted as an element of the county's general plan.

1548 (38) "Person" means an individual, corporation, partnership, organization, association,
1549 trust, governmental agency, or any other legal entity.

1550 (39) "Plan for moderate income housing" means a written document adopted by a
1551 county legislative body that includes:

1552 (a) an estimate of the existing supply of moderate income housing located within the
1553 county;

1554 (b) an estimate of the need for moderate income housing in the county for the next five
1555 years as revised biennially;

1556 (c) a survey of total residential land use;

1557 (d) an evaluation of how existing land uses and zones affect opportunities for moderate
1558 income housing; and

1559 (e) a description of the county's program to encourage an adequate supply of moderate
1560 income housing.

1561 (40) "Plat" means a map or other graphical representation of lands being laid out and
1562 prepared in accordance with Section 17-27a-603, 17-23-17, or 57-8-13.

1563 (41) "Potential geologic hazard area" means an area that:

1564 (a) is designated by a Utah Geological Survey map, county geologist map, or other
1565 relevant map or report as needing further study to determine the area's potential for geologic
1566 hazard; or

1567 (b) has not been studied by the Utah Geological Survey or a county geologist but
1568 presents the potential of geologic hazard because the area has characteristics similar to those of
1569 a designated geologic hazard area.

1570 (42) "Public agency" means:

1571 (a) the federal government;

1572 (b) the state;

1573 (c) a county, municipality, school district, local district, special service district, or other
1574 political subdivision of the state; or

1575 (d) a charter school.

1576 (43) "Public hearing" means a hearing at which members of the public are provided a
1577 reasonable opportunity to comment on the subject of the hearing.

1578 (44) "Public meeting" means a meeting that is required to be open to the public under
1579 Title 52, Chapter 4, Open and Public Meetings Act.

1580 (45) "Receiving zone" means an unincorporated area of a county that the county's land
1581 use authority designates as an area in which an owner of land may receive transferrable
1582 development rights.

1583 (46) "Record of survey map" means a map of a survey of land prepared in accordance
1584 with Section 17-23-17.

1585 (47) "Residential facility for elderly persons" means a single-family or multiple-family
1586 dwelling unit that meets the requirements of Section 17-27a-515, but does not include a health
1587 care facility as defined by Section 26-21-2.

1588 (48) "Residential facility for persons with a disability" means a residence:

1589 (a) in which more than one person with a disability resides; and

1590 (b) (i) is licensed or certified by the Department of Human Services under Title 62A,
1591 Chapter 2, Licensure of Programs and Facilities; or

1592 (ii) is licensed or certified by the Department of Health under Title 26, Chapter 21,
1593 Health Care Facility Licensing and Inspection Act.

1594 (49) "Sanitary sewer authority" means the department, agency, or public entity with
1595 responsibility to review and approve the feasibility of sanitary sewer services or onsite
1596 wastewater systems.

1597 (50) "Sending zone" means an unincorporated area of a county that the county's land
1598 use authority designates as an area from which an owner of land may transfer transferrable
1599 development rights to an owner of land in a receiving zone.

1600 (51) "Specified public agency" means:

1601 (a) the state;

1602 (b) a school district; or

1603 (c) a charter school.

1604 (52) "Specified public utility" means an electrical corporation, gas corporation, or
1605 telephone corporation, as those terms are defined in Section 54-2-1.

1606 (53) "State" includes any department, division, or agency of the state.

1607 (54) "Street" means a public right-of-way, including a highway, avenue, boulevard,
1608 parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement, or other

1609 way.

1610 (55) (a) "Subdivision" means any land that is divided, resubdivided or proposed to be
1611 divided into two or more lots, parcels, sites, units, plots, or other division of land for the
1612 purpose, whether immediate or future, for offer, sale, lease, or development either on the
1613 installment plan or upon any and all other plans, terms, and conditions.

1614 (b) "Subdivision" includes:

1615 (i) the division or development of land whether by deed, metes and bounds description,
1616 devise and testacy, map, plat, or other recorded instrument; and

1617 (ii) except as provided in Subsection (55)(c), divisions of land for residential and
1618 nonresidential uses, including land used or to be used for commercial, agricultural, and
1619 industrial purposes.

1620 (c) "Subdivision" does not include:

1621 (i) a bona fide division or partition of agricultural land for agricultural purposes;

1622 (ii) a recorded agreement between owners of adjoining properties adjusting their
1623 mutual boundary if:

1624 (A) no new lot is created; and

1625 (B) the adjustment does not violate applicable land use ordinances;

1626 (iii) a recorded document, executed by the owner of record:

1627 (A) revising the legal description of more than one contiguous unsubdivided parcel of
1628 property into one legal description encompassing all such parcels of property; or

1629 (B) joining a subdivided parcel of property to another parcel of property that has not
1630 been subdivided, if the joinder does not violate applicable land use ordinances;

1631 (iv) a bona fide division or partition of land in a county other than a first class county
1632 for the purpose of siting, on one or more of the resulting separate parcels:

1633 (A) an electrical transmission line or a substation;

1634 (B) a natural gas pipeline or a regulation station; or

1635 (C) an unmanned telecommunications, microwave, fiber optic, electrical, or other
1636 utility service regeneration, transformation, retransmission, or amplification facility;

1637 (v) a recorded agreement between owners of adjoining subdivided properties adjusting
1638 their mutual boundary if:

1639 (A) no new dwelling lot or housing unit will result from the adjustment; and

1640 (B) the adjustment will not violate any applicable land use ordinance; or
1641 (vi) a bona fide division or partition of land by deed or other instrument where the land
1642 use authority expressly approves in writing the division in anticipation of further land use
1643 approvals on the parcel or parcels.

1644 (d) The joining of a subdivided parcel of property to another parcel of property that has
1645 not been subdivided does not constitute a subdivision under this Subsection (55) as to the
1646 unsubdivided parcel of property or subject the unsubdivided parcel to the county's subdivision
1647 ordinance.

1648 (56) "Township" means a contiguous, geographically defined portion of the
1649 unincorporated area of a county, established under this part or reconstituted or reinstated under
1650 Section 17-27a-306, with planning and zoning functions as exercised through the township
1651 planning commission, as provided in this chapter, but with no legal or political identity
1652 separate from the county and no taxing authority, except that "township" means a former
1653 township under Laws of Utah 1996, Chapter 308, where the context so indicates.

1654 (57) "Transferrable development right" means the entitlement to develop land within a
1655 sending zone that would vest according to the county's existing land use ordinances on the date
1656 that a completed land use application is filed seeking the approval of development activity on
1657 the land.

1658 (58) "Unincorporated" means the area outside of the incorporated area of a
1659 municipality.

1660 (59) "Water interest" means any right to the beneficial use of water, including:

1661 (a) each of the rights listed in Section 73-1-11; and

1662 (b) an ownership interest in the right to the beneficial use of water represented by:

1663 (i) a contract; or

1664 (ii) a share in a water company, as defined in Section 73-3-3.5.

1665 (60) "Zoning map" means a map, adopted as part of a land use ordinance, that depicts
1666 land use zones, overlays, or districts.

1667 Section 35. Section **17-27a-305** is amended to read:

1668 **17-27a-305. Other entities required to conform to county's land use ordinances --**
1669 **Exceptions -- School districts and charter schools -- Submission of development plan and**
1670 **schedule.**

1671 (1) (a) Each county, municipality, school district, charter school, local district, special
1672 service district, and political subdivision of the state shall conform to any applicable land use
1673 ordinance of any county when installing, constructing, operating, or otherwise using any area,
1674 land, or building situated within the unincorporated portion of the county.

1675 (b) In addition to any other remedies provided by law, when a county's land use
1676 ordinance is violated or about to be violated by another political subdivision, that county may
1677 institute an injunction, mandamus, abatement, or other appropriate action or proceeding to
1678 prevent, enjoin, abate, or remove the improper installation, improvement, or use.

1679 (2) (a) Notwithstanding Subsection (1), a public transit district under Title 17B,
1680 Chapter 2a, Part 8, Public Transit District Act, is not required to conform to any applicable
1681 land use ordinance of a county of the first class when constructing a:

1682 (i) rail fixed guideway public transit facility that extends across two or more counties;

1683 or

1684 (ii) structure that serves a rail fixed guideway public transit facility that extends across
1685 two or more counties, including:

1686 (A) platforms;

1687 (B) passenger terminals or stations;

1688 (C) park and ride facilities;

1689 (D) maintenance facilities;

1690 (E) all related utility lines, roadways, and other facilities serving the public transit

1691 facility; or

1692 (F) other auxiliary facilities.

1693 (b) The exemption from county land use ordinances under this Subsection (2) does not
1694 extend to any property not necessary for the construction or operation of a rail fixed guideway
1695 public transit facility.

1696 (c) A county of the first class may not, through an agreement under Title 11, Chapter
1697 13, Interlocal Cooperation Act, require a public transit district under Title 17B, Chapter 2a,
1698 Part 8, Public Transit District Act, to obtain approval from the county prior to constructing a:

1699 (i) rail fixed guideway public transit facility that extends across two or more counties;

1700 or

1701 (ii) structure that serves a rail fixed guideway public transit facility that extends across

1702 two or more counties, including:

1703 (A) platforms;

1704 (B) passenger terminals or stations;

1705 (C) park and ride facilities;

1706 (D) maintenance facilities;

1707 (E) all related utility lines, roadways, and other facilities serving the public transit

1708 facility; or

1709 (F) other auxiliary facilities.

1710 (3) (a) Except as provided in Subsection (4), a school district or charter school is

1711 subject to a county's land use ordinances.

1712 (b) (i) Notwithstanding Subsection (4), a county may:

1713 (A) subject a charter school to standards within each zone pertaining to setback, height,

1714 bulk and massing regulations, off-site parking, curb cut, traffic circulation, and construction

1715 staging; and

1716 (B) impose regulations upon the location of a project that are necessary to avoid

1717 unreasonable risks to health or safety, as provided in Subsection (4)(f).

1718 (ii) The standards to which a county may subject a charter school under Subsection

1719 (3)(b)(i) shall be objective standards only and may not be subjective.

1720 (iii) Except as provided in Subsection (8)(d), the only basis upon which a county may

1721 deny or withhold approval of a charter school's land use application is the charter school's

1722 failure to comply with a standard imposed under Subsection (3)(b)(i).

1723 (iv) Nothing in Subsection (3)(b)(iii) may be construed to relieve a charter school of an

1724 obligation to comply with a requirement of an applicable building or safety code to which it is

1725 otherwise obligated to comply.

1726 (4) A county may not:

1727 (a) impose requirements for landscaping, fencing, aesthetic considerations,

1728 construction methods or materials, additional building inspections, county building codes,

1729 building use for educational purposes, or the placement or use of temporary classroom facilities

1730 on school property;

1731 (b) except as otherwise provided in this section, require a school district or charter

1732 school to participate in the cost of any roadway or sidewalk, or a study on the impact of a

- 1733 school on a roadway or sidewalk, that is not reasonably necessary for the safety of school
1734 children and not located on or contiguous to school property, unless the roadway or sidewalk is
1735 required to connect an otherwise isolated school site to an existing roadway;
- 1736 (c) require a district or charter school to pay fees not authorized by this section;
- 1737 (d) provide for inspection of school construction or assess a fee or other charges for
1738 inspection, unless the school district or charter school is unable to provide for inspection by an
1739 inspector, other than the project architect or contractor, who is qualified under criteria
1740 established by the state superintendent;
- 1741 (e) require a school district or charter school to pay any impact fee for an improvement
1742 project unless the impact fee is imposed as provided in Title 11, Chapter [36] 36a, Impact Fees
1743 Act;
- 1744 (f) impose regulations upon the location of an educational facility except as necessary
1745 to avoid unreasonable risks to health or safety; or
- 1746 (g) for a land use or a structure owned or operated by a school district or charter school
1747 that is not an educational facility but is used in support of providing instruction to pupils,
1748 impose a regulation that:
- 1749 (i) is not imposed on a similar land use or structure in the zone in which the land use or
1750 structure is approved; or
- 1751 (ii) uses the tax exempt status of the school district or charter school as criteria for
1752 prohibiting or regulating the land use or location of the structure.
- 1753 (5) Subject to Section 53A-20-108, a school district or charter school shall coordinate
1754 the siting of a new school with the county in which the school is to be located, to:
- 1755 (a) avoid or mitigate existing and potential traffic hazards, including consideration of
1756 the impacts between the new school and future highways; and
- 1757 (b) maximize school, student, and site safety.
- 1758 (6) Notwithstanding Subsection (4)(d), a county may, at its discretion:
- 1759 (a) provide a walk-through of school construction at no cost and at a time convenient to
1760 the district or charter school; and
- 1761 (b) provide recommendations based upon the walk-through.
- 1762 (7) (a) Notwithstanding Subsection (4)(d), a school district or charter school shall use:
- 1763 (i) a county building inspector;

- 1764 (ii) (A) for a school district, a school district building inspector from that school
- 1765 district; or
- 1766 (B) for a charter school, a school district building inspector from the school district in
- 1767 which the charter school is located; or
- 1768 (iii) an independent, certified building inspector who is:
- 1769 (A) not an employee of the contractor;
- 1770 (B) approved by:
- 1771 (I) a county building inspector; or
- 1772 (II) (Aa) for a school district, a school district building inspector from that school
- 1773 district; or
- 1774 (Bb) for a charter school, a school district building inspector from the school district in
- 1775 which the charter school is located; and
- 1776 (C) licensed to perform the inspection that the inspector is requested to perform.
- 1777 (b) The approval under Subsection (7)(a)(iii)(B) may not be unreasonably withheld.
- 1778 (c) If a school district or charter school uses a school district or independent building
- 1779 inspector under Subsection (7)(a)(ii) or (iii), the school district or charter school shall submit to
- 1780 the state superintendent of public instruction and county building official, on a monthly basis
- 1781 during construction of the school building, a copy of each inspection certificate regarding the
- 1782 school building.
- 1783 (8) (a) A charter school shall be considered a permitted use in all zoning districts
- 1784 within a county.
- 1785 (b) Each land use application for any approval required for a charter school, including
- 1786 an application for a building permit, shall be processed on a first priority basis.
- 1787 (c) Parking requirements for a charter school may not exceed the minimum parking
- 1788 requirements for schools or other institutional public uses throughout the county.
- 1789 (d) If a county has designated zones for a sexually oriented business, or a business
- 1790 which sells alcohol, a charter school may be prohibited from a location which would otherwise
- 1791 defeat the purpose for the zone unless the charter school provides a waiver.
- 1792 (e) (i) A school district or a charter school may seek a certificate authorizing permanent
- 1793 occupancy of a school building from:
- 1794 (A) the state superintendent of public instruction, as provided in Subsection

1795 53A-20-104(3), if the school district or charter school used an independent building inspector
1796 for inspection of the school building; or

1797 (B) a county official with authority to issue the certificate, if the school district or
1798 charter school used a county building inspector for inspection of the school building.

1799 (ii) A school district may issue its own certificate authorizing permanent occupancy of
1800 a school building if it used its own building inspector for inspection of the school building,
1801 subject to the notification requirement of Subsection 53A-20-104(3)(a)(ii).

1802 (iii) A charter school may seek a certificate authorizing permanent occupancy of a
1803 school building from a school district official with authority to issue the certificate, if the
1804 charter school used a school district building inspector for inspection of the school building.

1805 (iv) A certificate authorizing permanent occupancy issued by the state superintendent
1806 of public instruction under Subsection 53A-20-104(3) or a school district official with authority
1807 to issue the certificate shall be considered to satisfy any county requirement for an inspection or
1808 a certificate of occupancy.

1809 (9) (a) A specified public agency intending to develop its land shall submit to the land
1810 use authority a development plan and schedule:

1811 (i) as early as practicable in the development process, but no later than the
1812 commencement of construction; and

1813 (ii) with sufficient detail to enable the land use authority to assess:

1814 (A) the specified public agency's compliance with applicable land use ordinances;

1815 (B) the demand for public facilities listed in Subsections [~~11-36-102(14)~~]

1816 11-36a-102(15)(a), (b), (c), (d), (e), and (g) caused by the development;

1817 (C) the amount of any applicable fee listed in Subsection 17-27a-509(5);

1818 (D) any credit against an impact fee; and

1819 (E) the potential for waiving an impact fee.

1820 (b) The land use authority shall respond to a specified public agency's submission
1821 under Subsection (9)(a) with reasonable promptness in order to allow the specified public
1822 agency to consider information the municipality provides under Subsection (9)(a)(ii) in the
1823 process of preparing the budget for the development.

1824 (10) Nothing in this section may be construed to modify or supersede Section
1825 17-27a-304.

1826 Section 36. Section **17-27a-509** is amended to read:

1827 **17-27a-509. Limit on fees -- Requirement to itemize fees.**

1828 (1) A county may not impose or collect a fee for reviewing or approving the plans for a
1829 commercial or residential building that exceeds the lesser of:

1830 (a) the actual cost of performing the plan review; and

1831 (b) 65% of the amount the county charges for a building permit fee for that building.

1832 (2) Subject to Subsection (1), a county may impose and collect only a nominal fee for
1833 reviewing and approving identical plans.

1834 (3) A county may not impose or collect a hookup fee that exceeds the reasonable cost
1835 of installing and inspecting the pipe, line, meter, or appurtenance to connect to the county
1836 water, sewer, storm water, power, or other utility system.

1837 (4) A county may not impose or collect:

1838 (a) a land use application fee that exceeds the reasonable cost of processing the
1839 application; or

1840 (b) an inspection or review fee that exceeds the reasonable cost of performing the
1841 inspection or review.

1842 (5) Upon the request of an applicant or an owner of residential property, the county
1843 shall itemize each fee that the county imposes on the applicant or on the residential property,
1844 respectively, showing the basis of each calculation for each fee imposed.

1845 (6) A county may not impose on or collect from a public agency any fee associated
1846 with the public agency's development of its land other than:

1847 (a) subject to Subsection (4), a fee for a development service that the public agency
1848 does not itself provide;

1849 (b) subject to Subsection (3), a hookup fee; and

1850 (c) an impact fee for a public facility listed in Subsection [~~11-36-102(14)~~]

1851 11-36a-102(15)(a), (b), (c), (d), (e), or (g), subject to any applicable credit under Subsection
1852 [~~11-36-202(2)(b)~~] 11-36a-402(2).

1853 Section 37. Section **17B-1-111** is amended to read:

1854 **17B-1-111. Impact fee resolution -- Notice and hearing requirements.**

1855 (1) (a) If a local district wishes to impose impact fees, the board of trustees of the local
1856 district shall:

1857 (i) prepare a proposed impact fee resolution that meets the requirements of Title 11,
1858 Chapter [36] 36a, Impact Fees Act;

1859 (ii) make a copy of the impact fee resolution available to the public at least 14 days
1860 before the date of the public hearing and hold a public hearing on the proposed impact fee
1861 resolution; and

1862 (iii) provide reasonable notice of the public hearing at least 14 days before the date of
1863 the hearing.

1864 (b) After the public hearing, the board of trustees may:

1865 (i) adopt the impact fee resolution as proposed;

1866 (ii) amend the impact fee resolution and adopt or reject it as amended; or

1867 (iii) reject the resolution.

1868 (2) A local district meets the requirements of reasonable notice required by this section
1869 if it:

1870 (a) posts notice of the hearing or meeting in at least three public places within the
1871 jurisdiction and publishes notice of the hearing or meeting in a newspaper of general
1872 circulation in the jurisdiction, if one is available; or

1873 (b) gives actual notice of the hearing or meeting.

1874 (3) The local district's board of trustees may enact a resolution establishing stricter
1875 notice requirements than those required by this section.

1876 (4) (a) Proof that one of the two forms of notice required by this section was given is
1877 prima facie evidence that notice was properly given.

1878 (b) If notice given under authority of this section is not challenged within 30 days from
1879 the date of the meeting for which the notice was given, the notice is considered adequate and
1880 proper.

1881 Section 38. Section **17B-1-118** is amended to read:

1882 **17B-1-118. Local district hookup fee -- Preliminary design or site plan from a**
1883 **specified public agency.**

1884 (1) As used in this section:

1885 (a) "Hookup fee" means a fee for the installation and inspection of any pipe, line,
1886 meter, or appurtenance to connect to a local district water, sewer, storm water, power, or other
1887 utility system.

1888 (b) "Impact fee" has the same meaning as defined in Section [~~11-36-102~~] 11-36a-102.

1889 (c) "Specified public agency" means:

1890 (i) the state;

1891 (ii) a school district; or

1892 (iii) a charter school.

1893 (d) "State" includes any department, division, or agency of the state.

1894 (2) A local district may not impose or collect a hookup fee that exceeds the reasonable

1895 cost of installing and inspecting the pipe, line, meter, or appurtenance to connect to the local

1896 district water, sewer, storm water, power, or other utility system.

1897 (3) (a) A specified public agency intending to develop its land shall submit a

1898 development plan and schedule to each local district from which the specified public agency

1899 anticipates the development will receive service:

1900 (i) as early as practicable in the development process, but no later than the

1901 commencement of construction; and

1902 (ii) with sufficient detail to enable the local district to assess:

1903 (A) the demand for public facilities listed in Subsections [~~11-36-102(14)~~]

1904 11-36a-102(15)(a), (b), (c), (d), (e), and (g) caused by the development;

1905 (B) the amount of any hookup fees, or impact fees or substantive equivalent;

1906 (C) any credit against an impact fee; and

1907 (D) the potential for waiving an impact fee.

1908 (b) The local district shall respond to a specified public agency's submission under

1909 Subsection (3)(a) with reasonable promptness in order to allow the specified public agency to

1910 consider information the local district provides under Subsection (3)(a)(ii) in the process of

1911 preparing the budget for the development.

1912 (4) Upon a specified public agency's submission of a development plan and schedule as

1913 required in Subsection (3) that complies with the requirements of that subsection, the specified

1914 public agency vests in the local district's hookup fees and impact fees in effect on the date of

1915 submission.

1916 Section 39. Section **17B-1-643** is amended to read:

1917 **17B-1-643. Imposing or increasing a fee for service provided by local district.**

1918 (1) (a) Before imposing a new fee or increasing an existing fee for a service provided

1919 by a local district, each local district board of trustees shall first hold a public hearing at which
1920 any interested person may speak for or against the proposal to impose a fee or to increase an
1921 existing fee.

1922 (b) Each public hearing under Subsection (1)(a) shall be held in the evening beginning
1923 no earlier than 6 p.m.

1924 (c) A public hearing required under this Subsection (1) may be combined with a public
1925 hearing on a tentative budget required under Section 17B-1-610.

1926 (d) Except to the extent that this section imposes more stringent notice requirements,
1927 the local district board shall comply with Title 52, Chapter 4, Open and Public Meetings Act,
1928 in holding the public hearing under Subsection (1)(a).

1929 (2) (a) Each local district board shall give notice of a hearing under Subsection (1) as
1930 provided in Subsection (2)(b)(i) or (ii).

1931 (b) (i) (A) The notice required under Subsection (2)(a) shall be published:

1932 (I) in a newspaper or combination of newspapers of general circulation in the local
1933 district, if there is a newspaper or combination of newspapers of general circulation in the local
1934 district; or

1935 (II) if there is no newspaper or combination of newspapers of general circulation in the
1936 local district, the local district board shall post at least one notice per 1,000 population within
1937 the local district, at places within the local district that are most likely to provide actual notice
1938 to residents within the local district.

1939 (B) The notice described in Subsection (2)(b)(i)(A)(I):

1940 (I) shall be no less than 1/4 page in size and the type used shall be no smaller than 18
1941 point, and surrounded by a 1/4-inch border;

1942 (II) may not be placed in that portion of the newspaper where legal notices and
1943 classified advertisements appear;

1944 (III) whenever possible, shall appear in a newspaper that is published at least one day
1945 per week;

1946 (IV) shall be in a newspaper or combination of newspapers of general interest and
1947 readership in the local district, and not of limited subject matter; and

1948 (V) shall be run once each week for the two weeks preceding the hearing.

1949 (ii) The notice described in Subsection (2)(b)(i)(A) shall state that the local district

1950 board intends to impose or increase a fee for a service provided by the local district and will
1951 hold a public hearing on a certain day, time, and place fixed in the notice, which shall be not
1952 less than seven days after the day the first notice is published, for the purpose of hearing
1953 comments regarding the proposed imposition or increase of a fee and to explain the reasons for
1954 the proposed imposition or increase.

1955 (c) (i) In lieu of providing notice under Subsection (2)(b), the local district board of
1956 trustees may give the notice required under Subsection (2)(a) by mailing the notice to those
1957 within the district who:

1958 (A) will be charged the fee for a district service, if the fee is being imposed for the first
1959 time; or

1960 (B) are being charged a fee, if the fee is proposed to be increased.

1961 (ii) Each notice under Subsection (2)(c)(i) shall comply with Subsection (2)(b)(ii).

1962 (iii) A notice under Subsection (2)(c)(i) may accompany a district bill for an existing
1963 fee.

1964 (d) If the hearing required under this section is combined with the public hearing
1965 required under Section 17B-1-610, the notice requirement under this Subsection (2) is satisfied
1966 if a notice that meets the requirements of Subsection (2)(b)(ii) is combined with the notice
1967 required under Section 17B-1-609.

1968 (e) Proof that notice was given as provided in Subsection (2)(b) or (c) is prima facie
1969 evidence that notice was properly given.

1970 (f) If no challenge is made to the notice given of a hearing required by Subsection (1)
1971 within 30 days after the date of the hearing, the notice is considered adequate and proper.

1972 (3) After holding a public hearing under Subsection (1), a local district board may:

1973 (a) impose the new fee or increase the existing fee as proposed;

1974 (b) adjust the amount of the proposed new fee or the increase of the existing fee and
1975 then impose the new fee or increase the existing fee as adjusted; or

1976 (c) decline to impose the new fee or increase the existing fee.

1977 (4) This section applies to each new fee imposed and each increase of an existing fee
1978 that occurs on or after July 1, 1998.

1979 (5) (a) This section does not apply to an impact fee.

1980 (b) The imposition or increase of an impact fee is governed by Title 11, Chapter [36]

1981 36a, Impact Fees Act.

1982 Section 40. Section **17B-2a-1004** is amended to read:

1983 **17B-2a-1004. Additional water conservancy district powers -- Limitations on**
1984 **water conservancy districts.**

1985 (1) In addition to the powers conferred on a water conservancy district under Section
1986 17B-1-103, a water conservancy district may:

1987 (a) issue bonds as provided in and subject to Chapter 1, Part 11, Local District Bonds,
1988 to carry out the purposes of the district;

1989 (b) acquire or lease any real or personal property or acquire any interest in real or
1990 personal property, as provided in Subsections 17B-1-103(2)(a) and (b), whether inside or
1991 outside the district;

1992 (c) acquire or construct works, facilities, or improvements, as provided in Subsection
1993 17B-1-103(2)(d), whether inside or outside the district;

1994 (d) acquire water, works, water rights, and sources of water necessary or convenient to
1995 the full exercise of the district's powers, whether the water, works, water rights, or sources of
1996 water are inside or outside the district, and encumber, sell, lease, transfer an interest in, or
1997 dispose of water, works, water rights, and sources of water;

1998 (e) fix rates and terms for the sale, lease, or other disposal of water;

1999 (f) acquire rights to the use of water from works constructed or operated by the district
2000 or constructed or operated pursuant to a contract to which the district is a party, and sell rights
2001 to the use of water from those works;

2002 (g) levy assessments against lands within the district to which water is allotted on the
2003 basis of:

2004 (i) a uniform district-wide value per acre foot of irrigation water; or

2005 (ii) a uniform unit-wide value per acre foot of irrigation water, if the board divides the
2006 district into units and fixes a different value per acre foot of water in the respective units;

2007 (h) fix rates for the sale, lease, or other disposal of water, other than irrigation water, at
2008 rates that are equitable, though not necessarily equal or uniform, for like classes of service;

2009 (i) adopt and modify plans and specifications for the works for which the district was
2010 organized;

2011 (j) investigate and promote water conservation and development;

- 2012 (k) appropriate and otherwise acquire water and water rights inside or outside the state;
- 2013 (l) develop, store, treat, and transport water;
- 2014 (m) acquire stock in canal companies, water companies, and water users associations;
- 2015 (n) acquire, construct, operate, or maintain works for the irrigation of land;
- 2016 (o) subject to Subsection (2), sell water and water services to individual customers and
- 2017 charge sufficient rates for the water and water services supplied;
- 2018 (p) own property for district purposes within the boundaries of a municipality; and
- 2019 (q) coordinate water resource planning among public entities.
- 2020 (2) (a) A water conservancy district and another political subdivision of the state may
- 2021 contract with each other, and a water conservancy district may contract with one or more public
- 2022 entities and private persons, for:
 - 2023 (i) the joint operation or use of works owned by any party to the contract; or
 - 2024 (ii) the sale, purchase, lease, exchange, or loan of water, water rights, works, or related
 - 2025 services.
- 2026 (b) An agreement under Subsection (2)(a) may provide for the joint use of works
- 2027 owned by one of the contracting parties if the agreement provides for reasonable compensation.
- 2028 (c) A statutory requirement that a district supply water to its own residents on a priority
- 2029 basis does not apply to a contract under Subsection (2)(a).
- 2030 (d) An agreement under Subsection (2)(a) may include terms that the parties determine,
- 2031 including:
 - 2032 (i) a term of years specified by the contract;
 - 2033 (ii) a requirement that the purchasing party make specified payments, without regard to
 - 2034 actual taking or use;
 - 2035 (iii) a requirement that the purchasing party pay user charges, charges for the
 - 2036 availability of water or water facilities, or other charges for capital costs, debt service,
 - 2037 operating and maintenance costs, and the maintenance of reasonable reserves, whether or not
 - 2038 the related water, water rights, or facilities are acquired, completed, operable, or operating, and
 - 2039 notwithstanding the suspension, interruption, interference, reduction, or curtailment of water or
 - 2040 services for any reason;
 - 2041 (iv) provisions for one or more parties to acquire an undivided ownership interest in, or
 - 2042 a contractual right to the capacity, output, or services of, joint water facilities, and establishing:

2043 (A) the methods for financing the costs of acquisition, construction, and operation of
2044 the joint facilities;

2045 (B) the method for allocating the costs of acquisition, construction, and operation of
2046 the facilities among the parties consistent with their respective interests in or rights to the
2047 facilities;

2048 (C) a management committee comprised of representatives of the parties, which may
2049 be responsible for the acquisition, construction, and operation of the facilities as the parties
2050 determine; and

2051 (D) the remedies upon a default by any party in the performance of its obligations
2052 under the contract, which may include a provision obligating or enabling the other parties to
2053 succeed to all or a portion of the ownership interest or contractual rights and obligations of the
2054 defaulting party; and

2055 (v) provisions that a purchasing party make payments from:

2056 (A) general or other funds of the purchasing party;

2057 (B) the proceeds of assessments levied under this part;

2058 (C) the proceeds of impact fees imposed by any party under Title 11, Chapter [36] 36a,
2059 Impact Fees Act;

2060 (D) revenues from the operation of the water system of a party receiving water or
2061 services under the contract;

2062 (E) proceeds of any revenue-sharing arrangement between the parties, including
2063 amounts payable as a percentage of revenues or net revenues of the water system of a party
2064 receiving water or services under the contract; and

2065 (F) any combination of the sources of payment listed in Subsections (2)(d)(v)(A)
2066 through (E).

2067 (3) (a) A water conservancy district may enter into a contract with another state or a
2068 political subdivision of another state for the joint construction, operation, or ownership of a
2069 water facility.

2070 (b) Water from any source in the state may be appropriated and used for beneficial
2071 purposes within another state only as provided in Title 73, Chapter 3a, Water Exports.

2072 (4) (a) Except as provided in Subsection (4)(b), a water conservancy district may not
2073 sell water to a customer located within a municipality for domestic or culinary use without the

2074 consent of the municipality.

2075 (b) Subsection (4)(a) does not apply if:

2076 (i) the property of a customer to whom a water conservancy district sells water was, at
2077 the time the district began selling water to the customer, within an unincorporated area of a
2078 county; and

2079 (ii) after the district begins selling water to the customer, the property becomes part of
2080 a municipality through municipal incorporation or annexation.

2081 (5) A water conservancy district may not carry or transport water in transmountain
2082 diversion if title to the water was acquired by a municipality by eminent domain.

2083 (6) A water conservancy district may not be required to obtain a franchise for the
2084 acquisition, ownership, operation, or maintenance of property.

2085 (7) A water conservancy district may not acquire by eminent domain title to or
2086 beneficial use of vested water rights for transmountain diversion.

2087 **Section 41. Repealer.**

2088 This bill repeals:

2089 **Section 11-36-101, Title.**

2090 **Section 11-36-102 (Superseded 05/11/11), Definitions.**

2091 **Section 11-36-102 (Effective 05/11/11), Definitions.**

2092 **Section 11-36-201, Impact fees -- Analysis -- Capital facilities plan -- Notice of plan**
2093 **-- Summary -- Exemptions.**

2094 **Section 11-36-202, Impact fees -- Enactment -- Required and allowed provisions --**
2095 **Limitations -- Effective date.**

2096 **Section 11-36-301, Impact fees -- Accounting -- Report.**

2097 **Section 11-36-302, Impact fees -- Expenditure.**

2098 **Section 11-36-303, Refunds.**

2099 **Section 11-36-401, Impact fees -- Challenges -- Appeals.**

2100 **Section 11-36-401.5, Mediation.**

2101 **Section 11-36-402, Challenging an impact fee by arbitration -- Procedure --**
2102 **Appeal -- Costs.**

2103 **Section 11-36-501, Private entity assessment of impact fees -- Notice and hearing --**
2104 **Audit.**

2105 Section 42. **Effective date.**

2106 This bill takes effect on May 11, 2011.

Legislative Review Note
as of 1-31-11 11:45 AM

Office of Legislative Research and General Counsel