



Office of
LEGISLATIVE AUDITOR GENERAL
State of Utah

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Limited Survey of Local Government Compliance with Impact Fees Act

Based on our limited survey work, we developed concerns about the manner in which political subdivisions:

- Justify the determination of impact fees and exactions
- Account for impact fee revenues and expenditures
- Charge other fees associated with development and provide appropriate administrative remedies for dispute of fees

Despite these concerns, we recommend the Audit Subcommittee remove the Performance Audit of Local Government Compliance with Impact Fees Act from the prioritized list of audits. Due to the passage of Senate Bills 267 and 268 during the 2006 Legislative General Session, many of our concerns were addressed. Both of the audit requestors concur with this action.

This report is a more detailed discussion of how S.B. 267 and S.B. 268 will address these identified concerns in the future with regards to political subdivisions' use of impact fees.

Due to the passage of recent legislation, we request the Audit Subcommittee consider removing the Impact Fees audit from the prioritized list.

The Determination of Impact Fees and Exactions May Not be Adequately Justified

Political subdivisions differ widely in the impact fee amounts they are charging.

Because political subdivisions differ widely in the exactions and impact fee amounts they are charging, we are concerned with the justifications being used to support the amounts charged. It is also unclear whether impact fees and exactions charged represent a proportional share of new development's actual impact. Because of the manner in which sampled political subdivisions are monitoring and reporting impact fee activity, it is difficult to determine if proportionality is being adequately addressed. Determining proportionality is difficult because political subdivisions are considering the entire municipality as a service area. The Impact Fees Act suggests that political subdivisions need to determine a proportionate and fair amount of equity which new developments are required to pay into a system to offset the impact of the new development (*Utah Code* 11-36-201(5)(b)).

S.B. 267 will require heightened accountability of political subdivisions in the setting of impact fees.

S.B. 267 will require heightened accountability of political subdivisions in the setting of impact fees, requiring the assumptions which underlie the setting of the fees to be realistic and disclosed in the impact fee analysis. This disclosure includes the political subdivision's method of determining proportionality. It also requires that impact fee funds be identified by the year in which they were received, the project from which the funds were collected, the capital projects for which the funds are budgeted, and the projected schedules for expenditure of funds. Proportionality would be more easily addressed with clearer tracking requirements for the amounts collected and the portion of capital projects the monies were spent on.

In addition, S.B. 268 allows the Property Rights Ombudsman to issue an opinion on whether the fees are justified. The Property Rights Ombudsman can also issue an opinion on the use of exactions, as well as the proportionality of fees. Therefore, we believe an audit of these areas may not be the most productive use of our office's resources at this time.

Accounting of Impact Fees May be Inadequate

The political subdivisions we initially visited are primarily showing aggregate revenues and expenditures from separate impact fee

While we question if accounting detail is in compliance with the current Impact Fees Act, S.B.267 requires heightened accountability.

accounts. We are concerned that this is not the intent of *Utah Code* 11-36-301, which outlines the accounting of impact fee revenues and expenditures. It appears that some political subdivisions may be using their Comprehensive Annual Financial Reports (CAFRS) to justify compliance with this section of the Impact Fees Act, and we question if the detail found in these reports is in compliance with the current act. S.B. 267 will demand more specific accounting requirements for political subdivisions, including tracking revenues by development, the year in which they were received, proposed expenditures for capital projects, and expected expenditure date.

Other Fees Associated with Development Presented Some Concerns

Finally, we were concerned with other fees associated with development approval that are not considered impact fees. We were concerned if all permit and application fees are reasonable, as stipulated in the Impact Fees Act. We were also concerned with the adequacy of controls over the practice of incentive or performance zoning. Most political subdivisions use incentive zoning to preserve open space or to protect sensitive lands (e.g., wetlands) by allowing developers to increase their density through clustering of homes. Our survey found one political subdivision that appears to use incentive zoning to require some developers to make financial contributions to the school district prior to approval of their development application.

Before the 2006 Legislative General Session, parties or individuals affected by political subdivisions general land use authority could only appeal actions through the political subdivision itself or take legal action against the political subdivision. S.B. 268 now allows a potentially aggrieved person to request a written advisory opinion from a neutral third party to determine compliance with the *Utah Code*, without having to exhaust all other administrative remedies first. We believe this change in the law helps to address our concerns with fees associated with development.

We hope the information provided in this brief survey report clarifies our opinion of how and why it may be less effective for our office to proceed with the Performance Audit of Local Government Compliance with Impact Fees in light of changes to the law during the 2006 Legislative General Session.

Although we are concerned with controls over other development fees, S.B. 268 now allows an advisory opinion from a neutral third party which will help enhance current controls.

Recommendation

1. We recommend the Audit Subcommittee consider removing the Audit of Local Government Compliance with Impact Fees Act from the list of prioritized audits.