

## Part 2 Impact Fees

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

- (1) A local political subdivision or private entity shall ensure that any imposed impact fees comply with the requirements of this chapter.
- (2) A local political subdivision and private entity may establish impact fees only for those public facilities defined in Section 11-36a-102.
- (3) Nothing in this chapter may be construed to repeal or otherwise eliminate an impact fee in effect on the effective date of this chapter that is pledged as a source of revenues to pay bonded indebtedness that was incurred before the effective date of this chapter.

Enacted by Chapter 47, 2011 General Session

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

- (1) A local political subdivision or private entity may not:
  - (a) impose an impact fee to:
    - (i) cure deficiencies in a public facility serving existing development;
    - (ii) raise the established level of service of a public facility serving existing development;
    - (iii) recoup more than the local political subdivision's or private entity's costs actually incurred for excess capacity in an existing system improvement; or
    - (iv) include an expense for overhead, unless the expense is calculated pursuant to a methodology that is consistent with:
      - (A) generally accepted cost accounting practices; and
      - (B) the methodological standards set forth by the federal Office of Management and Budget for federal grant reimbursement;
  - (b) delay the construction of a school or charter school because of a dispute with the school or charter school over impact fees; or
  - (c) impose or charge any other fees as a condition of development approval unless those fees are a reasonable charge for the service provided.
- (2)
  - (a) Notwithstanding any other provision of this chapter, a political subdivision or private entity may not impose an impact fee:
    - (i) on residential components of development to pay for a public safety facility that is a fire suppression vehicle;
    - (ii) on a school district or charter school for a park, recreation facility, open space, or trail;
    - (iii) on a school district or charter school unless:
      - (A) the development resulting from the school district's or charter school's development activity directly results in a need for additional system improvements for which the impact fee is imposed; and
      - (B) the impact fee is calculated to cover only the school district's or charter school's proportionate share of the cost of those additional system improvements;
    - (iv) to the extent that the impact fee includes a component for a law enforcement facility, on development activity for:
      - (A) the Utah National Guard;
      - (B) the Utah Highway Patrol; or
      - (C) a state institution of higher education that has its own police force; or

(v) on development activity on the state fair park, as defined in Section 63H-6-102.

(b)

- (i) Notwithstanding any other provision of this chapter, a political subdivision or private entity may not impose an impact fee on development activity that consists of the construction of a school, whether by a school district or a charter school, if:
  - (A) the school is intended to replace another school, whether on the same or a different parcel;
  - (B) the new school creates no greater demand or need for public facilities than the school or school facilities, including any portable or modular classrooms that are on the site of the replaced school at the time that the new school is proposed; and
  - (C) the new school and the school being replaced are both within the boundary of the local political subdivision or the jurisdiction of the private entity.
- (ii) If the imposition of an impact fee on a new school is not prohibited under Subsection (2)(b)
  - (i) because the new school creates a greater demand or need for public facilities than the school being replaced, the impact fee shall be based only on the demand or need that the new school creates for public facilities that exceeds the demand or need that the school being replaced creates for those public facilities.
- (c) Notwithstanding any other provision of this chapter, a political subdivision or private entity may impose an impact fee for a road facility on the state only if and to the extent that:
  - (i) the state's development causes an impact on the road facility; and
  - (ii) the portion of the road facility related to an impact fee is not funded by the state or by the federal government.
- (3) Notwithstanding any other provision of this chapter, a local political subdivision may impose and collect impact fees on behalf of a school district if authorized by Section 53A-20-100.5.

Amended by Chapter 2, 2016 Special Session 3

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

- (1) A private entity:
  - (a) shall comply with the requirements of this chapter before imposing an impact fee; and
  - (b) except as otherwise specified in this chapter, is subject to the same requirements of this chapter as a local political subdivision.
- (2) A private entity may only impose a charge for water rights or physical infrastructure necessary to provide water or sewer facilities by imposing an impact fee.
- (3) Where notice and hearing requirements are specified, a private entity shall comply with the notice and hearing requirements for local districts.
- (4) A private entity that assesses an impact fee under this chapter is subject to the audit requirements of Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act.

Enacted by Chapter 47, 2011 General Session

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

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

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

Enacted by Chapter 47, 2011 General Session

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

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

- (1) the local political subdivision has formally agreed to fund a Habitat Conservation Plan to resolve conflicts with the Endangered Species Act of 1973, 16 U.S.C. Sec. 1531, et seq. or other state or federal environmental law or regulation;
- (2) the impact fee bears a reasonable relationship to the environmental mitigation required by the Habitat Conservation Plan; and
- (3) the legislative body of the local political subdivision adopts an ordinance or resolution:
  - (a) declaring that an impact fee is required to finance the Habitat Conservation Plan;
  - (b) establishing periodic sunset dates for the impact fee; and
  - (c) requiring the legislative body to:
    - (i) review the impact fee on those sunset dates;
    - (ii) determine whether or not the impact fee is still required to finance the Habitat Conservation Plan; and
    - (iii) affirmatively reauthorize the impact fee if the legislative body finds that the impact fee must remain in effect.

Enacted by Chapter 47, 2011 General Session