

**Representative Gerry A. Adair** proposes to substitute the following bill:

**IMPACT FEES AMENDMENTS**

1999 GENERAL SESSION

STATE OF UTAH

**Sponsor: Gerry A. Adair**

AN ACT RELATING TO CITIES, COUNTIES, AND LOCAL TAXING UNITS; MODIFYING THE REQUIREMENTS FOR IMPOSING IMPACT FEES; MODIFYING THE PROCESS FOR CHALLENGING AN IMPACT FEE; AND MAKING TECHNICAL CHANGES.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**11-36-201**, as enacted by Chapter 11, Laws of Utah 1995, First Special Session

**11-36-202**, as enacted by Chapter 11, Laws of Utah 1995, First Special Session

**11-36-401**, as enacted by Chapter 11, Laws of Utah 1995, First Special Session

ENACTS:

**11-36-103**, Utah Code Annotated 1953

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

Section 1. Section **11-36-103** is enacted to read:

**11-36-103. Allowable fees for providing documents.**

If a provision of this chapter allows or requires a local political subdivision to provide or make available a document to the public, the local political subdivision may charge a fee, as provided in Section 63-2-203, for providing or making available that document.

Section 2. Section **11-36-201** is amended to read:

**11-36-201. Impact fees -- Analysis -- Capital facilities plan -- Exemptions.**

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

(b) A local political subdivision may not:

26 (i) establish any new impact fees that are not authorized by this chapter; or  
27 (ii) impose or charge any other fees as a condition of development approval unless those  
28 fees are a reasonable charge for the service provided.

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31 Subsection 11-36-102(11) is repealed by July 1, 1995.

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

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

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

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

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

41 (b) The plan shall [identify]:

42 (i) include an inventory of all existing public facilities;

43 [(i)] (ii) identify demands placed upon existing public facilities by new development  
44 activity; [and]

45 [(ii)] (iii) identify the proposed means by which the local political subdivision will meet  
46 those demands; and

47 (iv) include a detailed estimate of the capital costs for any proposed system improvements.

48 (c) Municipalities and counties need not prepare a separate capital facilities plan if the  
49 general plan required by Sections 10-9-301 and 17-27-301 contains the elements required by this  
50 subsection.

51 (d) (i) If a local political subdivision prepares an independent capital facilities plan rather  
52 than including a capital facilities element in the general plan, the local political subdivision  
53 shall[-];

54 (A) before adopting the capital facilities plan, give public notice of the plan according to  
55 this [subsection, make a copy of the plan available to the public] Subsection (2)(d);

56 (B) at least 14 days before the date of the public hearing[-];

57           (I) make a copy of the plan, together with a summary easily understood by the general  
58 public, available to the public; and

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

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

62           (ii) Municipalities shall comply with the notice and hearing requirements of, and receive  
63 the protections of, Subsections 10-9-103(2) and 10-9-402(2).

64           (iii) Counties shall comply with the notice and hearing requirements of, and receive the  
65 protections of, Subsections 17-27-103(2) and 17-27-402(2).

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

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

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

74           (3) In preparing the plan, each local political subdivision shall [generally]:

75           (a) consider all revenue sources, including impact fees, to finance the impacts on system  
76 improvements; and

77           (b) specifically explain the effect that other revenue sources would have on the average  
78 household if the other revenue sources were used instead of impact fees.

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

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

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

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

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

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

92 (b) In establishing that impact fees are necessary to achieve an equitable allocation to the  
93 costs borne in the past and to be borne in the future, in comparison to the benefits already received  
94 and yet to be received, and in analyzing whether or not the proportionate share of the costs of  
95 public facilities are reasonably related to the new development activity, the local political  
96 subdivision shall identify[-if applicable]:

97 (i) the original cost of all existing public facilities;

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

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

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

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

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

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

113 (c) In identifying the items in Subsection (5)(b), each local political subdivision shall, in  
114 its written analysis, explain in detail the information on which the local political subdivision bases  
115 its determination of the equitable allocation of the costs borne by existing and new development  
116 in comparison to the benefits already received and yet to be received by both.

117 (d) A local political subdivision may not adopt an impact fee enactment if any of the items  
118 in Subsection (5)(b) is not expressly identified or if the explanation required under Subsection

119 (5)(c) is not provided for any of those items.

120 (e) A local political subdivision may not prepare, consider, or adopt a written analysis  
121 required under this Subsection (5) until 60 days after adoption of a capital facilities plan.

122 (f) (i) Before adopting a written analysis under this Subsection (5), each local political  
123 subdivision shall:

124 (A) give public notice of the written analysis according to this Subsection (5)(f);

125 (B) at least 14 days before the date of the public hearing:

126 (I) make a copy of the written analysis, with a summary easily understood by the general  
127 public, available to the public; and

128 (II) place a copy of the written analysis and summary in each public library within the local  
129 political subdivision; and

130 (C) hold a public hearing to obtain public comment on the analysis.

131 (ii) Each municipality shall comply with the notice and hearing requirements and receive  
132 the protections of Subsections 10-9-103(2) and 10-9-402(2).

133 (iii) Each county shall comply with the notice and hearing requirements and receive the  
134 protections of Subsections 17-27-103(2) and 17-27-402(2).

135 (iv) Each special district shall comply with the notice and hearing requirements and  
136 receive the protections of Section 17A-1-203.

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

140 Section 3. Section **11-36-202** is amended to read:

141 **11-36-202. Impact fees -- Enactment -- Required provisions.**

142 (1) (a) Each local political subdivision wishing to impose impact fees shall pass an impact  
143 fee enactment.

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

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

147 (i) the construction contract price;

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

149 (iii) the cost for planning, surveying, and engineering fees for services provided for and

150 directly related to the construction of the system improvements; and

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

154 (d) In enacting an impact fee enactment:

155 (i) municipalities shall:

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

158 (B) comply with the notice and hearing requirements of, and receive the protections of,  
159 Subsections 10-9-103(2) and 10-9-802(2);

160 (ii) counties shall:

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

163 (B) comply with the notice and hearing requirements of, and receive the protections of,  
164 Subsections 17-27-103(2) and 17-27-802(2); and

165 (iii) special districts shall:

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

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

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

173 (f) A local political subdivision may not prepare, consider, or adopt an impact fee  
174 enactment until 30 days after adoption of the written analysis required under Subsection  
175 11-36-201(5).

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

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

179 (b) either:

180 (i) a schedule of impact fees for each type of development activity that specifies the

181 amount of the impact fee to be imposed for each type of system improvement; or

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

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

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

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

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

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

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

195 (b) imposes an impact fee for public facility costs previously incurred by a local political  
196 subdivision to the extent that new growth and development will be served by the previously  
197 constructed improvement[; ~~and (c) allows~~].

198 (4) Each impact fee enactment shall include a provision that gives a fair market value  
199 credit against impact fees for any dedication of land for, improvement to, or new construction of,  
200 any system improvements provided by the developer if the facilities:

201 [(i)] (a) are identified in the capital facilities plan; and

202 [(ii)] (b) are required by the local political subdivision as a condition of approving the  
203 development activity.

204 [~~(4) Except as provided in Subsection (3)(b), the~~]

205 (5) A local political subdivision may not impose an impact fee to cure deficiencies in  
206 public facilities serving existing development.

207 [~~(5)~~] (6) Notwithstanding the requirements and prohibitions of this chapter, a local  
208 political subdivision may impose and assess an impact fee for environmental mitigation when:

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

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

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

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

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

217 (iii) requiring the legislative body to:

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

219 (B) determine whether or not the impact fee is still required to finance the Habitat

220 Conservation Plan; and

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

223 [~~(6)~~] (7) Each political subdivision shall ensure that any existing impact fee for  
224 environmental mitigation meets the requirements of Subsection (5) by July 1, 1995.

225 [~~(7)~~] (8) Notwithstanding any other provision of this chapter, municipalities imposing  
226 impact fees to fund fire trucks as of the effective date of this act may impose impact fees for fire  
227 trucks until July 1, 1997.

228 [~~(8)~~] (9) Notwithstanding any other provision of this chapter, a local political subdivision  
229 may impose and collect impact fees on behalf of a school district if authorized by Section  
230 53A-20-100.5.

231 Section 4. Section **11-36-401** is amended to read:

232 **11-36-401. Impact fees -- Challenges -- Appeals.**

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

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

240 (b) Within two weeks of the receipt of the request for information, the local political  
241 subdivision shall provide the person or entity with the written analysis required by Section  
242 11-36-201, the capital facilities plan, and with any other relevant information relating to the impact



243 fee.

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

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

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

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

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

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

259 ~~[(5) (a) If the local political subdivision establishes an administrative appeals procedure,~~  
260 ~~within 90 days of a decision upholding an impact fee by a local political subdivision or within 120~~  
261 ~~days after the date the challenge to the impact fee was filed, whichever is earlier, any party to the~~  
262 ~~administrative action who is adversely affected by the local political subdivision's decision may~~  
263 ~~petition the district court for a review of the decision.]~~

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

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

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

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

272 ~~[(B) the court may not accept or consider any evidence outside the local political~~  
273 ~~subdivision's record unless that evidence was offered to the local political subdivision and the~~

274 ~~court determines that it was improperly excluded by the local political subdivision.]~~

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

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

278 (3) A person or entity may file an action in district court challenging an impact fee as not  
279 meeting all the requirements of this chapter if the person or entity:

280 (a) resides in, owns, or has an interest in property within the service area affected by the  
281 impact fee; or

282 (b) is required to pay the impact fee.

283 (4) In an action under Subsection (3) or in an arbitration proceeding challenging the  
284 validity of an impact fee, the local political subdivision bears the burden of demonstrating that the  
285 fee is an equitable allocation of the costs borne by new and existing development, as required  
286 under Subsection 11-36-201(4).

287 ~~[(6)]~~ (5) The judge may award reasonable attorneys' fees and costs to the prevailing party  
288 in any action brought under this section.

289 ~~[(7)]~~ (6) Nothing in this chapter may be construed as restricting or limiting any rights to  
290 challenge impact fees that were paid before the effective date of this ~~[act]~~ chapter.