IMPACT FEES ACT AMENDMENTS

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Glenn L. Way

This act modifies the Impact Fees Act by including private water companies in the scope of the act under certain circumstances.

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

AMENDS:

11-36-102, as enacted by Chapter 11, Laws of Utah 1995, First Special Session

11-36-201, as last amended by Chapter 211, Laws of Utah 2000

ENACTS:

11-36-501, Utah Code Annotated 1953

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

Section 1. Section **11-36-102** is amended to read:

11-36-102. Definitions.

As used in this chapter:

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

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

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

(4) "Development approval" means any written authorization from a local political subdivision that authorizes the commencement of development activity.

(5) "Enactment" means:

(a) a municipal ordinance, for municipalities;

(b) a county ordinance, for counties; and

(c) a governing board resolution, for special districts.

(6) "Hookup fees" means reasonable fees, not in excess of the approximate average costs to the political subdivision, for services provided for and directly attributable to the connection to utility services, including gas, water, sewer, power, or other municipal, county, or independent special district utility services.

(7) (a) "Impact fee" means a payment of money imposed upon development activity as a condition of development approval.

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

(8) (a) "Local political subdivision" means a county, a municipality, or a special district created under Title 17A, Special Districts.

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

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

[~~(9)~~] (10) (a) "Project improvements" means site improvements and facilities that are:

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

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

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

[~~(10)~~] (11) "Proportionate share" means the cost of public facility improvements that are roughly proportionate and reasonably related to the service demands and needs of any development activity.

[~~(11)~~] (12) "Public facilities" means only the following capital facilities that have a life expectancy of ten or more years and are owned or operated by or on behalf of a local political subdivision or private entity:

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

(b) wastewater collection and treatment facilities;

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

(d) municipal power facilities;

(e) roadway facilities;

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

(g) public safety facilities.

[~~(12)~~] (13) (a) "Public safety facility" means a building constructed or leased to house police, fire, or other public safety entities.

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

[~~(13)~~] (14) (a) "Roadway facilities" means streets or roads that have been designated on an officially adopted subdivision plat, roadway plan, or general plan of a political subdivision, together with all necessary appurtenances.

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

(i) are necessitated by the new development; and

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

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

[~~(14)~~] (15) (a) "Service area" means a geographic area designated by a local political subdivision on the basis of sound planning or engineering principles in which a defined set of public facilities provide service within the area.

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

[~~(15)~~] (16) (a) "System improvements" means:

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

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

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

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

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

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

(b) A local political subdivision may not:

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

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

(c) Notwithstanding any other requirements of this chapter, each local political subdivision shall ensure that each existing impact fee that is charged for any public facility not authorized by Subsection 11-36-102[~~(11)~~](12) is repealed by July 1, 1995.

(d) (i) Existing impact fees for public facilities authorized in Subsection 11-36-102[~~(11)~~](12) that are charged by local political subdivisions need not comply with the requirements of this chapter until July 1, 1997.

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

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

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

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

(b) The plan shall identify:

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

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

(c) Municipalities and counties need not prepare a separate capital facilities plan if the general plan required by Sections 10-9-301 and 17-27-301 contains the elements required by Subsection (2)(b).

(d) (i) If a local political subdivision prepares an independent capital facilities plan rather than including a capital facilities element in the general plan, the local political subdivision shall,

before adopting the capital facilities plan:

(A) give public notice of the plan according to this Subsection (2)(d);

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

(I) make a copy of the plan, together with a summary designed to be understood by a lay person, available to the public; and

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

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

(ii) Municipalities shall comply with the notice and hearing requirements of, and, except as provided in Subsection 11-36-401(4)(f), receive the protections of, Subsections 10-9-103(2) and 10-9-402(2).

(iii) Counties shall comply with the notice and hearing requirements of, and, except as provided in Subsection 11-36-401(4)(f), receive the protections of, Subsections 17-27-103(2) and 17-27-402(2).

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

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

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

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

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

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

comparison to the benefits already received and yet to be received.

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

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

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

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

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

(b) In analyzing whether or not the proportionate share of the costs of public facilities are reasonably related to the new development activity, the local political subdivision shall identify, if applicable:

(i) the cost of existing public facilities;

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

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

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

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

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

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

times.

(c) Each local political subdivision that prepares a written analysis under this Subsection (5) on or after July 1, 2000 shall also prepare a summary of the written analysis, designed to be understood by a lay person.

(6) Each local political subdivision that adopts an impact fee enactment under Section 11-36-202 on or after July 1, 2000 shall, at least 14 days before adopting the enactment, submit to each public library within the local political subdivision:

(a) a copy of the written analysis required by Subsection (5)(a); and

(b) a copy of the summary required by Subsection (5)(c).

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

Section 3. Section **11-36-501** is enacted to read:

Part 5. Private Entity Assessment of Impact Fees

11-36-501. Private entity assessment of impact fees -- Notice and hearing -- Audit.

(1) A private entity may only impose a charge for public facilities as a condition of development approval by imposing an impact fee. A private entity shall comply with the requirements of this chapter before imposing an impact fee.

(2) Except as otherwise specified in this chapter, a private entity is subject to the same requirements of this chapter as a local political subdivision.

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

(4) A private entity that assesses an impact fee under this chapter is subject to the audit requirements of Title 51, Chapter 2, Audits of Political Subdivisions, Interlocal Organizations, and Other Local Entities.