

Senator L. Alma Mansell proposes the following substitute bill:

1 CHANGES TO LOCAL GOVERNMENT

2 PROVISIONS

3 2006 GENERAL SESSION

4 STATE OF UTAH

5 Chief Sponsor: L. Alma Mansell

6 House Sponsor: Gordon E. Snow

7

8 LONG TITLE

9 General Description:

10 This bill modifies provisions related to counties, municipalities, and special districts.

11 Highlighted Provisions:

12 This bill:

- 13 ▶ modifies the definition of "affected entity";
- 14 ▶ expands requirements imposed on counties and municipalities with respect to notice
- 15 and information to be provided to applicants submitting a land use application;
- 16 ▶ allows an applicant to waive a county's or municipality's failure to comply with
- 17 certain requirements;
- 18 ▶ requires counties and municipalities to process and render a decision on land use
- 19 applications with reasonable diligence;

19a **⚡→ ▶ expands the definition of "public safety facility" for impact fee purposes to include**

19b **certain fire suppression equipment;**

19c **▶ provides that a local political subdivision may impose an impact fee for a public**

19d **safety facility that is a fire suppression vehicle in commercial areas only; ←⚡**

20 ▶ modifies annual financial report requirements for counties, municipalities, and

21 special districts with respect to impact fees; and

22 ▶ imposes requirements and limitations on counties and municipalities in calculating

23 an impact fee.

24 Monies Appropriated in this Bill:

25 None



26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **10-5-129**, as enacted by Chapter 34, Laws of Utah 198331 **10-6-150**, as last amended by Chapter 300, Laws of Utah 199932 **10-9a-103**, as last amended by Chapter 7 and renumbered and amended by Chapter
33 254, Laws of Utah 200534 **10-9a-202**, as enacted by Chapter 254, Laws of Utah 200535 **10-9a-509**, as enacted by Chapter 254, Laws of Utah 200536 **10-9a-603**, as renumbered and amended by Chapter 254, Laws of Utah 200536a **§→ 11-36-102, as last amended by Chapter 239, Laws of Utah 2002 ←§**37 **11-36-202**, as last amended by Chapter 254, Laws of Utah 200538 **17-27a-103**, as last amended by Chapter 7 and renumbered and amended by Chapter
39 254, Laws of Utah 200540 **17-27a-202**, as enacted by Chapter 254, Laws of Utah 200541 **17-27a-508**, as enacted by Chapter 254, Laws of Utah 200542 **17-27a-603**, as renumbered and amended by Chapter 254, Laws of Utah 200543 **17-36-37**, as last amended by Chapter 300, Laws of Utah 199944 **17A-1-443**, as renumbered and amended by Chapter 186, Laws of Utah 1990

45

46 *Be it enacted by the Legislature of the state of Utah:*47 Section 1. Section **10-5-129** is amended to read:48 **10-5-129. Annual financial report.**49 (1) (a) Within 180 days after the close of each fiscal year the town clerk or other
50 delegated person shall present to the council an annual financial report. [~~This section]~~51 (b) Each annual financial report shall identify impact fee funds by the year in which
52 they were received, the project from which the funds were collected, the capital projects for
53 which the funds are budgeted, and the projected schedule for expenditure.54 (2) The requirement under Subsection (1)(a) to present an annual financial report may
55 be satisfied by an audit report or annual financial report of an independent auditor.56 Section 2. Section **10-6-150** is amended to read:

57 **10-6-150. Annual financial reports -- Independent audit reports.**

58 (1) (a) Within 180 days after the close of each fiscal period or, for a city that has
59 adopted a fiscal period that is a biennial period, within 180 days after both the mid-point and
60 the close of the fiscal period, the city recorder or other delegated person shall present to the
61 governing body an annual financial report prepared in conformity with generally accepted
62 accounting principles, as prescribed in the Uniform Accounting Manual for Utah Cities. [~~This~~
63 requirement]

64 (b) Each annual financial report shall identify impact fee funds by the year in which
65 they were received, the project from which the funds were collected, the capital projects for
66 which the funds are budgeted, and the projected schedule for expenditure.

67 (2) (a) The requirement under Subsection (1)(a) to present an annual financial report
68 may be satisfied by presentation of the audit report furnished by the independent auditor, if the
69 financial statements included are appropriately prepared and reviewed with the governing body.

70 (b) Notwithstanding the acceptability of the audit report furnished by the independent
71 auditor in substitution for financial statements prepared by an officer of the city, the governing
72 body has the responsibility for those financial statements.

73 (c) The independent auditor has the responsibility of reporting whether the governing
74 body's financial statements are prepared in conformity with generally accepted accounting
75 principles.

76 (3) Copies of the annual financial report or the audit report furnished by the
77 independent auditor shall be filed with the state auditor and shall be filed as a public document
78 in the office of the city recorder.

79 Section 3. Section **10-9a-103** is amended to read:

80 **10-9a-103. Definitions.**

81 As used in this chapter:

82 (1) "Affected entity" means a county, municipality, independent special district under
83 Title 17A, Chapter 2, Independent Special Districts, local district under Title 17B, Chapter 2,
84 Local Districts, school district, interlocal cooperation entity established under Title 11, Chapter
85 13, Interlocal Cooperation Act, specified public utility, a property owner, a property owners
86 association, or the Utah Department of Transportation, if:

87 (a) the entity's services or facilities are likely to require expansion or significant

88 modification because of an intended use of land;

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

91 (c) the ~~[entity's boundaries or facilities are within one mile of land which is the subject~~
92 ~~of a general plan amendment or land use ordinance change]~~ entity has filed with the
93 municipality a request for notice during the same calendar year and before the municipality
94 provides notice to an affected entity in compliance with a requirement imposed under this
95 chapter.

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

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

102 (4) "Charter school" includes:

103 (a) an operating charter school;

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

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

108 (5) "Chief executive officer" means the:

109 (a) mayor in municipalities operating under all forms of municipal government except
110 the council-manager form; or

111 (b) city manager in municipalities operating under the council-manager form of
112 municipal government.

113 (6) "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 (7) "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 (8) "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 (9) (a) "Disability" means a physical or mental impairment that substantially limits one
125 or more of a person's major life activities, including a person having a record of such an
126 impairment or being regarded as having such an impairment.

127 (b) "Disability" does not include current illegal use of, or addiction to, any federally
128 controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C.
129 802.

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

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

135 (12) "Identical plans" means building plans submitted to a municipality that are
136 substantially identical to building plans that were previously submitted to and reviewed and
137 approved by the municipality and describe a building that is:

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

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

142 (13) "Land use application" means an application required by a municipality's land use
143 ordinance.

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

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

148 (16) "Legislative body" means the municipal council.

149 (17) "Lot line adjustment" means the relocation of the property boundary line in a

150 subdivision between two adjoining lots with the consent of the owners of record.

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

154 (19) "Nominal fee" means a fee that reasonably reimburses a municipality only for time
155 spent and expenses incurred in:

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

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

159 (20) "Noncomplying structure" means a structure that:

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

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

164 (21) "Nonconforming use" means a use of land that:

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

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

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

170 (22) "Official map" means a map drawn by municipal authorities and recorded in a
171 county recorder's office that:

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

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

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

178 (23) "Person" means an individual, corporation, partnership, organization, association,
179 trust, governmental agency, or any other legal entity.

180 (24) "Plan for moderate income housing" means a written document adopted by a city

181 legislative body that includes:

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

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

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

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

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

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

193 (26) "Public hearing" means a hearing at which members of the public are provided a
194 reasonable opportunity to comment on the subject of the hearing.

195 (27) "Public meeting" means a meeting that is required to be open to the public under
196 Title 52, Chapter 4, Open and Public Meetings.

197 (28) "Record of survey map" means a map of a survey of land prepared in accordance
198 with Section 17-23-17.

199 (29) "Residential facility for elderly persons" means a single-family or multiple-family
200 dwelling unit that meets the requirements of Part 4, General Plan, but does not include a health
201 care facility as defined by Section 26-21-2.

202 (30) "Residential facility for persons with a disability" means a residence:

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

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

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

208 (31) "Sanitary sewer authority" means the department, agency, or public entity with
209 responsibility to review and approve the feasibility of sanitary sewer services or onsite
210 wastewater systems.

211 (32) "Special district" means an entity established under the authority of Title 17A,

212 Special Districts, and any other governmental or quasi-governmental entity that is not a county,
213 municipality, school district, or unit of the state.

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

216 (34) "Street" means a public right-of-way, including a highway, avenue, boulevard,
217 parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement, or other
218 way.

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

223 (b) "Subdivision" includes:

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

226 (ii) except as provided in Subsection (35)(c), divisions of land for residential and
227 nonresidential uses, including land used or to be used for commercial, agricultural, and
228 industrial purposes.

229 (c) "Subdivision" does not include:

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

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

236 (A) no new lot is created; and

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

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

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

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

243 (d) The joining of a subdivided parcel of property to another parcel of property that has
244 not been subdivided does not constitute a subdivision under this Subsection (35) as to the
245 unsubdivided parcel of property or subject the unsubdivided parcel to the municipality's
246 subdivision ordinance.

247 (36) "Unincorporated" means the area outside of the incorporated area of a city or
248 town.

249 (37) "Zoning map" means a map, adopted as part of a land use ordinance, that depicts
250 land use zones, overlays, or districts.

251 Section 4. Section **10-9a-202** is amended to read:

252 **10-9a-202. Applicant notice -- Waiver of requirements.**

253 (1) For each land use application, the municipality shall:

254 (a) notify the applicant of the date, time, and place of each public hearing and public
255 meeting to consider the application [and];

256 (b) provide to each applicant a copy of each staff report regarding the applicant or the
257 pending application at least three business days before the public hearing or public meeting;
258 and

259 (c) notify the applicant of any final action on a pending application.

260 (2) If a municipality fails to comply with the requirements of Subsection (1)(a) or (b)
261 or both, an applicant may waive the failure so that the application may stay on the public
262 hearing or public meeting agenda and be considered as if the requirements had been met.

263 Section 5. Section **10-9a-509** is amended to read:

264 **10-9a-509. When a land use applicant is entitled to approval -- Exception --**
265 **Municipality required to comply with land use ordinances.**

266 (1) (a) An applicant is entitled to approval of a land use application if the application
267 conforms to the requirements of an applicable land use ordinance in effect when a complete
268 application is submitted and all fees have been paid, unless:

269 (i) the land use authority, on the record, finds that a compelling, countervailing public
270 interest would be jeopardized by approving the application; or

271 (ii) in the manner provided by local ordinance and before the application is submitted,
272 the municipality has formally initiated proceedings to amend its ordinances in a manner that
273 would prohibit approval of the application as submitted.

274 (b) The municipality shall process an application without regard to proceedings
275 initiated to amend the municipality's ordinances if:

- 276 (i) 180 days have passed since the proceedings were initiated; and
277 (ii) the proceedings have not resulted in an enactment that prohibits approval of the
278 application as submitted.

279 (c) An application for a land use approval is considered submitted and complete when
280 the application is provided in a form that complies with the requirements of applicable
281 ordinances and all applicable fees have been paid.

282 (d) The continuing validity of an approval of a land use application is conditioned upon
283 the applicant proceeding after approval to implement the approval with reasonable diligence.

284 (2) A municipality is bound by the terms and standards of applicable land use
285 ordinances and shall comply with mandatory provisions of those ordinances.

286 (3) Each municipality shall process and render a decision on each land use application
287 with reasonable diligence.

288 Section 6. Section **10-9a-603** is amended to read:

289 **10-9a-603. Plat required when land is subdivided -- Approval of plat -- Recording**
290 **plat.**

291 (1) Unless exempt under Section 10-9a-605 or excluded from the definition of
292 subdivision under Subsection 10-9a-103[~~(34)~~](35), whenever any land is laid out and platted,
293 the owner of the land shall provide an accurate plat that describes or specifies:

294 (a) a name or designation of the subdivision that is distinct from any plat already
295 recorded in the county recorder's office;

296 (b) the boundaries, course, and dimensions of all of the parcels of ground divided, by
297 their boundaries, course, and extent, whether the owner proposes that any parcel of ground is
298 intended to be used as a street or for any other public use, and whether any such area is
299 reserved or proposed for dedication for a public purpose;

300 (c) the lot or unit reference, block or building reference, street or site address, street
301 name or coordinate address, acreage or square footage for all parcels, units, or lots, and length
302 and width of the blocks and lots intended for sale; and

303 (d) every existing right-of-way and easement grant of record for underground facilities,
304 as defined in Section 54-8a-2, and for other utility facilities.

305 (2) Subject to Subsections (3), (4), and (5), if the plat conforms to the municipality's
 306 ordinances and this part and has been approved by the culinary water authority and the sanitary
 307 sewer authority, the municipality shall approve the plat.

308 (3) The municipality may withhold an otherwise valid plat approval until the owner of
 309 the land provides the legislative body with a tax clearance indicating that all taxes, interest, and
 310 penalties owing on the land have been paid.

311 (4) (a) The owner of the land shall acknowledge the plat before an officer authorized
 312 by law to take the acknowledgement of conveyances of real estate and shall obtain the
 313 signature of each individual designated by the municipality.

314 (b) The surveyor making the plat shall certify that the surveyor:

315 (i) holds a license in accordance with Title 58, Chapter 22, Professional Engineers and
 316 Professional Land Surveyors Licensing Act;

317 (ii) has completed a survey of the property described on the plat in accordance with
 318 Section 17-23-17 and has verified all measurements; and

319 (iii) has placed monuments as represented on the plat.

320 (c) As applicable, the owner or operator of the underground and utility facilities shall
 321 approve the:

322 (i) boundary, course, dimensions, and intended use of the right-of-way and easement
 323 grants of record;

324 (ii) location of existing underground and utility facilities; and

325 (iii) conditions or restrictions governing the location of the facilities within the
 326 right-of-way, and easement grants of records, and utility facilities within the subdivision.

327 (5) (a) After the plat has been acknowledged, certified, and approved, the owner of the
 328 land shall, within the time period designated by ordinance, record the plat in the county
 329 recorder's office in the county in which the lands platted and laid out are situated.

330 (b) An owner's failure to record a plat within the time period designated by ordinance
 331 renders the plat voidable.

331a **§→ Section 7. Section 11-36-102 is amended to read:**

331b **11-36-102. Definitions.**

331c **As used in this chapter:**

331d (1) "Building permit fee" means the fees charged to enforce the uniform codes adopted
 331e pursuant to Title 58, Chapter 56, Utah Uniform Building Standards Act, that are not greater than the
 331f fees indicated in the appendix to the ~~H~~→ [Uniform] International ~~H~~← Building Code.

331g (2) "Capital facilities plan" means the plan required by Section 11-36-201.

331h (3) "Development activity" means any construction or expansion of a building, structure, or
 331i use, any change in use of a building or structure, or any changes in the use of land that creates
 331j additional demand and need for public facilities.

331k (4) "Development approval" means any written authorization from a local ~~S~~←

- 331l **§→ political subdivision that authorizes the commencement of development activity.**
- 331m (5) "Enactment" means:
- 331n (a) a municipal ordinance, for municipalities;
- 331o (b) a county ordinance, for counties; and
- 331p (c) a governing board resolution, for special districts.
- 331q (6) "Hookup fees" means reasonable fees, not in excess of the approximate average costs to the
- 331r political subdivision, for services provided for and directly attributable to the connection to utility
- 331s services, including gas, water, sewer, power, or other municipal, county, or independent special district
- 331t utility services.
- 331u (7) (a) "Impact fee" means a payment of money imposed upon development activity as a
- 331v condition of development approval.
- 331w (b) "Impact fee" does not mean a tax, a special assessment, a building permit fee, a hookup
- 331x fee, a fee for project improvements, or other reasonable permit or application fee.
- 331y (8) (a) "Local political subdivision" means a county, a municipality, or a special district
- 331z created under Title 17A, Special Districts.
- 331aa (b) "Local political subdivision" does not mean school districts, whose impact fee activity is
- 331ab governed by Section 53A-20-100.5.
- 331ac (9) "Private entity" means an entity with private ownership that provides culinary water that
- 331ad is required to be used as a condition of development.
- 331ae (10) (a) "Project improvements" means site improvements and facilities that are:
- 331af (i) planned and designed to provide service for development resulting from a development
- 331ag activity; and
- 331ah (ii) necessary for the use and convenience of the occupants or users of development resulting
- 331ai from a development activity.
- 331aj (b) "Project improvements" does not mean system improvements.
- 331ak (11) "Proportionate share" means the cost of public facility improvements that are roughly
- 331al proportionate and reasonably related to the service demands and needs of any development activity.
- 331am (12) "Public facilities" means only the following capital facilities that have a life expectancy of
- 331an ten or more years and are owned or operated by or on behalf of a local political subdivision or private
- 331ao entity:
- 331ap (a) water rights and water supply, treatment, and distribution facilities;
- 331aq (b) wastewater collection and treatment facilities;
- 331ar (c) storm water, drainage, and flood control facilities;
- 331as (d) municipal power facilities;
- 331at (e) roadway facilities;
- 331au (f) parks, recreation facilities, open space, and trails; and
- 331av (g) public safety facilities.
- 331aw (13) (a) "Public safety facility" means :
- 331ax (i) a building constructed or leased to house police, fire, or other public safety
- 331ay entities [-] ; or ←§

- 331az **§→** (ii) a fire suppression vehicle, costing in excess of \$1,000,000, that is necessary for fire
 331ba suppression in commercial areas.
- 331bb (b) "Public safety facility" does not mean a jail, prison, or other place of involuntary
 331bc incarceration.
- 331bd (14) (a) "Roadway facilities" means streets or roads that have been designated on an officially
 331be adopted subdivision plat, roadway plan, or general plan of a political subdivision, together with all
 331bf necessary appurtenances.
- 331bg (b) "Roadway facilities" includes associated improvements to federal or state roadways only
 331bh when the associated improvements:
- 331bi (i) are necessitated by the new development; and
 331bj (ii) are not funded by the state or federal government.
- 331bk (c) "Roadway facilities" does not mean federal or state roadways.
- 331bl (15) (a) "Service area" means a geographic area designated by a local political subdivision on
 331bm the basis of sound planning or engineering principles in which a defined set of public facilities provide
 331bn service within the area.
- 331bo (b) "Service area" may include the entire local political subdivision.
- 331bp (16) (a) "System improvements" means:
- 331bq (i) existing public facilities that are designed to provide services to service areas within the
 331br community at large; and
- 331bs (ii) future public facilities identified in a capital facilities plan that are intended to provide
 331bt services to service areas within the community at large.
- 331bu (b) "System improvements" does not mean project improvements. ←§
- 332 Section **§→** [7] **§ ←§** . Section **11-36-202** is amended to read:
- 333 **11-36-202. Impact fees -- Enactment -- Required provisions.**
- 334 (1) (a) Each local political subdivision wishing to impose impact fees shall pass an
 335 impact fee enactment.

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

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

339 (i) the construction contract price;

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

341 (iii) the cost for planning, surveying, and engineering fees for services provided for and
342 directly related to the construction of the system improvements; and

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

346 (d) In calculating an impact fee, a local political subdivision may not include an
347 expense for overhead unless the expense is calculated pursuant to a methodology that is
348 consistent with:

349 (i) generally accepted cost accounting practices; and

350 (ii) the methodological standards set forth by the federal Office of Management and
351 Budget for federal grant reimbursement.

352 (e) In calculating an impact fee, each local political subdivision shall base amounts
353 calculated under Subsection (1)(c) on realistic estimates, and the assumptions underlying those
354 estimates shall be disclosed in the impact fee analysis.

355 [~~(d)~~] (f) In enacting an impact fee enactment:

356 (i) municipalities shall:

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

359 (B) comply with the notice and hearing requirements of, and, except as provided in
360 Subsection 11-36-401(4)(f), receive the protections of Sections 10-9a-207 and 10-9a-801;

361 (ii) counties shall:

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

364 (B) comply with the notice and hearing requirements of, and, except as provided in
365 Subsection 11-36-401(4)(f), receive the protections of Sections 17-27a-207 and 17-27a-801;

366 and

367 (iii) special districts shall:

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

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

372 ~~[(e)]~~ (g) Nothing contained in Subsection (1)~~[(d)]~~~~(f)~~ or in the subsections referenced in
373 Subsections (1)~~[(d)]~~~~(f)~~(i)(B) and (ii)(B) may be construed to require involvement by a planning
374 commission in the impact fee enactment process.

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

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

378 (b) either:

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

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

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

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

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

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

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

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

394 (b) imposes an impact fee for public facility costs previously incurred by a local
395 political subdivision to the extent that new growth and development will be served by the
396 previously constructed improvement; and

397 (c) allows a credit against impact fees for any dedication of land for, improvement to,

398 or new construction of, any system improvements provided by the developer if the facilities:

399 (i) are identified in the capital facilities plan; and

400 (ii) are required by the local political subdivision as a condition of approving the
401 development activity.

402 (4) Except as provided in Subsection (3)(b), the local political subdivision may not
403 impose an impact fee to cure deficiencies in public facilities serving existing development.

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

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

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

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

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

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

415 (iii) requiring the legislative body to:

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

417 (B) determine whether or not the impact fee is still required to finance the Habitat
418 Conservation Plan; and

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

421 (6) Each political subdivision shall ensure that any existing impact fee for
422 environmental mitigation meets the requirements of Subsection (5) by July 1, 1995.

423 (7) Notwithstanding any other provision of this chapter ~~§→~~ [~~-, municipalities~~] :

423a (a) a municipality ←§ imposing

424 impact fees to fund fire trucks as of the effective date of this act may impose impact fees for
425 fire trucks until July 1, 1997 ~~§→~~ ; and

425a (b) an impact fee to pay for a public safety facility that is a fire suppression vehicle may
425b not be imposed with respect to land that has a zoning designation other than commercial ←§ .

426 (8) Notwithstanding any other provision of this chapter, a local political subdivision
427 may impose and collect impact fees on behalf of a school district if authorized by Section
428 53A-20-100.5.

429 Section 8. Section **17-27a-103** is amended to read:

430 **17-27a-103. Definitions.**

431 As used in this chapter:

432 (1) "Affected entity" means a county, municipality, independent special district under
433 Title 17A, Chapter 2, Independent Special Districts, local district under Title 17B, Chapter 2,
434 Local Districts, school district, interlocal cooperation entity established under Title 11, Chapter
435 13, Interlocal Cooperation Act, specified public utility, property owner, property owners
436 association, or the Utah Department of Transportation, if:

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

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

441 (c) the [~~entity's boundaries or facilities are within one mile of land that is the subject of~~
442 ~~a general plan amendment or land use ordinance change~~] entity has filed with the county a
443 request for notice during the same calendar year and before the county provides notice to an
444 affected entity in compliance with a requirement imposed under this chapter.

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

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

451 (4) "Charter school" includes:

452 (a) an operating charter school;

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

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

457 (5) "Chief executive officer" means the person or body that exercises the executive
458 powers of the county.

459 (6) "Conditional use" means a land use that, because of its unique characteristics or

460 potential impact on the county, surrounding neighbors, or adjacent land uses, may not be
461 compatible in some areas or may be compatible only if certain conditions are required that
462 mitigate or eliminate the detrimental impacts.

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

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

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

467 (8) "Culinary water authority" means the department, agency, or public entity with
468 responsibility to review and approve the feasibility of the culinary water system and sources for
469 the subject property.

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

473 (b) "Disability" does not include current illegal use of, or addiction to, any federally
474 controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C.
475 802.

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

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

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

482 (13) "Identical plans" means building plans submitted to a county that are substantially
483 identical building plans that were previously submitted to and reviewed and approved by the
484 county and describe a building that is:

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

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

489 (14) "Interstate pipeline company" means a person or entity engaged in natural gas
490 transportation subject to the jurisdiction of the Federal Energy Regulatory Commission under

491 the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

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

495 (16) "Land use application" means an application required by a county's land use
496 ordinance.

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

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

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

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

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

508 (22) "Nominal fee" means a fee that reasonably reimburses a county only for time spent
509 and expenses incurred in:

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

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

513 (23) "Noncomplying structure" means a structure that:

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

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

518 (24) "Nonconforming use" means a use of land that:

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

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

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

524 (25) "Official map" means a map drawn by county authorities and recorded in the
525 county recorder's office that:

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

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

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

532 (26) "Person" means an individual, corporation, partnership, organization, association,
533 trust, governmental agency, or any other legal entity.

534 (27) "Plan for moderate income housing" means a written document adopted by a
535 county legislative body that includes:

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

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

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

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

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

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

547 (29) "Public hearing" means a hearing at which members of the public are provided a
548 reasonable opportunity to comment on the subject of the hearing.

549 (30) "Public meeting" means a meeting that is required to be open to the public under
550 Title 52, Chapter 4, Open and Public Meetings.

551 (31) "Record of survey map" means a map of a survey of land prepared in accordance
552 with Section 17-23-17.

553 (32) "Residential facility for elderly persons" means a single-family or multiple-family
554 dwelling unit that meets the requirements of Part 4, General Plan, but does not include a health
555 care facility as defined by Section 26-21-2.

556 (33) "Residential facility for persons with a disability" means a residence:

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

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

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

562 (34) "Sanitary sewer authority" means the department, agency, or public entity with
563 responsibility to review and approve the feasibility of sanitary sewer services or onsite
564 wastewater systems.

565 (35) "Special district" means any entity established under the authority of Title 17A,
566 Special Districts, and any other governmental or quasi-governmental entity that is not a county,
567 municipality, school district, or unit of the state.

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

570 (37) "Street" means a public right-of-way, including a highway, avenue, boulevard,
571 parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement, or other
572 way.

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

577 (b) "Subdivision" includes:

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

580 (ii) except as provided in Subsection (38)(c), divisions of land for residential and
581 nonresidential uses, including land used or to be used for commercial, agricultural, and
582 industrial purposes.

583 (c) "Subdivision" does not include:

584 (i) a bona fide division or partition of agricultural land for agricultural purposes;
585 (ii) a recorded agreement between owners of adjoining properties adjusting their
586 mutual boundary if:

587 (A) no new lot is created; and

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

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

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

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

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

596 (A) an unmanned facility appurtenant to a pipeline owned or operated by a gas
597 corporation, interstate pipeline company, or intrastate pipeline company; or

598 (B) an unmanned telecommunications, microwave, fiber optic, electrical, or other
599 utility service regeneration, transformation, retransmission, or amplification facility.

600 (d) The joining of a subdivided parcel of property to another parcel of property that has
601 not been subdivided does not constitute a subdivision under this Subsection (38) as to the
602 unsubdivided parcel of property or subject the unsubdivided parcel to the county's subdivision
603 ordinance.

604 (39) "Township" means a contiguous, geographically defined portion of the
605 unincorporated area of a county, established under this part or reconstituted or reinstated under
606 Section 17-27a-307, with planning and zoning functions as exercised through the township
607 planning commission, as provided in this chapter, but with no legal or political identity
608 separate from the county and no taxing authority, except that "township" means a former
609 township under Chapter 308, Laws of Utah 1996 where the context so indicates.

610 (40) "Unincorporated" means the area outside of the incorporated area of a
611 municipality.

612 (41) "Zoning map" means a map, adopted as part of a land use ordinance, that depicts
613 land use zones, overlays, or districts.

614 Section 9. Section **17-27a-202** is amended to read:

615 **17-27a-202. Applicant notice -- Waiver of requirements.**

616 (1) For each land use application, the county shall:

617 (a) notify the applicant of the date, time, and place of each public hearing and public
618 meeting to consider the application [~~and~~];

619 (b) provide to each applicant a copy of each staff report regarding the applicant or the
620 pending application at least three business days before the public hearing or public meeting;
621 and

622 (c) notify the applicant of any final action on a pending application.

623 (2) If a county fails to comply with the requirements of Subsection (1)(a) or (b) or both,
624 an applicant may waive the failure so that the application may stay on the public hearing or
625 public meeting agenda and be considered as if the requirements had been met.

626 Section 10. Section **17-27a-508** is amended to read:

627 **17-27a-508. When a land use applicant is entitled to approval -- Exception --**
628 **County required to comply with land use ordinances.**

629 (1) (a) An applicant is entitled to approval of a land use application if the application
630 conforms to the requirements of an applicable land use ordinance in effect when a complete
631 application is submitted and all fees have been paid, unless:

632 (i) the land use authority, on the record, finds that a compelling, countervailing public
633 interest would be jeopardized by approving the application; or

634 (ii) in the manner provided by local ordinance and before the application is submitted,
635 the county has formally initiated proceedings to amend its ordinances in a manner that would
636 prohibit approval of the application as submitted.

637 (b) The county shall process an application without regard to proceedings initiated to
638 amend the county's ordinances if:

639 (i) 180 days have passed since the proceedings were initiated; and

640 (ii) the proceedings have not resulted in an enactment that prohibits approval of the
641 application as submitted.

642 (c) An application for a land use approval is considered submitted and complete when
643 the application is provided in a form that complies with the requirements of applicable
644 ordinances and all applicable fees have been paid.

645 (d) The continuing validity of an approval of a land use application is conditioned upon

646 the applicant proceeding after approval to implement the approval with reasonable diligence.

647 (2) A county is bound by the terms and standards of applicable land use ordinances and
648 shall comply with mandatory provisions of those ordinances.

649 (3) Each county shall process and render a decision on each land use application with
650 reasonable diligence.

651 Section 11. Section **17-27a-603** is amended to read:

652 **17-27a-603. Plat required when land is subdivided -- Approval of plat --**
653 **Recording plat.**

654 (1) Unless exempt under Section 17-27a-605 or excluded from the definition of
655 subdivision under Subsection 17-27a-103[~~(37)~~](38), whenever any land is laid out and platted,
656 the owner of the land shall provide an accurate plat that describes or specifies:

657 (a) a name or designation of the subdivision that is distinct from any plat already
658 recorded in the county recorder's office;

659 (b) the boundaries, course, and dimensions of all of the parcels of ground divided, by
660 their boundaries, course, and extent, whether the owner proposes that any parcel of ground is
661 intended to be used as a street or for any other public use, and whether any such area is
662 reserved or proposed for dedication for a public purpose;

663 (c) the lot or unit reference, block or building reference, street or site address, street
664 name or coordinate address, acreage or square footage for all parcels, units, or lots, and length
665 and width of the blocks and lots intended for sale; and

666 (d) every existing right-of-way and easement grant of record for underground facilities,
667 as defined in Section 54-8a-2, and for other utility facilities.

668 (2) Subject to Subsections (3), (4), and (5), if the plat conforms to the county's
669 ordinances and this part and has been approved by the culinary water authority and the sanitary
670 sewer authority, the county shall approve the plat.

671 (3) The county may withhold an otherwise valid plat approval until the owner of the
672 land provides the legislative body with a tax clearance indicating that all taxes, interest, and
673 penalties owing on the land have been paid.

674 (4) (a) The owner of the land shall acknowledge the plat before an officer authorized
675 by law to take the acknowledgment of conveyances of real estate and shall obtain the signature
676 of each individual designated by the county.

- 677 (b) The surveyor making the plat shall certify that the surveyor:
678 (i) holds a license in accordance with Title 58, Chapter 22, Professional Engineers and
679 Land Surveyors Licensing Act;
680 (ii) has completed a survey of the property described on the plat in accordance with
681 Section 17-23-17 and has verified all measurements; and
682 (iii) has placed monuments as represented on the plat.
683 (c) As applicable, the owner or operator of the underground and utility facilities shall
684 approve the:
685 (i) boundary, course, dimensions, and intended use of the right-of-way and easement
686 grants of record;
687 (ii) location of existing underground and utility facilities; and
688 (iii) conditions or restrictions governing the location of the facilities within the
689 right-of-way, and easement grants of records, and utility facilities within the subdivision.
690 (5) (a) After the plat has been acknowledged, certified, and approved, the owner of the
691 land shall, within the time period designated by ordinance, record the plat in the county
692 recorder's office in the county in which the lands platted and laid out are situated.
693 (b) An owner's failure to record a plat within the time period designated by ordinance
694 renders the plat voidable.

695 Section 12. Section **17-36-37** is amended to read:

696 **17-36-37. Budget officer -- Annual financial statement -- Contents.**

- 697 (1) The budget officer of each county, within 180 days after the close of each fiscal
698 period or, for a county that has adopted a fiscal period that is a biennial period, within 180 days
699 after both the midpoint and the close of the fiscal period, except as provided by Section
700 17-36-38, shall prepare and make available to the governing body an annual financial report
701 which shall contain:
702 (a) a statement of revenues and expenditures and a comparison with the budget of the
703 general fund, similar statements of all other funds for which budgets are required, and
704 statements of revenues and expenditures or of income and expense, as the case may be, of all
705 other operating funds of the county;
706 (b) a balance sheet of each fund and a combined balance sheet of all funds as of:
707 (i) for a county that has adopted a fiscal period that is a biennial period, the midpoint

708 and the close of the fiscal period; and

709 (ii) for each other county, the close of the fiscal period; or

710 (c) any other reports the governing body may require, including work performance
711 data, tax levies, taxable values, details of bonded indebtedness, and historical facts of interest
712 to the governing body and the public.

713 (2) Each annual financial report required under Subsection (1) shall identify impact fee
714 funds by the year in which they were received, the project from which the funds were collected,
715 the capital projects for which the funds are budgeted, and the projected schedule for
716 expenditure.

717 [~~2~~] (3) Copies of the annual report shall be furnished to the state auditor and made a
718 matter of public record in the office of the budget officer.

719 Section 13. Section **17A-1-443** is amended to read:

720 **17A-1-443. Annual financial reports -- Independent audit reports.**

721 (1) (a) Within 180 days after the close of each fiscal year, the district shall prepare an
722 annual financial report in conformity with generally accepted accounting principles as
723 prescribed in the Uniform Accounting Manual for Special Districts. [~~This requirement~~]

724 (b) Each annual financial report shall identify impact fee funds by the year in which
725 they were received, the project from which the funds were collected, the capital projects for
726 which the funds are budgeted, and the projected schedule for expenditure.

727 (2) The requirement under Subsection (1)(a) to prepare an annual financial report may
728 be satisfied by presentation of the audit report furnished by the independent auditor.

729 (3) Copies of the annual financial report or the audit report furnished by the
730 independent auditor shall be filed with the state auditor and shall be filed as a public document
731 in the district office.

Fiscal Note
Bill Number SB0267S01

Changes to Local Government Provisions

15-Feb-06

9:52 AM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst