

**SCHOOL IMPACT FEES**

2007 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Steven R. Mascaro**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE****General Description:**

This bill modifies provisions related to impact fees to authorize school districts to impose impact fees.

**Highlighted Provisions:**

This bill:

- ▶ authorizes school districts to impose an impact fee, subject to voter approval;
- ▶ expands the definition of enactment to include a local school board resolution;
- ▶ modifies the definition of local political subdivision to include school districts;
- ▶ requires school districts to comply with notice, hearing, voter approval, and other requirements in imposing an impact fee;
- ▶ repeals a provision prohibiting school districts from imposing impact fees;
- ▶ repeals language authorizing a local political subdivision to impose and collect impact fees on behalf of a school district if authorized under another statutory provision; and
- ▶ provides that impact fees imposed by a school district need not be paid before a county or municipality gives development approval but become a lien on property.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None



**Utah Code Sections Affected:**

## AMENDS:

**11-36-102**, as last amended by Chapter 257, Laws of Utah 2006

**11-36-202**, as last amended by Chapters 240 and 257, Laws of Utah 2006

## ENACTS:

**53A-20-100.7**, Utah Code Annotated 1953

## REPEALS:

**53A-20-100.5**, as enacted by Chapter 283, Laws of Utah 1995

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*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 International 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 of trustees resolution, for special districts; and

(d) a local school board resolution, for a school district.

(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, a school district, 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.

(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.

(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.

(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~~[-]; and~~

(h) school buildings and related facilities.

(13) (a) "Public safety facility" means:

(i) a building constructed or leased to house police, fire, or other public safety entities;  
or

(ii) a fire suppression vehicle with a ladder reach of at least 75 feet, costing in excess of \$1,250,000, that is necessary for fire suppression in commercial areas with one or more buildings at least five stories high.

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

(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.

(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.

(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 **11-36-202** is amended to read:

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

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

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

121 (c) In calculating the impact fee, each local political subdivision may include:  
122 (i) the construction contract price;  
123 (ii) the cost of acquiring land, improvements, materials, and fixtures;  
124 (iii) the cost for planning, surveying, and engineering fees for services provided for and  
125 directly related to the construction of the system improvements; and  
126 (iv) debt service charges, if the political subdivision might use impact fees as a revenue  
127 stream to pay the principal and interest on bonds, notes, or other obligations issued to finance  
128 the costs of the system improvements.

129 (d) In calculating an impact fee, a local political subdivision may not include an  
130 expense for overhead unless the expense is calculated pursuant to a methodology that is  
131 consistent with:  
132 (i) generally accepted cost accounting practices; and  
133 (ii) the methodological standards set forth by the federal Office of Management and  
134 Budget for federal grant reimbursement.

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

138 (f) In enacting an impact fee enactment:  
139 (i) municipalities shall:  
140 (A) make a copy of the impact fee enactment available to the public at least 14 days  
141 before the date of the public hearing; and  
142 (B) comply with the notice and hearing requirements of, and, except as provided in  
143 Subsection 11-36-401(4)(f), receive the protections of Sections 10-9a-205 and 10-9a-801;  
144 (ii) counties shall:  
145 (A) make a copy of the impact fee enactment available to the public at least 14 days  
146 before the date of the public hearing; and  
147 (B) comply with the notice and hearing requirements of, and, except as provided in  
148 Subsection 11-36-401(4)(f), receive the protections of Sections 17-27a-205 and 17-27a-801;  
149 [~~and~~]  
150 (iii) school districts shall comply with the requirements of, and receive the protections  
151 of, Section 53A-20-100.7; and

152           ~~[(iii)]~~ (iv) special districts shall:

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

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

157           (g) Nothing contained in Subsection (1)(f) or in the subsections referenced in  
158 Subsections (1)(f)(i)(B) and (ii)(B) may be construed to require involvement by a planning  
159 commission in the impact fee enactment process.

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

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

163           (b) either:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) requiring the legislative body to:

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

(B) determine whether or not the impact fee is still required to finance the Habitat Conservation Plan; and  
(C) affirmatively reauthorize the impact fee if the legislative body finds that the impact fee must remain in effect.

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

(7) Notwithstanding any other provision of this chapter:

(a) a municipality imposing impact fees to fund fire trucks as of the effective date of this act may impose impact fees for fire trucks until July 1, 1997; and

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

~~[(8) Notwithstanding any other provision of this chapter, a local political subdivision~~

may impose and collect impact fees on behalf of a school district if authorized by Section 53A-20-100.5.]

(8) Impact fees imposed by a school district need not be paid before a county or municipality gives development approval, but upon their imposition become a lien on the property in favor of the school district.

Section 3. Section **53A-20-100.7** is enacted to read:

**53A-20-100.7. Impact fee resolution -- Notice and hearing requirements.**

(1) (a) In order for a school district to impose an impact fee under Title 11, Chapter 36, Impact Fees Act, the local school board shall:

(i) prepare a proposed impact fee resolution that meets the requirements of Title 11, Chapter 36, Impact Fees Act;

(ii) make a copy of the impact fee resolution available to the public at least 14 days before the date of the public hearing and hold a public hearing on the proposed impact fee resolution;

(iii) provide reasonable notice of the public hearing at least 14 days before the date of the hearing; and

(iv) obtain the approval of school district voters for imposition of the impact fee at an election held for that purpose.

(b) After holding a hearing, the local school board may:

(i) submit the impact fee resolution to voters as originally proposed;

(ii) amend the impact fee resolution and submit the amended resolution to voters; or

(iii) reject the resolution.

(2) A school district meets the requirements of reasonable notice required by this section if it:

(a) posts notice of the hearing or meeting in at least three public places within the jurisdiction and publishes notice of the hearing or meeting in a newspaper of general circulation in the jurisdiction, if one is available; or

(b) gives actual notice of the hearing or meeting.

(3) The local school board may enact a resolution establishing stricter notice requirements than those required by this section.

(4) (a) Proof that one of the two forms of notice required by this section was given is



245 prima facie evidence that notice was properly given.  
246 (b) If notice given under authority of this section is not challenged within 30 days from  
247 the date of the meeting for which the notice was given, the notice is considered adequate and  
248 proper.  
249 Section 4. **Repealer.**  
250 This bill repeals:  
251 Section **53A-20-100.5, Prohibition of school impact fees.**

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Legislative Review Note  
as of 12-7-06 9:55 AM

Office of Legislative Research and General Counsel

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**H.B. 74 - School Impact Fees**

**Fiscal Note**

2007 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Local revenue generated by a school district may increase if a district implements an impact fee. The associated revenue generated by a school district which implements such fees will be paid by individuals or businesses through an impact fee imposed upon development activity within the boundaries of the school district.

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*1/17/2007, 11:42:22 AM, Lead Analyst: Leishman, B.*

**Office of the Legislative Fiscal Analyst**