

- 30 construction that the developer is required to provide in excess of requirements for the project;
- 31 ▶ includes private water providers in other impact fee provisions;
- 32 ▶ prohibits an impact fee enactment from taking effect until 90 days after it is enacted;
- 33 and
- 34 ▶ makes technical changes.

35 **Monies Appropriated in this Bill:**

36 None

37 **Other Special Clauses:**

38 None

39 **Utah Code Sections Affected:**

40 AMENDS:

- 41 **11-36-102**, as last amended by Laws of Utah 2007, Chapter 329
- 42 **11-36-201**, as last amended by Laws of Utah 2007, Chapter 329
- 43 **11-36-202**, as last amended by Laws of Utah 2007, Chapter 329

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

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

47 **11-36-102. Definitions.**

48 As used in this chapter:

- 49 (1) "Building permit fee" means the fees charged to enforce the uniform codes adopted
- 50 pursuant to Title 58, Chapter 56, Utah Uniform Building Standards Act, that are not greater
- 51 than the fees indicated in the appendix to the International Building Code.
- 52 (2) "Capital facilities plan" means the plan required by Section 11-36-201.
- 53 (3) "Development activity" means any construction or expansion of a building,
- 54 structure, or use, any change in use of a building or structure, or any changes in the use of land
- 55 that creates additional demand and need for public facilities.
- 56 (4) "Development approval" means any written authorization from a local political
- 57 subdivision that authorizes the commencement of development activity.

58 (5) "Enactment" means:

59 (a) a municipal ordinance, for [~~municipalities~~] a municipality;

60 (b) a county ordinance, for [~~counties~~] a county; and

61 (c) a governing board resolution, for a local [~~districts or~~] district, special service
62 [~~districts~~] district, or private entity.

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

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

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

71 (8) (a) "Local political subdivision" means a county, a municipality, a local district
72 under Title 17B, Limited Purpose Local Government Entities - Local Districts, or a special
73 service district under Title 17A, Chapter 2, Part 13, Utah Special Service District Act.

74 (b) "Local political subdivision" does not mean a school [~~districts~~] district, whose
75 impact fee activity is governed by Section 53A-20-100.5.

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

78 (10) (a) "Project improvements" means site improvements and facilities that are:

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

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

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

84 (11) "Proportionate share" means the cost of public facility improvements that are
85 roughly proportionate and reasonably related to the service demands and needs of any

86 development activity.

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

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

91 (b) wastewater collection and treatment facilities;

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

93 (d) municipal power facilities;

94 (e) roadway facilities;

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

96 (g) public safety facilities.

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

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

99 or

100 (ii) a fire suppression vehicle with a ladder reach of at least 75 feet, costing in excess of
101 \$1,250,000, that is necessary for fire suppression in commercial areas with one or more
102 buildings at least five stories high.

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

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

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

110 (i) are necessitated by the new development; and

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

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

113 (15) (a) "Service area" means a geographic area designated by a local political

114 subdivision on the basis of sound planning or engineering principles in which a defined set of
115 public facilities provide service within the area.

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

117 (16) (a) "System improvements" means:

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

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

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

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

124 **11-36-201. Impact fees -- Analysis -- Capital facilities plan -- Notice of plan --**
125 **Summary -- Exemptions.**

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

128 (b) A local political subdivision may not:

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

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

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

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

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

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

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

142 (2) (a) Before imposing impact fees, each local political subdivision and private entity
143 shall, except as provided in Subsection (2)(f), prepare a capital facilities plan.

144 (b) (i) As used in this Subsection (2)(b):

145 (A) (I) "Affected entity" means each county, municipality, local district under Title 17B,
146 Limited Purpose Local Government Entities - Local Districts, special service district under Title
147 17A, Chapter 2, Part 13, Utah Special Service District Act, school district, interlocal
148 cooperation entity established under Chapter 13, Interlocal Cooperation Act, and specified
149 public utility:

150 (Aa) whose services or facilities are likely to require expansion or significant
151 modification because of the facilities proposed in the proposed capital facilities plan; or

152 (Ab) that has filed with the local political subdivision or private entity a copy of the
153 general or long-range plan of the county, municipality, local district, special service district,
154 school district, interlocal cooperation entity, or specified public utility.

155 (II) "Affected entity" does not include the local political subdivision or private entity
156 that is required under this Subsection (2) to provide notice.

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

159 (ii) Before preparing or amending a capital facilities plan [~~for facilities proposed on land~~
160 ~~located within a county of the first or second class~~], each local political subdivision and each
161 private entity shall provide written notice, as provided in this Subsection (2)(b), of its intent to
162 prepare or amend a capital facilities plan.

163 (iii) Each notice under Subsection (2)(b)(ii) shall:

164 (A) indicate that the local political subdivision or private entity intends to prepare or
165 amend a capital facilities plan;

166 (B) describe or provide a map of the geographic area where the proposed capital
167 facilities will be located;

168 (C) be sent to:

169 (I) each county in whose unincorporated area and each municipality in whose

170 boundaries is located the land on which the proposed facilities will be located;

171 (II) each affected entity;

172 (III) the Automated Geographic Reference Center created in Section 63F-1-506;

173 (IV) the association of governments, established pursuant to an interlocal agreement

174 under Title 11, Chapter 13, Interlocal Cooperation Act, in which the facilities are proposed to

175 be located; ~~[and]~~

176 (V) the state planning coordinator appointed under Section 63-38d-202; ~~[and]~~

177 (VI) the registered agent of the Utah Home Builders Association;

178 (VII) the registered agent of the Utah Association of Realtors; and

179 (VIII) the registered agent of the Utah Chapter of the Associated General Contractors

180 of America; and

181 (D) with respect to the notice to an affected ~~[entities]~~ entity, invite the affected

182 ~~[entities]~~ entity to provide information for the local political subdivision or private entity to

183 consider in the process of preparing, adopting, and implementing or amending a capital facilities

184 plan concerning:

185 (I) impacts that the facilities proposed in the capital facilities plan may have on the

186 affected entity; and

187 (II) facilities or uses of land that the affected entity is planning or considering that may

188 conflict with the facilities proposed in the capital facilities plan.

189 (c) The plan shall identify:

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

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

192 demands.

193 (d) ~~[Municipalities and counties]~~ A municipality or county need not prepare a separate

194 capital facilities plan if the general plan required by ~~[Sections]~~ Section 10-9a-401 ~~[and]~~ or

195 17-27a-401, respectively, contains the elements required by Subsection (2)(c).

196 (e) (i) If a local political subdivision ~~[prepares]~~ chooses to prepare an independent

197 capital facilities plan rather than ~~[including]~~ include a capital facilities element in the general

198 plan, the local political subdivision shall[-];

199 (A) before preparing or contracting to prepare or amending or contracting to amend the
200 independent capital facilities plan, send written notice:

201 (I) to:

202 (Aa) the registered agent of the Utah Home Builders Association;

203 (Bb) the registered agent of the Utah Association of Realtors; and

204 (Cc) the registered agent of the Utah Chapter of the Associated General Contractors of
205 America;

206 (II) stating the local political subdivision's intent to prepare or amend a capital facilities
207 plan; and

208 (III) inviting each of the notice recipients to participate in the preparation of or
209 amendment to the capital facilities plan; and

210 (B) before adopting or amending the capital facilities plan:

211 ~~[(A)]~~ (I) give public notice of the plan or amendment according to [this] Subsection
212 (2)(e)[-;(B)](ii)(A), (B), or (C), as the case may be, at least 14 days before the date of the public
213 hearing[-];

214 ~~[(F)]~~ (II) make a copy of the plan or amendment, together with a summary designed to
215 be understood by a lay person, available to the public; [and]

216 ~~[(H)]~~ (III) place a copy of the plan or amendment and summary in each public library
217 within the local political subdivision; and

218 ~~[(E)]~~ (IV) hold a public hearing to hear public comment on the plan or amendment.

219 (ii) With respect to the public notice required under Subsection (2)(e)(i)(B)(I):

220 ~~[(ii) Municipalities]~~ (A) each municipality shall comply with the notice and hearing
221 requirements of, and, except as provided in Subsection 11-36-401(4)(f), receive the protections
222 of Sections 10-9a-205 and 10-9a-801 and Subsection 10-9a-502(2)[-];

223 ~~[(iii) Counties]~~ (B) each county shall comply with the notice and hearing requirements
224 of, and, except as provided in Subsection 11-36-401(4)(f), receive the protections of Sections
225 17-27a-205 and 17-27a-801 and Subsection 17-27a-502(2)[-]; and

226 ~~[(iv) Local districts]~~ (C) each local district, special service ~~[districts]~~ district, and
 227 private ~~[entities]~~ entity shall comply with the notice and hearing requirements of, and receive the
 228 protections of, Section 17B-1-111.

229 ~~[(v)]~~ (iii) Nothing contained in this Subsection (2)(e) or in the subsections referenced in
 230 Subsections (2)(e)(ii)(A) and ~~[(iii)]~~ (B) may be construed to require involvement by a planning
 231 commission in the capital facilities planning process.

232 (f) (i) ~~[Local]~~ A local political [subdivisions] subdivision with a population or serving a
 233 population of less than 5,000 as of the last federal census need not comply with the capital
 234 facilities plan requirements of this part, but shall ensure that:

235 (A) the impact fees [imposed by them] that the local political subdivision imposes are
 236 based upon a reasonable plan[-]; and

237 (B) each applicable notice required by this chapter is given.

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

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

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

245 (5) (a) ~~[Each]~~ Subject to the notice requirement of Subsection (5)(b), each local
 246 political subdivision [imposing impact fees] and private entity intending to impose an impact fee
 247 shall prepare a written analysis of each impact fee that:

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

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

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

253 (iv) based upon those factors and the requirements of this chapter, identifies how the

254 impact fee was calculated.

255 (b) Before preparing or contracting to prepare the written analysis required under
256 Subsection (5)(a), each local political subdivision or private entity shall provide:

257 (i) public notice; and

258 (ii) written notice:

259 (A) to:

260 (I) the registered agent of the Utah Home Builders Association;

261 (II) the registered agent of the Utah Association of Realtors; and

262 (III) the registered agent of the Utah Chapter of the Associated General Contractors of
263 America;

264 (B) indicating the local political subdivision or private entity's intent to prepare or
265 contract to prepare a written analysis of an impact fee; and

266 (C) inviting each notice recipient to participate in the preparation of the written
267 analysis.

268 ~~[(b)]~~ (c) In analyzing whether or not the proportionate share of the costs of public
269 facilities are reasonably related to the new development activity, the local political subdivision
270 or private entity, as the case may be, shall identify, if applicable:

271 (i) the cost of existing public facilities;

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

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

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

281 (v) the extent to which the newly developed properties are entitled to a credit because

282 the ~~[municipality is requiring their]~~ local political subdivision or private entity, as the case may
 283 be, requires its developers or owners, by contractual arrangement or otherwise, to provide
 284 common facilities, inside or outside the proposed development, that have been provided by the
 285 ~~[municipality]~~ local political subdivision or private entity, respectively, and financed through
 286 general taxation or other means, apart from user charges, in other parts of the ~~[municipality]~~
 287 service area;

288 (vi) extraordinary costs, if any, in servicing the newly developed properties; and
 289 (vii) the time-price differential inherent in fair comparisons of amounts paid at different
 290 times.

291 ~~[(e)]~~ (d) Each local political subdivision and private entity that prepares a written
 292 analysis under this Subsection (5) on or after July 1, 2000 shall also prepare a summary of the
 293 written analysis, designed to be understood by a lay person.

294 (6) Each local political subdivision that adopts an impact fee enactment under Section
 295 11-36-202 on or after July 1, 2000 shall, at least 14 days before adopting the enactment, submit
 296 ~~[to each public library within the local political subdivision: (a)]~~ a copy of the written analysis
 297 required by Subsection (5)(a)[;] and ~~[(b)]~~ a copy of the summary required by Subsection
 298 (5)~~[(e)].~~(d) to:

- 299 (a) each public library within the local political subdivision;
- 300 (b) the registered agent of the Utah Home Builders Association;
- 301 (c) the registered agent of the Utah Association of Realtors; and
- 302 (d) the registered agent of the Utah Chapter of the Associated General Contractors of
 303 America.

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

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

308 **11-36-202. Impact fees -- Enactment -- Required provisions -- Effective date.**

309 (1) (a) Each local political subdivision and private entity wishing to impose impact fees

310 shall pass an impact fee enactment.

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

313 (c) In calculating the impact fee, ~~[each]~~ a local political subdivision or private entity
314 may include:

315 (i) the construction contract price;

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

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

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

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

324 (i) generally accepted cost accounting practices; and

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

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

330 (f) ~~[In enacting]~~ Each local political subdivision and private entity that intends to enact
331 an impact fee enactment shall:

332 ~~[(i) municipalities shall:]~~

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

334 (A) make a copy of the impact fee enactment available to the public ~~[at least 14 days~~
335 ~~before the date of the public hearing]~~; and

336 (B) mail a written copy of the impact fee enactment to:

337 (I) the registered agent of the Utah Home Builders Association;

338 (II) the registered agent of the Utah Association of Realtors; and
339 (III) the registered agent of the Utah Chapter of the Associated General Contractors of
340 America; and

341 ~~[(B)]~~ (ii) (A) for a municipality, comply with the notice and hearing requirements of,
342 and, except as provided in Subsection 11-36-401(4)(f), receive the protections of Sections
343 10-9a-205 and 10-9a-801;

344 ~~[(ii) counties shall:]~~

345 ~~[(A) make a copy of the impact fee enactment available to the public at least 14 days~~
346 ~~before the date of the public hearing; and]~~

347 (B) for a county, comply with the notice and hearing requirements of, and, except as
348 provided in Subsection 11-36-401(4)(f), receive the protections of Sections 17-27a-205 and
349 17-27a-801; and

350 ~~[(iii) local districts and special service districts shall:]~~

351 ~~[(A) make a copy of the impact fee enactment available to the public at least 14 days~~
352 ~~before the date of the public hearing; and]~~

353 ~~[(B)]~~ (C) for a local district or special service district, comply with the notice and
354 hearing requirements of, and receive the protections of, Section 17B-1-111.

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

358 (2) The local political subdivision or private entity shall ensure that the impact fee
359 enactment;

360 (a) contains:

361 ~~[(a)]~~ (i) a provision establishing one or more service areas within which [it shall
362 calculate and impose] the local political subdivision or private entity calculates and imposes
363 impact fees for various land use categories;

364 ~~[(b) either:]~~

365 ~~[(i)]~~ (ii) (A) a schedule of impact fees for each type of development activity that

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

367 ~~[(ii)]~~ (B) the formula that the local political subdivision or private entity, as the case
368 may be, will use to calculate each impact fee;

369 ~~[(e)]~~ (iii) a provision authorizing the local political subdivision or private entity, as the
370 case may be, to adjust the standard impact fee at the time the fee is charged to:

371 ~~[(i)]~~ (A) respond to unusual circumstances in specific cases; and

372 ~~[(ii)]~~ (B) ensure that the impact fees are imposed fairly; and

373 ~~[(d)]~~ (iv) a provision governing calculation of the amount of the impact fee to be
374 imposed on a particular development that permits adjustment of the amount of the fee based
375 upon studies and data submitted by the developer~~[-];~~ and

376 (b) allows a developer to receive a credit against or proportionate reimbursement of an
377 impact fee if:

378 (i) the developer is required by the local political subdivision, as a condition of
379 development activity approval, to:

380 (A) dedicate land for a system improvement;

381 (B) improve a system improvement; or

382 (C) provide new construction for a system improvement;

383 (ii) the system improvement is included in the impact fee analysis; and

384 (iii) the land, improvement, or new construction provides a system improvement that
385 exceeds the requirements for the project.

386 (3) ~~[The]~~ A local political subdivision or private entity may include a provision in ~~[the]~~
387 an impact fee enactment that:

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

391 (b) imposes an impact fee for public facility costs previously incurred by a local political
392 subdivision or private entity, as the case may be, to the extent that new growth and
393 development will be served by the previously constructed improvement; and

394 (c) allows a credit against impact fees for any dedication of land for, improvement to, or
395 new construction of, any system improvements provided by the developer if the facilities:

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

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

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

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

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

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

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

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

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

412 (iii) requiring the legislative body to:

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

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

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

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

420 (7) Notwithstanding any other provision of this chapter:

421 (a) a municipality imposing impact fees to fund fire trucks as of the effective date of this

422 act may impose impact fees for fire trucks until July 1, 1997; and

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

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

428 (9) An impact fee enactment may not take effect until 90 days after it is enacted.