

IMPACT FEE AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kraig Powell

Senate Sponsor: Daniel R. Liljenquist

LONG TITLE

General Description:

This bill modifies provisions relating to impact fees.

Highlighted Provisions:

This bill:

► adds to the list of required recipients of notice relating to impact fees and capital facilities plans ~~H→ [-] ; and~~

► **modifies how that notice is to be given.** ←H

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

11-36-201, as last amended by Laws of Utah 2008, Chapters 70, 360, and 382

11-36-202, as last amended by Laws of Utah 2008, Chapter 70

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

Section 1. Section **11-36-201** is amended to read:

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

Summary -- Exemptions.

(1) (a) Each local political subdivision and private entity shall comply with the



28 requirements of this chapter before establishing or modifying any impact fee.

29 (b) A local political subdivision may not:

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

31 (ii) impose or charge any other fees as a condition of development approval unless

32 those fees are a reasonable charge for the service provided.

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35 authorized by Subsection 11-36-102(12) is repealed by July 1, 1995.

36 (d) (i) Existing impact fees that a local political subdivision charges for public facilities
37 authorized in Subsection 11-36-102(12) need not comply with the requirements of this chapter
38 until July 1, 1997.

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

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

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

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

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

46 (A) (I) "Affected entity" means each county, municipality, local district under Title
47 17B, Limited Purpose Local Government Entities - Local Districts, special service district
48 under Title 17D, Chapter 1, Special Service District Act, school district, interlocal cooperation
49 entity established under Chapter 13, Interlocal Cooperation Act, and specified public utility:

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

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

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

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

59 (ii) Before preparing or amending a capital facilities plan, each local political
 60 subdivision and each private entity shall provide written notice, as provided in this Subsection
 61 (2)(b), of its intent to prepare or amend a capital facilities plan.

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

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

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

67 (C) be ~~H→~~ [sent to] ~~←H~~ :

68 (I) ~~H→~~ sent to ~~←H~~ each county in whose unincorporated area and each municipality in
 68a whose
 69 boundaries is located the land on which the proposed facilities will be located;

70 (II) ~~H→~~ sent to ~~←H~~ each affected entity;

71 (III) ~~H→~~ sent to ~~←H~~ the Automated Geographic Reference Center created in
 71a Section 63F-1-506;

72 (IV) ~~H→~~ sent to ~~←H~~ the association of governments, established pursuant to an interlocal
 72a agreement
 73 under [~~Title 11,~~] Chapter 13, Interlocal Cooperation Act, in which the facilities are proposed to
 74 be located; ~~S→~~ and ~~←S~~

74a ~~H→~~ (V)(Aa) placed on the Utah Public Notice Website created under Section 63F-1-701,
 74b if the local political subdivision:

74c (Ii) is required under Subsection 52-4-203(3) to use that website to provide public notice
 74d of a meeting; or

74e (Iii) voluntarily chooses to place notice on that website despite not being required to do
 74f so under Subsection (2)(b)(iii)(C)(V)(Aa)(Ii); or

74g (Bb) if the local political subdivision does not provide notice on the Utah Public Notice
 74h Website, or in the case of a private entity, sent to:

75 [~~(V)~~] (Ii) ~~←H~~ the state planning coordinator appointed under Section 63J-4-202;

76 ~~H→~~ [~~(V)~~] (Iii) ~~←H~~ the registered agent of the Utah Home Builders Association;

77 ~~H→~~ [~~(V)~~] (IIIiii) ~~←H~~ the registered agent of the Utah Association of Realtors; [~~and~~]

78 ~~H→~~ [~~(V)~~] (IViv) ~~←H~~ the registered agent of the Utah Chapter of the Associated General
 78a Contractors
 79 of America; [~~and~~]

80 ~~H→~~ [~~(IX)~~ the registered agent of the Utah League of Women Voters;

81 ~~_____ (X) (Vv) ←Ĥ~~ the Utah office of ~~Ĥ→ [the American Association of Retired Persons]~~

81a AARP ←Ĥ ; and

82 ~~Ĥ→ [(Xf) (VIvi) ←Ĥ~~ the registered agent of the Utah Taxpayers Association; and

82a ~~Ŝ→ [Ĥ→ (VI) sent to each owner of an undeveloped parcel of property that is:~~

82b ~~_____ (Aa) located within the boundary of the local political subdivision or within the~~

82c ~~jurisdiction of the private entity, as the case may be; and~~

82d ~~_____ (Bb) larger than five acres in size; and ←Ĥ] ←Ŝ~~

83 (D) with respect to the notice to an affected entity, invite the affected entity to provide
84 information for the local political subdivision or private entity to consider in the process of
85 preparing, adopting, and implementing or amending a capital facilities plan concerning:

86 (I) impacts that the facilities proposed in the capital facilities plan may have on the
87 affected entity; and

88 (II) facilities or uses of land that the affected entity is planning or considering that may
89 conflict with the facilities proposed in the capital facilities plan.

90 (c) The plan shall identify:
 91 (i) demands placed upon existing public facilities by new development activity; and
 92 (ii) the proposed means by which the local political subdivision will meet those
 93 demands.

94 (d) A municipality or county need not prepare a separate capital facilities plan if the
 95 general plan required by Section 10-9a-401 or 17-27a-401, respectively, contains the elements
 96 required by Subsection (2)(c).

97 (e) (i) If a local political subdivision chooses to prepare an independent capital
 98 facilities plan rather than include a capital facilities element in the general plan, the local
 99 political subdivision shall:

100 (A) before preparing or contracting to prepare or amending or contracting to amend the
 101 independent capital facilities plan, ~~H→~~ **[send] provide ←H** written notice ~~H→~~ **, as provided in**
 101a **Subsection (e)(ii) ←H** :

102 ~~H→~~ **[(H) to:**

103 ~~—— (Aa) the registered agent of the Utah Home Builders Association;~~

104 ~~—— (Bb) the registered agent of the Utah Association of Realtors; [and]~~

105 ~~—— (Cc) the registered agent of the Utah Chapter of the Associated General Contractors of~~
 106 ~~America;~~

107 ~~—— (Dd) the registered agent of the Utah League of Women Voters;~~

108 ~~—— (Ee) the Utah office of the American Association of Retired Persons; and~~

109 ~~—— (Ff) the registered agent of the Utah Taxpayers Association;~~

110 ~~(H) (I) ←H~~ stating the local political subdivision's intent to prepare or amend a capital
 110a facilities

111 plan; and

112 ~~H→~~ **[(HH) (II) ←H** inviting each of the notice recipients to participate in the preparation of
 112a or

113 amendment to the capital facilities plan; and

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

115 (I) give public notice of the plan or amendment according to Subsection (2)(e) ~~H→~~ **[(ii) (iii)**
 115a ~~←H~~ (A),

116 (B), or (C), as the case may be, at least 14 days before the date of the public hearing;

117 (II) make a copy of the plan or amendment, together with a summary designed to be
 118 understood by a lay person, available to the public;

119 (III) place a copy of the plan or amendment and summary in each public library within
 120 the local political subdivision; and

121 (IV) hold a public hearing to hear public comment on the plan or amendment.

121a ~~H~~→ (ii) The notice required under Subsection (2)(e)(i)(A) shall be:

121b (A) ~~S~~→ [~~f~~] ~~←S~~ placed on the Utah Public Notice Website created in Section

121c1 63F-1- 701, if the

121c local political subdivision:

121d ~~S~~→ [~~Aa~~] (I) ~~←S~~ is required under Subsection 52-4-203(3) to use that website to

121e1 provide public

121e notice of a meeting; or

121f ~~S~~→ [~~Bb~~] (II) ~~←S~~ voluntarily chooses to place notice on that website despite not being

121g1 required to do

121g so under Subsection (2)(e)(ii)(A)(I); or

121h ~~S~~→ [~~H~~] (B) ~~←S~~ if the local political subdivision does not provide notice on the Utah

121i1 Public Notice

121i Website under Subsection (2)(e)(ii)(A)(I), sent to:

121j ~~S~~→ [~~Aa~~] (I) ~~←S~~ the registered agent of the Utah

121k Homebuilders Association;

121l ~~S~~→ [~~Bb~~] (II) ~~←S~~ the registered agent of the Utah Association of Realtors;

121m ~~S~~→ [~~Cc~~] (III) ~~←S~~ the registered agent of the Utah Chapter of the Associated General

121n1 Contractors of

121n America;

121o ~~S~~→ [~~Dd~~] (IV) ~~←S~~ the Utah office of AARP; and

121p ~~S~~→ [~~Ee~~] (V) ~~←S~~ the registered agent of the Utah Taxpayers Association ~~S~~→ [~~;~~and]

121q [~~B~~] sent to each owner of an undeveloped parcel of property that is:

121r ~~(I) located within the boundary of the local political subdivision; and~~

121s ~~(H) larger than five acres in size.]~~ ~~←S~~ .

122 [~~ii~~] (iii) ~~←H~~ With respect to the public notice required under Subsection (2)(e)(i)(B)(I):

123 (A) each municipality shall comply with the notice and hearing requirements of, and,

124 except as provided in Subsection 11-36-401(4)(f), receive the protections of Sections

125 10-9a-205 and 10-9a-801 and Subsection 10-9a-502(2);

126 (B) each county shall comply with the notice and hearing requirements of, and, except

127 as provided in Subsection 11-36-401(4)(f), receive the protections of Sections 17-27a-205 and

128 17-27a-801 and Subsection 17-27a-502(2); and

129 (C) each local district, special service district, and private entity shall comply with the

130 notice and hearing requirements of, and receive the protections of, Section 17B-1-111.

131 ~~H~~→ [~~iii~~] (iv) ~~←H~~ Nothing contained in this Subsection (2)(e) or in the subsections

131a referenced in

132 Subsections (2)(e)(ii)(A) and (B) may be construed to require involvement by a planning

133 commission in the capital facilities planning process.

134 (f) (i) A local political subdivision with a population or serving a population of less
135 than 5,000 as of the last federal census need not comply with the capital facilities plan
136 requirements of this part, but shall ensure that:

137 (A) the impact fees that the local political subdivision imposes are based upon a
138 reasonable plan; and

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

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

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

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

147 (5) (a) Subject to the notice requirement of Subsection (5)(b), each local political
148 subdivision and private entity intending to impose an impact fee shall prepare a written analysis
149 of each impact fee that:

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

151 (ii) demonstrates how those impacts on system improvements are reasonably related to

152 the development activity;

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

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

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

159 (i) public notice; and

160 (ii) written notice:

161 (A) ~~Ĥ→ (I) Š→ [(Aa)] ←Š~~ on the Utah Public Notice Website created in Section

161a1 63F-1-1701, if the

161a local political:

161b ~~Š→ [(Ĥĥ)] (Aa) ←Š~~ is required under Subsection 52-4-203(3) to use that website to
 161c1 provide public notice

161c of a meeting; or

161d ~~Š→ [(Ĥĥĥ)] (Bb) ←Š~~ voluntarily chooses to provide written notice on that website
 161e1 despite not being

161e required to do so under Subsection (5)(b)(ii)(A)(I)(Aa); or

161f ~~Š→ [(ĤĤ)] (II) ←Š~~ if the local political subdivision does not provide notice on the Utah

161g1 Public Notice

161g Website under Subsection (5)(b)(ii)(A)(I)(Aa), or in the case of a private entity, ←Ĥ to:

162 ~~Ĥ→ [(Ĥ)] Š→ [(Ĥĥ)] (Aa) ←Š ←Ĥ~~ the registered agent of the Utah Home Builders

162a Association;

163 ~~Ĥ→ [(ĤĤ)] Š→ [(Ĥĥĥ)] (Bb) ←Š ←Ĥ~~ the registered agent of the Utah Association of

163a Realtors; [and]

164 ~~Ĥ→ [(ĤĤĤ)] Š→ [(Ĥĥĥĥ)] (Cc) ←Š ←Ĥ~~ the registered agent of the Utah Chapter of the

164a1 Associated General

164a Contractors of

165 America;

166 ~~Ĥ→ [(ĤV) the registered agent of the Utah League of Women Voters;~~

167 ~~— [(V)] Š→ [(ĤVĥ)] (Dd) ←Š ←Ĥ~~ the Utah office of Ĥ→ [the American Association of Retired

167a1 Persons]

167a AARP ←Ĥ ; and

168 ~~Ĥ→ [(ĤVĤ)] Š→ [(ĤVĥ)] (Ee) ←Š ←Ĥ~~ the registered agent of the Utah Taxpayers Association;

- 168a1 ~~§~~ → [~~H~~ → and
- 168a ——— ~~(H) to each owner of an undeveloped parcel of property that is:~~
- 168b ——— ~~(Aa) located within the boundary of the local political subdivision or within the~~
- 168c jurisdiction of the private entity, as the case may be; and
- 168d ——— ~~(Bb) larger than five acres in size; ← H] ← §~~
- 169 (B) indicating the local political subdivision or private entity's intent to prepare or
- 170 contract to prepare a written analysis of an impact fee; and
- 171 (C) inviting each notice recipient to participate in the preparation of the written
- 172 analysis.
- 173 (c) In analyzing whether or not the proportionate share of the costs of public facilities
- 174 are reasonably related to the new development activity, the local political subdivision or private
- 175 entity, as the case may be, shall identify, if applicable:
- 176 (i) the cost of existing public facilities;
- 177 (ii) the manner of financing existing public facilities, such as user charges, special
- 178 assessments, bonded indebtedness, general taxes, or federal grants;
- 179 (iii) the relative extent to which the newly developed properties and other properties
- 180 have already contributed to the cost of existing public facilities, by such means as user charges,
- 181 special assessments, or payment from the proceeds of general taxes;
- 182 (iv) the relative extent to which the newly developed properties and other properties

183 will contribute to the cost of existing public facilities in the future;

184 (v) the extent to which the newly developed properties are entitled to a credit because
 185 the local political subdivision or private entity, as the case may be, requires its developers or
 186 owners, by contractual arrangement or otherwise, to provide common facilities, inside or
 187 outside the proposed development, that have been provided by the local political subdivision or
 188 private entity, respectively, and financed through general taxation or other means, apart from
 189 user charges, in other parts of the service area;

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

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

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

196 (6) Each local political subdivision that adopts an impact fee enactment under Section
 197 11-36-202 on or after July 1, 2000 shall, at least 14 days before adopting the enactment, submit
 198 a copy of the written analysis required by Subsection (5)(a) and a copy of the summary
 199 required by Subsection (5)(d) ~~to~~ **[to]** ~~the~~ **:**

200 (a) ~~to~~ **to** ~~each~~ **to** each public library within the local political subdivision; ~~and~~ **and** ~~the~~ **to**

201 (b) ~~to~~ **(i) on the Utah Public Notice Website created in Section 63F-1-701, if the local**
 201a **political subdivision:**

201b **(A) is required under Subsection 52-4-203(2) to use that website to provide public notice**
 201c **of a meeting; or**

201d **(B) voluntarily chooses to place a copy of the written analysis and a copy of the**
 201e **summary on that website despite not being required to do so under Subsection (6)(b)(i)(A); or**

201f **(ii) if the local political subdivision does not place a copy of the written analysis and a**
 201g **copy of the summary on the Utah Public Notice Website under Subsection (6)(b)(i), to:**

201h **(A)** ~~the~~ **to** the registered agent of the Utah Home Builders Association;

202 ~~the~~ **to** ~~(c)~~ **(B)** ~~the~~ **to** the registered agent of the Utah Association of Realtors; ~~and~~

203 ~~the~~ **to** ~~(d)~~ **(C)** ~~the~~ **to** the registered agent of the Utah Chapter of the Associated General
 203a Contractors of

204 America[-];

205 ~~the~~ **to** ~~(e)~~ **the registered agent of the Utah League of Women Voters;**

206 ~~the~~ **to** ~~(f)~~ **(D)** ~~the~~ **to** the Utah office of ~~the~~ **to** ~~(the American Association of Retired Persons)~~

206a **AARP** ~~the~~ **to** ; and

207 ~~H→~~ [(g)] (E) ~~←H~~ the registered agent of the Utah Taxpayers Association ~~S→~~ ~~H→~~ [f] . [f]

207a1 [~~;~~ and

207a ~~————~~ (c) to each owner of an undeveloped parcel of property that is:

207b ~~————~~ (i) located within the boundary of the local political subdivision; and

207c ~~————~~ (ii) larger than five acres in size. ~~←H~~] ~~←S~~

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

211 Section 2. Section **11-36-202** is amended to read:

212 **11-36-202. Impact fees -- Enactment -- Required provisions -- Effective date.**

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

214 shall pass an impact fee enactment.

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

217 (c) In calculating the impact fee, a local political subdivision or private entity may
218 include:

219 (i) the construction contract price;

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

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

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

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

229 (i) generally accepted cost accounting practices; and

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

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

235 (f) Each local political subdivision and private entity that intends to enact an impact fee
236 enactment shall:

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

238 (A) make a copy of the impact fee enactment available to the public; ~~§~~ → ~~§~~ → [f] and [f] ← ~~§~~ ← ~~§~~

239 (B) ~~§~~ → **(I) place a copy of the impact fee enactment on the Utah Public Notice Website**

239a **created in Section 63F-1-701, if the local political subdivision:**

239b **(Aa) is required under Subsection 52-4-203(3) to use that website to provide public**

239c **notice of a meeting; or**

239d **(Bb) voluntarily chooses to place a copy of the impact fee enactment on that website**

239e **despite not being required to do so under Subsection (1)(f)(i)(B)(I)(Aa); or**

239f **(II) if the local political subdivision does not place a copy of the impact fee enactment on**

239g **the Utah Public Notice Website under Subsection (1)(f)(i)(B)(I), or in the case of a private**

239h **entity, ←§** mail a written copy of the impact fee enactment to:

240 ~~H~~→ [(~~H~~)] (Aa) ←~~H~~ the registered agent of the Utah Home Builders Association;

241 ~~H~~→ [(~~H~~)] (Bb) ←~~H~~ the registered agent of the Utah Association of Realtors; [~~and~~]

242 ~~H~~→ [(~~H~~)] (Cc) ←~~H~~ the registered agent of the Utah Chapter of the Associated General

242a Contractors of

243 America; [~~and~~]

244 ~~H~~→ [~~(IV)~~] ~~the registered agent of the Utah League of Women Voters;~~

245 ~~_____ (V) (Dd) ←H the Utah office of H → [the American Association of Retired Persons]~~
 245a AARP ←H ; and

246 ~~S → [H → [(VD)] (Ee) ←H the registered agent of the Utah Taxpayers Association; and~~

246a ~~_____ H → (C) mail a written copy of the impact fee enactment to each owner of an~~

246b undeveloped parcel of property that is:

246c ~~_____ (I) located within the boundary of the local political subdivision or within the~~

246d jurisdiction of the private entity, as the case may be; and

246e ~~_____ (H) larger than five acres in size; and ←H] ←S~~

247 (ii) (A) for a municipality, comply with the notice and hearing requirements of, and,
 248 except as provided in Subsection 11-36-401(4)(f), receive the protections of Sections
 249 10-9a-205 and 10-9a-801;

250 (B) for a county, comply with the notice and hearing requirements of, and, except as
 251 provided in Subsection 11-36-401(4)(f), receive the protections of Sections 17-27a-205 and
 252 17-27a-801; and

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

255 (g) Nothing contained in Subsection (1)(f) may be construed to require involvement by
 256 a planning commission in the impact fee enactment process.

257 (2) The local political subdivision or private entity shall ensure that the impact fee
 258 enactment:

259 (a) contains:

260 (i) a provision establishing one or more service areas within which the local political
 261 subdivision or private entity calculates and imposes impact fees for various land use categories;

262 (ii) (A) a schedule of impact fees for each type of development activity that specifies
 263 the amount of the impact fee to be imposed for each type of system improvement; or

264 (B) the formula that the local political subdivision or private entity, as the case may be,
 265 will use to calculate each impact fee;

266 (iii) a provision authorizing the local political subdivision or private entity, as the case
 267 may be, to adjust the standard impact fee at the time the fee is charged to:

268 (A) respond to unusual circumstances in specific cases; and

269 (B) ensure that the impact fees are imposed fairly; and

270 (iv) a provision governing calculation of the amount of the impact fee to be imposed on
 271 a particular development that permits adjustment of the amount of the fee based upon studies
 272 and data submitted by the developer; and

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

275 (i) the developer is required by the local political subdivision, as a condition of

276 development activity approval, to:

277 (A) dedicate land for a system improvement;

278 (B) improve a system improvement; or

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

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

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

283 (3) A local political subdivision or private entity may include a provision in an impact
284 fee enactment that:

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

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

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

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

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

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

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

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

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

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

- 307 (i) declaring that an impact fee is required to finance the Habitat Conservation Plan;
- 308 (ii) establishing periodic sunset dates for the impact fee; and
- 309 (iii) requiring the legislative body to:
 - 310 (A) review the impact fee on those sunset dates;
 - 311 (B) determine whether or not the impact fee is still required to finance the Habitat
 - 312 Conservation Plan; and
 - 313 (C) affirmatively reauthorize the impact fee if the legislative body finds that the impact
 - 314 fee must remain in effect.
- 315 (6) Each political subdivision shall ensure that any existing impact fee for
- 316 environmental mitigation meets the requirements of Subsection (5) by July 1, 1995.
- 317 (7) Notwithstanding any other provision of this chapter:
 - 318 (a) a municipality imposing impact fees to fund fire trucks as of the effective date of
 - 319 this act may impose impact fees for fire trucks until July 1, 1997; and
 - 320 (b) an impact fee to pay for a public safety facility that is a fire suppression vehicle
 - 321 may not be imposed with respect to land that has a zoning designation other than commercial.
 - 322 (8) Notwithstanding any other provision of this chapter, a local political subdivision
 - 323 may impose and collect impact fees on behalf of a school district if authorized by Section
 - 324 53A-20-100.5.
 - 325 (9) An impact fee enactment may not take effect until 90 days after it is enacted.

Legislative Review Note
as of 1-8-09 8:55 AM

Office of Legislative Research and General Counsel

H.B. 125 - Impact Fee Amendments

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
