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H.B. 274
1st Sub. (Buff)

Representative C. Brent Wallis proposes the following substitute bill:

LOCAL GOVERNMENT FEES AND CHARGES

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: C. Brent Wallis

Senate Sponsor: Scott K. Jenkins

LONG TITLE

General Description:

This bill modifies provisions relating to fees and charges imposed by local government on development.

Highlighted Provisions:

This bill:

- requires certain public agencies to submit a preliminary design or site plan to local authorities to allow the local authorities to make assessments to provide information to the public agencies for inclusion in the process of compiling a development budget;
- provides that changes in applicable provisions or fees after the public agency submits a preliminary design or site plan may not be enforced against the public agency;
- clarifies that the fees which must be paid by an applicant before being entitled to approval of a land use application are application fees;
- limits hookup and other fees imposed by counties, municipalities, local districts, and special service districts;
- modifies the definitions of "hookup fee," "impact fee," "project improvements," and "system improvements" in the Impact Fees Act;

- repeals obsolete language;
- clarifies the purposes of a capital facilities plan relating to an impact fee;
- modifies provisions relating to an impact fee analysis;
- modifies requirements applicable to an impact fee enactment;
- limits impact fees imposed on the state;
- modifies a provision relating to permissible expenditures of impact fees;
- clarifies that a local political subdivision may act by resolution in establishing an administrative impact fee appeals procedure;
- requires a local political subdivision to participate in mediation of an impact fee challenge if a specified public agency requests mediation; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-9a-103, as last amended by Laws of Utah 2008, Chapters 19, 112, 326, and 360

10-9a-305, as last amended by Laws of Utah 2008, Chapter 290

10-9a-509, as last amended by Laws of Utah 2008, Chapters 112 and 279

10-9a-510, as renumbered and amended by Laws of Utah 2005, Chapter 254

11-36-102, as last amended by Laws of Utah 2008, Chapters 70 and 360

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

11-36-302, as enacted by Laws of Utah 1995, First Special Session, Chapter 11

11-36-401, as last amended by Laws of Utah 2005, Chapter 254

17-27a-103, as last amended by Laws of Utah 2008, Chapters 112, 250, 326, and 360

17-27a-305, as last amended by Laws of Utah 2008, Chapter 290

17-27a-508, as last amended by Laws of Utah 2008, Chapters 112 and 279

17-27a-509, as renumbered and amended by Laws of Utah 2005, Chapter 254

17D-1-106, as enacted by Laws of Utah 2008, Chapter 360

ENACTS:

11-36-401.5, Utah Code Annotated 1953

17B-1-118, Utah Code Annotated 1953

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

Section 1. Section **10-9a-103** is amended to read:

10-9a-103. Definitions.

As used in this chapter:

(1) "Affected entity" means a county, municipality, local district, special service district under Title 17D, Chapter 1, Special Service District Act, school district, interlocal cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, specified public utility, a property owner, a property owners association, or the Utah Department of Transportation, if:

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

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

(c) the entity has filed with the municipality a request for notice during the same calendar year and before the municipality provides notice to an affected entity in compliance with a requirement imposed under this chapter.

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

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

(4) "Charter school" includes:

(a) an operating charter school;

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

(c) an entity who is working on behalf of a charter school or approved charter applicant

to develop or construct a charter school building.

(5) "Conditional use" means a land use that, because of its unique characteristics or potential impact on the municipality, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.

Ĥ→ ~~**[(6) "Connection fee" has the same meaning as hookup fee.]**~~ ←Ĥ

[~~(6)~~] (7) "Constitutional taking" means a governmental action that results in a taking of private property so that compensation to the owner of the property is required by the:

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

(b) Utah Constitution Article I, Section 22.

[~~(7)~~] (8) "Culinary water authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of the culinary water system and sources for the subject property.

[~~(8)~~] (9) "Development activity" means:

(a) any construction or expansion of a building, structure, or use that creates additional demand and need for public facilities;

(b) any change in use of a building or structure that creates additional demand and need for public facilities; or

(c) any change in the use of land that creates additional demand and need for public facilities.

[~~(9)~~] (10) (a) "Disability" means a physical or mental impairment that substantially limits one or more of a person's major life activities, including a person having a record of such an impairment or being regarded as having such an impairment.

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

[~~(10)~~] (11) "Elderly person" means a person who is 60 years old or older, who desires or needs to live with other elderly persons in a group setting, but who is capable of living independently.

[~~(11)~~] (12) "Fire authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of fire protection and suppression services

for the subject property.

[~~(12)~~] (13) "Flood plain" means land that:

(a) is within the 100-year flood plain designated by the Federal Emergency Management Agency; or

(b) has not been studied or designated by the Federal Emergency Management Agency but presents a likelihood of experiencing chronic flooding or a catastrophic flood event because the land has characteristics that are similar to those of a 100-year flood plain designated by the Federal Emergency Management Agency.

[~~(13)~~] (14) "General plan" means a document that a municipality adopts that sets forth general guidelines for proposed future development of the land within the municipality.

[~~(14)~~] (15) "Geologic hazard" means:

(a) a surface fault rupture;

(b) shallow groundwater;

(c) liquefaction;

(d) a landslide;

(e) a debris flow;

(f) unstable soil;

(g) a rock fall; or

(h) any other geologic condition that presents a risk:

(i) to life;

(ii) of substantial loss of real property; or

(iii) of substantial damage to real property.

(16) "Hookup fee" means a fee for the installation and inspection of any pipe, line, meter, or appurtenance that connects to a municipal water, sewer, storm water, power, or other utility system.

[~~(15)~~] (17) "Identical plans" means building plans submitted to a municipality that are substantially identical to building plans that were previously submitted to and reviewed and approved by the municipality and describe a building that is:

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

(b) subject to the same geological and meteorological conditions and the same law as

the building described in the previously approved plans.

(18) "Impact fee" means a payment of money imposed under Title 11, Chapter 36, Impact Fees Act.

[~~(16)~~] (19) "Improvement assurance" means a surety bond, letter of credit, cash, or other security:

(a) to guaranty the proper completion of an improvement;

(b) that is required as a condition precedent to:

(i) recording a subdivision plat; or

(ii) beginning development activity; and

(c) that is offered to a land use authority to induce the land use authority, before actual construction of required improvements, to:

(i) consent to the recording of a subdivision plat; or

(ii) issue a permit for development activity.

[~~(17)~~] (20) "Improvement assurance warranty" means a promise that the materials and workmanship of improvements:

(a) comport with standards that the municipality has officially adopted; and

(b) will not fail in any material respect within a warranty period.

[~~(18)~~] (21) "Land use application" means an application required by a municipality's land use ordinance.

[~~(19)~~] (22) "Land use authority" means a person, board, commission, agency, or other body designated by the local legislative body to act upon a land use application.

[~~(20)~~] (23) "Land use ordinance" means a planning, zoning, development, or subdivision ordinance of the municipality, but does not include the general plan.

[~~(21)~~] (24) "Land use permit" means a permit issued by a land use authority.

[~~(22)~~] (25) "Legislative body" means the municipal council.

[~~(23)~~] (26) "Local district" means an entity under Title 17B, Limited Purpose Local Government Entities - Local Districts, and any other governmental or quasi-governmental entity that is not a county, municipality, school district, or [~~unit of~~] the state.

[~~(24)~~] (27) "Lot line adjustment" means the relocation of the property boundary line in a subdivision between two adjoining lots with the consent of the owners of record.

[~~(25)~~] (28) "Moderate income housing" means housing occupied or reserved for

occupancy by households with a gross household income equal to or less than 80% of the median gross income for households of the same size in the county in which the city is located.

[~~(26)~~] (29) "Nominal fee" means a fee that reasonably reimburses a municipality only for time spent and expenses incurred in:

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

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

[~~(27)~~] (30) "Noncomplying structure" means a structure that:

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

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

[~~(28)~~] (31) "Nonconforming use" means a use of land that:

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

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

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

[~~(29)~~] (32) "Official map" means a map drawn by municipal authorities and recorded in a county recorder's office that:

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

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

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

[~~(30)~~] (33) "Person" means an individual, corporation, partnership, organization, association, trust, governmental agency, or any other legal entity.

[~~(31)~~] (34) "Plan for moderate income housing" means a written document adopted by a city legislative body that includes:

(a) an estimate of the existing supply of moderate income housing located within the

city;

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

(c) a survey of total residential land use;

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

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

[~~(32)~~] (35) "Plat" means a map or other graphical representation of lands being laid out and prepared in accordance with Section 10-9a-603, 17-23-17, or 57-8-13.

[~~(33)~~] (36) "Potential geologic hazard area" means an area that:

(a) is designated by a Utah Geological Survey map, county geologist map, or other relevant map or report as needing further study to determine the area's potential for geologic hazard; or

(b) has not been studied by the Utah Geological Survey or a county geologist but presents the potential of geologic hazard because the area has characteristics similar to those of a designated geologic hazard area.

(37) "Public agency" means:

(a) the federal government;

(b) the state;

(c) a county, municipality, school district, local district, special service district, or other political subdivision of the state; or

(d) a charter school.

[~~(34)~~] (38) "Public hearing" means a hearing at which members of the public are provided a reasonable opportunity to comment on the subject of the hearing.

[~~(35)~~] (39) "Public meeting" means a meeting that is required to be open to the public under Title 52, Chapter 4, Open and Public Meetings Act.

[~~(36)~~] (40) "Record of survey map" means a map of a survey of land prepared in accordance with Section 17-23-17.

[~~(37)~~] (41) "Receiving zone" means an area of a municipality that the municipality's land use authority designates as an area in which an owner of land may receive transferrable

development rights.

[~~(38)~~] (42) "Residential facility for elderly persons" means a single-family or multiple-family dwelling unit that meets the requirements of Section 10-9a-516, but does not include a health care facility as defined by Section 26-21-2.

[~~(39)~~] (43) "Residential facility for persons with a disability" means a residence:

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

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

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

[~~(40)~~] (44) "Sanitary sewer authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of sanitary sewer services or onsite wastewater systems.

[~~(41)~~] (45) "Sending zone" means an area of a municipality that the municipality's land use authority designates as an area from which an owner of land may transfer transferrable development rights to an owner of land in a receiving zone.

(46) "Specified public agency" means:

(a) the state;

(b) a school district; or

(c) a charter school.

[~~(42)~~] (47) "Specified public utility" means an electrical corporation, gas corporation, or telephone corporation, as those terms are defined in Section 54-2-1.

(48) "State" includes any department, division, or agency of the state.

[~~(43)~~] (49) "Street" means a public right-of-way, including a highway, avenue, boulevard, parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement, or other way.

[~~(44)~~] (50) (a) "Subdivision" means any land that is divided, resubdivided or proposed to be divided into two or more lots, parcels, sites, units, plots, or other division of land for the purpose, whether immediate or future, for offer, sale, lease, or development either on the installment plan or upon any and all other plans, terms, and conditions.

(b) "Subdivision" includes:

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

(ii) except as provided in Subsection [~~(44)~~] (50)(c), divisions of land for residential and nonresidential uses, including land used or to be used for commercial, agricultural, and industrial purposes.

(c) "Subdivision" does not include:

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

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

(A) no new lot is created; and

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

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

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

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

(iv) a recorded agreement between owners of adjoining subdivided properties adjusting their mutual boundary if:

(A) no new dwelling lot or housing unit will result from the adjustment; and

(B) the adjustment will not violate any applicable land use ordinance.

(d) The joining of a subdivided parcel of property to another parcel of property that has not been subdivided does not constitute a subdivision under this Subsection [~~(44)~~] (50) as to the unsubdivided parcel of property or subject the unsubdivided parcel to the municipality's subdivision ordinance.

[~~(45)~~] (51) "Transferrable development right" means the entitlement to develop land within a sending zone that would vest according to the municipality's existing land use ordinances on the date that a completed land use application is filed seeking the approval of development activity on the land.

[~~(46)~~] (52) "Unincorporated" means the area outside of the incorporated area of a city or town.

[~~(47)~~] (53) "Zoning map" means a map, adopted as part of a land use ordinance, that depicts land use zones, overlays, or districts.

Section 2. Section **10-9a-305** is amended to read:

10-9a-305. Other entities required to conform to municipality's land use ordinances -- Exceptions -- School districts and charter schools.

(1) (a) Each county, municipality, school district, charter school, local district, special service district, and political subdivision of the state shall conform to any applicable land use ordinance of any municipality when installing, constructing, operating, or otherwise using any area, land, or building situated within that municipality.

(b) In addition to any other remedies provided by law, when a municipality's land use ordinance is violated or about to be violated by another political subdivision, that municipality may institute an injunction, mandamus, abatement, or other appropriate action or proceeding to prevent, enjoin, abate, or remove the improper installation, improvement, or use.

(2) (a) Notwithstanding Subsection (1), a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit District Act, is not required to conform to any applicable land use ordinance of a municipality located within the boundaries of a county of the first class when constructing a:

(i) rail fixed guideway public transit facility that extends across two or more counties; or

(ii) structure that serves a rail fixed guideway public transit facility that extends across two or more counties, including:

(A) platforms;

(B) passenger terminals or stations;

(C) park and ride facilities;

(D) maintenance facilities;

(E) all related utility lines, roadways, and other facilities serving the public transit facility; or

(F) other auxiliary facilities.

(b) The exemption from municipal land use ordinances under this Subsection (2) does

not extend to any property not necessary for the construction or operation of a rail fixed guideway public transit facility.

(c) A municipality located within the boundaries of a county of the first class may not, through an agreement under Title 11, Chapter 3, Interlocal Cooperation Act, require a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit District Act, to obtain approval from the municipality prior to constructing a:

(i) rail fixed guideway public transit facility that extends across two or more counties; or

(ii) structure that serves a rail fixed guideway public transit facility that extends across two or more counties, including:

(A) platforms;

(B) passenger terminals or stations;

(C) park and ride facilities;

(D) maintenance facilities;

(E) all related utility lines, roadways, and other facilities serving the public transit facility; or

(F) other auxiliary facilities.

(3) (a) Except as provided in Subsection (4), a school district or charter school is subject to a municipality's land use ordinances.

(b) (i) Notwithstanding Subsection (4), a municipality may:

(A) subject a charter school to standards within each zone pertaining to setback, height, bulk and massing regulations, off-site parking, curb cut, traffic circulation, and construction staging; and

(B) impose regulations upon the location of a project that are necessary to avoid unreasonable risks to health or safety, as provided in Subsection (4)(f).

(ii) The standards to which a municipality may subject a charter school under Subsection (3)(b)(i) shall be objective standards only and may not be subjective.

(iii) Except as provided in Subsection (8)(d), the only basis upon which a municipality may deny or withhold approval of a charter school's land use application is the charter school's failure to comply with a standard imposed under Subsection (3)(b)(i).

(iv) Nothing in Subsection (3)(b)(iii) may be construed to relieve a charter school of an

obligation to comply with a requirement of an applicable building or safety code to which it is otherwise obligated to comply.

(4) A municipality may not:

(a) impose requirements for landscaping, fencing, aesthetic considerations, construction methods or materials, additional building inspections, municipal building codes, building use for educational purposes, or the placement or use of temporary classroom facilities on school property;

(b) except as otherwise provided in this section, require a school district or charter school to participate in the cost of any roadway or sidewalk, or a study on the impact of a school on a roadway or sidewalk, that is not reasonably necessary for the safety of school children and not located on or contiguous to school property, unless the roadway or sidewalk is required to connect an otherwise isolated school site to an existing roadway;

(c) require a district or charter school to pay fees not authorized by this section;

(d) provide for inspection of school construction or assess a fee or other charges for inspection, unless the school district or charter school is unable to provide for inspection by an inspector, other than the project architect or contractor, who is qualified under criteria established by the state superintendent;

(e) require a school district or charter school to pay any impact fee for an improvement project unless the impact fee is imposed as provided in Title 11, Chapter 36, Impact Fees Act; or

(f) impose regulations upon the location of a project except as necessary to avoid unreasonable risks to health or safety.

(5) Subject to Section 53A-20-108, a school district or charter school shall coordinate the siting of a new school with the municipality in which the school is to be located, to:

(a) avoid or mitigate existing and potential traffic hazards, including consideration of the impacts between the new school and future highways; and

(b) maximize school, student, and site safety.

(6) Notwithstanding Subsection (4)(d), a municipality may, at its discretion:

(a) provide a walk-through of school construction at no cost and at a time convenient to the district or charter school; and

(b) provide recommendations based upon the walk-through.

(7) (a) Notwithstanding Subsection (4)(d), a school district or charter school shall use:

(i) a municipal building inspector;

(ii) (A) for a school district, a school district building inspector from that school district; or

(B) for a charter school, a school district building inspector from the school district in which the charter school is located; or

(iii) an independent, certified building inspector who is:

(A) not an employee of the contractor;

(B) approved by:

(I) a municipal building inspector; or

(II) (Aa) for a school district, a school district building inspector from that school district; or

(Bb) for a charter school, a school district building inspector from the school district in which the charter school is located; and

(C) licensed to perform the inspection that the inspector is requested to perform.

(b) The approval under Subsection (7)(a)(iii)(B) may not be unreasonably withheld.

(c) If a school district or charter school uses a school district or independent building inspector under Subsection (7)(a)(ii) or (iii), the school district or charter school shall submit to the state superintendent of public instruction and municipal building official, on a monthly basis during construction of the school building, a copy of each inspection certificate regarding the school building.

(8) (a) A charter school shall be considered a permitted use in all zoning districts within a municipality.

(b) Each land use application for any approval required for a charter school, including an application for a building permit, shall be processed on a first priority basis.

(c) Parking requirements for a charter school may not exceed the minimum parking requirements for schools or other institutional public uses throughout the municipality.

(d) If a municipality has designated zones for a sexually oriented business, or a business which sells alcohol, a charter school may be prohibited from a location which would otherwise defeat the purpose for the zone unless the charter school provides a waiver.

(e) (i) A school district or a charter school may seek a certificate authorizing permanent

occupancy of a school building from:

(A) the state superintendent of public instruction, as provided in Subsection 53A-20-104(3), if the school district or charter school used an independent building inspector for inspection of the school building; or

(B) a municipal official with authority to issue the certificate, if the school district or charter school used a municipal building inspector for inspection of the school building.

(ii) A school district may issue its own certificate authorizing permanent occupancy of a school building if it used its own building inspector for inspection of the school building, subject to the notification requirement of Subsection 53A-20-104(3)(a)(ii).

(iii) A charter school may seek a certificate authorizing permanent occupancy of a school building from a school district official with authority to issue the certificate, if the charter school used a school district building inspector for inspection of the school building.

(iv) A certificate authorizing permanent occupancy issued by the state superintendent of public instruction under Subsection 53A-20-104(3) or a school district official with authority to issue the certificate shall be considered to satisfy any municipal requirement for an inspection or a certificate of occupancy.

(9) (a) A specified public agency intending to develop its land shall submit to the land use authority a development plan and schedule:

(i) as early as practicable in the development process, but no later than the commencement of construction; and

(ii) with sufficient detail to enable the land use authority to assess:

(A) the specified public agency's compliance with applicable land use ordinances;

(B) the demand for public facilities listed in Subsections 11-36-102(12)(a), (b), (c), (d), (e), and (g) caused by the development;

(C) the amount of any applicable fee listed in Subsection 10-9a-510(5);

(D) any credit against an impact fee; and

(E) the potential for waiving an impact fee.

(b) The land use authority shall respond to a specified public agency's submission under Subsection (9)(a) with reasonable promptness in order to allow the specified public agency to consider information the municipality provides under Subsection (9)(a)(ii) in the process of preparing the budget for the development.

(10) Nothing in this section may be construed to modify or supersede Section 10-9a-304.

Section 3. Section **10-9a-509** is amended to read:

10-9a-509. When a land use applicant is entitled to approval -- Exception -- Municipality may not impose unexpressed requirements -- Municipality required to comply with land use ordinances.

(1) (a) Except as provided in Subsection (1)(b), an applicant is entitled to approval of a land use application if the application conforms to the requirements of the municipality's land use maps, zoning map, and applicable land use ordinance in effect when a complete application is submitted and all application fees have been paid, unless:

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

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

(b) (i) Except as provided in Subsection (1)(c), an applicant is not entitled to approval of a land use application until the requirements of this Subsection (1)(b) have been met if the land use application relates to land located within the boundaries of a high priority transportation corridor designated in accordance with Section 72-5-403.

(ii) (A) A municipality shall notify the executive director of the Department of Transportation of any land use applications that relate to land located within the boundaries of a high priority transportation corridor.

(B) The notification under Subsection (1)(b)(ii)(A) shall be in writing and mailed by certified or registered mail to the executive director of the Department of Transportation.

(iii) Except as provided in Subsection (1)(c), a municipality may not approve a land use application that relates to land located within the boundaries of a high priority transportation corridor until:

(A) 30 days after the notification under Subsection (1)(b)(ii) is received by the Department of Transportation if the land use application is for a building permit; or

(B) 45 days after the notification under Subsection (1)(b)(ii) is received by the Department of Transportation if the land use application is for any land use other than a

building permit.

(c) (i) A land use application is exempt from the requirements of Subsection (1)(b) if:

(A) the land use application relates to land that was the subject of a previous land use application; and

(B) the previous land use application described under Subsection (1)(c)(i)(A) complied with the requirements of Subsection (1)(b).

(ii) A municipality may approve a land use application without making the required notifications under Subsection (1)(b) if:

(A) the land use application relates to land that was the subject of a previous land use application; and

(B) the previous land use application described under Subsection (1)(c)(ii)(A) complied with the requirements of Subsection (1)(b).

(d) After a municipality has complied with the requirements of Subsection (1)(b) for a land use application, the municipality may not withhold approval of the land use application for which the applicant is otherwise entitled under Subsection (1)(a).

(e) The municipality shall process an application without regard to proceedings initiated to amend the municipality's ordinances as provided in Subsection (1)(a)(ii) if:

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

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

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

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

(h) A municipality may not impose on a holder of an issued land use permit or approved subdivision plat a requirement that is not expressed:

(i) in the land use permit or subdivision plat, documents on which the land use permit or subdivision plat is based, or the written record evidencing approval of the land use permit or subdivision plat; or

(ii) in this chapter or the municipality's ordinances.

(i) A municipality may not withhold issuance of a certificate of occupancy or acceptance of subdivision improvements because of an applicant's failure to comply with a requirement that is not expressed:

(i) in the building permit or subdivision plat, documents on which the building permit or subdivision plat is based, or the written record evidencing approval of the land use permit or subdivision plat; or

(ii) in this chapter or the municipality's ordinances.

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

(3) Upon a specified public agency's submission of a development plan and schedule as required in Subsection 10-9a-305(9) that complies with the requirements of that subsection, the specified public agency vests in the municipality's applicable land use maps, zoning map, hookup fees, impact fees, other applicable development fees, and land use ordinances in effect on the date of submission.

Section 4. Section **10-9a-510** is amended to read:

10-9a-510. Limit on fees for review and approving building plans.

(1) A municipality may not impose or collect a fee for reviewing or approving the plans for a commercial or residential building that exceeds the lesser of:

(a) the actual cost of performing the plan review; and

(b) 65% of the amount the municipality charges for a building permit fee for that building.

(2) Subject to Subsection (1), a municipality may impose and collect only a nominal fee for reviewing and approving identical plans.

(3) A municipality may not impose or collect a hookup fee Ĥ→ **[~~or connection fee~~]** ←Ĥ that exceeds the reasonable cost of installing and inspecting the pipe, line, meter, and appurtenance to connect to the municipal water, sewer, storm water, power, or other utility system.

(4) A municipality may not impose or collect:

(a) a land use application fee that exceeds the Ĥ→ **reasonable** ←Ĥ cost of processing the application; or

(b) an inspection or review fee that exceeds the reasonable cost of performing the inspection or review.

(5) A municipality may not impose on or collect from a public agency any fee

associated with the public agency's development of its land other than:

(a) subject to Subsection (4), a fee for a development service that the public agency does not itself provide;

(b) subject to Subsection (3), a hookup fee; and

(c) an impact fee for a public facility listed in Subsection 11-36-102(12)(a), (b), (c), (d), (e), or (g), subject to any applicable credit under Subsection 11-36-202(2)(b).

Section 5. 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:

(a) except as provided in Subsection (4)(b), any written authorization from a local political subdivision that authorizes the commencement of development activity[.]; or

(b) development activity, for a public entity that may develop without written authorization from a local political subdivision.

(5) "Enactment" means:

(a) a municipal ordinance, for a municipality;

(b) a county ordinance, for a county; and

(c) a governing board resolution, for a local district, special service district, or private entity.

(6) "Hookup [~~fees~~] fee" 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~~] a fee for the installation and inspection of any pipe, line, meter, or appurtenance to connect to a gas, water, sewer, storm water, power, or other [~~municipal~~] utility system of a municipality, county, local district, [~~or~~] special service

district [~~utility services~~], or private entity.

(7) (a) "Impact fee" means a payment of money imposed upon new development activity as a condition of development approval to mitigate the impact of the new development on public facilities.

(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 local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, or a special service district under Title 17D, Chapter 1, Special Service District Act.

(b) "Local political subdivision" does not mean a school district, 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[~~.~~]; and

(iii) not identified or reimbursed as a system improvement.

(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.

(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) "Specified public agency" means:

(a) the state;

(b) a school district; or

(c) a charter school.

[~~(16)~~] (17) (a) "System improvements" means:

(i) existing public facilities that are:

(A) identified in the impact fee analysis under Section 11-36-201; and

(B) designed to provide services to service areas within the community at large; and

(ii) future public facilities identified in [~~a capital facilities plan~~] the impact fee analysis

under Section 11-36-201 that are intended to provide services to service areas within the community at large.

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

Section 6. Section **11-36-201** is amended to read:

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

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

Ĥ→ **(ii) A fee that meets the definition of impact fee under Section 11-36-102 is an impact fee subject to this chapter, regardless of what term the local political subdivision or private entity uses to refer to the fee.**

(iii) A local political subdivision or private entity may not avoid application of this chapter to a fee that meets the definition of an impact fee under Section 11-36-102 by referring to the fee by another name. ←Ĥ

(b) A local political subdivision may not:

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

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

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

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

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

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

[~~(B)~~] (d) Each local political subdivision shall ensure that the impact fees comply with the requirements of this chapter.

(2) (a) Before imposing impact fees, each local political subdivision and private entity shall, except as provided in Subsection (2)(f), prepare a capital facilities plan to determine the public facilities required to serve development resulting from new development activity.

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

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

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

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

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

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

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

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

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

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

(C) be sent to:

(I) each county in whose unincorporated area and each municipality in whose boundaries is located the land on which the proposed facilities will be located;

(II) each affected entity;

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

(IV) the association of governments, established pursuant to an interlocal agreement under Title 11, Chapter 13, Interlocal Cooperation Act, in which the facilities are proposed to be located;

(V) the state planning coordinator appointed under Section 63J-4-202;

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

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

(VIII) the registered agent of the Utah Chapter of the Associated General Contractors of America; and

(D) with respect to the notice to an affected entity, invite the affected entity to provide

information for the local political subdivision or private entity to consider in the process of preparing, adopting, and implementing or amending a capital facilities plan concerning:

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

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

(c) The plan shall identify:

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

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

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

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

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

(I) to:

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

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

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

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

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

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

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

(II) make a copy of the plan or amendment, together with a summary designed to be

understood by a lay person, available to the public;

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

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

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

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

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

(C) each local district, special service district, and private entity shall comply with the notice and hearing requirements of, and receive the protections of, Section 17B-1-111.

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

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

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

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

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

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

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

(5) (a) Subject to the notice requirement of Subsection (5)(b), each local political

subdivision and private entity intending to impose an impact fee shall prepare a written analysis of each impact fee that:

(i) identifies the anticipated impact on or consumption of any existing capacity of a public facility by the anticipated development activity;

[~~(i)~~] (ii) identifies the anticipated impact on system improvements required by the anticipated development activity to maintain the established level of service for each public facility;

[~~(ii)~~] (iii) demonstrates how those anticipated impacts [~~on system improvements~~] are reasonably related to the anticipated development activity;

[~~(iii)~~] (iv) estimates the proportionate share of:

(A) the costs for existing capacity that will be recouped; and

(B) the costs of impacts on system improvements that are reasonably related to the new development activity; and

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

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

(i) public notice; and

(ii) written notice:

(A) to:

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

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

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

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

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

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

(i) the cost of each existing public [~~facilities~~] facility that has excess capacity to serve the anticipated development resulting from the new development activity;

(ii) the cost of system improvements for each public facility;

[~~(ii)~~] (iii) other than impact fees, the manner of financing [~~existing~~] each public [~~facilities~~] facility, such as user charges, special assessments, bonded indebtedness, general taxes, or federal grants;

[~~(iii)~~] (iv) the relative extent to which [~~the newly developed properties and other properties have already contributed to the cost of~~] development activity will contribute to financing the excess capacity of and system improvements for each existing public [~~facilities~~] facility, by such means as user charges, special assessments, or payment from the proceeds of general taxes;

[~~(iv)~~] (v) the relative extent to which [~~the newly developed properties and other properties~~] development activity will contribute to the cost of existing public facilities and system improvements in the future;

[~~(v)~~] (vi) the extent to which the [~~newly developed properties are~~] development activity is entitled to a credit against impact fees because the [~~local political subdivision or private entity, as the case may be, requires its developers or owners, by contractual arrangement or otherwise, to provide common facilities~~] development activity will dedicate system improvements or public facilities that will offset the demand for system improvements, inside or outside the proposed development[~~, that have been provided by the local political subdivision or private entity, respectively, and financed through general taxation or other means, apart from user charges, in other parts of the service area~~];

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

[~~(vii)~~] (viii) the time-price differential inherent in fair comparisons of amounts paid at different times.

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

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

required by Subsection (5)(d) to:

(a) each public library within the local political subdivision;

(b) the registered agent of the Utah Home Builders Association;

(c) the registered agent of the Utah Association of Realtors; and

(d) the registered agent of the Utah Chapter of the Associated General Contractors of America.

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

Section 7. Section **11-36-202** is amended to read:

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

(1) (a) Each local political subdivision and private entity 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.

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

(i) the construction contract price;

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

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

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

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

(i) generally accepted cost accounting practices; and

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

(e) In calculating an impact fee, each local political subdivision shall base amounts

calculated under Subsection (1)(c) on realistic estimates, and the assumptions underlying those estimates shall be disclosed in the impact fee analysis.

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

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

(A) make a copy of the impact fee enactment available to the public; and

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

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

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

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

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

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

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

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

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

(a) contains:

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

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

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

(iii) a provision authorizing the local political subdivision or private entity, as the case

may be, to adjust the standard impact fee at the time the fee is charged to:

(A) respond to:

(I) unusual circumstances in specific cases; [~~and~~] or

(II) a request for a prompt and individualized impact fee review for the development activity of the state or a school district or charter school; and

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

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

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

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

(A) [~~dedicate~~] dedicates land for a system improvement;

(B) [~~improve~~] builds and dedicates some or all of a system improvement; or

(C) [~~provide new construction~~] dedicates a public facility that the local political subdivision or private entity and the developer agree will reduce the need for a system improvement[~~;~~].

[~~(ii) the system improvement is included in the impact fee analysis; and~~]

[~~(iii) the land, improvement, or new construction provides a system improvement that exceeds the requirements for the project.~~]

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

(a) provides an impact fee exemption for:

(i) development activity attributable to:

[~~(a) exempts~~] (A) low income housing [~~and~~];

(B) the state;

(C) a school district; or

(D) a charter school; or

(ii) other development [~~activities~~] activity with a broad public [~~purposes from impact fees~~] purpose; and

(b) establishes one or more sources of funds other than impact fees to pay for that development activity Ĥ→ [;] . ←Ĥ

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

[~~(c) allows~~] (4) A local political subdivision or private entity shall include a provision in an impact fee enactment that requires 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.~~]

(a) are system improvements; or

(b) (i) are dedicated to the public; and

(ii) offset the need for an identified system improvement.

[~~(4)~~] (5) [~~Except as provided in Subsection (3)(b), the~~] A local political subdivision may not impose an impact fee to:

(a) cure deficiencies in a public [~~facilities~~] facility serving existing development[~~.~~]; or

(b) raise the established level of service of a public facility 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)~~] (6) 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[~~.~~];

(c) an impact fee for a road facility may be imposed on the state only if and to the extent that:

(i) the state's development causes an impact on the road facility; and

(ii) the portion of the road facility related to an impact fee is not funded by the state or by the federal government; and

(d) to the extent that the impact fee includes a component for a law enforcement facility, the impact fee may not be imposed on development activity for:

(i) the Utah National Guard;

(ii) the Utah Highway Patrol; or

(iii) a state institution of higher education that has its own police force.

[~~(8)~~] (7) 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.

[~~(9)~~] (8) An impact fee enactment may not take effect until 90 days after it is enacted.

Section 8. Section **11-36-302** is amended to read:

11-36-302. Impact fees -- Expenditure.

(1) A local political subdivision may expend impact fees only for a system

improvement:

(a) [~~system improvements for public facilities~~] identified in the capital facilities plan; and

(b) [~~system improvements~~] for the specific public facility type for which the fee was collected.

(2) (a) Except as provided in Subsection (b), a local political subdivision shall expend or encumber the impact fees for a permissible use within six years of their receipt.

(b) A local political subdivision may hold the fees for longer than six years if it identifies, in writing:

(i) an extraordinary and compelling reason why the fees should be held longer than six years; and

(ii) an absolute date by which the fees will be expended.

Section 9. Section **11-36-401** is amended to read:

11-36-401. Impact fees -- Challenges -- Appeals.

(1) Any person or entity residing in or owning property within a service area, and any organization, association, or corporation representing the interests of persons or entities owning property within a service area, may file a declaratory judgment action challenging the validity of the fee.

(2) (a) Any person or entity required to pay an impact fee who believes the fee does not meet the requirements of law may file a written request for information with the local political subdivision who established the fee.

(b) Within two weeks [~~of~~] after the receipt of the request for information, the local political subdivision shall provide the person or entity with the written analysis required by Section 11-36-201, the capital facilities plan, and with any other relevant information relating to the impact fee.

(3) (a) Any local political subdivision may establish, by ordinance or resolution, an administrative appeals procedure to consider and decide challenges to impact fees.

(b) If the local political subdivision establishes an administrative appeals procedure, the local political subdivision shall ensure that the procedure includes a requirement that the local political subdivision make its decision no later than 30 days after the date the challenge to the impact fee is filed.

(4) (a) In addition to the method of challenging an impact fee under Subsection (1), a person or entity that has paid an impact fee that was imposed by a local political subdivision may challenge:

(i) if the impact fee enactment was adopted on or after July 1, 2000:

(A) whether the local political subdivision complied with the notice requirements of this chapter with respect to the imposition of the impact fee; and

(B) whether the local political subdivision complied with other procedural requirements of this chapter for imposing the impact fee; and

(ii) except as limited by Subsection (4)(a)(i), the impact fee.

(b) A challenge under Subsection (4)(a) may not be initiated unless it is initiated within:

(i) for a challenge under Subsection (4)(a)(i)(A), 30 days after the person or entity pays the impact fee;

(ii) for a challenge under Subsection (4)(a)(i)(B), 180 days after the person or entity pays the impact fee; or

(iii) for a challenge under Subsection (4)(a)(ii), one year after the person or entity pays the impact fee.

(c) A challenge under Subsection (4)(a) is initiated by filing:

(i) if the local political subdivision has established an administrative appeals procedure under Subsection (3), the necessary document, under the administrative appeals procedure, for initiating the administrative appeal;

(ii) a request for arbitration as provided in Subsection 11-36-402(1); or

(iii) an action in district court.

(d) (i) The sole remedy for a challenge under Subsection (4)(a)(i)(A) is the equitable remedy of requiring the local political subdivision to correct the defective notice and repeat the process.

(ii) The sole remedy for a challenge under Subsection (4)(a)(i)(B) is the equitable remedy of requiring the local political subdivision to correct the defective process.

(iii) The sole remedy for a challenge under Subsection (4)(a)(ii) is a refund of the difference between what the person or entity paid as an impact fee and the amount the impact fee should have been if it had been correctly calculated.

(e) Nothing in this Subsection (4) may be construed as requiring a person or entity to exhaust administrative remedies with the local political subdivision before filing an action in district court under this Subsection (4).

(f) The protections given to a municipality under Section 10-9a-801 and to a county under Section 17-27a-801 do not apply in a challenge under Subsection (4)(a)(i)(A).

(5) The judge may award reasonable attorneys' fees and costs to the prevailing party in any action brought under this section.

(6) Nothing in this chapter may be construed as restricting or limiting any rights to challenge impact fees that were paid before the effective date of this chapter.

Section 10. Section **11-36-401.5** is enacted to read:

11-36-401.5. Mediation.

(1) In addition to the methods of challenging an impact fee under Section 11-36-401, a specified public agency may require a local political subdivision or private entity to participate in mediation of any **[~~appealable~~] applicable** fee.

(2) To require mediation, the specified public agency shall submit a written request for mediation to the local political subdivision or private entity.

(3) The specified public agency may submit a request for mediation under this section at any time, but no later than 30 days after the impact fee is paid.

(4) Upon the submission of a request for mediation under this section, the local political subdivision or private entity shall:

(a) cooperate with the specified public agency in the selection of a mediator; and

(b) participate in the mediation process.

Section 11. Section **17-27a-103** is amended to read:

17-27a-103. Definitions.

As used in this chapter:

(1) "Affected entity" means a county, municipality, local district, special service district under Title 17D, Chapter 1, Special Service District Act, school district, interlocal cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, specified property owner, property owners association, public utility, or the Utah Department of Transportation, if:

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

modification because of an intended use of land;

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

(c) the entity has filed with the county a request for notice during the same calendar year and before the county provides notice to an affected entity in compliance with a requirement imposed under this chapter.

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

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

(4) "Charter school" includes:

(a) an operating charter school;

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

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

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

(6) "Conditional use" means a land use that, because of its unique characteristics or potential impact on the county, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.

Ĥ→ ~~[(7) "Connection fee" has the same meaning as hookup fee.]~~ ←Ĥ

[~~(7)~~] (8) "Constitutional taking" means a governmental action that results in a taking of private property so that compensation to the owner of the property is required by the:

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

(b) Utah Constitution Article I, Section 22.

[~~(8)~~] (9) "Culinary water authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of the culinary water system and sources for

the subject property.

[~~(9)~~] (10) "Development activity" means:

(a) any construction or expansion of a building, structure, or use that creates additional demand and need for public facilities;

(b) any change in use of a building or structure that creates additional demand and need for public facilities; or

(c) any change in the use of land that creates additional demand and need for public facilities.

[~~(10)~~] (11) (a) "Disability" means a physical or mental impairment that substantially limits one or more of a person's major life activities, including a person having a record of such an impairment or being regarded as having such an impairment.

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

[~~(11)~~] (12) "Elderly person" means a person who is 60 years old or older, who desires or needs to live with other elderly persons in a group setting, but who is capable of living independently.

[~~(12)~~] (13) "Fire authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of fire protection and suppression services for the subject property.

[~~(13)~~] (14) "Flood plain" means land that:

(a) is within the 100-year flood plain designated by the Federal Emergency Management Agency; or

(b) has not been studied or designated by the Federal Emergency Management Agency but presents a likelihood of experiencing chronic flooding or a catastrophic flood event because the land has characteristics that are similar to those of a 100-year flood plain designated by the Federal Emergency Management Agency.

[~~(14)~~] (15) "Gas corporation" has the same meaning as defined in Section 54-2-1.

[~~(15)~~] (16) "General plan" means a document that a county adopts that sets forth general guidelines for proposed future development of the unincorporated land within the county.

[~~(16)~~] (17) "Geologic hazard" means:

(a) a surface fault rupture;

(b) shallow groundwater;

(c) liquefaction;

(d) a landslide;

(e) a debris flow;

(f) unstable soil;

(g) a rock fall; or

(h) any other geologic condition that presents a risk:

(i) to life;

(ii) of substantial loss of real property; or

(iii) of substantial damage to real property.

(18) "Hookup fee" means a fee for the installation and inspection of any pipe, line, meter, or appurtenance to connect to a county water, sewer, storm water, power, or other utility system.

[~~(17)~~] (19) "Identical plans" means building plans submitted to a county that are substantially identical building plans that were previously submitted to and reviewed and approved by the county and describe a building that is:

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

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

(20) "Impact fee" means a payment of money imposed under Title 11, Chapter 36, Impact Fees Act.

[~~(18)~~] (21) "Improvement assurance" means a surety bond, letter of credit, cash, or other security:

(a) to guaranty the proper completion of an improvement;

(b) that is required as a condition precedent to:

(i) recording a subdivision plat; or

(ii) beginning development activity; and

(c) that is offered to a land use authority to induce the land use authority, before actual

construction of required improvements, to:

(i) consent to the recording of a subdivision plat; or

(ii) issue a permit for development activity.

[~~(19)~~] (22) "Improvement assurance warranty" means a promise that the materials and workmanship of improvements:

(a) comport with standards that the county has officially adopted; and

(b) will not fail in any material respect within a warranty period.

[~~(20)~~] (23) "Interstate pipeline company" means a person or entity engaged in natural gas transportation subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

[~~(21)~~] (24) "Intrastate pipeline company" means a person or entity engaged in natural gas transportation that is not subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

[~~(22)~~] (25) "Land use application" means an application required by a county's land use ordinance.

[~~(23)~~] (26) "Land use authority" means a person, board, commission, agency, or other body designated by the local legislative body to act upon a land use application.

[~~(24)~~] (27) "Land use ordinance" means a planning, zoning, development, or subdivision ordinance of the county, but does not include the general plan.

[~~(25)~~] (28) "Land use permit" means a permit issued by a land use authority.

[~~(26)~~] (29) "Legislative body" means the county legislative body, or for a county that has adopted an alternative form of government, the body exercising legislative powers.

[~~(27)~~] (30) "Local district" means any entity under Title 17B, Limited Purpose Local Government Entities - Local Districts, and any other governmental or quasi-governmental entity that is not a county, municipality, school district, or [~~unit of~~] the state.

[~~(28)~~] (31) "Lot line adjustment" means the relocation of the property boundary line in a subdivision between two adjoining lots with the consent of the owners of record.

[~~(29)~~] (32) "Moderate income housing" means housing occupied or reserved for occupancy by households with a gross household income equal to or less than 80% of the median gross income for households of the same size in the county in which the housing is located.

[~~(30)~~] (33) "Nominal fee" means a fee that reasonably reimburses a county only for time spent and expenses incurred in:

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

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

[~~(31)~~] (34) "Noncomplying structure" means a structure that:

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

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

[~~(32)~~] (35) "Nonconforming use" means a use of land that:

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

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

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

[~~(33)~~] (36) "Official map" means a map drawn by county authorities and recorded in the county recorder's office that:

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

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

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

[~~(34)~~] (37) "Person" means an individual, corporation, partnership, organization, association, trust, governmental agency, or any other legal entity.

[~~(35)~~] (38) "Plan for moderate income housing" means a written document adopted by a county legislative body that includes:

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

(b) an estimate of the need for moderate income housing in the county for the next five

years as revised biennially;

(c) a survey of total residential land use;

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

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

[~~(36)~~] (39) "Plat" means a map or other graphical representation of lands being laid out and prepared in accordance with Section 17-27a-603, 17-23-17, or 57-8-13.

[~~(37)~~] (40) "Potential geologic hazard area" means an area that:

(a) is designated by a Utah Geological Survey map, county geologist map, or other relevant map or report as needing further study to determine the area's potential for geologic hazard; or

(b) has not been studied by the Utah Geological Survey or a county geologist but presents the potential of geologic hazard because the area has characteristics similar to those of a designated geologic hazard area.

(41) "Public agency" means:

(a) the federal government;

(b) the state;

(c) a county, municipality, school district, local district, special service district, or other political subdivision of the state; or

(d) a charter school.

[~~(38)~~] (42) "Public hearing" means a hearing at which members of the public are provided a reasonable opportunity to comment on the subject of the hearing.

[~~(39)~~] (43) "Public meeting" means a meeting that is required to be open to the public under Title 52, Chapter 4, Open and Public Meetings Act.

[~~(40)~~] (44) "Receiving zone" means an unincorporated area of a county that the county's land use authority designates as an area in which an owner of land may receive transferrable development rights.

[~~(41)~~] (45) "Record of survey map" means a map of a survey of land prepared in accordance with Section 17-23-17.

[~~(42)~~] (46) "Residential facility for elderly persons" means a single-family or

multiple-family dwelling unit that meets the requirements of Section 17-27a-515, but does not include a health care facility as defined by Section 26-21-2.

[~~(43)~~] (47) "Residential facility for persons with a disability" means a residence:

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

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

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

[~~(44)~~] (48) "Sanitary sewer authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of sanitary sewer services or onsite wastewater systems.

[~~(45)~~] (49) "Sending zone" means an unincorporated area of a county that the county's land use authority designates as an area from which an owner of land may transfer transferrable development rights to an owner of land in a receiving zone.

(50) "Specified public agency" means:

(a) the state;

(b) a school district; or

(c) a charter school.

[~~(46)~~] (51) "Specified public utility" means an electrical corporation, gas corporation, or telephone corporation, as those terms are defined in Section 54-2-1.

(52) "State" includes any department, division, or agency of the state.

[~~(47)~~] (53) "Street" means a public right-of-way, including a highway, avenue, boulevard, parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement, or other way.

[~~(48)~~] (54) (a) "Subdivision" means any land that is divided, resubdivided or proposed to be divided into two or more lots, parcels, sites, units, plots, or other division of land for the purpose, whether immediate or future, for offer, sale, lease, or development either on the installment plan or upon any and all other plans, terms, and conditions.

(b) "Subdivision" includes:

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

(ii) except as provided in Subsection [~~(48)~~] (54)(c), divisions of land for residential and nonresidential uses, including land used or to be used for commercial, agricultural, and industrial purposes.

(c) "Subdivision" does not include:

(i) a bona fide division or partition of agricultural land for agricultural purposes;

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

(A) no new lot is created; and

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

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

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

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

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

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

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

(v) a recorded agreement between owners of adjoining subdivided properties adjusting their mutual boundary if:

(A) no new dwelling lot or housing unit will result from the adjustment; and

(B) the adjustment will not violate any applicable land use ordinance.

(d) The joining of a subdivided parcel of property to another parcel of property that has not been subdivided does not constitute a subdivision under this Subsection [~~(48)~~] (54) as to the unsubdivided parcel of property or subject the unsubdivided parcel to the county's subdivision ordinance.

[~~(49)~~] (55) "Township" means a contiguous, geographically defined portion of the unincorporated area of a county, established under this part or reconstituted or reinstated under Section 17-27a-306, with planning and zoning functions as exercised through the township

planning commission, as provided in this chapter, but with no legal or political identity separate from the county and no taxing authority, except that "township" means a former township under Laws of Utah 1996, Chapter 308, where the context so indicates.

[~~(50)~~] (56) "Transferrable development right" means the entitlement to develop land within a sending zone that would vest according to the county's existing land use ordinances on the date that a completed land use application is filed seeking the approval of development activity on the land.

[~~(51)~~] (57) "Unincorporated" means the area outside of the incorporated area of a municipality.

[~~(52)~~] (58) "Zoning map" means a map, adopted as part of a land use ordinance, that depicts land use zones, overlays, or districts.

Section 12. Section **17-27a-305** is amended to read:

17-27a-305. Other entities required to conform to county's land use ordinances -- Exceptions -- School districts and charter schools.

(1) (a) Each county, municipality, school district, charter school, local district, special service district, and political subdivision of the state shall conform to any applicable land use ordinance of any county when installing, constructing, operating, or otherwise using any area, land, or building situated within the unincorporated portion of the county.

(b) In addition to any other remedies provided by law, when a county's land use ordinance is violated or about to be violated by another political subdivision, that county may institute an injunction, mandamus, abatement, or other appropriate action or proceeding to prevent, enjoin, abate, or remove the improper installation, improvement, or use.

(2) (a) Notwithstanding Subsection (1), a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit District Act, is not required to conform to any applicable land use ordinance of a county of the first class when constructing a:

(i) rail fixed guideway public transit facility that extends across two or more counties; or

(ii) structure that serves a rail fixed guideway public transit facility that extends across two or more counties, including:

(A) platforms;

(B) passenger terminals or stations;

(C) park and ride facilities;

(D) maintenance facilities;

(E) all related utility lines, roadways, and other facilities serving the public transit facility; or

(F) other auxiliary facilities.

(b) The exemption from county land use ordinances under this Subsection (2) does not extend to any property not necessary for the construction or operation of a rail fixed guideway public transit facility.

(c) A county of the first class may not, through an agreement under Title 11, Chapter 3, Interlocal Cooperation Act, require a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit District Act, to obtain approval from the county prior to constructing a:

(i) rail fixed guideway public transit facility that extends across two or more counties; or

(ii) structure that serves a rail fixed guideway public transit facility that extends across two or more counties, including:

(A) platforms;

(B) passenger terminals or stations;

(C) park and ride facilities;

(D) maintenance facilities;

(E) all related utility lines, roadways, and other facilities serving the public transit facility; or

(F) other auxiliary facilities.

(3) (a) Except as provided in Subsection (4), a school district or charter school is subject to a county's land use ordinances.

(b) (i) Notwithstanding Subsection (4), a county may:

(A) subject a charter school to standards within each zone pertaining to setback, height, bulk and massing regulations, off-site parking, curb cut, traffic circulation, and construction staging; and

(B) impose regulations upon the location of a project that are necessary to avoid unreasonable risks to health or safety, as provided in Subsection (4)(f).

(ii) The standards to which a county may subject a charter school under Subsection

(3)(b)(i) shall be objective standards only and may not be subjective.

(iii) Except as provided in Subsection (8)(d), the only basis upon which a county may deny or withhold approval of a charter school's land use application is the charter school's failure to comply with a standard imposed under Subsection (3)(b)(i).

(iv) Nothing in Subsection (3)(b)(iii) may be construed to relieve a charter school of an obligation to comply with a requirement of an applicable building or safety code to which it is otherwise obligated to comply.

(4) A county may not:

(a) impose requirements for landscaping, fencing, aesthetic considerations, construction methods or materials, additional building inspections, county building codes, building use for educational purposes, or the placement or use of temporary classroom facilities on school property;

(b) except as otherwise provided in this section, require a school district or charter school to participate in the cost of any roadway or sidewalk, or a study on the impact of a school on a roadway or sidewalk, that is not reasonably necessary for the safety of school children and not located on or contiguous to school property, unless the roadway or sidewalk is required to connect an otherwise isolated school site to an existing roadway;

(c) require a district or charter school to pay fees not authorized by this section;

(d) provide for inspection of school construction or assess a fee or other charges for inspection, unless the school district or charter school is unable to provide for inspection by an inspector, other than the project architect or contractor, who is qualified under criteria established by the state superintendent;

(e) require a school district or charter school to pay any impact fee for an improvement project unless the impact fee is imposed as provided in Title 11, Chapter 36, Impact Fees Act; or

(f) impose regulations upon the location of a project except as necessary to avoid unreasonable risks to health or safety.

(5) Subject to Section 53A-20-108, a school district or charter school shall coordinate the siting of a new school with the county in which the school is to be located, to:

(a) avoid or mitigate existing and potential traffic hazards, including consideration of the impacts between the new school and future highways; and

(b) maximize school, student, and site safety.

(6) Notwithstanding Subsection (4)(d), a county may, at its discretion:

(a) provide a walk-through of school construction at no cost and at a time convenient to the district or charter school; and

(b) provide recommendations based upon the walk-through.

(7) (a) Notwithstanding Subsection (4)(d), a school district or charter school shall use:

(i) a county building inspector;

(ii) (A) for a school district, a school district building inspector from that school district; or

(B) for a charter school, a school district building inspector from the school district in which the charter school is located; or

(iii) an independent, certified building inspector who is:

(A) not an employee of the contractor;

(B) approved by:

(I) a county building inspector; or

(II) (Aa) for a school district, a school district building inspector from that school district; or

(Bb) for a charter school, a school district building inspector from the school district in which the charter school is located; and

(C) licensed to perform the inspection that the inspector is requested to perform.

(b) The approval under Subsection (7)(a)(iii)(B) may not be unreasonably withheld.

(c) If a school district or charter school uses a school district or independent building inspector under Subsection (7)(a)(ii) or (iii), the school district or charter school shall submit to the state superintendent of public instruction and county building official, on a monthly basis during construction of the school building, a copy of each inspection certificate regarding the school building.

(8) (a) A charter school shall be considered a permitted use in all zoning districts within a county.

(b) Each land use application for any approval required for a charter school, including an application for a building permit, shall be processed on a first priority basis.

(c) Parking requirements for a charter school may not exceed the minimum parking

requirements for schools or other institutional public uses throughout the county.

(d) If a county has designated zones for a sexually oriented business, or a business which sells alcohol, a charter school may be prohibited from a location which would otherwise defeat the purpose for the zone unless the charter school provides a waiver.

(e) (i) A school district or a charter school may seek a certificate authorizing permanent occupancy of a school building from:

(A) the state superintendent of public instruction, as provided in Subsection 53A-20-104(3), if the school district or charter school used an independent building inspector for inspection of the school building; or

(B) a county official with authority to issue the certificate, if the school district or charter school used a county building inspector for inspection of the school building.

(ii) A school district may issue its own certificate authorizing permanent occupancy of a school building if it used its own building inspector for inspection of the school building, subject to the notification requirement of Subsection 53A-20-104(3)(a)(ii).

(iii) A charter school may seek a certificate authorizing permanent occupancy of a school building from a school district official with authority to issue the certificate, if the charter school used a school district building inspector for inspection of the school building.

(iv) A certificate authorizing permanent occupancy issued by the state superintendent of public instruction under Subsection 53A-20-104(3) or a school district official with authority to issue the certificate shall be considered to satisfy any county requirement for an inspection or a certificate of occupancy.

(9) (a) A specified public agency intending to develop its land shall submit to the land use authority a development plan and schedule:

(i) as early as practicable in the development process, but no later than the commencement of construction; and

(ii) with sufficient detail to enable the land use authority to assess:

(A) the specified public agency's compliance with applicable land use ordinances;

(B) the demand for public facilities listed in Subsections 11-36-102(12)(a), (b), (c), (d), (e), and (g) caused by the development;

(C) the amount of any applicable fee listed in Subsection 17-27a-509(5);

(D) any credit against an impact fee; and

(E) the potential for waiving an impact fee.

(b) The land use authority shall respond to a specified public agency's submission under Subsection (9)(a) with reasonable promptness in order to allow the specified public agency to consider information the municipality provides under Subsection (9)(a)(ii) in the process of preparing the budget for the development.

(10) Nothing in this section may be construed to modify or supersede Section 17-27a-304.

Section 13. Section **17-27a-508** is amended to read:

17-27a-508. When a land use applicant is entitled to approval -- Exception -- County may not impose unexpressed requirements -- County required to comply with land use ordinances.

(1) (a) Except as provided in Subsection (1)(b), an applicant is entitled to approval of a land use application if the application conforms to the requirements of the county's land use maps, zoning map, and applicable land use ordinance in effect when a complete application is submitted and all application fees have been paid, unless:

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

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

(b) (i) Except as provided in Subsection (1)(c), an applicant is not entitled to approval of a land use application until the requirements of this Subsection (1)(b) have been met if the land use application relates to land located within the boundaries of a high priority transportation corridor designated in accordance with Section 72-5-403.

(ii) (A) A county shall notify the executive director of the Department of Transportation of any land use applications that relate to land located within the boundaries of a high priority transportation corridor.

(B) The notification under Subsection (1)(b)(ii)(A) shall be in writing and mailed by certified or registered mail to the executive director of the Department of Transportation.

(iii) Except as provided in Subsection (1)(c), a county may not approve a land use application that relates to land located within the boundaries of a high priority transportation

corridor until:

(A) 30 days after the notification under Subsection (1)(b)(ii) is received by the Department of Transportation if the land use application is for a building permit; or

(B) 45 days after the notification under Subsection (1)(b)(ii) is received by the Department of Transportation if the land use application is for any land use other than a building permit.

(c) (i) A land use application is exempt from the requirements of Subsection (1)(b) if:

(A) the land use application relates to land that was the subject of a previous land use application; and

(B) the previous land use application described under Subsection (1)(c)(i)(A) complied with the requirements of Subsection (1)(b).

(ii) A county may approve a land use application without making the required notifications under Subsection (1)(b) if:

(A) the land use application relates to land that was the subject of a previous land use application; and

(B) the previous land use application described under Subsection (1)(c)(ii)(A) complied with the requirements of Subsection (1)(b).

(d) After a county has complied with the requirements of Subsection (1)(b) for a land use application, the county may not withhold approval of the land use application for which the applicant is otherwise entitled under Subsection (1)(a).

(e) The county shall process an application without regard to proceedings initiated to amend the county's ordinances as provided in Subsection (1)(a)(ii) if:

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

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

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

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

(h) A county may not impose on a holder of an issued land use permit or approved

subdivision plat a requirement that is not expressed:

(i) in the land use permit or subdivision plat documents on which the land use permit or subdivision plat is based, or the written record evidencing approval of the land use permit or subdivision plat; or

(ii) in this chapter or the county's ordinances.

(i) A county may not withhold issuance of a certificate of occupancy or acceptance of subdivision improvements because of an applicant's failure to comply with a requirement that is not expressed:

(i) in the building permit or subdivision plat, documents on which the building permit or subdivision plat is based, or the written record evidencing approval of the building permit or subdivision plat; or

(ii) in this chapter or the county's ordinances.

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

(3) Upon a specified public agency's submission of a development plan and schedule as required in Subsection 17-27a-305(9) that complies with the requirements of that subsection, the specified public agency vests in the county's applicable land use maps, zoning map, hookup fees, impact fees, other applicable development fees, and land use ordinances in effect on the date of submission.

Section 14. Section **17-27a-509** is amended to read:

17-27a-509. Limit on fee for review and approving building plans.

(1) A county may not impose or collect a fee for reviewing or approving the plans for a commercial or residential building that exceeds the lesser of:

(a) the actual cost of performing the plan review; and

(b) 65% of the amount the county charges for a building permit fee for that building.

(2) Subject to Subsection (1), a county may impose and collect only a nominal fee for reviewing and approving identical plans.

(3) A county may not impose or collect a hookup fee Ĥ→ [~~or connection fee~~] ←Ĥ that exceeds the reasonable cost of installing and inspecting the pipe, line, meter, or appurtenance to connect to the county water, sewer, storm water, power, or other utility system.

(4) A county may not impose or collect:

(a) a land use application fee that exceeds the Ĥ→ **reasonable** ←Ĥ cost of processing the application; or

(b) an inspection or review fee that exceeds the reasonable cost of performing the inspection or review.

(5) A county may not impose on or collect from a public agency any fee associated with the public agency's development of its land other than:

(a) subject to Subsection (4), a fee for a development service that the public agency does not itself provide;

(b) subject to Subsection (3), a hookup fee; and

(c) an impact fee for a public facility listed in Subsection 11-36-102(12)(a), (b), (c), (d), (e), or (g), subject to any applicable credit under Subsection 11-36-202(2)(b).

Section 15. Section **17B-1-118** is enacted to read:

17B-1-118. Local district hookup fee -- Preliminary design or site plan from a specified public agency.

(1) As used in this section:

Ĥ→ **[~~(a) "Connection fee" has the same meaning as hookup fee.~~**

~~(b)~~] (a) ←Ĥ "Hookup fee" means a fee for the installation and inspection of any pipe, line, meter, or appurtenance to connect to a local district water, sewer, storm water, power, or other utility system.

Ĥ→ **(b) "Impact fee" has the same meaning as defined in Section 11-36-102.** ←Ĥ

(c) "Specified public agency" means:

(i) the state;

(ii) a school district; or

(iii) a charter school.

(d) "State" includes any department, division, or agency of the state.

(2) A local district may not impose or collect a hookup fee Ĥ→ **[~~or connection fee~~]** ←Ĥ that exceeds the reasonable cost of installing and inspecting the pipe, line, meter, or appurtenance to connect to the local district water, sewer, storm water, power, or other utility system.

(3) (a) A specified public agency intending to develop its land shall submit a development plan and schedule to each local district from which the specified public agency anticipates the development will receive service:

(i) as early as practicable in the development process, but no later than the commencement of construction; and

(ii) with sufficient detail to enable the local district to assess:

(A) the demand for public facilities listed in Subsections 11-36-102(12)(a), (b), (c), (d), (e), and (g) caused by the development;

(B) the amount of any hookup Ĥ→ [~~fee~~] **fees,** ←Ĥ or Ĥ→ [~~connection~~] **impact fees or substantive equivalent** [~~fee~~] ←Ĥ ;

(C) any credit against an impact fee; and

(D) the potential for waiving an impact fee.

(b) The local district shall respond to a specified public agency's submission under Subsection (3)(a) with reasonable promptness in order to allow the specified public agency to consider information the local district provides under Subsection (3)(a)(ii) in the process of preparing the budget for the development.

(4) Upon a specified public agency's submission of a development plan and schedule as required in Subsection (3) that complies with the requirements of that subsection, the specified public agency vests in the local district's hookup fees Ĥ→ [~~,~~] **and** ←Ĥ impact fees Ĥ→ [~~, and other applicable development fees~~] ←Ĥ in effect on the date of submission.

Section 16. Section **17D-1-106** is amended to read:

17D-1-106. Special service districts subject to other provisions.

(1) A special service district is, to the same extent as if it were a local district, subject to and governed by:

(a) Sections 17B-1-105, 17B-1-107, 17B-1-108, 17B-1-109, 17B-1-110, 17B-1-111, 17B-1-112, 17B-1-113, [~~and~~] 17B-1-116, and 17B-1-118;

(b) Sections 17B-1-304, 17B-1-305, 17B-1-306, 17B-1-307, 17B-1-310, 17B-1-312, and 17B-1-313;

(c) Title 17B, Chapter 1, Part 6, Fiscal Procedures for Local Districts;

(d) Title 17B, Chapter 1, Part 7, Local District Budgets and Audit Reports;

(e) Title 17B, Chapter 1, Part 8, Local District Personnel Management; and

(f) Title 17B, Chapter 1, Part 9, Collection of Service Fees and Charges.

(2) For purposes of applying the provisions listed in Subsection (1) to a special service district, each reference in those provisions to the local district board of trustees means the governing authority.

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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.

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Office of the Legislative Fiscal Analyst