

**IMPACT FEE AMENDMENTS**

2009 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Kraig Powell**

Senate Sponsor: Daniel R. Liljenquist

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**LONG TITLE**

**General Description:**

This bill modifies provisions relating to impact fees.

**Highlighted Provisions:**

This bill:

► adds to the list of required recipients of notice relating to impact fees and capital facilities plans.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

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

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

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

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

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

**Summary -- Exemptions.**

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



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

29 (b) A local political subdivision may not:

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

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

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

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35 authorized by Subsection 11-36-102(12) is repealed by July 1, 1995.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

67 (C) be sent to:

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

70 (II) each affected entity;

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

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

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

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

77 (VII) the registered agent of the Utah Association of Realtors; [~~and~~]

78 (VIII) the registered agent of the Utah Chapter of the Associated General Contractors  
79 of America; [~~and~~]

80 (IX) the registered agent of the Utah League of Women Voters;

81 (X) the Utah office of the American Association of Retired Persons; and

82 (XI) the registered agent of the Utah Taxpayers Association; and

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

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

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

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

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

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

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

102 (I) to:

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

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

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

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

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

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

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

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

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

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

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

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

- 121 (IV) hold a public hearing to hear public comment on the plan or amendment.
- 122 (ii) With respect to the public notice required under Subsection (2)(e)(i)(B)(I):
- 123 (A) each municipality shall comply with the notice and hearing requirements of, and,
- 124 except as provided in Subsection 11-36-401(4)(f), receive the protections of Sections
- 125 10-9a-205 and 10-9a-801 and Subsection 10-9a-502(2);
- 126 (B) each county shall comply with the notice and hearing requirements of, and, except
- 127 as provided in Subsection 11-36-401(4)(f), receive the protections of Sections 17-27a-205 and
- 128 17-27a-801 and Subsection 17-27a-502(2); and
- 129 (C) each local district, special service district, and private entity shall comply with the
- 130 notice and hearing requirements of, and receive the protections of, Section 17B-1-111.
- 131 (iii) Nothing contained in this Subsection (2)(e) or in the subsections referenced in
- 132 Subsections (2)(e)(ii)(A) and (B) may be construed to require involvement by a planning
- 133 commission in the capital facilities planning process.
- 134 (f) (i) A local political subdivision with a population or serving a population of less
- 135 than 5,000 as of the last federal census need not comply with the capital facilities plan
- 136 requirements of this part, but shall ensure that:
- 137 (A) the impact fees that the local political subdivision imposes are based upon a
- 138 reasonable plan; and
- 139 (B) each applicable notice required by this chapter is given.
- 140 (ii) Subsection (2)(f)(i) does not apply to private entities.
- 141 (3) In preparing the plan, each local political subdivision shall generally consider all
- 142 revenue sources, including impact fees, to finance the impacts on system improvements.
- 143 (4) A local political subdivision or private entity may only impose impact fees on
- 144 development activities when its plan for financing system improvements establishes that
- 145 impact fees are necessary to achieve an equitable allocation to the costs borne in the past and to
- 146 be borne in the future, in comparison to the benefits already received and yet to be received.
- 147 (5) (a) Subject to the notice requirement of Subsection (5)(b), each local political
- 148 subdivision and private entity intending to impose an impact fee shall prepare a written analysis
- 149 of each impact fee that:
- 150 (i) identifies the impact on system improvements required by the development activity;
- 151 (ii) demonstrates how those impacts on system improvements are reasonably related to

152 the development activity;

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

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

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

159 (i) public notice; and

160 (ii) written notice:

161 (A) to:

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

163 (II) the registered agent of the Utah Association of Realtors; [~~and~~]

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

166 (IV) the registered agent of the Utah League of Women Voters;

167 (V) the Utah office of the American Association of Retired Persons; and

168 (VI) the registered agent of the Utah Taxpayers Association;

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

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

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

176 (i) the cost of existing public facilities;

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

179 (iii) the relative extent to which the newly developed properties and other properties  
180 have already contributed to the cost of existing public facilities, by such means as user charges,  
181 special assessments, or payment from the proceeds of general taxes;

182 (iv) the relative extent to which the newly developed properties and other properties

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

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

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

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

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

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

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

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

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

203 (d) the registered agent of the Utah Chapter of the Associated General Contractors of  
204 America[-];

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

206 (f) the Utah office of the American Association of Retired Persons; and

207 (g) the registered agent of the Utah Taxpayers Association.

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

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

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

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

214 shall pass an impact fee enactment.

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

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

219 (i) the construction contract price;

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

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

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

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

229 (i) generally accepted cost accounting practices; and

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

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

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

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

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

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

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

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

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

244 (IV) the registered agent of the Utah League of Women Voters;



245           (V) the Utah office of the American Association of Retired Persons; and  
246           (VI) the registered agent of the Utah Taxpayers Association; and  
247           (ii) (A) for a municipality, comply with the notice and hearing requirements of, and,  
248 except as provided in Subsection 11-36-401(4)(f), receive the protections of Sections  
249 10-9a-205 and 10-9a-801;  
250           (B) for a county, comply with the notice and hearing requirements of, and, except as  
251 provided in Subsection 11-36-401(4)(f), receive the protections of Sections 17-27a-205 and  
252 17-27a-801; and  
253           (C) for a local district or special service district, comply with the notice and hearing  
254 requirements of, and receive the protections of, Section 17B-1-111.  
255           (g) Nothing contained in Subsection (1)(f) may be construed to require involvement by  
256 a planning commission in the impact fee enactment process.  
257           (2) The local political subdivision or private entity shall ensure that the impact fee  
258 enactment:  
259           (a) contains:  
260           (i) a provision establishing one or more service areas within which the local political  
261 subdivision or private entity calculates and imposes impact fees for various land use categories;  
262           (ii) (A) a schedule of impact fees for each type of development activity that specifies  
263 the amount of the impact fee to be imposed for each type of system improvement; or  
264           (B) the formula that the local political subdivision or private entity, as the case may be,  
265 will use to calculate each impact fee;  
266           (iii) a provision authorizing the local political subdivision or private entity, as the case  
267 may be, to adjust the standard impact fee at the time the fee is charged to:  
268           (A) respond to unusual circumstances in specific cases; and  
269           (B) ensure that the impact fees are imposed fairly; and  
270           (iv) a provision governing calculation of the amount of the impact fee to be imposed on  
271 a particular development that permits adjustment of the amount of the fee based upon studies  
272 and data submitted by the developer; and  
273           (b) allows a developer to receive a credit against or proportionate reimbursement of an  
274 impact fee if:  
275           (i) the developer is required by the local political subdivision, as a condition of

276 development activity approval, to:

277 (A) dedicate land for a system improvement;

278 (B) improve a system improvement; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Office of Legislative Research and General Counsel**

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**H.B. 125 - Impact Fee Amendments**

**Fiscal Note**

2009 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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

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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