

1 **IMPACT FEES REVISIONS**

2 2009 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Gregory S. Bell**

5 House Sponsor: \_\_\_\_\_

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7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions related to impact fees.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ modifies the definition of "development approval" for public entities that may  
13 develop without written authorization;
- 14 ▶ modifies the definition of "public safety facility";
- 15 ▶ repeals obsolete language;
- 16 ▶ shortens from 14 to ten days the period of time before a public hearing date that a  
17 notice of a capital facilities plan or amendment is required to be given;
- 18 ▶ shortens from 14 to ten days the period of time before adoption of an impact fee  
19 enactment that a local political subdivision is required to submit a copy of the  
20 written impact fee analysis and applies that time period to a new requirement to  
21 obtain a written certification;
- 22 ▶ modifies impact fee reporting requirements;
- 23 ▶ requires a local political subdivision to obtain a written certification from the person  
24 or entity that prepares the written impact fee analysis and specifies the content of  
25 that certification;
- 26 ▶ shortens from 14 to ten days the period of time before a public hearing that a local  
27 political subdivision and private entity is required to make a copy of the impact fee



28 enactment available and to mail a copy of the enactment; and  
29       ▶ modifies a provision restricting the imposition of an impact fee to pay for a public  
30 safety facility.

31 **Monies Appropriated in this Bill:**

32       None

33 **Other Special Clauses:**

34       None

35 **Utah Code Sections Affected:**

36 AMENDS:

- 37       **10-5-129**, as last amended by Laws of Utah 2006, Chapter 257
- 38       **10-6-150**, as last amended by Laws of Utah 2006, Chapter 257
- 39       **11-36-102**, as last amended by Laws of Utah 2008, Chapters 70 and 360
- 40       **11-36-201**, as last amended by Laws of Utah 2008, Chapters 70, 360, and 382
- 41       **11-36-202**, as last amended by Laws of Utah 2008, Chapter 70



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

44       Section 1. Section **10-5-129** is amended to read:

45       **10-5-129. Annual financial report.**

46       (1) (a) Within 180 days after the close of each fiscal year the town clerk or other  
47 delegated person shall present to the council:

- 48       (i) an annual financial report[-]; and
- 49       (ii) an impact fee report, as provided in Subsection (1)(b).

50       (b) Each [~~annual financial~~] impact fee report under Subsection (1)(a)(ii) shall identify  
51 impact fee funds by the year in which they were received, the project from which the funds  
52 were collected, the capital projects for which the funds are budgeted, and the projected  
53 schedule for expenditure.

54       (2) The requirement under Subsection (1)(a) to present an annual financial report and  
55 an impact fee report may be satisfied by an audit report or an annual financial report of an  
56 independent auditor.

57       Section 2. Section **10-6-150** is amended to read:

58       **10-6-150. Annual financial reports -- Independent audit reports.**

59 (1) (a) Within 180 days after the close of each fiscal period or, for a city that has  
60 adopted a fiscal period that is a biennial period, within 180 days after both the mid-point and  
61 the close of the fiscal period, the city recorder or other delegated person shall present to the  
62 governing body an annual financial report and an impact fee report prepared in conformity with  
63 generally accepted accounting principles, as prescribed in the Uniform Accounting Manual for  
64 Utah Cities.

65 (b) Each [~~annual financial~~] impact fee report shall identify impact fee funds by the year  
66 in which they were received, the project from which the funds were collected, the capital  
67 projects for which the funds are budgeted, and the projected schedule for expenditure.

68 (2) (a) The requirement under Subsection (1)(a) to present an annual financial report  
69 and an impact fee report may be satisfied by presentation of the audit report furnished by the  
70 independent auditor, if the financial statements included are appropriately prepared and  
71 reviewed with the governing body.

72 (b) Notwithstanding the acceptability of the audit report furnished by the independent  
73 auditor in substitution for financial statements prepared by an officer of the city, the governing  
74 body has the responsibility for those financial statements.

75 (c) The independent auditor has the responsibility of reporting whether the governing  
76 body's financial statements and impact fee report are prepared in conformity with generally  
77 accepted accounting principles.

78 (3) Copies of the annual financial report and impact fee report or the audit report  
79 furnished by the independent auditor shall be filed with the state auditor and shall be filed as a  
80 public document in the office of the city recorder.

81 Section 3. Section **11-36-102** is amended to read:

82 **11-36-102. Definitions.**

83 As used in this chapter:

84 (1) "Building permit fee" means the fees charged to enforce the uniform codes adopted  
85 pursuant to Title 58, Chapter 56, Utah Uniform Building Standards Act, that are not greater  
86 than the fees indicated in the appendix to the International Building Code.

87 (2) "Capital facilities plan" means the plan required by Section 11-36-201.

88 (3) "Development activity" means any construction or expansion of a building,  
89 structure, or use, any change in use of a building or structure, or any changes in the use of land

90 that creates additional demand and need for public facilities.

91 (4) "Development approval" means:

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

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

96 (5) "Enactment" means:

97 (a) a municipal ordinance, for a municipality;

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

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

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

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

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

109 (8) (a) "Local political subdivision" means a county, a municipality, a local district  
110 under Title 17B, Limited Purpose Local Government Entities - Local Districts, or a special  
111 service district under Title 17D, Chapter 1, Special Service District Act.

112 (b) "Local political subdivision" does not mean a school district, whose impact fee  
113 activity is governed by Section 53A-20-100.5.

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

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

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

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

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

122 (11) "Proportionate share" means the cost of public facility improvements that are  
123 roughly proportionate and reasonably related to the service demands and needs of any  
124 development activity.

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

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

129 (b) wastewater collection and treatment facilities;

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

131 (d) municipal power facilities;

132 (e) roadway facilities;

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

134 (g) public safety facilities.

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

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

137 or

138 (ii) a fire suppression vehicle [~~with a ladder reach of at least 75 feet,~~] costing in excess  
139 of [~~\$1,250,000, that is necessary for fire suppression in commercial areas with one or more~~  
140 ~~buildings at least five stories high~~] \$500,000.

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

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

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

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

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

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

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

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

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

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

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

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

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

161 Section 4. Section **11-36-201** is amended to read:

162 **11-36-201. Impact fees -- Analysis -- Capital facilities plan -- Notice of plan --**  
163 **Summary -- Exemptions.**

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

166 (b) A local political subdivision may not:

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

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

170 (c) [~~Notwithstanding any other requirements of this chapter, each~~] Each local political  
171 subdivision shall [~~ensure that each existing impact fee that is charged for any public facility not~~  
172 ~~authorized by Subsection 11-36-102(12) is repealed by July 1, 1995.~~] (d) (i) ~~Existing impact~~  
173 ~~fees that a local political subdivision charges for public facilities authorized in Subsection~~  
174 ~~11-36-102(12) need not comply with the requirements of this chapter until July 1, 1997.~~ (ii) ~~By~~  
175 ~~July 1, 1997, each local political subdivision shall: (A) review any impact fees in existence as~~  
176 ~~of the effective date of this act, and prepare and approve the analysis required by this section~~  
177 ~~for each of those impact fees; and (B)] ensure that the impact fees comply with the~~  
178 requirements of this chapter.

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

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

182 (A) (I) "Affected entity" means each county, municipality, local district under Title

183 17B, Limited Purpose Local Government Entities - Local Districts, special service district  
184 under Title 17D, Chapter 1, Special Service District Act, school district, interlocal cooperation  
185 entity established under Chapter 13, Interlocal Cooperation Act, and specified public utility:

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

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

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

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

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

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

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

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

203 (C) be sent to:

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

206 (II) each affected entity;

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

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

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

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

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

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

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

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

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

223 (c) The plan shall identify:

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

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

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

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

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

235 (I) to:

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

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

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

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

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

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



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

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

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

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

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

253 (A) each municipality shall comply with the notice and hearing requirements of, and,  
254 except as provided in Subsection 11-36-401(4)(f), receive the protections of Sections  
255 10-9a-205 and 10-9a-801 and Subsection 10-9a-502(2);

256 (B) each county shall comply with the notice and hearing requirements of, and, except  
257 as provided in Subsection 11-36-401(4)(f), receive the protections of Sections 17-27a-205 and  
258 17-27a-801 and Subsection 17-27a-502(2); and

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

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

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

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

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

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

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

273 (4) A local political subdivision or private entity may only impose impact fees on  
274 development activities when its plan for financing system improvements establishes that

275 impact fees are necessary to achieve an equitable allocation to the costs borne in the past and to

276 be borne in the future, in comparison to the benefits already received and yet to be received.

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

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

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

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

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

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

289 (i) public notice; and

290 (ii) written notice:

291 (A) to:

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

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

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

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

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

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

303 (i) the cost of existing public facilities;

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

306 (iii) the relative extent to which the newly developed properties and other properties

307 have already contributed to the cost of existing public facilities, by such means as user charges,  
 308 special assessments, or payment from the proceeds of general taxes;

309 (iv) the relative extent to which the newly developed properties and other properties  
 310 will contribute to the cost of existing public facilities in the future;

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

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

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

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

323 (6) Each local political subdivision that adopts an impact fee enactment under Section  
 324 11-36-202 on or after July 1, 2000 shall, at least [~~14~~] ten days before adopting the enactment[-];

325 (a) submit a copy of the written analysis required by Subsection (5)(a) and a copy of  
 326 the summary required by Subsection (5)(d) to:

327 [~~(a)~~] (i) each public library within the local political subdivision;

328 [~~(b)~~] (ii) the registered agent of the Utah Home Builders Association;

329 [~~(c)~~] (iii) the registered agent of the Utah Association of Realtors; and

330 [~~(d)~~] (iv) the registered agent of the Utah Chapter of the Associated General  
 331 Contractors of America[-]; and

332 (b) obtain a written certification from the person or entity that prepares the written  
 333 analysis which states as follows:

334 "I certify that the attached impact fee analysis:

335 1. includes only the costs for qualifying public facilities that are:

336 a. allowed under the Impact Fees Act; and

337 b. projected to be incurred or encumbered within six years after each

- 338 impact fee is paid;
- 339           2. contains no cost for operation and maintenance of public facilities;
- 340           3. offsets costs with grants or other alternate sources of payment;
- 341           4. does not include costs for qualifying public facilities that will raise the level
- 342 of service for the facilities, through impact fees, above the level of service that
- 343 is supported by existing residents; and
- 344           5. complies in each and every relevant respect with the Impact Fees Act."

345           (7) Nothing in this chapter may be construed to repeal or otherwise eliminate any

346 impact fee in effect on the effective date of this chapter that is pledged as a source of revenues

347 to pay bonded indebtedness that was incurred before the effective date of this chapter.

348           Section 5. Section **11-36-202** is amended to read:

349           **11-36-202. Impact fees -- Enactment -- Required provisions -- Effective date.**

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

351 shall pass an impact fee enactment.

352           (b) The impact fee imposed by that enactment may not exceed the highest fee justified

353 by the impact fee analysis performed pursuant to Section 11-36-201.

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

355 include:

- 356           (i) the construction contract price;
- 357           (ii) the cost of acquiring land, improvements, materials, and fixtures;
- 358           (iii) the cost for planning, surveying, and engineering fees for services provided for and
- 359 directly related to the construction of the system improvements; and

360           (iv) debt service charges, if the political subdivision might use impact fees as a revenue

361 stream to pay the principal and interest on bonds, notes, or other obligations issued to finance

362 the costs of the system improvements.

363           (d) In calculating an impact fee, a local political subdivision may not include an

364 expense for overhead unless the expense is calculated pursuant to a methodology that is

365 consistent with:

- 366           (i) generally accepted cost accounting practices; and
- 367           (ii) the methodological standards set forth by the federal Office of Management and
- 368 Budget for federal grant reimbursement.

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

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

374 (i) at least [~~14~~] ten days before the date of the public hearing:

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

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

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

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

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

381 (ii) (A) for a municipality, comply with the notice and hearing requirements of, and,  
382 except as provided in Subsection 11-36-401(4)(f), receive the protections of Sections  
383 10-9a-205 and 10-9a-801;

384 (B) for a county, comply with the notice and hearing requirements of, and, except as  
385 provided in Subsection 11-36-401(4)(f), receive the protections of Sections 17-27a-205 and  
386 17-27a-801; and

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

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

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

393 (a) contains:

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

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

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

400 (iii) a provision authorizing the local political subdivision or private entity, as the case  
401 may be, to adjust the standard impact fee at the time the fee is charged to:  
402 (A) respond to unusual circumstances in specific cases; and  
403 (B) ensure that the impact fees are imposed fairly; and  
404 (iv) a provision governing calculation of the amount of the impact fee to be imposed on  
405 a particular development that permits adjustment of the amount of the fee based upon studies  
406 and data submitted by the developer; and  
407 (b) allows a developer to receive a credit against or proportionate reimbursement of an  
408 impact fee if:  
409 (i) the developer is required by the local political subdivision, as a condition of  
410 development activity approval, to:  
411 (A) dedicate land for a system improvement;  
412 (B) improve a system improvement; or  
413 (C) provide new construction for a system improvement;  
414 (ii) the system improvement is included in the impact fee analysis; and  
415 (iii) the land, improvement, or new construction provides a system improvement that  
416 exceeds the requirements for the project.  
417 (3) A local political subdivision or private entity may include a provision in an impact  
418 fee enactment that:  
419 (a) exempts low income housing and other development activities with broad public  
420 purposes from impact fees and establishes one or more sources of funds other than impact fees  
421 to pay for that development activity;  
422 (b) imposes an impact fee for public facility costs previously incurred by a local  
423 political subdivision or private entity, as the case may be, to the extent that new growth and  
424 development will be served by the previously constructed improvement; and  
425 (c) allows a credit against impact fees for any dedication of land for, improvement to,  
426 or new construction of, any system improvements provided by the developer if the facilities:  
427 (i) are identified in the capital facilities plan; and  
428 (ii) are required by the local political subdivision as a condition of approving the  
429 development activity.  
430 (4) Except as provided in Subsection (3)(b), the local political subdivision may not

431 impose an impact fee to cure deficiencies in public facilities serving existing development.

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

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

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

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

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

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

443 (iii) requiring the legislative body to:

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

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

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

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

451 ~~[(7)] (6) Notwithstanding any other provision of this chapter[: (a) a municipality  
452 imposing impact fees to fund fire trucks as of the effective date of this act may impose impact  
453 fees for fire trucks until July 1, 1997; and (b)], an impact fee to pay for a public safety facility  
454 that is a fire suppression vehicle may not be imposed [with respect to land that has a zoning  
455 designation other than commercial] on residential components of development.~~

456 ~~[(8)] (7) Notwithstanding any other provision of this chapter, a local political  
457 subdivision may impose and collect impact fees on behalf of a school district if authorized by  
458 Section 53A-20-100.5.~~

459 ~~[(9)] (8) An impact fee enactment may not take effect until 90 days after it is enacted.~~

**Legislative Review Note**  
as of 1-29-09 2:41 PM

**Office of Legislative Research and General Counsel**



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**S.B. 84 - Impact Fees Revisions**

**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 and local governments. Businesses may be impacted due changes in the proposed statute.

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