

**Representative Stephen E. Sandstrom** proposes the following substitute bill:

**IMPACT FEE AMENDMENTS**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Stephen E. Sandstrom**

Senate Sponsor: Howard A. Stephenson

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**LONG TITLE**

**General Description:**

This bill amends impact fee provisions relating to school districts and charter schools.

**Highlighted Provisions:**

This bill:

- ▶ requires that an impact fee enactment allow, in certain circumstances, a developer to receive a credit against or proportionate reimbursement of an impact fee, including a school district or charter school;
- ▶ amends requirements for a capital facilities plan;
- ▶ amends provisions relating to an impact fee enactment;
- ▶ amends provisions relating to impact fees; and
- ▶ makes technical corrections.

**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 2009, Chapters 181, 188, 286, and 323



11-36-202, as last amended by Laws of Utah 2009, Chapters 181, 286, and 323

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

(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.

(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) Each local political subdivision shall ensure that the impact fees comply with the requirements of this chapter.

(d) (i) Each local political subdivision and private entity shall ensure that each impact fee collected on or after May 12, 2009 complies with the provisions of this chapter, even if the impact fee was imposed but not paid before May 12, 2009.

(ii) Subsection (1)(d)(i) does not apply to an impact fee that was paid before May 12, 2009.

(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:

(I) sent to 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) sent to each affected entity;

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

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

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

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

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

(Bb) sent to the state planning coordinator appointed under Section 63J-4-202, if the local political subdivision does not provide notice on the Utah Public Notice Website under Subsection (2)(b)(iii)(C)(V)(Aa) or for a private entity;

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

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

(VIII) sent to 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 10 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.

(g) (i) ~~H~~→ [The] Subject to Subsection (2)(g)(iii), the ~~←H~~ plan shall include a public facility ~~H~~→ for which an impact fee may be charged or ~~←H~~ required for a school district or charter

school if the local political subdivision is aware of the planned location of the school district facility or charter school:

(A) through the planning process; or

(B) after receiving a written request from a school district or charter school that the public facility be included in the plan.

(ii) If necessary, the plan shall be amended to reflect a public facility described in Subsection (2)(g)(i).

~~H~~→ (iii)(A) In accordance with Subsections 10-9a-305(4) and 17-27a-305(4), a local political subdivision may not require a school district or charter school to participate in the cost of any roadway or sidewalk.

(B) Notwithstanding Subsection (2)(g)(iii)(A), if a school district or charter school agrees to build a roadway or sidewalk, the roadway or sidewalk shall be included in the plan, ~~←H~~

(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;

(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;

(iii) demonstrates how those anticipated impacts are reasonably related to the anticipated development activity;

(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

(v) 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 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;

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

(iv) the relative extent to which development activity will contribute to financing the excess capacity of and system improvements for each existing public facility, by such means as user charges, special assessments, or payment from the proceeds of general taxes;

(v) the relative extent to which development activity will contribute to the cost of existing public facilities and system improvements in the future;

(vi) the extent to which the development activity is entitled to a credit against impact fees because the development activity will dedicate system improvements or public facilities that will offset the demand for system improvements, inside or outside the proposed

development;

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

(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) 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 10 days before adopting the enactment:

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

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

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

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

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

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

"I certify that the attached impact fee analysis:

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

a. allowed under the Impact Fees Act; and

b. projected to be incurred or encumbered within six years after each impact fee is paid;

2. contains no cost for operation and maintenance of public facilities;

3. offsets costs with grants or other alternate sources of payment;

4. does not include costs for qualifying public facilities that will raise the level of service for the facilities, through impact fees, above the level of service that is supported by existing residents; and

5. complies in each and every relevant respect with the Impact Fees Act."

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

**11-36-202. Impact fees -- Enactment -- Required and allowed provisions --  
Limitations -- 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 10 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:

274 (I) the registered agent of the Utah Home Builders Association;  
275 (II) the registered agent of the Utah Association of Realtors; and  
276 (III) the registered agent of the Utah Chapter of the Associated General Contractors of  
277 America; and  
278 (ii) (A) for a municipality, comply with the notice and hearing requirements of, and,  
279 except as provided in Subsection 11-36-401(4)(f), receive the protections of Sections  
280 10-9a-205 and 10-9a-801;  
281 (B) for a county, comply with the notice and hearing requirements of, and, except as  
282 provided in Subsection 11-36-401(4)(f), receive the protections of Sections 17-27a-205 and  
283 17-27a-801; and  
284 (C) for a local district or special service district, comply with the notice and hearing  
285 requirements of, and receive the protections of, Section 17B-1-111.  
286 (g) Nothing contained in Subsection (1)(f) may be construed to require involvement by  
287 a planning commission in the impact fee enactment process.  
288 (2) The local political subdivision or private entity shall ensure that the impact fee  
289 enactment:  
290 (a) contains:  
291 (i) a provision establishing one or more service areas within which the local political  
292 subdivision or private entity calculates and imposes impact fees for various land use categories;  
293 (ii) (A) a schedule of impact fees for each type of development activity that specifies  
294 the amount of the impact fee to be imposed for each type of system improvement; or  
295 (B) the formula that the local political subdivision or private entity, as the case may be,  
296 will use to calculate each impact fee;  
297 (iii) a provision authorizing the local political subdivision or private entity, as the case  
298 may be, to adjust the standard impact fee at the time the fee is charged to:  
299 (A) respond to:  
300 (I) unusual circumstances in specific cases; or  
301 (II) a request for a prompt and individualized impact fee review for:  
302 (Aa) the development activity of the state or a school district or charter school; and  
303 (Bb) an offset or credit for a public facility for which an impact fee has been or will be  
304 collected; and

305 (B) ensure that the impact fees are imposed fairly; and  
306 (iv) a provision governing calculation of the amount of the impact fee to be imposed on  
307 a particular development that permits adjustment of the amount of the fee based upon studies  
308 and data submitted by the developer; and  
309 (b) allows a developer, including a school district or charter school, to receive a credit  
310 against or proportionate reimbursement of an impact fee if the developer:  
311 (i) dedicates land for a system improvement;  
312 (ii) builds and dedicates some or all of a system improvement; or  
313 (iii) dedicates a public facility that the local political subdivision or private entity and  
314 the developer agree will reduce the need for a system improvement.  
315 (3) (a) A local political subdivision or private entity may include a provision in an  
316 impact fee enactment that:  
317 (i) provides an impact fee exemption for:  
318 (A) development activity attributable to:  
319 (I) low income housing;  
320 (II) the state;  
321 (III) a school district; or  
322 (IV) a charter school; or  
323 (B) other development activity with a broad public purpose; and  
324 (ii) establishes one or more sources of funds other than impact fees to pay for that  
325 development activity.  
326 (b) An impact fee enactment that provides an impact fee exemption for development  
327 activity attributable to a school district or charter school shall allow either a school district or a  
328 charter school to qualify for the exemption on the same basis.  
329 (4) A local political subdivision or private entity shall include a provision in an impact  
330 fee enactment that requires a credit against impact fees for any dedication of land for,  
331 improvement to, or new construction of, any system improvements provided by the developer  
332 if the facilities:  
333 (a) are system improvements; or  
334 (b) (i) are dedicated to the public; and  
335 (ii) offset the need for an identified system improvement.

336 (5) A local political subdivision may not;  
337 (a) impose an impact fee to:  
338 ~~[(a)]~~ (i) cure deficiencies in a public facility serving existing development; or  
339 ~~[(b)]~~ (ii) raise the established level of service of a public facility serving existing  
340 development[-]; or  
341 (b) delay the construction ~~H→~~ [or-operation] ~~←H~~ of a school or charter school because of a  
342 dispute with the school or charter school over impact fees.  
343 (6) Notwithstanding the requirements and prohibitions of this chapter, a local political  
344 subdivision may impose and assess an impact fee for environmental mitigation when:  
345 (a) the local political subdivision has formally agreed to fund a Habitat Conservation  
346 Plan to resolve conflicts with the Endangered Species Act of 1973, 16 U.S.C. Sec 1531, et seq.  
347 or other state or federal environmental law or regulation;  
348 (b) the impact fee bears a reasonable relationship to the environmental mitigation  
349 required by the Habitat Conservation Plan; and  
350 (c) the legislative body of the local political subdivision adopts an ordinance or  
351 resolution:  
352 (i) declaring that an impact fee is required to finance the Habitat Conservation Plan;  
353 (ii) establishing periodic sunset dates for the impact fee; and  
354 (iii) requiring the legislative body to:  
355 (A) review the impact fee on those sunset dates;  
356 (B) determine whether or not the impact fee is still required to finance the Habitat  
357 Conservation Plan; and  
358 (C) affirmatively reauthorize the impact fee if the legislative body finds that the impact  
359 fee must remain in effect.  
360 (7) (a) Notwithstanding any other provision of this chapter:  
361 (i) an impact fee to pay for a public safety facility that is a fire suppression vehicle may  
362 not be imposed on residential components of development;  
363 (ii) an impact fee may not be imposed on a school district or charter school for a park,  
364 recreation facility, open space, or trail;  
365 (iii) an impact fee may not be imposed on development activity that consists of the  
366 construction of a school, whether by a school district or a charter school, if:

(A) the school is intended to replace another school, whether on the same or a different parcel;

(B) the new school creates no greater demand or need for public facilities than the school ~~[being replaced]~~ or school facilities, including any portable or modular classrooms that are on the site of the replaced school at the time that the new school is proposed; and

(C) the new school and the school being replaced are both within:

(I) the boundary of the local political subdivision; or

(II) the jurisdiction of the private entity;

(iv) an impact fee may not be imposed on a school district or charter school unless:

(A) the development resulting from the school district or charter school's development activity directly results in a need for additional system improvements for which the impact fee is imposed; and

(B) the impact fee is calculated to cover only the school district or charter school's proportionate share of the cost of those additional system improvements;

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

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

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

(vi) 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:

(A) the Utah National Guard;

(B) the Utah Highway Patrol; or

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

(b) If the imposition of an impact fee on a new school is not prohibited under Subsection (7)(a)(iii) because the new school creates a greater demand or need for public facilities than the school being replaced, the impact fee may be based only on the demand or need that the new school creates for public facilities that exceeds the demand or need that the school being replaced creates for those public facilities.

(8) 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

398 53A-20-100.5.

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

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**H.B. 205 1st Sub. (Buff) - Impact Fee Amendments**

**Fiscal Note**

2010 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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