

IMPACT FEE AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen E. Sandstrom

Senate Sponsor: Howard A. Stephenson

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

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

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

30 **11-36-201. Impact fees -- Analysis -- Capital facilities plan -- Notice of plan --**
31 **Summary -- Exemptions.**

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

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

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

40 (b) A local political subdivision may not:

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

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

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

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

49 (ii) Subsection (1)(d)(i) does not apply to an impact fee that was paid before May 12,
50 2009.

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

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

55 (A) (I) "Affected entity" means each county, municipality, local district under Title
56 17B, Limited Purpose Local Government Entities - Local Districts, special service district
57 under Title 17D, Chapter 1, Special Service District Act, school district, interlocal cooperation

58 entity established under Chapter 13, Interlocal Cooperation Act, and specified public utility:

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

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

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

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

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

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

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

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

76 (C) be:

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

79 (II) sent to each affected entity;

80 (III) sent to the Automated Geographic Reference Center created in Section
81 63F-1-506;

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

85 (V) (Aa) placed on the Utah Public Notice Website created under Section 63F-1-701,

86 if the local political subdivision:

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

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

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

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

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

96 (VIII) sent to the registered agent of the Utah Chapter of the Associated General
97 Contractors of America; and

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

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

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

105 (c) The plan shall identify:

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

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

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

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

114 political subdivision shall:

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

117 (I) to:

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

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

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

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

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

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

127 (I) give public notice of the plan or amendment according to Subsection (2)(e)(ii)(A),
128 (B), or (C), as the case may be, at least 10 days before the date of the public hearing;

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

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

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

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

135 (A) each municipality shall comply with the notice and hearing requirements of, and,
136 except as provided in Subsection 11-36-401(4)(f), receive the protections of Sections
137 10-9a-205 and 10-9a-801 and Subsection 10-9a-502(2);

138 (B) each county shall comply with the notice and hearing requirements of, and, except
139 as provided in Subsection 11-36-401(4)(f), receive the protections of Sections 17-27a-205 and
140 17-27a-801 and Subsection 17-27a-502(2); and

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

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

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

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

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

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

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

153 (g) (i) Subject to Subsection (2)(g)(iii), the plan shall include a public facility for
154 which an impact fee may be charged or required for a school district or charter school if the
155 local political subdivision is aware of the planned location of the school district facility or
156 charter school:

157 (A) through the planning process; or

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

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

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

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

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

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

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

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

179 (ii) identifies the anticipated impact on system improvements required by the
180 anticipated development activity to maintain the established level of service for each public
181 facility;

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

184 (iv) estimates the proportionate share of:

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

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

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

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

192 (i) public notice; and

193 (ii) written notice:

194 (A) to:

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

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

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

198 America;

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

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

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

206 (i) the cost of each existing public facility that has excess capacity to serve the
207 anticipated development resulting from the new development activity;

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

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

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

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

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

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

221 (viii) the time-price differential inherent in fair comparisons of amounts paid at
222 different times.

223 (d) Each local political subdivision and private entity that prepares a written analysis
224 under this Subsection (5) shall also prepare a summary of the written analysis, designed to be
225 understood by a lay person.

226 (6) Each local political subdivision that adopts an impact fee enactment under Section
227 11-36-202 on or after July 1, 2000 shall, at least 10 days before adopting the enactment:

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

- 230 (i) each public library within the local political subdivision;
- 231 (ii) the registered agent of the Utah Home Builders Association;
- 232 (iii) the registered agent of the Utah Association of Realtors; and
- 233 (iv) the registered agent of the Utah Chapter of the Associated General Contractors of
234 America; and

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

237 "I certify that the attached impact fee analysis:

- 238 1. includes only the costs for qualifying public facilities that are:
 - 239 a. allowed under the Impact Fees Act; and
 - 240 b. projected to be incurred or encumbered within six years after each
241 impact fee is paid;
- 242 2. contains no cost for operation and maintenance of public facilities;
- 243 3. offsets costs with grants or other alternate sources of payment;
- 244 4. does not include costs for qualifying public facilities that will raise the level
245 of service for the facilities, through impact fees, above the level of service that
246 is supported by existing residents; and
- 247 5. complies in each and every relevant respect with the Impact Fees Act."

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

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

252 **11-36-202. Impact fees -- Enactment -- Required and allowed provisions --**
253 **Limitations -- Effective date.**

254 (1) (a) Each local political subdivision and private entity wishing to impose impact
255 fees shall pass an impact fee enactment.

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

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

260 (i) the construction contract price;

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

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

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

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

270 (i) generally accepted cost accounting practices; and

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

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

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

278 (i) at least 10 days before the date of the public hearing:

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

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

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

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

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

338 fee enactment that requires a credit against impact fees for any dedication of land for,
339 improvement to, or new construction of, any system improvements provided by the developer
340 if the facilities:

- 341 (a) are system improvements; or
- 342 (b) (i) are dedicated to the public; and
- 343 (ii) offset the need for an identified system improvement.

344 (5) A local political subdivision may not:

345 (a) impose an impact fee to:

- 346 [~~(a)~~] (i) cure deficiencies in a public facility serving existing development; or
- 347 [~~(b)~~] (ii) raise the established level of service of a public facility serving existing
348 development[~~;~~]; or

349 (b) delay the construction of a school or charter school because of a dispute with the
350 school or charter school over impact fees.

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

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

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

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

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

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

362 (iii) requiring the legislative body to:

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

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

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

368 (7) (a) Notwithstanding any other provision of this chapter:

369 (i) an impact fee to pay for a public safety facility that is a fire suppression vehicle
370 may not be imposed on residential components of development;

371 (ii) an impact fee may not be imposed on a school district or charter school for a park,
372 recreation facility, open space, or trail;

373 (iii) an impact fee may not be imposed on development activity that consists of the
374 construction of a school, whether by a school district or a charter school, if:

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

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

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

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

382 (II) the jurisdiction of the private entity;

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

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

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

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

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

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

394 (vi) to the extent that the impact fee includes a component for a law enforcement
395 facility, the impact fee may not be imposed on development activity for:
396 (A) the Utah National Guard;
397 (B) the Utah Highway Patrol; or
398 (C) a state institution of higher education that has its own police force.
399 (b) If the imposition of an impact fee on a new school is not prohibited under
400 Subsection (7)(a)(iii) because the new school creates a greater demand or need for public
401 facilities than the school being replaced, the impact fee may be based only on the demand or
402 need that the new school creates for public facilities that exceeds the demand or need that the
403 school being replaced creates for those public facilities.
404 (8) Notwithstanding any other provision of this chapter, a local political subdivision
405 may impose and collect impact fees on behalf of a school district if authorized by Section
406 53A-20-100.5.
407 (9) An impact fee enactment may not take effect until 90 days after it is enacted.