

**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



26 11-36-202, as last amended by Laws of Utah 2009, Chapters 181, 286, and 323

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

29 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 referring  
39 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 63F-1-506;

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

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

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

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

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

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

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

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

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

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

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

104 (c) The plan shall identify:

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

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

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

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

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

116 (I) to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

152 (g) (i) The plan shall include a public facility required for a school district or charter  
153 school if the local political subdivision is aware of the planned location of the school district  
154 facility or charter school:

155 (A) through the planning process; or

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

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

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

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

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

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

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

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

177 (iv) estimates the proportionate share of:

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

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

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

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

185 (i) public notice; and

186 (ii) written notice:

187 (A) to:

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

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

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

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

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

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

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

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

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

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

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

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

212 development;

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

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

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

219 (6) Each local political subdivision that adopts an impact fee enactment under Section  
220 11-36-202 on or after July 1, 2000 shall, at least 10 days before adopting the enactment:

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

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

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

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

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

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

230 "I certify that the attached impact fee analysis:

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

232 a. allowed under the Impact Fees Act; and

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

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

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

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

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

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

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



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

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

245 **11-36-202. Impact fees -- Enactment -- Required and allowed provisions --**

246 **Limitations -- Effective date.**

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

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

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

253 (i) the construction contract price;

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

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

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

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

263 (i) generally accepted cost accounting practices; and

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

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

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

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

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

273 (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 or operation 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:

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

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

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

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

374 (II) the jurisdiction of the private entity;

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

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

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

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

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

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

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

388 (A) the Utah National Guard;

389 (B) the Utah Highway Patrol; or

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

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

396 (8) Notwithstanding any other provision of this chapter, a local political subdivision  
397 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.