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IMPACT FEE REVISIONS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne L. Niederhauser

House Sponsor: Michael T. Morley

LONG TITLE

General Description:

This bill amends public notice requirements for a local political subdivision that imposes an impact fee and directs a local government entity to refund an impact fee subject to certain circumstances.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ amends public notice requirements;
- ▶ directs a local government entity to refund an impact fee if a court ruling is consistent with an advisory opinion issued by the Office of Property Rights Ombudsman on the impact fee; and
- ▶ makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an effective date.

Utah Code Sections Affected:

AMENDS:

10-9a-305, as last amended by Laws of Utah 2009, Chapters 181 and 286

10-9a-510, as last amended by Laws of Utah 2009, Chapters 181 and 225



- 28 **11-36-102**, as last amended by Laws of Utah 2009, Chapters 181, 286, and 323
- 29 **11-36-201**, as last amended by Laws of Utah 2009, Chapters 181, 188, 286, and 323
- 30 **13-43-206**, as last amended by Laws of Utah 2008, Chapters 3, 250, and 382
- 31 **17-27a-305**, as last amended by Laws of Utah 2009, Chapters 181 and 286
- 32 **17-27a-509**, as last amended by Laws of Utah 2009, Chapters 181 and 225
- 33 **17B-1-118**, as enacted by Laws of Utah 2009, Chapter 181



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

36 Section 1. Section **10-9a-305** is amended to read:

37 **10-9a-305. Other entities required to conform to municipality's land use**
 38 **ordinances -- Exceptions -- School districts and charter schools -- Submission of**
 39 **development plan and schedule.**

40 (1) (a) Each county, municipality, school district, charter school, local district, special
 41 service district, and political subdivision of the state shall conform to any applicable land use
 42 ordinance of any municipality when installing, constructing, operating, or otherwise using any
 43 area, land, or building situated within that municipality.

44 (b) In addition to any other remedies provided by law, when a municipality's land use
 45 ordinance is violated or about to be violated by another political subdivision, that municipality
 46 may institute an injunction, mandamus, abatement, or other appropriate action or proceeding to
 47 prevent, enjoin, abate, or remove the improper installation, improvement, or use.

48 (2) (a) Notwithstanding Subsection (1), a public transit district under Title 17B,
 49 Chapter 2a, Part 8, Public Transit District Act, is not required to conform to any applicable
 50 land use ordinance of a municipality located within the boundaries of a county of the first class
 51 when constructing a:

52 (i) rail fixed guideway public transit facility that extends across two or more counties;

53 or

54 (ii) structure that serves a rail fixed guideway public transit facility that extends across
 55 two or more counties, including:

- 56 (A) platforms;
- 57 (B) passenger terminals or stations;
- 58 (C) park and ride facilities;

- 59 (D) maintenance facilities;
- 60 (E) all related utility lines, roadways, and other facilities serving the public transit
- 61 facility; or
- 62 (F) other auxiliary facilities.

63 (b) The exemption from municipal land use ordinances under this Subsection (2) does

64 not extend to any property not necessary for the construction or operation of a rail fixed

65 guideway public transit facility.

66 (c) A municipality located within the boundaries of a county of the first class may not,

67 through an agreement under Title 11, Chapter [3] 13, Interlocal Cooperation Act, require a

68 public transit district under Title 17B, Chapter 2a, Part 8, Public Transit District Act, to obtain

69 approval from the municipality prior to constructing a:

- 70 (i) rail fixed guideway public transit facility that extends across two or more counties;
- 71 or
- 72 (ii) structure that serves a rail fixed guideway public transit facility that extends across
- 73 two or more counties, including:

- 74 (A) platforms;
- 75 (B) passenger terminals or stations;
- 76 (C) park and ride facilities;
- 77 (D) maintenance facilities;
- 78 (E) all related utility lines, roadways, and other facilities serving the public transit
- 79 facility; or
- 80 (F) other auxiliary facilities.

81 (3) (a) Except as provided in Subsection (4), a school district or charter school is

82 subject to a municipality's land use ordinances.

83 (b) (i) Notwithstanding Subsection (4), a municipality may:

84 (A) subject a charter school to standards within each zone pertaining to setback, height,

85 bulk and massing regulations, off-site parking, curb cut, traffic circulation, and construction

86 staging; and

87 (B) impose regulations upon the location of a project that are necessary to avoid

88 unreasonable risks to health or safety, as provided in Subsection (4)(f).

89 (ii) The standards to which a municipality may subject a charter school under

90 Subsection (3)(b)(i) shall be objective standards only and may not be subjective.

91 (iii) Except as provided in Subsection (8)(d), the only basis upon which a municipality
92 may deny or withhold approval of a charter school's land use application is the charter school's
93 failure to comply with a standard imposed under Subsection (3)(b)(i).

94 (iv) Nothing in Subsection (3)(b)(iii) may be construed to relieve a charter school of an
95 obligation to comply with a requirement of an applicable building or safety code to which it is
96 otherwise obligated to comply.

97 (4) A municipality may not:

98 (a) impose requirements for landscaping, fencing, aesthetic considerations,
99 construction methods or materials, additional building inspections, municipal building codes,
100 building use for educational purposes, or the placement or use of temporary classroom facilities
101 on school property;

102 (b) except as otherwise provided in this section, require a school district or charter
103 school to participate in the cost of any roadway or sidewalk, or a study on the impact of a
104 school on a roadway or sidewalk, that is not reasonably necessary for the safety of school
105 children and not located on or contiguous to school property, unless the roadway or sidewalk is
106 required to connect an otherwise isolated school site to an existing roadway;

107 (c) require a district or charter school to pay fees not authorized by this section;

108 (d) provide for inspection of school construction or assess a fee or other charges for
109 inspection, unless the school district or charter school is unable to provide for inspection by an
110 inspector, other than the project architect or contractor, who is qualified under criteria
111 established by the state superintendent;

112 (e) require a school district or charter school to pay any impact fee for an improvement
113 project unless the impact fee is imposed as provided in Title 11, Chapter 36, Impact Fees Act;
114 or

115 (f) impose regulations upon the location of an educational facility except as necessary
116 to avoid unreasonable risks to health or safety.

117 (5) Subject to Section 53A-20-108, a school district or charter school shall coordinate
118 the siting of a new school with the municipality in which the school is to be located, to:

119 (a) avoid or mitigate existing and potential traffic hazards, including consideration of
120 the impacts between the new school and future highways; and

- 121 (b) maximize school, student, and site safety.
- 122 (6) Notwithstanding Subsection (4)(d), a municipality may, at its discretion:
- 123 (a) provide a walk-through of school construction at no cost and at a time convenient to
- 124 the district or charter school; and
- 125 (b) provide recommendations based upon the walk-through.
- 126 (7) (a) Notwithstanding Subsection (4)(d), a school district or charter school shall use:
- 127 (i) a municipal building inspector;
- 128 (ii) (A) for a school district, a school district building inspector from that school
- 129 district; or
- 130 (B) for a charter school, a school district building inspector from the school district in
- 131 which the charter school is located; or
- 132 (iii) an independent, certified building inspector who is:
- 133 (A) not an employee of the contractor;
- 134 (B) approved by:
- 135 (I) a municipal building inspector; or
- 136 (II) (Aa) for a school district, a school district building inspector from that school
- 137 district; or
- 138 (Bb) for a charter school, a school district building inspector from the school district in
- 139 which the charter school is located; and
- 140 (C) licensed to perform the inspection that the inspector is requested to perform.
- 141 (b) The approval under Subsection (7)(a)(iii)(B) may not be unreasonably withheld.
- 142 (c) If a school district or charter school uses a school district or independent building
- 143 inspector under Subsection (7)(a)(ii) or (iii), the school district or charter school shall submit to
- 144 the state superintendent of public instruction and municipal building official, on a monthly
- 145 basis during construction of the school building, a copy of each inspection certificate regarding
- 146 the school building.
- 147 (8) (a) A charter school shall be considered a permitted use in all zoning districts
- 148 within a municipality.
- 149 (b) Each land use application for any approval required for a charter school, including
- 150 an application for a building permit, shall be processed on a first priority basis.
- 151 (c) Parking requirements for a charter school may not exceed the minimum parking

152 requirements for schools or other institutional public uses throughout the municipality.

153 (d) If a municipality has designated zones for a sexually oriented business, or a
154 business which sells alcohol, a charter school may be prohibited from a location which would
155 otherwise defeat the purpose for the zone unless the charter school provides a waiver.

156 (e) (i) A school district or a charter school may seek a certificate authorizing permanent
157 occupancy of a school building from:

158 (A) the state superintendent of public instruction, as provided in Subsection
159 53A-20-104(3), if the school district or charter school used an independent building inspector
160 for inspection of the school building; or

161 (B) a municipal official with authority to issue the certificate, if the school district or
162 charter school used a municipal building inspector for inspection of the school building.

163 (ii) A school district may issue its own certificate authorizing permanent occupancy of
164 a school building if it used its own building inspector for inspection of the school building,
165 subject to the notification requirement of Subsection 53A-20-104(3)(a)(ii).

166 (iii) A charter school may seek a certificate authorizing permanent occupancy of a
167 school building from a school district official with authority to issue the certificate, if the
168 charter school used a school district building inspector for inspection of the school building.

169 (iv) A certificate authorizing permanent occupancy issued by the state superintendent
170 of public instruction under Subsection 53A-20-104(3) or a school district official with authority
171 to issue the certificate shall be considered to satisfy any municipal requirement for an
172 inspection or a certificate of occupancy.

173 (9) (a) A specified public agency intending to develop its land shall submit to the land
174 use authority a development plan and schedule:

175 (i) as early as practicable in the development process, but no later than the
176 commencement of construction; and

177 (ii) with sufficient detail to enable the land use authority to assess:

178 (A) the specified public agency's compliance with applicable land use ordinances;

179 (B) the demand for public facilities listed in Subsections 11-36-102~~(13)~~(14)(a), (b),
180 (c), (d), (e), and (g) caused by the development;

181 (C) the amount of any applicable fee listed in Subsection 10-9a-510(5);

182 (D) any credit against an impact fee; and

183 (E) the potential for waiving an impact fee.

184 (b) The land use authority shall respond to a specified public agency's submission
185 under Subsection (9)(a) with reasonable promptness in order to allow the specified public
186 agency to consider information the municipality provides under Subsection (9)(a)(ii) in the
187 process of preparing the budget for the development.

188 (10) Nothing in this section may be construed to modify or supersede Section
189 10-9a-304.

190 Section 2. Section **10-9a-510** is amended to read:

191 **10-9a-510. Limit on fees -- Requirement to itemize fees.**

192 (1) A municipality may not impose or collect a fee for reviewing or approving the
193 plans for a commercial or residential building that exceeds the lesser of:

194 (a) the actual cost of performing the plan review; and

195 (b) 65% of the amount the municipality charges for a building permit fee for that
196 building.

197 (2) Subject to Subsection (1), a municipality may impose and collect only a nominal
198 fee for reviewing and approving identical plans.

199 (3) A municipality may not impose or collect a hookup fee that exceeds the reasonable
200 cost of installing and inspecting the pipe, line, meter, and appurtenance to connect to the
201 municipal water, sewer, storm water, power, or other utility system.

202 (4) A municipality may not impose or collect:

203 (a) a land use application fee that exceeds the reasonable cost of processing the
204 application; or

205 (b) an inspection or review fee that exceeds the reasonable cost of performing the
206 inspection or review.

207 (5) Upon the request of an applicant or an owner of residential property, the
208 municipality shall itemize each fee that the municipality imposes on the applicant or on the
209 residential property, respectively, showing the basis of each calculation for each fee imposed.

210 (6) A municipality may not impose on or collect from a public agency any fee
211 associated with the public agency's development of its land other than:

212 (a) subject to Subsection (4), a fee for a development service that the public agency
213 does not itself provide;

- 214 (b) subject to Subsection (3), a hookup fee; and
- 215 (c) an impact fee for a public facility listed in Subsection 11-36-102~~(13)~~(14)(a), (b),
- 216 (c), (d), (e), or (g), subject to any applicable credit under Subsection 11-36-202(2)(b).

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

218 **11-36-102. Definitions.**

219 As used in this chapter:

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

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

224 (3) "Charter school" includes:

225 (a) an operating charter school;

226 (b) an applicant for a charter school whose application has been approved by a
227 chartering entity as provided in Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act;
228 and

229 (c) an entity that is working on behalf of a charter school or approved charter applicant
230 to develop or construct a charter school building.

231 (4) "Development activity" means any construction or expansion of a building,
232 structure, or use, any change in use of a building or structure, or any changes in the use of land
233 that creates additional demand and need for public facilities.

234 (5) "Development approval" means:

235 (a) except as provided in Subsection (5)(b), any written authorization from a local
236 political subdivision that authorizes the commencement of development activity; ~~[or]~~

237 (b) development activity, for a public entity that may develop without written
238 authorization from a local political subdivision[-];

239 (c) a written agreement between a local political subdivision and a public water
240 supplier, as defined in Section 73-1-4, or a private water company:

241 (i) to reserve:

242 (A) a water right;

243 (B) system capacity; or

244 (C) a distribution facility; or

- 245 (ii) to deliver for new development:
- 246 (A) culinary water; or
- 247 (B) irrigation water; or
- 248 (d) a written agreement between a local political subdivision and a sanitary sewer
- 249 authority, as defined in Section 10-9a-103:
- 250 (i) to reserve:
- 251 (A) sewer collection capacity; or
- 252 (B) treatment capacity; or
- 253 (ii) to provide sewer service for a new development.
- 254 (6) "Enactment" means:
- 255 (a) a municipal ordinance, for a municipality;
- 256 (b) a county ordinance, for a county; and
- 257 (c) a governing board resolution, for a local district, special service district, or private
- 258 entity.
- 259 (7) "Encumber" means:
- 260 (a) a pledge to retire a debt; or
- 261 (b) an allocation to a current purchase order or contract.
- 262 [~~(7)~~] (8) "Hookup fee" means a fee for the installation and inspection of any pipe, line,
- 263 meter, or appurtenance to connect to a gas, water, sewer, storm water, power, or other utility
- 264 system of a municipality, county, local district, special service district, or private entity.
- 265 [~~(8)~~] (9) (a) "Impact fee" means a payment of money imposed upon new development
- 266 activity as a condition of development approval to mitigate the impact of the new development
- 267 on public facilities.
- 268 (b) "Impact fee" does not mean a tax, a special assessment, a building permit fee, a
- 269 hookup fee, a fee for project improvements, or other reasonable permit or application fee.
- 270 [~~(9)~~] (10) (a) "Local political subdivision" means a county, a municipality, a local
- 271 district under Title 17B, Limited Purpose Local Government Entities - Local Districts, or a
- 272 special service district under Title 17D, Chapter 1, Special Service District Act.
- 273 (b) "Local political subdivision" does not mean a school district, whose impact fee
- 274 activity is governed by Section 53A-20-100.5.
- 275 [~~(10)~~] (11) "Private entity" means an entity with private ownership that provides

276 culinary water that is required to be used as a condition of development.

277 ~~[(11)]~~ (12) (a) "Project improvements" means site improvements and facilities that are:

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

280 (ii) necessary for the use and convenience of the occupants or users of development
281 resulting from a development activity; and

282 (iii) not identified or reimbursed as a system improvement.

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

284 ~~[(12)]~~ (13) "Proportionate share" means the cost of public facility improvements that
285 are roughly proportionate and reasonably related to the service demands and needs of any
286 development activity.

287 ~~[(13)]~~ (14) "Public facilities" means only the following capital facilities that have a life
288 expectancy of 10 or more years and are owned or operated by or on behalf of a local political
289 subdivision or private entity:

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

291 (b) wastewater collection and treatment facilities;

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

293 (d) municipal power facilities;

294 (e) roadway facilities;

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

296 (g) public safety facilities.

297 ~~[(14)]~~ (15) (a) "Public safety facility" means:

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

299 or

300 (ii) a fire suppression vehicle costing in excess of \$500,000.

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

303 ~~[(15)]~~ (16) (a) "Roadway facilities" means streets or roads that have been designated on
304 an officially adopted subdivision plat, roadway plan, or general plan of a political subdivision,
305 together with all necessary appurtenances.

306 (b) "Roadway facilities" includes associated improvements to federal or state roadways

307 only when the associated improvements:

- 308 (i) are necessitated by the new development; and
- 309 (ii) are not funded by the state or federal government.
- 310 (c) "Roadway facilities" does not mean federal or state roadways.

311 [~~16~~] (17) (a) "Service area" means a geographic area designated by a local political
312 subdivision on the basis of sound planning or engineering principles in which a defined set of
313 public facilities provide service within the area.

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

315 [~~17~~] (18) "Specified public agency" means:

- 316 (a) the state;
- 317 (b) a school district; or
- 318 (c) a charter school.

319 [~~18~~] (19) (a) "System improvements" means:

- 320 (i) existing public facilities that are:
 - 321 (A) identified in the impact fee analysis under Section 11-36-201; and
 - 322 (B) designed to provide services to service areas within the community at large; and
- 323 (ii) future public facilities identified in the impact fee analysis under Section 11-36-201
324 that are intended to provide services to service areas within the community at large.

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

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

327 **11-36-201. Impact fees -- Analysis -- Capital facilities plan -- Notice of plan --**
328 **Summary -- Exemptions.**

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

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

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

337 (b) A local political subdivision may not:

338 (i) establish any new impact fees that are not authorized by this chapter; or
339 (ii) impose or charge any other fees as a condition of development approval unless
340 those fees are a reasonable charge for the service provided.

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

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

346 (ii) Subsection (1)(d)(i) does not apply to an impact fee that was paid before May 12,
347 2009.

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

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

352 (A) (I) "Affected entity" means each county, municipality, local district under Title
353 17B, Limited Purpose Local Government Entities - Local Districts, special service district
354 under Title 17D, Chapter 1, Special Service District Act, school district, interlocal cooperation
355 entity established under Chapter 13, Interlocal Cooperation Act, and specified public utility:

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

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

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

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

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

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

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

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

373 [~~(C) be:~~]

374 [~~(f) sent to each county in whose unincorporated area and each municipality in whose
 375 boundaries is located the land on which the proposed facilities will be located;]~~

376 [~~(H) sent to each affected entity;]~~

377 [~~(HH) sent to the Automated Geographic Reference Center created in Section
 378 63F-1-506;]~~

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

382 [~~(V)(Aa) placed]~~ (C) ~~§~~→ **subject to Subsection (2)(b)(iv)**, ~~←~~§ be posted on the Utah
 382a Public Notice Website created under
 383 Section 63F-1-701[, if the local political subdivision:].

384 [~~(fi) is required under Subsection 52-4-203(3) to use that website to provide public
 385 notice of a meeting; or]~~

386 [~~(Hii) voluntarily chooses to place notice on that website despite not being required to
 387 do so under Subsection (2)(b)(iii)(C)(V)(Aa)(fi); or]~~

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

391 [~~(VI) sent to the registered agent of the Utah Home Builders Association;]~~

392 [~~(VII) sent to the registered agent of the Utah Association of Realtors; and]~~

393 [~~(VIII) sent to the registered agent of the Utah Chapter of the Associated General
 394 Contractors of America; and]~~

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

398 [~~(I) impacts that the facilities proposed in the capital facilities plan may have on the
 399 affected entity; and]~~

400 ~~[(H) facilities or uses of land that the affected entity is planning or considering that may~~
 401 ~~conflict with the facilities proposed in the capital facilities plan.]~~

401a **§→ (iv) For a private entity required to post notice on the Utah Public Notice Website under**
 401b **Subsection (2)(b)(iii):**

401c **(A) the private entity shall give notice to the general purpose local government in**
 401d **which the private entity's primary business office is located; and**

401e **(B) the general purpose local government described in Subsection (2)(b)(iv)(A)**
 401f **shall post the notice on the Utah Public Notice Website. ←§**

402 (c) The capital facilities plan shall identify:

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

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

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

409 (e) (i) If a local political subdivision chooses to prepare an independent capital
 410 facilities plan rather than include a capital facilities element in the general plan, the local
 411 political subdivision shall~~[(A) before preparing or contracting to prepare or amending or~~
 412 ~~contracting to amend the independent capital facilities plan, send written notice: (I) to: (Aa)~~
 413 ~~the registered agent of the Utah Home Builders Association; (Bb) the registered agent of the~~
 414 ~~Utah Association of Realtors; and (Cc) the registered agent of the Utah Chapter of the~~
 415 ~~Associated General Contractors of America; (II) stating the local political subdivision's intent~~
 416 ~~to prepare or amend a capital facilities plan; and (III) inviting each of the notice recipients to~~
 417 ~~participate in the preparation of or amendment to the capital facilities plan; and (B)] before~~
 418 adopting or amending the capital facilities plan:

419 ~~[(H) (A)~~ (A) give public notice of the plan or amendment according to Subsection
 420 (2)(e)(ii)(A), (B), or (C), as the case may be, at least 10 days before the date of the public
 421 hearing;

422 ~~[(H) (B)~~ (B) make a copy of the plan or amendment, together with a summary designed to
 423 be understood by a lay person, available to the public;

424 ~~[(H) (C)~~ (C) place a copy of the plan or amendment and summary in each public library
 425 within the local political subdivision; and

426 ~~[(IV) (D)~~ (D) hold a public hearing to hear public comment on the plan or amendment.

427 (ii) With respect to the public notice required under Subsection (2)(e)(i)~~[(B)(H)(A):~~

428 (A) each municipality shall comply with the notice and hearing requirements of, and,
429 except as provided in Subsection 11-36-401(4)(f), receive the protections of Sections
430 10-9a-205 and 10-9a-801 and Subsection 10-9a-502(2);

431 (B) each county shall comply with the notice and hearing requirements of, and, except
432 as provided in Subsection 11-36-401(4)(f), receive the protections of Sections 17-27a-205 and
433 17-27a-801 and Subsection 17-27a-502(2); and

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

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

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

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

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

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

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

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

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

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

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

461 (iii) demonstrates how those anticipated impacts are reasonably related to the

462 anticipated development activity;

463 (iv) estimates the proportionate share of:

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

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

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

469 (b) ~~§~~ **→ (i) ←** ~~§~~ Before preparing or contracting to prepare the written analysis required under
470 Subsection (5)(a), each local political subdivision or private entity shall [~~provide: (i) public~~
471 ~~notice; and (ii) written notice: (A) to: (I) the registered agent of the Utah Home Builders~~
472 ~~Association; (II) the registered agent of the Utah Association of Realtors; and (III) the~~
473 ~~registered agent of the Utah Chapter of the Associated General Contractors of America; (B)]~~
474 **§** **→ subject to Subsection (5)(b)(ii), ←** ~~§~~ post a public notice on the Utah Public Notice Website
474a created under Section 63F-1-701

475 indicating the local political subdivision or private entity's intent to prepare or contract to
476 prepare a written analysis of an impact fee[; ~~and~~].

477 [~~(C) inviting each notice recipient to participate in the preparation of the written~~
478 ~~analysis.~~]

478a **§** **→ (ii) For a private entity required to post notice on the Utah Public Notice Website under**
478b **Subsection (5)(b)(i):**

478c (A) the private entity shall give notice to the general purpose local government in
478d which the private entity's primary business office is located; and

478e (B) the general purpose local government described in Subsection (5)(b)(ii)(A)
478f shall post the notice on the Utah Public Notice Website. ← ~~§~~

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

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

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

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

487 (iv) the relative extent to which development activity will contribute to financing the
488 excess capacity of and system improvements for each existing public facility, by such means as

489 user charges, special assessments, or payment from the proceeds of general taxes;
490 (v) the relative extent to which development activity will contribute to the cost of
491 existing public facilities and system improvements in the future;
492 (vi) the extent to which the development activity is entitled to a credit against impact

493 fees because the development activity will dedicate system improvements or public facilities
494 that will offset the demand for system improvements, inside or outside the proposed
495 development;

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

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

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

502 (6) Each local political subdivision that adopts an impact fee enactment under Section
503 11-36-202 on or after July 1, 2000 shall, at least 10 days before adopting the enactment:

504 (a) submit a copy of the written analysis required by Subsection (5)(a) and a copy of
505 the summary required by Subsection (5)(d) to~~[-(i)]~~ each public library within the local political
506 subdivision; and

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

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

509 ~~[(iv) the registered agent of the Utah Chapter of the Associated General Contractors of
510 America; and]~~

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

513 "I certify that the attached impact fee analysis:

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

515 a. allowed under the Impact Fees Act; and

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

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

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

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

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

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

527 Section 5. Section **13-43-206** is amended to read:

528 **13-43-206. Advisory opinion -- Process.**

529 (1) A request for an advisory opinion under Section 13-43-205 shall be:

530 (a) filed with the Office of the Property Rights Ombudsman; and

531 (b) accompanied by a filing fee of \$150.

532 (2) The Office of the Property Rights Ombudsman may establish policies providing for
533 partial fee waivers for a person who is financially unable to pay the entire fee.

534 (3) A person requesting an advisory opinion need not exhaust administrative remedies,
535 including remedies described under Section 10-9a-801 or 17-27a-801, before requesting an
536 advisory opinion.

537 (4) The Office of the Property Rights Ombudsman shall:

538 (a) deliver notice of the request to opposing parties indicated in the request;

539 (b) inquire of all parties if there are other necessary parties to the dispute; and

540 (c) deliver notice to all necessary parties.

541 (5) If a governmental entity is an opposing party, the Office of the Property Rights
542 Ombudsman shall deliver the request in the manner provided for in Section 63G-7-401.

543 (6) (a) The Office of the Property Rights Ombudsman shall promptly determine if the
544 parties can agree to a neutral third party to issue an advisory opinion.

545 (b) If no agreement can be reached within four business days after notice is delivered
546 pursuant to Subsections (4) and (5), the Office of the Property Rights Ombudsman shall
547 appoint a neutral third party to issue an advisory opinion.

548 (7) All parties that are the subject of the request for advisory opinion shall:

549 (a) share equally in the cost of the advisory opinion; and

550 (b) provide financial assurance for payment that the neutral third party requires.

551 (8) The neutral third party shall comply with the provisions of Section 78B-11-109,
552 and shall promptly:

553 (a) seek a response from all necessary parties to the issues raised in the request for
554 advisory opinion;

555 (b) investigate and consider all responses; and

556 (c) issue a written advisory opinion within 15 business days after the appointment of
557 the neutral third party under Subsection (6)(b), unless:

558 (i) the parties agree to extend the deadline; or

559 (ii) the neutral third party determines that the matter is complex and requires additional
560 time to render an opinion, which may not exceed 30 calendar days.

561 (9) An advisory opinion shall include a statement of the facts and law supporting the
562 opinion's conclusions.

563 (10) (a) Copies of any advisory opinion issued by the Office of the Property Rights
564 Ombudsman shall be delivered as soon as practicable to all necessary parties.

565 (b) A copy of the advisory opinion shall be delivered to the government entity in the
566 manner provided for in Section 63G-7-401.

567 (11) An advisory opinion issued by the Office of the Property Rights Ombudsman is
568 not binding on any party to, nor admissible as evidence in, a dispute involving land use law
569 except as provided in Subsection (12).

570 (12) (a) ~~[H]~~ Subject to Subsection (12)(d), if the same issue that is the subject of an
571 advisory opinion is listed as a cause of action in litigation, and that cause of action is litigated
572 on the same facts and circumstances and is resolved consistent with the advisory opinion[-];

573 (i) the substantially prevailing party on that cause of action;

574 (A) may collect reasonable attorney fees and court costs pertaining to the development
575 of that cause of action from the date of the delivery of the advisory opinion to the date of the
576 court's resolution[-]; and

577 (B) shall be refunded an impact fee held to be in violation of Title 11, Chapter 36,
578 Impact Fees Act, based on the difference between the impact fee paid and what the impact fee
579 should have been if the government entity had correctly calculated the impact fee; and

580 (ii) in accordance with Subsection (12)(b), a government entity shall refund an impact
581 fee held to be in violation of Title 11, Chapter 36, Impact Fees Act, to the person who was in
582 record title of the property on the day on which the impact fee for the property was paid if:

583 (A) the impact fee was paid on or after the day on which the advisory opinion on the
584 impact fee was issued but before the day on which the final court ruling on the impact fee is
585 issued; and

586 (B) the person described in Subsection (12)(a)(ii) requests the impact fee refund from
587 the government entity within 30 days after the day on which the court issued the final ruling on
588 the impact fee.

589 (b) A government entity subject to Subsection (12)(a)(ii) shall refund the impact fee
590 based on the difference between the impact fee paid and what the impact fee should have been
591 if the government entity had correctly calculated the impact fee.

592 ~~(b)~~ (c) Nothing in this Subsection (12) is intended to create any new cause of action
593 under land use law.

594 (d) Subsection (12)(a) does not apply unless the resolution described in Subsection
595 (12)(a) is final.

596 (13) Unless filed by the local government, a request for an advisory opinion under
597 Section 13-43-205 does not stay the progress of a land use application, or the effect of a land
598 use decision.

599 Section 6. Section **17-27a-305** is amended to read:

600 **17-27a-305. Other entities required to conform to county's land use ordinances --**
601 **Exceptions -- School districts and charter schools -- Submission of development plan and**
602 **schedule.**

603 (1) (a) Each county, municipality, school district, charter school, local district, special
604 service district, and political subdivision of the state shall conform to any applicable land use
605 ordinance of any county when installing, constructing, operating, or otherwise using any area,
606 land, or building situated within the unincorporated portion of the county.

607 (b) In addition to any other remedies provided by law, when a county's land use
608 ordinance is violated or about to be violated by another political subdivision, that county may
609 institute an injunction, mandamus, abatement, or other appropriate action or proceeding to
610 prevent, enjoin, abate, or remove the improper installation, improvement, or use.

611 (2) (a) Notwithstanding Subsection (1), a public transit district under Title 17B,
612 Chapter 2a, Part 8, Public Transit District Act, is not required to conform to any applicable
613 land use ordinance of a county of the first class when constructing a:

614 (i) rail fixed guideway public transit facility that extends across two or more counties;

615 or

616 (ii) structure that serves a rail fixed guideway public transit facility that extends across

617 two or more counties, including:

618 (A) platforms;

619 (B) passenger terminals or stations;

620 (C) park and ride facilities;

621 (D) maintenance facilities;

622 (E) all related utility lines, roadways, and other facilities serving the public transit

623 facility; or

624 (F) other auxiliary facilities.

625 (b) The exemption from county land use ordinances under this Subsection (2) does not
626 extend to any property not necessary for the construction or operation of a rail fixed guideway
627 public transit facility.

628 (c) A county of the first class may not, through an agreement under Title 11, Chapter
629 13, Interlocal Cooperation Act, require a public transit district under Title 17B, Chapter 2a,
630 Part 8, Public Transit District Act, to obtain approval from the county prior to constructing a:

631 (i) rail fixed guideway public transit facility that extends across two or more counties;

632 or

633 (ii) structure that serves a rail fixed guideway public transit facility that extends across
634 two or more counties, including:

635 (A) platforms;

636 (B) passenger terminals or stations;

637 (C) park and ride facilities;

638 (D) maintenance facilities;

639 (E) all related utility lines, roadways, and other facilities serving the public transit

640 facility; or

641 (F) other auxiliary facilities.

642 (3) (a) Except as provided in Subsection (4), a school district or charter school is
643 subject to a county's land use ordinances.

644 (b) (i) Notwithstanding Subsection (4), a county may:

645 (A) subject a charter school to standards within each zone pertaining to setback, height,
646 bulk and massing regulations, off-site parking, curb cut, traffic circulation, and construction
647 staging; and

648 (B) impose regulations upon the location of a project that are necessary to avoid
649 unreasonable risks to health or safety, as provided in Subsection (4)(f).

650 (ii) The standards to which a county may subject a charter school under Subsection
651 (3)(b)(i) shall be objective standards only and may not be subjective.

652 (iii) Except as provided in Subsection (8)(d), the only basis upon which a county may
653 deny or withhold approval of a charter school's land use application is the charter school's
654 failure to comply with a standard imposed under Subsection (3)(b)(i).

655 (iv) Nothing in Subsection (3)(b)(iii) may be construed to relieve a charter school of an
656 obligation to comply with a requirement of an applicable building or safety code to which it is
657 otherwise obligated to comply.

658 (4) A county may not:

659 (a) impose requirements for landscaping, fencing, aesthetic considerations,
660 construction methods or materials, additional building inspections, county building codes,
661 building use for educational purposes, or the placement or use of temporary classroom facilities
662 on school property;

663 (b) except as otherwise provided in this section, require a school district or charter
664 school to participate in the cost of any roadway or sidewalk, or a study on the impact of a
665 school on a roadway or sidewalk, that is not reasonably necessary for the safety of school
666 children and not located on or contiguous to school property, unless the roadway or sidewalk is
667 required to connect an otherwise isolated school site to an existing roadway;

668 (c) require a district or charter school to pay fees not authorized by this section;

669 (d) provide for inspection of school construction or assess a fee or other charges for
670 inspection, unless the school district or charter school is unable to provide for inspection by an
671 inspector, other than the project architect or contractor, who is qualified under criteria
672 established by the state superintendent;

673 (e) require a school district or charter school to pay any impact fee for an improvement
674 project unless the impact fee is imposed as provided in Title 11, Chapter 36, Impact Fees Act;
675 or

676 (f) impose regulations upon the location of an educational facility except as necessary
677 to avoid unreasonable risks to health or safety.

678 (5) Subject to Section 53A-20-108, a school district or charter school shall coordinate

679 the siting of a new school with the county in which the school is to be located, to:

680 (a) avoid or mitigate existing and potential traffic hazards, including consideration of
681 the impacts between the new school and future highways; and

682 (b) maximize school, student, and site safety.

683 (6) Notwithstanding Subsection (4)(d), a county may, at its discretion:

684 (a) provide a walk-through of school construction at no cost and at a time convenient to
685 the district or charter school; and

686 (b) provide recommendations based upon the walk-through.

687 (7) (a) Notwithstanding Subsection (4)(d), a school district or charter school shall use:

688 (i) a county building inspector;

689 (ii) (A) for a school district, a school district building inspector from that school
690 district; or

691 (B) for a charter school, a school district building inspector from the school district in
692 which the charter school is located; or

693 (iii) an independent, certified building inspector who is:

694 (A) not an employee of the contractor;

695 (B) approved by:

696 (I) a county building inspector; or

697 (II) (Aa) for a school district, a school district building inspector from that school
698 district; or

699 (Bb) for a charter school, a school district building inspector from the school district in
700 which the charter school is located; and

701 (C) licensed to perform the inspection that the inspector is requested to perform.

702 (b) The approval under Subsection (7)(a)(iii)(B) may not be unreasonably withheld.

703 (c) If a school district or charter school uses a school district or independent building
704 inspector under Subsection (7)(a)(ii) or (iii), the school district or charter school shall submit to
705 the state superintendent of public instruction and county building official, on a monthly basis
706 during construction of the school building, a copy of each inspection certificate regarding the
707 school building.

708 (8) (a) A charter school shall be considered a permitted use in all zoning districts
709 within a county.

710 (b) Each land use application for any approval required for a charter school, including
711 an application for a building permit, shall be processed on a first priority basis.

712 (c) Parking requirements for a charter school may not exceed the minimum parking
713 requirements for schools or other institutional public uses throughout the county.

714 (d) If a county has designated zones for a sexually oriented business, or a business
715 which sells alcohol, a charter school may be prohibited from a location which would otherwise
716 defeat the purpose for the zone unless the charter school provides a waiver.

717 (e) (i) A school district or a charter school may seek a certificate authorizing permanent
718 occupancy of a school building from:

719 (A) the state superintendent of public instruction, as provided in Subsection
720 53A-20-104(3), if the school district or charter school used an independent building inspector
721 for inspection of the school building; or

722 (B) a county official with authority to issue the certificate, if the school district or
723 charter school used a county building inspector for inspection of the school building.

724 (ii) A school district may issue its own certificate authorizing permanent occupancy of
725 a school building if it used its own building inspector for inspection of the school building,
726 subject to the notification requirement of Subsection 53A-20-104(3)(a)(ii).

727 (iii) A charter school may seek a certificate authorizing permanent occupancy of a
728 school building from a school district official with authority to issue the certificate, if the
729 charter school used a school district building inspector for inspection of the school building.

730 (iv) A certificate authorizing permanent occupancy issued by the state superintendent
731 of public instruction under Subsection 53A-20-104(3) or a school district official with authority
732 to issue the certificate shall be considered to satisfy any county requirement for an inspection or
733 a certificate of occupancy.

734 (9) (a) A specified public agency intending to develop its land shall submit to the land
735 use authority a development plan and schedule:

736 (i) as early as practicable in the development process, but no later than the
737 commencement of construction; and

738 (ii) with sufficient detail to enable the land use authority to assess:

739 (A) the specified public agency's compliance with applicable land use ordinances;

740 (B) the demand for public facilities listed in Subsections 11-36-102[~~(13)~~](14)(a), (b),

741 (c), (d), (e), and (g) caused by the development;

742 (C) the amount of any applicable fee listed in Subsection 17-27a-509(5);

743 (D) any credit against an impact fee; and

744 (E) the potential for waiving an impact fee.

745 (b) The land use authority shall respond to a specified public agency's submission
746 under Subsection (9)(a) with reasonable promptness in order to allow the specified public
747 agency to consider information the municipality provides under Subsection (9)(a)(ii) in the
748 process of preparing the budget for the development.

749 (10) Nothing in this section may be construed to modify or supersede Section
750 17-27a-304.

751 Section 7. Section **17-27a-509** is amended to read:

752 **17-27a-509. Limit on fees -- Requirement to itemize fees.**

753 (1) A county may not impose or collect a fee for reviewing or approving the plans for a
754 commercial or residential building that exceeds the lesser of:

755 (a) the actual cost of performing the plan review; and

756 (b) 65% of the amount the county charges for a building permit fee for that building.

757 (2) Subject to Subsection (1), a county may impose and collect only a nominal fee for
758 reviewing and approving identical plans.

759 (3) A county may not impose or collect a hookup fee that exceeds the reasonable cost
760 of installing and inspecting the pipe, line, meter, or appurtenance to connect to the county
761 water, sewer, storm water, power, or other utility system.

762 (4) A county may not impose or collect:

763 (a) a land use application fee that exceeds the reasonable cost of processing the
764 application; or

765 (b) an inspection or review fee that exceeds the reasonable cost of performing the
766 inspection or review.

767 (5) Upon the request of an applicant or an owner of residential property, the county
768 shall itemize each fee that the county imposes on the applicant or on the residential property,
769 respectively, showing the basis of each calculation for each fee imposed.

770 (6) A county may not impose on or collect from a public agency any fee associated
771 with the public agency's development of its land other than:

772 (a) subject to Subsection (4), a fee for a development service that the public agency
773 does not itself provide;

774 (b) subject to Subsection (3), a hookup fee; and

775 (c) an impact fee for a public facility listed in Subsection 11-36-102~~(13)~~(14)(a), (b),
776 (c), (d), (e), or (g), subject to any applicable credit under Subsection 11-36-202(2)(b).

777 Section 8. Section **17B-1-118** is amended to read:

778 **17B-1-118. Local district hookup fee -- Preliminary design or site plan from a**
779 **specified public agency.**

780 (1) As used in this section:

781 (a) "Hookup fee" means a fee for the installation and inspection of any pipe, line,
782 meter, or appurtenance to connect to a local district water, sewer, storm water, power, or other
783 utility system.

784 (b) "Impact fee" has the same meaning as defined in Section 11-36-102.

785 (c) "Specified public agency" means:

786 (i) the state;

787 (ii) a school district; or

788 (iii) a charter school.

789 (d) "State" includes any department, division, or agency of the state.

790 (2) A local district may not impose or collect a hookup fee that exceeds the reasonable
791 cost of installing and inspecting the pipe, line, meter, or appurtenance to connect to the local
792 district water, sewer, storm water, power, or other utility system.

793 (3) (a) A specified public agency intending to develop its land shall submit a
794 development plan and schedule to each local district from which the specified public agency
795 anticipates the development will receive service:

796 (i) as early as practicable in the development process, but no later than the
797 commencement of construction; and

798 (ii) with sufficient detail to enable the local district to assess:

799 (A) the demand for public facilities listed in Subsections 11-36-102~~(13)~~(14)(a), (b),

800 (c), (d), (e), and (g) caused by the development;

801 (B) the amount of any hookup fees, or impact fees or substantive equivalent;

802 (C) any credit against an impact fee; and

803 (D) the potential for waiving an impact fee.

804 (b) The local district shall respond to a specified public agency's submission under
805 Subsection (3)(a) with reasonable promptness in order to allow the specified public agency to
806 consider information the local district provides under Subsection (3)(a)(ii) in the process of
807 preparing the budget for the development.

808 (4) Upon a specified public agency's submission of a development plan and schedule as
809 required in Subsection (3) that complies with the requirements of that subsection, the specified
810 public agency vests in the local district's hookup fees and impact fees in effect on the date of
811 submission.

812 Section 9. **Effective date.**

813 This bill takes effect on May 11, 2010, except Section 11-36-102 which takes effect on
814 May 11, 2011.

Legislative Review Note

as of 12-14-09 2:51 PM

Office of Legislative Research and General Counsel

S.B. 37 - Impact Fee Revisions

Fiscal Note

2010 General Session
State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

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.
