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

11-36-102, as last amended by Laws of Utah 2009, Chapters 181, 286, and 323

11-36-201, as last amended by Laws of Utah 2009, Chapters 181, 188, 286, and 323

13-43-206, as last amended by Laws of Utah 2008, Chapters 3, 250, and 382

17-27a-305, as last amended by Laws of Utah 2009, Chapters 181 and 286

17-27a-509, as last amended by Laws of Utah 2009, Chapters 181 and 225

17B-1-118, as enacted by Laws of Utah 2009, Chapter 181

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

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

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

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

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

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

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

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

(A) platforms;

(B) passenger terminals or stations;

(C) park and ride facilities;

(D) maintenance facilities;

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

(F) other auxiliary facilities.

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

(c) A municipality located within the boundaries of a county of the first class may not, through an agreement under Title 11, Chapter [~~3~~] 13, Interlocal Cooperation Act, require a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit District Act, to obtain approval from the municipality prior to constructing a:

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

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

(A) platforms;

(B) passenger terminals or stations;

(C) park and ride facilities;

(D) maintenance facilities;

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

(F) other auxiliary facilities.

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

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

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

construction staging; and

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

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

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

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

(4) A municipality may not:

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

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

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

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

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

or

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

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

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

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

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

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

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

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

(i) a municipal building inspector;

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

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

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

(A) not an employee of the contractor;

(B) approved by:

(I) a municipal building inspector; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) A certificate authorizing permanent occupancy issued by the state superintendent

of public instruction under Subsection 53A-20-104(3) or a school district official with authority to issue the certificate shall be considered to satisfy any municipal requirement for an inspection or a certificate of occupancy.

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

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

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

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

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

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

(D) any credit against an impact fee; and

(E) the potential for waiving an impact fee.

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

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

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

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

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

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

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

(2) Subject to Subsection (1), a municipality may impose and collect only a nominal

fee for reviewing and approving identical plans.

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

(4) A municipality may not impose or collect:

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

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

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

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

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

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

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

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

11-36-102. Definitions.

As used in this chapter:

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

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

(3) "Charter school" includes:

(a) an operating charter school;

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

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

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

(5) "Development approval" means:

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

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

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

(i) to reserve:

(A) a water right;

(B) system capacity; or

(C) a distribution facility; or

(ii) to deliver for new development:

(A) culinary water; or

(B) irrigation water; or

(d) a written agreement between a local political subdivision and a sanitary sewer authority, as defined in Section 10-9a-103:

(i) to reserve:

(A) sewer collection capacity; or

(B) treatment capacity; or

(ii) to provide sewer service for a new development.

(6) "Enactment" means:

(a) a municipal ordinance, for a municipality;

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

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

(7) "Encumber" means:

(a) a pledge to retire a debt; or

(b) an allocation to a current purchase order or contract.

[~~(7)~~] (8) "Hookup fee" means a fee for the installation and inspection of any pipe, line, meter, or appurtenance to connect to a gas, water, sewer, storm water, power, or other utility system of a municipality, county, local district, special service district, or private entity.

[~~(8)~~] (9) (a) "Impact fee" means a payment of money imposed upon new development activity as a condition of development approval to mitigate the impact of the new development on public facilities.

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

[~~(9)~~] (10) (a) "Local political subdivision" means a county, a municipality, a local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, or a special service district under Title 17D, Chapter 1, Special Service District Act.

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

[~~(10)~~] (11) "Private entity" means an entity with private ownership that provides culinary water that is required to be used as a condition of development.

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

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

(ii) necessary for the use and convenience of the occupants or users of development

resulting from a development activity; and

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

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

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

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

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

(b) wastewater collection and treatment facilities;

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

(d) municipal power facilities;

(e) roadway facilities;

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

(g) public safety facilities.

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

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

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

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

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

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

(i) are necessitated by the new development; and

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

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

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

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

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

(a) the state;

(b) a school district; or

(c) a charter school.

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

(i) existing public facilities that are:

(A) identified in the impact fee analysis under Section 11-36-201; and

(B) designed to provide services to service areas within the community at large; and

(ii) future public facilities identified in the impact fee analysis under Section 11-36-201 that are intended to provide services to service areas within the community at large.

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

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

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

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

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

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

(b) A local political subdivision may not:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[~~(C) be:~~]

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

[~~(II) sent to each affected entity;~~]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) The capital facilities plan shall identify:

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

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

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

(e) (i) If a local political subdivision chooses to prepare an independent capital facilities plan rather than include a capital facilities element in the general plan, the local political subdivision shall[~~: (A) before preparing or contracting to prepare or amending or contracting to amend the independent capital facilities plan, send written notice: (I) to: (Aa) the registered agent of the Utah Home Builders Association; (Bb) the registered agent of the~~

~~Utah Association of Realtors; and (Cc) the registered agent of the Utah Chapter of the Associated General Contractors of America; (II) stating the local political subdivision's intent to prepare or amend a capital facilities plan; and (III) inviting each of the notice recipients to participate in the preparation of or amendment to the capital facilities plan; and (B)~~] before adopting or amending the capital facilities plan:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) estimates the proportionate share of:

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

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

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

(b) (i) Before preparing or contracting to prepare the written analysis required under

Subsection (5)(a), each local political subdivision or private entity shall [~~provide: (i) public notice; and (ii) written notice: (A) to: (I) the registered agent of the Utah Home Builders Association; (II) the registered agent of the Utah Association of Realtors; and (III) the registered agent of the Utah Chapter of the Associated General Contractors of America; (B)~~] subject to Subsection (5)(b)(ii), post a public notice on the Utah Public Notice Website created under Section 63F-1-701 indicating the local political subdivision or private entity's intent to prepare or contract to prepare a written analysis of an impact fee[~~; and~~].

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"I certify that the attached impact fee analysis:

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

a. allowed under the Impact Fees Act; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) deliver notice to all necessary parties.

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

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

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

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

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

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

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

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

(b) investigate and consider all responses; and

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

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

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

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

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

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

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

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

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

(A) may collect reasonable attorney fees and court costs pertaining to the development of that cause of action from the date of the delivery of the advisory opinion to the date of the

court's resolution[.]; and

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

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

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

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

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

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

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

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

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

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

(1) (a) Each county, municipality, school district, charter school, local district, special

service district, and political subdivision of the state shall conform to any applicable land use ordinance of any county when installing, constructing, operating, or otherwise using any area, land, or building situated within the unincorporated portion of the county.

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

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

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

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

(A) platforms;

(B) passenger terminals or stations;

(C) park and ride facilities;

(D) maintenance facilities;

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

(F) other auxiliary facilities.

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

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

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

or

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

(A) platforms;

(B) passenger terminals or stations;

(C) park and ride facilities;

(D) maintenance facilities;

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

(F) other auxiliary facilities.

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

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

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

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

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

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

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

(4) A county may not:

(a) impose requirements for landscaping, fencing, aesthetic considerations,

construction methods or materials, additional building inspections, county building codes, building use for educational purposes, or the placement or use of temporary classroom facilities on school property;

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

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

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

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

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

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

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

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

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

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

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

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

(i) a county building inspector;

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

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

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

(A) not an employee of the contractor;

(B) approved by:

(I) a county building inspector; or

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

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

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

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

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

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

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

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

(d) If a county has designated zones for a sexually oriented business, or a business which sells alcohol, a charter school may be prohibited from a location which would otherwise

defeat the purpose for the zone unless the charter school provides a waiver.

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

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

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

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

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

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

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

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

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

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

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

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

(D) any credit against an impact fee; and

(E) the potential for waiving an impact fee.

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

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

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

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

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

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

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

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

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

(4) A county may not impose or collect:

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

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

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

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

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

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

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

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

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

(1) As used in this section:

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

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

(c) "Specified public agency" means:

(i) the state;

(ii) a school district; or

(iii) a charter school.

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

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

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

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

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

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

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

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

(C) any credit against an impact fee; and

(D) the potential for waiving an impact fee.

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

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

Section 9. **Effective date.**

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