

SCHOOL BUILDING CONSTRUCTION IMPACT FEES

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kraig Powell

Senate Sponsor: _____

LONG TITLE

General Description:

This bill allows a local school board to impose a school impact fee.

Highlighted Provisions:

This bill:

- ▶ modifies definitions;
 - ▶ establishes a process for a local school board to impose a school impact fee on residential construction;
 - ▶ provides notice requirements for public hearings on enacting school impact fees;
- and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on May 11, 2011.

Utah Code Sections Affected:

AMENDS:

11-36-102 (Superseded 05/11/11), as last amended by Laws of Utah 2009, Chapters 181, 286, and 323

11-36-102 (Effective 05/11/11), as last amended by Laws of Utah 2010, Chapter 203

11-36-201, as last amended by Laws of Utah 2010, Chapters 203 and 315



28 11-36-202, as last amended by Laws of Utah 2010, Chapter 315
29 53A-20-100.5, as enacted by Laws of Utah 1995, Chapter 283



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

32 Section 1. Section 11-36-102 (Superseded 05/11/11) is amended to read:

33 **11-36-102 (Superseded 05/11/11). Definitions.**

34 As used in this chapter:

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

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

39 (3) "Charter school" includes:

40 (a) an operating charter school;

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

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

46 (4) (a) Except as provided in Subsection (4)(b), "development activity" means any
47 construction or expansion of a building, structure, or use, any change in use of a building or
48 structure, or any changes in the use of land that creates additional demand and need for public
49 facilities.

50 (b) For purposes of a school impact fee, "development activity" means the construction
51 of a residential building.

52 (5) "Development approval" means:

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

55 (b) development activity, for a public entity that may develop without written
56 authorization from a local political subdivision.

57 (6) "Enactment" means:

58 (a) a municipal ordinance, for a municipality;

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

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

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

65 (8) (a) "Impact fee" means a payment of money imposed upon new development
66 activity as a condition of development approval to mitigate the impact of the new development
67 on public facilities.

68 (b) "Impact fee" includes a school impact fee as defined in Section 53A-20-100.5.

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

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

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

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

78 (11) (a) "Project improvements" means site improvements and facilities that are:

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

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

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

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

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

88 (13) "Public facilities" means only the following capital facilities that have a life
89 expectancy of 10 or more years and are owned or operated by or on behalf of a local political

90 subdivision or private entity:

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

92 (b) wastewater collection and treatment facilities;

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

94 (d) municipal power facilities;

95 (e) roadway facilities;

96 (f) parks, recreation facilities, open space, and trails; [~~and~~]

97 (g) public safety facilities[-]; and

98 (h) school facilities.

99 (14) (a) "Public safety facility" means:

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

101 or

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

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

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

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

110 (i) are necessitated by the new development; and

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

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

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

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

117 (17) "Specified public agency" means:

118 (a) the state;

119 (b) a school district; or

120 (c) a charter school.

121 (18) (a) "System improvements" means:
 122 (i) existing public facilities that are:
 123 (A) identified in the impact fee analysis under Section 11-36-201; and
 124 (B) designed to provide services to service areas within the community at large; and
 125 (ii) future public facilities identified in the impact fee analysis under Section 11-36-201
 126 that are intended to provide services to service areas within the community at large.

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

128 Section 2. Section **11-36-102 (Effective 05/11/11)** is amended to read:

129 **11-36-102 (Effective 05/11/11). Definitions.**

130 As used in this chapter:

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

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

135 (3) "Charter school" includes:

136 (a) an operating charter school;

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

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

142 (4) (a) Except as provided in Subsection (4)(b), "development activity" means any
 143 construction or expansion of a building, structure, or use, any change in use of a building or
 144 structure, or any changes in the use of land that creates additional demand and need for public
 145 facilities.

146 (b) For purposes of a school impact fee, "development activity" means the construction
 147 of a residential building.

148 (5) "Development approval" means:

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

151 (b) development activity, for a public entity that may develop without written

- 152 authorization from a local political subdivision;
- 153 (c) a written agreement between a local political subdivision and a public water
154 supplier, as defined in Section 73-1-4, or a private water company:
- 155 (i) to reserve:
- 156 (A) a water right;
- 157 (B) system capacity; or
- 158 (C) a distribution facility; or
- 159 (ii) to deliver for new development:
- 160 (A) culinary water; or
- 161 (B) irrigation water; or
- 162 (d) a written agreement between a local political subdivision and a sanitary sewer
163 authority, as defined in Section 10-9a-103:
- 164 (i) to reserve:
- 165 (A) sewer collection capacity; or
- 166 (B) treatment capacity; or
- 167 (ii) to provide sewer service for a new development.
- 168 (6) "Enactment" means:
- 169 (a) a municipal ordinance, for a municipality;
- 170 (b) a county ordinance, for a county; and
- 171 (c) a governing board resolution, for a local district, special service district, school
172 district, or private entity.
- 173 (7) "Encumber" means:
- 174 (a) a pledge to retire a debt; or
- 175 (b) an allocation to a current purchase order or contract.
- 176 (8) "Hookup fee" means a fee for the installation and inspection of any pipe, line,
177 meter, or appurtenance to connect to a gas, water, sewer, storm water, power, or other utility
178 system of a municipality, county, local district, special service district, or private entity.
- 179 (9) (a) "Impact fee" means a payment of money imposed upon new development
180 activity as a condition of development approval to mitigate the impact of the new development
181 on public facilities.
- 182 (b) "Impact fee" includes a school impact fee as defined in Section 53A-20-100.5.

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

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

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

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

192 (12) (a) "Project improvements" means site improvements and facilities that are:

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

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

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

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

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

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

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

206 (b) wastewater collection and treatment facilities;

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

208 (d) municipal power facilities;

209 (e) roadway facilities;

210 (f) parks, recreation facilities, open space, and trails; ~~[and]~~

211 (g) public safety facilities~~[-];~~ and

212 (h) school facilities.

213 (15) (a) "Public safety facility" means:

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

215 or

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

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

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

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

224 (i) are necessitated by the new development; and

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

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

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

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

231 (18) "Specified public agency" means:

232 (a) the state;

233 (b) a school district; or

234 (c) a charter school.

235 (19) (a) "System improvements" means:

236 (i) existing public facilities that are:

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

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

239 (ii) future public facilities identified in the impact fee analysis under Section 11-36-201

240 that are intended to provide services to service areas within the community at large.

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

242 Section 3. Section **11-36-201** is amended to read:

243 **11-36-201. Impact fees -- Analysis -- Capital facilities plan -- Notice of plan --**

244 **Summary -- Exemptions.**

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

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

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

253 (b) A local political subdivision may not:

254 (i) establish ~~[any]~~ a new impact ~~[fees]~~ fee that ~~[are]~~ is not authorized by this chapter; or

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

257 (c) Each local political subdivision shall ensure that ~~[the]~~ an impact ~~[fees comply]~~ fee
258 complies with the requirements of this chapter.

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

262 (ii) Subsection (1)(d)(i) does not apply to an impact fee that was paid before May 12,
263 2009.

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

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

269 (A) (I) "Affected entity" means each county, municipality, local district under Title
270 17B, Limited Purpose Local Government Entities - Local Districts, special service district
271 under Title 17D, Chapter 1, Special Service District Act, school district, interlocal cooperation
272 entity established under Chapter 13, Interlocal Cooperation Act, and specified public utility:

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

275 (Bb) that has filed with the local political subdivision or private entity a copy of the

276 general or long-range plan of the county, municipality, local district, special service district,
277 school district, interlocal cooperation entity, or specified public utility.

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

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

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

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

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

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

290 (C) subject to Subsection (2)(b)(iv), be posted on the Utah Public Notice Website
291 created under Section 63F-1-701.

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

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

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

298 (c) The capital facilities plan shall identify:

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

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

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

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

307 political subdivision shall before adopting or amending the capital facilities plan:

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

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

312 (C) place a copy of the plan or amendment and summary in each public library within
313 the local political subdivision; and

314 (D) hold a public hearing to hear public comment on the plan or amendment.

315 (ii) With respect to the public notice required under Subsection (2)(e)(i)(A):

316 (A) each municipality shall comply with the notice and hearing requirements of, and,
317 except as provided in Subsection 11-36-401(4)(f), receive the protections of Sections
318 10-9a-205 and 10-9a-801 and Subsection 10-9a-502(2);

319 (B) each county shall comply with the notice and hearing requirements of, and, except
320 as provided in Subsection 11-36-401(4)(f), receive the protections of Sections 17-27a-205 and
321 17-27a-801 and Subsection 17-27a-502(2); [~~and~~]

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

324 (D) each school district shall comply with the notice and hearing requirements of
325 Section 53A-20-100.5.

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

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

332 (A) the impact [~~fees~~] fee that the local political subdivision imposes [~~are~~] is based
333 upon a reasonable plan; and

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

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

336 (g) (i) Subject to Subsection (2)(g)(iii), the plan shall include a public facility for which
337 an impact fee may be charged or required for a school district or charter school if the local

338 political subdivision is aware of the planned location of the school district facility or charter
339 school:

340 (A) through the planning process; or

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

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

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

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

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

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

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

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

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

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

368 (iv) estimates the proportionate share of:

369 (A) the costs for existing capacity that will be recouped; and
370 (B) the costs of impacts on system improvements that are reasonably related to the new
371 development activity; and
372 (v) based upon those factors and the requirements of this chapter, identifies how the
373 impact fee was calculated.

374 (b) (i) Before preparing or contracting to prepare the written analysis required under
375 Subsection (5)(a), each local political subdivision or private entity shall, subject to Subsection
376 (5)(b)(ii), post a public notice on the Utah Public Notice Website created under Section
377 63F-1-701 indicating the local political subdivision or private entity's intent to prepare or
378 contract to prepare a written analysis of an impact fee.

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

381 (A) the private entity shall give notice to the general purpose local government in
382 which the private entity's primary business office is located; and
383 (B) the general purpose local government described in Subsection (5)(b)(ii)(A) shall
384 post the notice on the Utah Public Notice Website.

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

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

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

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

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

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

398 (vi) the extent to which the development activity is entitled to a credit against impact
399 fees because the development activity will dedicate system improvements or public facilities

400 that will offset the demand for system improvements, inside or outside the proposed
401 development;

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

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

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

408 (6) Each local political subdivision that adopts an impact fee enactment under Section
409 11-36-202 on or after July 1, 2000, shall, at least 10 days before adopting the enactment:

410 (a) submit a copy of the written analysis required by Subsection (5)(a) and a copy of
411 the summary required by Subsection (5)(d) to each public library within the local political
412 subdivision; and

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

415 "I certify that the attached impact fee analysis:

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

417 a. allowed under the Impact Fees Act; and

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

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

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

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

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

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

429 Section 4. Section **11-36-202** is amended to read:

430 **11-36-202. Impact fees -- Enactment -- Required and allowed provisions --**

431 **Limitations -- Effective date.**

432 (1) (a) Each local political subdivision and private entity wishing to impose an impact
433 [~~fees~~] fee shall pass an impact fee enactment.

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

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

438 (i) the construction contract price;

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

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

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

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

448 (i) generally accepted cost accounting practices; and

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

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

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

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

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

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

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

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

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

462 America; and

463 (ii) (A) for a municipality, comply with the notice and hearing requirements of, and,
464 except as provided in Subsection 11-36-401(4)(f), receive the protections of Sections
465 10-9a-205 and 10-9a-801;

466 (B) for a county, comply with the notice and hearing requirements of, and, except as
467 provided in Subsection 11-36-401(4)(f), receive the protections of Sections 17-27a-205 and
468 17-27a-801; [~~and~~]

469 (C) for a local district or special service district, comply with the notice and hearing
470 requirements of, and receive the protections of, Section 17B-1-111[-]; and

471 (D) for a school district, comply with the notice and hearing requirements of
472 53A-20-100.5.

473 (g) Nothing contained in Subsection (1)(f) may be construed to require involvement by
474 a planning commission in the impact fee enactment process.

475 (2) The local political subdivision or private entity shall ensure that the impact fee
476 enactment:

477 (a) contains:

478 (i) a provision establishing one or more service areas within which the local political
479 subdivision or private entity calculates and imposes impact fees for various land use categories;

480 (ii) (A) a schedule of impact fees for each type of development activity that specifies
481 the amount of the impact fee to be imposed for each type of system improvement; or

482 (B) the formula that the local political subdivision or private entity, as the case may be,
483 will use to calculate each impact fee;

484 (iii) a provision authorizing the local political subdivision or private entity, as the case
485 may be, to adjust the standard impact fee at the time the fee is charged to:

486 (A) respond to:

487 (I) unusual circumstances in specific cases; or

488 (II) a request for a prompt and individualized impact fee review for:

489 (Aa) the development activity of the state or a school district or charter school; and

490 (Bb) an offset or credit for a public facility for which an impact fee has been or will be
491 collected; and

492 (B) ensure that the impact [~~fees are~~] fee is imposed fairly; and

493 (iv) a provision governing calculation of the amount of the impact fee to be imposed on
494 a particular development that permits adjustment of the amount of the impact fee based upon
495 studies and data submitted by the developer; and

496 (b) allows a developer, including a school district or charter school, to receive a credit
497 against or proportionate reimbursement of an impact fee if the developer:

498 (i) dedicates land for a system improvement;

499 (ii) builds and dedicates some or all of a system improvement; or

500 (iii) dedicates a public facility that the local political subdivision or private entity and
501 the developer agree will reduce the need for a system improvement.

502 (3) (a) A local political subdivision or private entity may include a provision in an
503 impact fee enactment that:

504 (i) provides an impact fee exemption for:

505 (A) development activity attributable to:

506 (I) low income housing;

507 (II) the state;

508 (III) a school district; or

509 (IV) a charter school; or

510 (B) other development activity with a broad public purpose; and

511 (ii) establishes one or more sources of funds other than an impact [~~fees~~] fee to pay for
512 that development activity.

513 (b) An impact fee enactment that provides an impact fee exemption for development
514 activity attributable to a school district or charter school shall allow either a school district or a
515 charter school to qualify for the exemption on the same basis.

516 (4) A local political subdivision or private entity shall include a provision in an impact
517 fee enactment that requires a credit against an impact [~~fees~~] fee for any dedication of land for,
518 improvement to, or new construction of, any system improvements provided by the developer
519 if the facilities:

520 (a) are system improvements; or

521 (b) (i) are dedicated to the public; and

522 (ii) offset the need for an identified system improvement.

523 (5) A local political subdivision may not:

- 524 (a) impose an impact fee to:
- 525 (i) cure deficiencies in a public facility serving existing development; or
- 526 (ii) raise the established level of service of a public facility serving existing
- 527 development; or
- 528 (b) delay the construction of a school or charter school because of a dispute with the
- 529 school or charter school over an impact [~~fees~~] fee.
- 530 (6) Notwithstanding the requirements and prohibitions of this chapter, a local political
- 531 subdivision may impose and assess an impact fee for environmental mitigation when:
- 532 (a) the local political subdivision has formally agreed to fund a Habitat Conservation
- 533 Plan to resolve conflicts with the Endangered Species Act of 1973, 16 U.S.C. Sec 1531, et seq.
- 534 or other state or federal environmental law or regulation;
- 535 (b) the impact fee bears a reasonable relationship to the environmental mitigation
- 536 required by the Habitat Conservation Plan; and
- 537 (c) the legislative body of the local political subdivision adopts an ordinance or
- 538 resolution:
- 539 (i) declaring that an impact fee is required to finance the Habitat Conservation Plan;
- 540 (ii) establishing periodic sunset dates for the impact fee; and
- 541 (iii) requiring the legislative body to:
- 542 (A) review the impact fee on those sunset dates;
- 543 (B) determine whether or not the impact fee is still required to finance the Habitat
- 544 Conservation Plan; and
- 545 (C) affirmatively reauthorize the impact fee if the legislative body finds that the impact
- 546 fee must remain in effect.
- 547 (7) (a) Notwithstanding any other provision of this chapter:
- 548 (i) an impact fee to pay for a public safety facility that is a fire suppression vehicle may
- 549 not be imposed on a a residential [~~components~~] component of development;
- 550 (ii) an impact fee may not be imposed on a school district or charter school for a park,
- 551 recreation facility, open space, or trail;
- 552 (iii) an impact fee may not be imposed on development activity that consists of the
- 553 construction of a school, whether by a school district or a charter school, if:
- 554 (A) the school is intended to replace another school, whether on the same or a different

555 parcel;

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

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

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

561 (II) the jurisdiction of the private entity;

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

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

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

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

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

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

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

575 (A) the Utah National Guard;

576 (B) the Utah Highway Patrol; or

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

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

583 (8) Notwithstanding any other provision of this chapter, a local political subdivision
584 may impose and collect impact fees on behalf of a school district if authorized by Section
585 53A-20-100.5.

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

587 Section 5. Section **53A-20-100.5** is amended to read:

588 **53A-20-100.5. School impact fees.**

589 (1) As used in this section, "school impact fee" means a charge on new residential
590 development in order to generate revenue for funding or recouping the costs of capital
591 improvements for schools or school facility expansions necessitated by and attributable to the
592 new residential development.

593 (2) [~~Beginning March 21, 1995, there is a moratorium prohibiting a county, city, town,~~]
594 A local school board[, or any other political subdivision from imposing or collecting] may
595 impose a school impact fee [unless hereafter authorized by the Legislature by statute] on
596 residential construction as provided in this section and Title 11, Chapter 36, Impact Fees Act.

597 [~~(3) Collection of any fees authorized before March 21, 1995, by any ordinance,~~
598 ~~resolution or rule of any county, city, town, local school board, or other political subdivision~~
599 ~~shall terminate on May 1, 1996, unless hereafter authorized by the Legislature by statute.]~~

600 (3) Before imposing a school impact fee, a local school board shall:

601 (a) prepare a proposed impact fee resolution that meets the requirement of Title 11,
602 Chapter 36, Impact Fees Act;

603 (b) make a copy of the proposed impact fee resolution available to the public at least 10
604 days before the date of the public hearing;

605 (c) provide notice of the date, time, and place of the public hearing at least 10 days
606 before the date of the hearing as provided in Subsection (4); and

607 (d) hold a public hearing, as defined in Section 10-9a-103, on the proposed impact fee
608 resolution.

609 (4) In addition to complying with Title 52, Chapter 4, Open and Public Meetings Act,
610 in regards to the public hearing described in this section, at least 10 days prior to the public
611 hearing, a local school board shall:

612 (a) publish a notice of the public hearing in a newspaper or combination of newspapers
613 of general circulation in the school district, except as provided in Section 45-1-101;

614 (b) publish a notice of the public hearing electronically in accordance with Section
615 45-1-101;

616 (c) post a notice at the school district's main office and in at least three other public

617 locations within the school district's boundaries; and
618 (d) provide notice to each affected entity, as defined in Section 11-36-201.
619 Section 6. **Effective date.**
620 This bill takes effect on May 11, 2011.

Legislative Review Note
as of 1-28-11 9:18 AM

Office of Legislative Research and General Counsel