LEGISLATIVE GENERAL COUNSEL
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IMPACT FEE AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jerry W. Stevenson

House Sponsor: Brad J. Galvez

LONG TITLE

General Description:

This bill recodifies the Impact Fees Act.

Highlighted Provisions:

This bill:

- repeals Title 11, Chapter 36, Impact Fees Act, and replaces it with Title 11, Chapter 36a, Impact Fees Act, including:
  - enacting general provisions;
  - enacting provisions related to an impact fee;
  - enacting provisions regulating the establishment of an impact fee;
  - enacting provisions related to an impact fee enactment;
  - enacting notice provisions;
  - enacting provisions regulating the accounting of and expenditure of an impact fee; and
  - enacting provisions related to challenging an impact fee; and
- makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on May 11, 2011.

Utah Code Sections Affected:

S.B. 146

AMENDS:

10-9a-103, as last amended by Laws of Utah 2010, Chapters 269 and 330

10-9a-305, as last amended by Laws of Utah 2010, Chapters 203 and 330

10-9a-510, as last amended by Laws of Utah 2010, Chapter 203

13-43-205, as enacted by Laws of Utah 2006, Chapter 258

13-43-206, as last amended by Laws of Utah 2010, Chapter 203

17-27a-103, as last amended by Laws of Utah 2010, Chapters 269 and 330

17-27a-305, as last amended by Laws of Utah 2010, Chapters 203 and 330

17-27a-509, as last amended by Laws of Utah 2010, Chapter 203

17B-1-111, as renumbered and amended by Laws of Utah 2007, Chapter 329

17B-1-118, as last amended by Laws of Utah 2010, Chapter 203

17B-1-643, as last amended by Laws of Utah 2009, First Special Session, Chapter 5

17B-2a-1004, as enacted by Laws of Utah 2007, Chapter 329

ENACTS:

11-36a-101, Utah Code Annotated 1953

11-36a-102, Utah Code Annotated 1953

11-36a-201, Utah Code Annotated 1953

11-36a-202, Utah Code Annotated 1953

11-36a-203, Utah Code Annotated 1953

11-36a-204, Utah Code Annotated 1953

11-36a-205, Utah Code Annotated 1953

11-36a-301, Utah Code Annotated 1953

11-36a-302, Utah Code Annotated 1953

11-36a-303, Utah Code Annotated 1953

11-36a-304, Utah Code Annotated 1953

11-36a-305, Utah Code Annotated 1953

11-36a-306, Utah Code Annotated 1953

11-36a-401, Utah Code Annotated 1953

11-36a-402, Utah Code Annotated 1953

11-36a-403, Utah Code Annotated 1953

11-36a-501, Utah Code Annotated 1953

11-36a-502, Utah Code Annotated 1953

11-36a-503, Utah Code Annotated 1953

11-36a-504, Utah Code Annotated 1953

11-36a-601, Utah Code Annotated 1953

11-36a-602, Utah Code Annotated 1953

11-36a-603, Utah Code Annotated 1953

11-36a-701, Utah Code Annotated 1953

11-36a-702, Utah Code Annotated 1953

11-36a-703, Utah Code Annotated 1953

11-36a-704, Utah Code Annotated 1953

11-36a-705, Utah Code Annotated 1953

REPEALS:

11-36-101, as enacted by Laws of Utah 1995, First Special Session, Chapter 11

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

11-36-202, as last amended by Laws of Utah 2010, Chapter 315

11-36-301, as last amended by Laws of Utah 2009, Chapter 323

11-36-302, as last amended by Laws of Utah 2009, Chapter 181

11-36-303, as enacted by Laws of Utah 1995, First Special Session, Chapter 11

11-36-401, as last amended by Laws of Utah 2010, Chapter 378

11-36-401.5, as enacted by Laws of Utah 2009, Chapters 181 and 286

11-36-402, as last amended by Laws of Utah 2008, Chapters 3 and 382

11-36-501, as last amended by Laws of Utah 2007, Chapter 329

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

Section 1. Section **10-9a-103** is amended to read:

10-9a-103. Definitions.

As used in this chapter:

(1) "Affected entity" means a county, municipality, local district, special service

district under Title 17D, Chapter 1, Special Service District Act, school district, interlocal cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, specified public utility, a property owner, a property owners association, or the Utah Department of Transportation, if:

(a) the entity's services or facilities are likely to require expansion or significant modification because of an intended use of land;

(b) the entity has filed with the municipality a copy of the entity's general or long-range plan; or

(c) the entity has filed with the municipality a request for notice during the same calendar year and before the municipality provides notice to an affected entity in compliance with a requirement imposed under this chapter.

(2) "Appeal authority" means the person, board, commission, agency, or other body designated by ordinance to decide an appeal of a decision of a land use application or a variance.

(3) "Billboard" means a freestanding ground sign located on industrial, commercial, or residential property if the sign is designed or intended to direct attention to a business, product, or service that is not sold, offered, or existing on the property where the sign is located.

(4) "Charter school" includes:

(a) an operating charter school;

(b) a charter school applicant that has its application approved by a chartering entity in accordance with Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act; and

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

(5) "Conditional use" means a land use that, because of its unique characteristics or potential impact on the municipality, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.

(6) "Constitutional taking" means a governmental action that results in a taking of private property so that compensation to the owner of the property is required by the:

(a) Fifth or Fourteenth Amendment of the Constitution of the United States; or

(b) Utah Constitution Article I, Section 22.

(7) "Culinary water authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of the culinary water system and sources for the subject property.

(8) "Development activity" means:

(a) any construction or expansion of a building, structure, or use that creates additional demand and need for public facilities;

(b) any change in use of a building or structure that creates additional demand and need for public facilities; or

(c) any change in the use of land that creates additional demand and need for public facilities.

(9) (a) "Disability" means a physical or mental impairment that substantially limits one or more of a person's major life activities, including a person having a record of such an impairment or being regarded as having such an impairment.

(b) "Disability" does not include current illegal use of, or addiction to, any federally controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. 802.

(10) "Educational facility":

(a) means:

(i) a school district's building at which pupils assemble to receive instruction in a program for any combination of grades from preschool through grade 12, including kindergarten and a program for children with disabilities;

(ii) a structure or facility:

(A) located on the same property as a building described in Subsection (10)(a)(i); and

(B) used in support of the use of that building; and

(iii) a building to provide office and related space to a school district's administrative personnel; and

(b) does not include land or a structure, including land or a structure for inventory storage, equipment storage, food processing or preparing, vehicle storage or maintenance, or similar use that is:

(i) not located on the same property as a building described in Subsection (10)(a)(i); and

(ii) used in support of the purposes of a building described in Subsection (10)(a)(i).

(11) "Elderly person" means a person who is 60 years old or older, who desires or needs to live with other elderly persons in a group setting, but who is capable of living independently.

(12) "Fire authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of fire protection and suppression services for the subject property.

(13) "Flood plain" means land that:

(a) is within the 100-year flood plain designated by the Federal Emergency Management Agency; or

(b) has not been studied or designated by the Federal Emergency Management Agency but presents a likelihood of experiencing chronic flooding or a catastrophic flood event because the land has characteristics that are similar to those of a 100-year flood plain designated by the Federal Emergency Management Agency.

(14) "General plan" means a document that a municipality adopts that sets forth general guidelines for proposed future development of the land within the municipality.

(15) "Geologic hazard" means:

(a) a surface fault rupture;

(b) shallow groundwater;

(c) liquefaction;

(d) a landslide;

(e) a debris flow;

(f) unstable soil;

(g) a rock fall; or

(h) any other geologic condition that presents a risk:

(i) to life;

(ii) of substantial loss of real property; or

(iii) of substantial damage to real property.

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

(17) "Identical plans" means building plans submitted to a municipality that are substantially identical to building plans that were previously submitted to and reviewed and approved by the municipality and describe a building that is:

(a) located on land zoned the same as the land on which the building described in the previously approved plans is located; and

(b) subject to the same geological and meteorological conditions and the same law as the building described in the previously approved plans.

(18) "Impact fee" means a payment of money imposed under Title 11, Chapter [~~36~~] 36a, Impact Fees Act.

(19) "Improvement assurance" means a surety bond, letter of credit, cash, or other security:

(a) to guaranty the proper completion of an improvement;

(b) that is required as a condition precedent to:

(i) recording a subdivision plat; or

(ii) beginning development activity; and

(c) that is offered to a land use authority to induce the land use authority, before actual construction of required improvements, to:

(i) consent to the recording of a subdivision plat; or

(ii) issue a permit for development activity.

(20) "Improvement assurance warranty" means a promise that the materials and workmanship of improvements:

(a) comport with standards that the municipality has officially adopted; and

(b) will not fail in any material respect within a warranty period.

(21) "Internal lot restriction" means a platted note, platted demarcation, or platted designation that:

(a) runs with the land; and

(b) (i) creates a restriction that is enclosed within the perimeter of a lot described on the plat; or

(ii) designates a development condition that is enclosed within the perimeter of a lot described on the plat.

(22) "Land use application" means an application required by a municipality's land use

ordinance.

(23) "Land use authority" means a person, board, commission, agency, or other body designated by the local legislative body to act upon a land use application.

(24) "Land use ordinance" means a planning, zoning, development, or subdivision ordinance of the municipality, but does not include the general plan.

(25) "Land use permit" means a permit issued by a land use authority.

(26) "Legislative body" means the municipal council.

(27) "Local district" means an entity under Title 17B, Limited Purpose Local Government Entities - Local Districts, and any other governmental or quasi-governmental entity that is not a county, municipality, school district, or the state.

(28) "Lot line adjustment" means the relocation of the property boundary line in a subdivision between two adjoining lots with the consent of the owners of record.

(29) "Moderate income housing" means housing occupied or reserved for occupancy by households with a gross household income equal to or less than 80% of the median gross income for households of the same size in the county in which the city is located.

(30) "Nominal fee" means a fee that reasonably reimburses a municipality only for time spent and expenses incurred in:

(a) verifying that building plans are identical plans; and

(b) reviewing and approving those minor aspects of identical plans that differ from the previously reviewed and approved building plans.

(31) "Noncomplying structure" means a structure that:

(a) legally existed before its current land use designation; and

(b) because of one or more subsequent land use ordinance changes, does not conform to the setback, height restrictions, or other regulations, excluding those regulations, which govern the use of land.

(32) "Nonconforming use" means a use of land that:

(a) legally existed before its current land use designation;

(b) has been maintained continuously since the time the land use ordinance governing the land changed; and

(c) because of one or more subsequent land use ordinance changes, does not conform to the regulations that now govern the use of the land.

(33) "Official map" means a map drawn by municipal authorities and recorded in a county recorder's office that:

(a) shows actual and proposed rights-of-way, centerline alignments, and setbacks for highways and other transportation facilities;

(b) provides a basis for restricting development in designated rights-of-way or between designated setbacks to allow the government authorities time to purchase or otherwise reserve the land; and

(c) has been adopted as an element of the municipality's general plan.

(34) "Person" means an individual, corporation, partnership, organization, association, trust, governmental agency, or any other legal entity.

(35) "Plan for moderate income housing" means a written document adopted by a city legislative body that includes:

(a) an estimate of the existing supply of moderate income housing located within the city;

(b) an estimate of the need for moderate income housing in the city for the next five years as revised biennially;

(c) a survey of total residential land use;

(d) an evaluation of how existing land uses and zones affect opportunities for moderate income housing; and

(e) a description of the city's program to encourage an adequate supply of moderate income housing.

(36) "Plat" means a map or other graphical representation of lands being laid out and prepared in accordance with Section 10-9a-603, 17-23-17, or 57-8-13.

(37) "Potential geologic hazard area" means an area that:

(a) is designated by a Utah Geological Survey map, county geologist map, or other relevant map or report as needing further study to determine the area's potential for geologic hazard; or

(b) has not been studied by the Utah Geological Survey or a county geologist but presents the potential of geologic hazard because the area has characteristics similar to those of a designated geologic hazard area.

(38) "Public agency" means:

(a) the federal government;

(b) the state;

(c) a county, municipality, school district, local district, special service district, or other political subdivision of the state; or

(d) a charter school.

(39) "Public hearing" means a hearing at which members of the public are provided a reasonable opportunity to comment on the subject of the hearing.

(40) "Public meeting" means a meeting that is required to be open to the public under Title 52, Chapter 4, Open and Public Meetings Act.

(41) "Record of survey map" means a map of a survey of land prepared in accordance with Section 17-23-17.

(42) "Receiving zone" means an area of a municipality that the municipality's land use authority designates as an area in which an owner of land may receive transferrable development rights.

(43) "Residential facility for elderly persons" means a single-family or multiple-family dwelling unit that meets the requirements of Section 10-9a-516, but does not include a health care facility as defined by Section 26-21-2.

(44) "Residential facility for persons with a disability" means a residence:

(a) in which more than one person with a disability resides; and

(b) (i) is licensed or certified by the Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities; or

(ii) is licensed or certified by the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

(45) "Sanitary sewer authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of sanitary sewer services or onsite wastewater systems.

(46) "Sending zone" means an area of a municipality that the municipality's land use authority designates as an area from which an owner of land may transfer transferrable development rights to an owner of land in a receiving zone.

(47) "Specified public agency" means:

(a) the state;

(b) a school district; or

(c) a charter school.

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

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

(50) "Street" means a public right-of-way, including a highway, avenue, boulevard, parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement, or other way.

(51) (a) "Subdivision" means any land that is divided, resubdivided or proposed to be divided into two or more lots, parcels, sites, units, plots, or other division of land for the purpose, whether immediate or future, for offer, sale, lease, or development either on the installment plan or upon any and all other plans, terms, and conditions.

(b) "Subdivision" includes:

(i) the division or development of land whether by deed, metes and bounds description, devise and testacy, map, plat, or other recorded instrument; and

(ii) except as provided in Subsection (51)(c), divisions of land for residential and nonresidential uses, including land used or to be used for commercial, agricultural, and industrial purposes.

(c) "Subdivision" does not include:

(i) a bona fide division or partition of agricultural land for the purpose of joining one of the resulting separate parcels to a contiguous parcel of unsubdivided agricultural land, if neither the resulting combined parcel nor the parcel remaining from the division or partition violates an applicable land use ordinance;

(ii) a recorded agreement between owners of adjoining unsubdivided properties adjusting their mutual boundary if:

(A) no new lot is created; and

(B) the adjustment does not violate applicable land use ordinances;

(iii) a recorded document, executed by the owner of record:

(A) revising the legal description of more than one contiguous unsubdivided parcel of property into one legal description encompassing all such parcels of property; or

(B) joining a subdivided parcel of property to another parcel of property that has not

been subdivided, if the joinder does not violate applicable land use ordinances;

(iv) a recorded agreement between owners of adjoining subdivided properties adjusting their mutual boundary if:

(A) no new dwelling lot or housing unit will result from the adjustment; and

(B) the adjustment will not violate any applicable land use ordinance; or

(v) a bona fide division or partition of land by deed or other instrument where the land use authority expressly approves in writing the division in anticipation of further land use approvals on the parcel or parcels.

(d) The joining of a subdivided parcel of property to another parcel of property that has not been subdivided does not constitute a subdivision under this Subsection (51) as to the unsubdivided parcel of property or subject the unsubdivided parcel to the municipality's subdivision ordinance.

(52) "Transferrable development right" means the entitlement to develop land within a sending zone that would vest according to the municipality's existing land use ordinances on the date that a completed land use application is filed seeking the approval of development activity on the land.

(53) "Unincorporated" means the area outside of the incorporated area of a city or town.

(54) "Water interest" means any right to the beneficial use of water, including:

(a) each of the rights listed in Section 73-1-11; and

(b) an ownership interest in the right to the beneficial use of water represented by:

(i) a contract; or

(ii) a share in a water company, as defined in Section 73-3-3.5.

(55) "Zoning map" means a map, adopted as part of a land use ordinance, that depicts land use zones, overlays, or districts.

Section 2. 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 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~~] 36a, Impact Fees Act;

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

(g) for a land use or a structure owned or operated by a school district or charter school that is not an educational facility but is used in support of providing instruction to pupils, impose a regulation that:

(i) is not imposed on a similar land use or structure in the zone in which the land use or structure is approved; or

(ii) uses the tax exempt status of the school district or charter school as criteria for prohibiting or regulating the land use or location of the structure.

(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(14)~~] 11-36a-102(15)(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 3. 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(14)~~] 11-36a-102(15)(a), (b), (c), (d), (e), or (g), subject to any applicable credit under Subsection [~~11-36-202(2)(b)~~] 11-36a-402(2).

Section 4. Section **11-36a-101** is enacted to read:

CHAPTER 36a. IMPACT FEES ACT

Part 1. General Provisions

11-36a-101. Title.

This chapter is known as the "Impact Fees Act."

Section 5. Section **11-36a-102** is enacted to read:

11-36a-102. Definitions.

As used in this chapter:

(1) (a) "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:

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

(ii) 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.

(b) "Affected entity" does not include the local political subdivision or private entity that is required under Section 11-36a-501 to provide notice.

(2) "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.

(3) "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.

(4) "Development approval" means:

(a) except as provided in Subsection (4)(b), any written authorization from a local political subdivision that authorizes the commencement of development activity;

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

(c) a written authorization from a public water supplier, as defined in Section 73-1-4, or a private water company:

(i) to reserve or provide:

(A) a water right;

(B) a system capacity; or

(C) a distribution facility; or

(ii) to deliver for a development activity:

(A) culinary water; or

(B) irrigation water; or

(d) a written authorization from a sanitary sewer authority, as defined in Section 10-9a-103:

(i) to reserve or provide:

(A) sewer collection capacity; or

(B) treatment capacity; or

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

(5) "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.

(6) "Encumber" means:

(a) a pledge to retire a debt; or

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

(7) "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) (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 infrastructure.

(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) "Impact fee analysis" means the written analysis of each impact fee required by Section 11-36a-303.

(10) "Impact fee facilities plan" means the plan required by Section 11-36a-301.

(11) (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.

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

(13) (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.

(14) "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.

(15) "Public facilities" means only the following impact fee 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;

(g) public safety facilities; or

(h) environmental mitigation as provided in Section 11-36a-205.

(16) (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.

(17) (a) "Roadway facilities" means a street or road that has 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 a federal or state roadway 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.

(18) (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 provides service within the area.

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

(19) "Specified public agency" means:

(a) the state;

(b) a school district; or

(c) a charter school.

(20) (a) "System improvements" means:

(i) existing public facilities that are:

(A) identified in the impact fee analysis under Section 11-36a-304; 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 11-36a-304 that are intended to provide services to service areas within the community at large.

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

Section 6. Section **11-36a-201** is enacted to read:

Part 2. Impact Fees

11-36a-201. Impact fees.

(1) A local political subdivision or private entity shall ensure that any imposed impact fees comply with the requirements of this chapter.

(2) A local political subdivision and private entity may establish impact fees only for those public facilities defined in Section 11-36a-102.

(3) Nothing in this chapter may be construed to repeal or otherwise eliminate an 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 7. Section **11-36a-202** is enacted to read:

11-36a-202. Prohibitions on impact fees.

(1) A local political subdivision or private entity may not:

(a) impose an impact fee to:

(i) cure deficiencies in a public facility serving existing development;

(ii) raise the established level of service of a public facility serving existing development;

(iii) recoup more than the local political subdivision's or private entity's costs actually incurred for excess capacity in an existing system improvement; or

(iv) include an expense for overhead, unless the expense is calculated pursuant to a methodology that is consistent with:

(A) generally accepted cost accounting practices; and

(B) the methodological standards set forth by the federal Office of Management and Budget for federal grant reimbursement;

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

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

(2) (a) Notwithstanding any other provision of this chapter, a political subdivision or private entity may not impose an impact fee:

(i) on residential components of development to pay for a public safety facility that is a fire suppression vehicle;

(ii) on a school district or charter school for a park, recreation facility, open space, or

trail;

(iii) on a school district or charter school unless:

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

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

(iv) to the extent that the impact fee includes a component for a law enforcement facility, on development activity for:

(A) the Utah National Guard;

(B) the Utah Highway Patrol; or

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

(b) (i) Notwithstanding any other provision of this chapter, a political subdivision or private entity may not impose an impact fee on development activity that consists of the construction of a school, whether by a school district or a charter school, if:

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

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

(C) the new school and the school being replaced are both within the boundary of the local political subdivision or the jurisdiction of the private entity.

(ii) If the imposition of an impact fee on a new school is not prohibited under Subsection (2)(b)(i) because the new school creates a greater demand or need for public facilities than the school being replaced, the impact fee shall be based only on the demand or need that the new school creates for public facilities that exceeds the demand or need that the school being replaced creates for those public facilities.

(c) Notwithstanding any other provision of this chapter, a political subdivision or private entity may impose an impact fee for a road facility on the state only if and to the extent that:

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

(ii) the portion of the road facility related to an impact fee is not funded by the state or by the federal government.

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

Section 8. Section **11-36a-203** is enacted to read:

11-36a-203. Private entity assessment of impact fees -- Charges for water rights, physical infrastructure -- Notice -- Audit.

(1) A private entity:

(a) shall comply with the requirements of this chapter before imposing an impact fee; and

(b) except as otherwise specified in this chapter, is subject to the same requirements of this chapter as a local political subdivision.

(2) A private entity may only impose a charge for water rights or physical infrastructure necessary to provide water or sewer facilities by imposing an impact fee.

(3) Where notice and hearing requirements are specified, a private entity shall comply with the notice and hearing requirements for local districts.

(4) A private entity that assesses an impact fee under this chapter is subject to the audit requirements of Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act.

Section 9. Section **11-36a-204** is enacted to read:

11-36a-204. Other names for impact fees.

(1) A fee that meets the definition of impact fee under Section 11-36a-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.

(2) 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 11-36a-102 by referring to the fee by another name.

Section 10. Section **11-36a-205** is enacted to read:

11-36a-205. Environmental mitigation impact fees.

Notwithstanding the requirements and prohibitions of this chapter, a local political

subdivision may impose and assess an impact fee for environmental mitigation when:

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

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

(3) the legislative body of the local political subdivision adopts an ordinance or resolution:

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

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

(c) requiring the legislative body to:

(i) review the impact fee on those sunset dates;

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

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

Section 11. Section **11-36a-301** is enacted to read:

Part 3. Establishing an Impact Fee

11-36a-301. Impact fee facilities plan.

(1) Before imposing an impact fee, each local political subdivision or private entity shall, except as provided in Subsection (3), prepare an impact fee facilities plan to determine the public facilities required to serve development resulting from new development activity.

(2) A municipality or county need not prepare a separate impact fee facilities plan if the general plan required by Section 10-9a-401 or 17-27a-401, respectively, contains the elements required by Section 11-36a-302.

(3) (a) 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 impact fee facilities plan requirements of this part, but shall ensure that:

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

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

(b) Subsection (3)(a) does not apply to a private entity.

Section 12. Section **11-36a-302** is enacted to read:

11-36a-302. Impact fee facilities plan requirements -- Limitations -- School district or charter school.

(1) An impact fee facilities plan shall identify:

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

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

(2) In preparing an impact fee facilities 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.

(3) A local political subdivision or private entity may only impose impact fees on development activities when the local political subdivision's or private entity's 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.

(4) (a) Subject to Subsection (4)(c), the impact fee facilities plan shall include a public facility for which an impact fee may be charged or required for a school district or charter school if the local political subdivision is aware of the planned location of the school district facility or charter school:

(i) through the planning process; or

(ii) after receiving a written request from a school district or charter school that the public facility be included in the impact fee facilities plan.

(b) If necessary, a local political subdivision or private entity shall amend the impact fee facilities plan to reflect a public facility described in Subsection (4)(a).

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

(ii) Notwithstanding Subsection (4)(c)(i), if a school district or charter school agrees to build a roadway or sidewalk, the roadway or sidewalk shall be included in the impact fee facilities plan if the local jurisdiction has an impact fee facilities plan for roads and sidewalks.

Section 13. Section **11-36a-303** is enacted to read:

11-36a-303. Impact fee analysis.

(1) Subject to the notice requirements of Section 11-36a-504, each local political subdivision or private entity intending to impose an impact fee shall prepare a written analysis of each impact fee.

(2) Each local political subdivision or private entity that prepares an impact fee analysis under Subsection (1) shall also prepare a summary of the impact fee analysis designed to be understood by a lay person.

Section 14. Section **11-36a-304** is enacted to read:

11-36a-304. Impact fee analysis requirements.

(1) An impact fee analysis shall:

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

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

(c) subject to Subsection (2), demonstrate how the anticipated impacts described in Subsections (1)(a) and (b) are reasonably related to the anticipated development activity;

(d) estimate the proportionate share of:

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

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

(e) based on the requirements of this chapter, identify how the impact fee was calculated.

(2) 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:

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

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

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

(d) 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;

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

(f) 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;

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

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

Section 15. Section **11-36a-305** is enacted to read:

11-36a-305. Calculating impact fees.

(1) In calculating an impact fee, a local political subdivision or private entity may include:

(a) the construction contract price;

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

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

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

(2) In calculating an impact fee, each local political subdivision or private entity shall base amounts calculated under Subsection (1) on realistic estimates, and the assumptions underlying those estimates shall be disclosed in the impact fee analysis.

Section 16. Section **11-36a-306** is enacted to read:

11-36a-306. Certification of impact fee analysis.

(1) An impact fee facilities plan shall include a written certification from the person or entity that prepares the impact fee facilities plan that states the following:

"I certify that the attached impact fee facilities plan:

1. includes only the costs of public facilities that are:

a. allowed under the Impact Fees Act; and

b. actually incurred; or

c. projected to be incurred or encumbered within six years after the day on which each impact fee is paid;

2. does not include:

a. costs of operation and maintenance of public facilities;

b. 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;

c. an expense for overhead, unless the expense is calculated pursuant to a methodology that is consistent with generally accepted cost accounting practices and the methodological standards set forth by the federal Office of Management and Budget for federal grant reimbursement; and

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

(2) An impact fee analysis shall include a written certification from the person or entity that prepares the impact fee analysis which states as follows:

"I certify that the attached impact fee analysis:

1. includes only the costs of public facilities that are:

a. allowed under the Impact Fees Act; and

b. actually incurred; or

c. projected to be incurred or encumbered within six years after the day on which each impact fee is paid;

2. does not include:

a. costs of operation and maintenance of public facilities;

b. 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;

c. an expense for overhead, unless the expense is calculated pursuant to a methodology that is consistent with generally accepted cost accounting practices and the methodological standards set forth by the federal Office of Management and Budget for federal grant reimbursement;

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

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

Section 17. Section **11-36a-401** is enacted to read:

Part 4. Enactment of Impact Fees

11-36a-401. Impact fee enactment.

(1) (a) A local political subdivision or private entity wishing to impose impact fees shall pass an impact fee enactment in accordance with Section 11-36a-402.

(b) An impact fee imposed by an impact fee enactment may not exceed the highest fee justified by the impact fee analysis.

(2) An impact fee enactment may not take effect until 90 days after the day on which the impact fee enactment is approved.

Section 18. Section **11-36a-402** is enacted to read:

11-36a-402. Required provisions of impact fee enactment.

(1) A local political subdivision or private entity shall ensure, in addition to the requirements described in Subsections (2) and (3), that an impact fee enactment contains:

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

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

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

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

(i) respond to:

(A) unusual circumstances in specific cases; or

(B) a request for a prompt and individualized impact fee review for the development activity of the state, a school district, or a charter school and an offset or credit for a public facility for which an impact fee has been or will be collected; and

(ii) ensure that the impact fees are imposed fairly; and

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

(2) A local political subdivision or private entity shall ensure that an impact fee enactment allows a developer, including a school district or a charter school, to receive a credit against or proportionate reimbursement of an impact fee if the developer:

(a) dedicates land for a system improvement;

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

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

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

(a) are system improvements; or

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

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

Section 19. Section **11-36a-403** is enacted to read:

11-36a-403. Other provisions of impact fee enactment.

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

(a) provides an impact fee exemption for:

(i) development activity attributable to:

(A) low income housing;

(B) the state;

(C) subject to Subsection (2), a school district; or

(D) subject to Subsection (2), a charter school; or

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

(b) except for an exemption under Section (1)(a)(i)(A), establishes one or more sources of funds other than impact fees to pay for that development activity.

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

(3) An impact fee enactment that repeals or suspends the collection of impact fees is

exempt from the notice requirements of Section 11-36a-504.

Section 20. Section **11-36a-501** is enacted to read:

Part 5. Notice

11-36a-501. Notice of intent to prepare an impact fee facilities plan.

(1) Before preparing or amending an impact fee facilities plan, a local political subdivision or private entity shall provide written notice of its intent to prepare or amend an impact fee facilities plan.

(2) A notice required under Subsection (1) shall:

(a) indicate that the local political subdivision or private entity intends to prepare or amend an impact fee facilities plan;

(b) describe or provide a map of the geographic area where the proposed impact fee facilities will be located; and

(c) subject to Subsection (3), be posted on the Utah Public Notice Website created under Section 63F-1-701.

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

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

(b) the general purpose local government described in Subsection (3)(a) shall post the notice on the Utah Public Notice Website.

Section 21. Section **11-36a-502** is enacted to read:

11-36a-502. Notice to adopt or amend an impact fee facilities plan.

(1) If a local political subdivision chooses to prepare an independent impact fee facilities plan rather than include an impact fee facilities element in the general plan in accordance with Section 11-36a-301, the local political subdivision shall, before adopting or amending the impact fee facilities plan:

(a) give public notice, in accordance with Subsection (2), of the plan or amendment at least 10 days before the day on which the public hearing described in Subsection (1)(d) is scheduled;

(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;

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

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

(2) With respect to the public notice required under Subsection (1)(a):

(a) each municipality shall comply with the notice and hearing requirements of, and, except as provided in Subsection 11-36a-701(3)(b)(ii), 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 11-36a-701(3)(b)(ii), 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.

(3) Nothing contained in this section or Section 11-36a-503 may be construed to require involvement by a planning commission in the impact fee facilities planning process.

Section 22. Section **11-36a-503** is enacted to read:

11-36a-503. Notice of preparation of an impact fee analysis.

(1) Before preparing or contracting to prepare an impact fee analysis, each local political subdivision or, subject to Subsection (2), private entity shall post a public notice on the Utah Public Notice Website created under Section 63F-1-701.

(2) For a private entity required to post notice on the Utah Public Notice Website under Subsection (1):

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

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

Section 23. Section **11-36a-504** is enacted to read:

11-36a-504. Notice of intent to adopt impact fee enactment -- Hearing -- Protections.

(1) Before adopting an impact fee enactment:

(a) a municipality legislative body shall:

(i) comply with the notice requirements of Section 10-9a-205 as if the impact fee

enactment were a land use ordinance;

(ii) hold a hearing in accordance with Section 10-9a-502 as if the impact fee enactment were a land use ordinance; and

(iii) except as provided in Subsection 11-36a-701(3)(b)(ii), receive the protections of Section 10-9a-801 as if the impact fee were a land use ordinance;

(b) a county legislative body shall:

(i) comply with the notice requirements of Section 17-27a-205 as if the impact fee enactment were a land use ordinance;

(ii) hold a hearing in accordance with Section 17-27a-502 as if the impact fee enactment were a land use ordinance; and

(iii) except as provided in Subsection 11-36a-701(3)(b)(ii), receive the protections of Section 17-27a-801 as if the impact fee were a land use ordinance;

(c) a local district or special service district shall:

(i) comply with the notice and hearing requirements of Section 17B-1-111; and

(ii) receive the protections of Section 17B-1-111;

(d) a local political subdivision shall at least 10 days before the day on which a public hearing is scheduled in accordance with this section:

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

(ii) post notice of the local political subdivision's intent to enact or modify the impact fee, specifying the type of impact fee being enacted or modified, on the Utah Public Notice Website created under Section 63F-1-701; and

(e) a local political subdivision shall submit a copy of the impact fee analysis and a copy of the summary of the impact fee analysis prepared in accordance with Section 11-36a-303 on its website or to each public library with the local political subdivision.

(2) Subsection (1)(a) or (b) may not be construed to require involvement by a planning commission in the impact fee enactment process.

Section 24. Section **11-36a-601** is enacted to read:

Part 6. Impact Fee Proceeds

11-36a-601. Accounting of impact fees.

A local political subdivision that collects an impact fee shall:

(1) establish a separate interest bearing ledger account for each type of public facility

for which an impact fee is collected;

(2) deposit a receipt for an impact fee in the appropriate ledger account established under Subsection (1);

(3) retain the interest earned on each fund or ledger account in the fund or ledger account;

(4) at the end of each fiscal year, prepare a report on each fund or ledger account showing:

(a) the source and amount of all money collected, earned, and received by the fund or ledger account; and

(b) each expenditure from the fund or ledger account; and

(5) produce a report that:

(a) identifies impact fee funds by the year in which they were received, the project from which the funds were collected, the impact fee projects for which the funds were budgeted, and the projected schedule for expenditure;

(b) is in a format developed by the state auditor;

(c) is certified by the local political subdivision's chief financial officer; and

(d) is transmitted annually to the state auditor.

Section 25. Section **11-36a-602** is enacted to read:

11-36a-602. Expenditure of impact fees.

(1) A local political subdivision may expend impact fees only for a system improvement:

(a) identified in the impact fee facilities plan; and

(b) for the specific public facility type for which the fee was collected.

(2) (a) Except as provided in Subsection (2)(b), a local political subdivision shall expend or encumber the impact fees for a permissible use within six years of their receipt.

(b) A local political subdivision may hold the fees for longer than six years if it identifies, in writing:

(i) an extraordinary and compelling reason why the fees should be held longer than six years; and

(ii) an absolute date by which the fees will be expended.

Section 26. Section **11-36a-603** is enacted to read:

11-36a-603. Refunds.

A local political subdivision shall refund any impact fee paid by a developer, plus interest earned, when:

(1) the developer does not proceed with the development activity and has filed a written request for a refund;

(2) the fee has not been spent or encumbered; and

(3) no impact has resulted.

Section 27. Section **11-36a-701** is enacted to read:

Part 7. Challenges

11-36a-701. Impact fee challenge.

(1) A person or an entity residing in or owning property within a service area, or an organization, association, or a corporation representing the interests of persons or entities owning property within a service area, has standing to file a declaratory judgment action challenging the validity of an impact fee.

(2) (a) A person or an entity required to pay an impact fee who believes the impact fee does not meet the requirements of law may file a written request for information with the local political subdivision who established the impact fee.

(b) Within two weeks after the receipt of the request for information under Subsection (2)(a), the local political subdivision shall provide the person or entity with the impact fee analysis, the impact fee facilities plan, and any other relevant information relating to the impact fee.

(3) (a) Subject to the time limitations described in Section 17-36a-702 and procedures set forth in Section 11-36a-703, a person or an entity that has paid an impact fee that was imposed by a local political subdivision may challenge:

(i) if the impact fee enactment was adopted on or after July 1, 2000:

(A) subject to Subsection (3)(b)(i) and except as provided in Subsection (3)(b)(ii), whether the local political subdivision complied with the notice requirements of this chapter with respect to the imposition of the impact fee; and

(B) whether the local political subdivision complied with other procedural requirements of this chapter for imposing the impact fee; and

(ii) except as limited by Subsection (3)(c), the impact fee.

(b) (i) The sole remedy for a challenge under Subsection (3)(a)(i)(A) is the equitable remedy of requiring the local political subdivision to correct the defective notice and repeat the process.

(ii) The protections given to a municipality under Section 10-9a-801 and to a county under Section 17-27a-801 do not apply in a challenge under Subsection (3)(a)(i)(A).

(c) The sole remedy for a challenge under Subsection (3)(a)(ii) is a refund of the difference between what the person or entity paid as an impact fee and the amount the impact fee should have been if it had been correctly calculated.

(4) (a) Subject to Subsection (4)(d), if an impact fee that is the subject of an advisory opinion under Section 13-43-205 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 this chapter, 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 Section 13-43-206, a government entity shall refund an impact fee held to be in violation of this chapter 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 (3)(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 (3)(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.

(c) Subsection (4) may not be construed to create a new cause of action under land use law.

(d) Subsection (3)(a) does not apply unless the resolution described in Subsection (3)(a) is final.

Section 28. Section **11-36a-702** is enacted to read:

11-36a-702. Time limitations.

(1) A person or an entity that initiates a challenge under Subsection 11-36a-701(3)(a) may not initiate that challenge unless it is initiated within:

(a) for a challenge under Subsection 11-36a-701(3)(a)(i)(A), 30 days after the day on which the person or entity pays the impact fee;

(b) for a challenge under Subsection 11-36a-701(3)(a)(i)(B), 180 days after the day on which the person or entity pays the impact fee; or

(c) for a challenge under Subsection 11-36a-701(3)(a)(ii), one year after the day on which the person or entity pays the impact fee.

(2) The deadline to file an action in district court is tolled from the date that a challenge is filed using an administrative appeals procedure described in Section 11-36a-703 until 30 days after the day on which a final decision is rendered in the administrative appeals procedure.

Section 29. Section **11-36a-703** is enacted to read:

11-36a-703. Procedures for challenging an impact fee.

(1) (a) A local political subdivision may establish, by ordinance or resolution, an administrative appeals procedure to consider and decide a challenge to an impact fee.

(b) If the local political subdivision establishes an administrative appeals procedure, the local political subdivision shall ensure that the procedure includes a requirement that the local political subdivision make its decision no later than 30 days after the day on which the challenge to the impact fee is filed.

(2) A challenge under Subsection 11-36a-701(3)(a) is initiated by filing:

(a) if the local political subdivision has established an administrative appeals procedure under Subsection (1), the necessary document, under the administrative appeals procedure, for initiating the administrative appeal;

(b) a request for arbitration as provided in Subsection 11-36a-705; or

(c) an action in district court.

(3) The sole remedy for a successful challenge under Subsection 11-36a-701(1), which determines that an impact fee process was invalid, or an impact fee is in excess of the fee allowed under this act, is a declaration that, until the local political subdivision or private entity enacts a new impact fee study, from the date of the decision forward, the entity may charge an impact fee only as the court has determined would have been appropriate if it had been properly enacted.

(4) Subsections (2), (3), 11-36a-701(3), and 11-36a-702(1) may not be construed as requiring a person or an entity to exhaust administrative remedies with the local political subdivision before filing an action in district court under Subsections (2), (3), 11-36a-701(3) and 11-36a-702(1).

(5) The judge may award reasonable attorney fees and costs to the prevailing party in an action brought under this section.

(6) This chapter may not be construed as restricting or limiting any rights to challenge impact fees that were paid before the effective date of this chapter.

Section 30. Section **11-36a-704** is enacted to read:

11-36a-704. Mediation.

(1) In addition to the methods of challenging an impact fee under Section 11-36a-701, a specified public agency may require a local political subdivision or private entity to participate in mediation of any applicable impact fee.

(2) To require mediation, the specified public agency shall submit a written request for mediation to the local political subdivision or private entity.

(3) The specified public agency may submit a request for mediation under this section at any time, but no later than 30 days after the day on which an impact fee is paid.

(4) Upon the submission of a request for mediation under this section, the local political subdivision or private entity shall:

(a) cooperate with the specified public agency to select a mediator; and

(b) participate in the mediation process.

Section 31. Section **11-36a-705** is enacted to read:

11-36a-705. Arbitration.

(1) A person or entity intending to challenge an impact fee under Section 11-36a-703 shall file a written request for arbitration with the local political subdivision within the time

limitation described in Section 11-36a-702 for the applicable type of challenge.

(2) If a person or an entity files a written request for arbitration under Subsection (1), an arbitrator or arbitration panel shall be selected as follows:

(a) the local political subdivision and the person or entity filing the request may agree on a single arbitrator within 10 days after the day on which the request for arbitration is filed; or

(b) if a single arbitrator is not agreed to in accordance with Subsection (2)(a), an arbitration panel shall be created with the following members:

(i) each party shall select an arbitrator within 20 days after the date the request is filed; and

(ii) the arbitrators selected under Subsection (2)(b)(i) shall select a third arbitrator.

(3) The arbitration panel shall hold a hearing on the challenge no later than 30 days after the day on which:

(a) the single arbitrator is agreed on under Subsection (2)(a); or

(b) the two arbitrators are selected under Subsection (2)(b)(i).

(4) The arbitrator or arbitration panel shall issue a decision in writing no later than 10 days after the day on which the hearing described in Subsection (3) is completed.

(5) Except as provided in this section, each arbitration shall be governed by Title 78B, Chapter 11, Utah Uniform Arbitration Act.

(6) The parties may agree to:

(a) binding arbitration;

(b) formal, nonbinding arbitration; or

(c) informal, nonbinding arbitration.

(7) If the parties agree in writing to binding arbitration:

(a) the arbitration shall be binding;

(b) the decision of the arbitration panel shall be final;

(c) neither party may appeal the decision of the arbitration panel; and

(d) notwithstanding Subsection (10), the person or entity challenging the impact fee may not also challenge the impact fee under Subsection 11-36a-701(1) or Subsection 11-36a-703(2)(a) or (2)(c).

(8) (a) Except as provided in Subsection (8)(b), if the parties agree to formal,

nonbinding arbitration, the arbitration shall be governed by the provisions of Title 63G, Chapter 4, Administrative Procedures Act.

(b) For purposes of applying Title 63G, Chapter 4, Administrative Procedures Act, to a formal, nonbinding arbitration under this section, notwithstanding Section 63G-4-502, "agency" means a local political subdivision.

(9) (a) An appeal from a decision in an informal, nonbinding arbitration may be filed with the district court in which the local political subdivision is located.

(b) An appeal under Subsection (9)(a) shall be filed within 30 days after the day on which the arbitration panel issues a decision under Subsection (4).

(c) The district court shall consider de novo each appeal filed under this Subsection (9).

(d) Notwithstanding Subsection (10), a person or entity that files an appeal under this Subsection (9) may not also challenge the impact fee under Subsection 11-36a-701(1) or Subsection 11-36a-703(2)(a) or (2)(c).

(10) (a) Except as provided in Subsections (7)(d) and (9)(d), this section may not be construed to prohibit a person or entity from challenging an impact fee as provided in Subsection 11-36a-701(1) or Subsection 11-36a-703(2)(a) or (2)(c).

(b) The filing of a written request for arbitration within the required time in accordance with Subsection (1) tolls all time limitations under Section 11-36a-702 until the day on which the arbitration panel issues a decision.

(11) The person or entity filing a request for arbitration and the local political subdivision shall equally share all costs of an arbitration proceeding under this section.

Section 32. Section **13-43-205** is amended to read:

13-43-205. Advisory opinion.

At any time before a final decision on a land use application by a local appeal authority under Section 10-9a-708 or 17-27a-708, a local government or a potentially aggrieved person may, in accordance with Section 13-43-206, request a written advisory opinion from a neutral third party to determine compliance with:

(1) Sections 10-9a-507 through 10-9a-511;

(2) Sections 17-27a-506 through 17-27a-510; and

(3) Title 11, Chapter [~~36~~] 36a, Impact Fees Act.

Section 33. 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) 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~~] 36a, 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~~] 36a, 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.

(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 34. Section **17-27a-103** is amended to read:

17-27a-103. Definitions.

As used in this chapter:

(1) "Affected entity" means a county, municipality, local district, special service district under Title 17D, Chapter 1, Special Service District Act, school district, interlocal cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, specified property owner, property owners association, public utility, or the Utah Department of Transportation, if:

(a) the entity's services or facilities are likely to require expansion or significant modification because of an intended use of land;

(b) the entity has filed with the county a copy of the entity's general or long-range plan; or

(c) the entity has filed with the county a request for notice during the same calendar year and before the county provides notice to an affected entity in compliance with a requirement imposed under this chapter.

(2) "Appeal authority" means the person, board, commission, agency, or other body designated by ordinance to decide an appeal of a decision of a land use application or a variance.

(3) "Billboard" means a freestanding ground sign located on industrial, commercial, or residential property if the sign is designed or intended to direct attention to a business, product, or service that is not sold, offered, or existing on the property where the sign is located.

(4) "Charter school" includes:

(a) an operating charter school;

(b) a charter school applicant that has its application approved by a chartering entity in accordance with Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act; and

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

(5) "Chief executive officer" means the person or body that exercises the executive powers of the county.

(6) "Conditional use" means a land use that, because of its unique characteristics or potential impact on the county, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.

(7) "Constitutional taking" means a governmental action that results in a taking of private property so that compensation to the owner of the property is required by the:

(a) Fifth or Fourteenth Amendment of the Constitution of the United States; or

(b) Utah Constitution Article I, Section 22.

(8) "Culinary water authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of the culinary water system and sources for the subject property.

(9) "Development activity" means:

(a) any construction or expansion of a building, structure, or use that creates additional demand and need for public facilities;

(b) any change in use of a building or structure that creates additional demand and need for public facilities; or

(c) any change in the use of land that creates additional demand and need for public facilities.

(10) (a) "Disability" means a physical or mental impairment that substantially limits one or more of a person's major life activities, including a person having a record of such an impairment or being regarded as having such an impairment.

(b) "Disability" does not include current illegal use of, or addiction to, any federally controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C.

802.

(11) "Educational facility":

(a) means:

(i) a school district's building at which pupils assemble to receive instruction in a program for any combination of grades from preschool through grade 12, including kindergarten and a program for children with disabilities;

(ii) a structure or facility:

(A) located on the same property as a building described in Subsection (11)(a)(i); and

(B) used in support of the use of that building; and

(iii) a building to provide office and related space to a school district's administrative personnel; and

(b) does not include land or a structure, including land or a structure for inventory storage, equipment storage, food processing or preparing, vehicle storage or maintenance, or similar use that is:

(i) not located on the same property as a building described in Subsection (11)(a)(i); and

(ii) used in support of the purposes of a building described in Subsection (11)(a)(i).

(12) "Elderly person" means a person who is 60 years old or older, who desires or needs to live with other elderly persons in a group setting, but who is capable of living independently.

(13) "Fire authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of fire protection and suppression services for the subject property.

(14) "Flood plain" means land that:

(a) is within the 100-year flood plain designated by the Federal Emergency Management Agency; or

(b) has not been studied or designated by the Federal Emergency Management Agency but presents a likelihood of experiencing chronic flooding or a catastrophic flood event because the land has characteristics that are similar to those of a 100-year flood plain designated by the Federal Emergency Management Agency.

(15) "Gas corporation" has the same meaning as defined in Section 54-2-1.

(16) "General plan" means a document that a county adopts that sets forth general guidelines for proposed future development of the unincorporated land within the county.

(17) "Geologic hazard" means:

(a) a surface fault rupture;

(b) shallow groundwater;

(c) liquefaction;

(d) a landslide;

(e) a debris flow;

(f) unstable soil;

(g) a rock fall; or

(h) any other geologic condition that presents a risk:

(i) to life;

(ii) of substantial loss of real property; or

(iii) of substantial damage to real property.

(18) "Internal lot restriction" means a platted note, platted demarcation, or platted designation that:

(a) runs with the land; and

(b) (i) creates a restriction that is enclosed within the perimeter of a lot described on the plat; or

(ii) designates a development condition that is enclosed within the perimeter of a lot described on the plat.

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

(20) "Identical plans" means building plans submitted to a county that are substantially identical building plans that were previously submitted to and reviewed and approved by the county and describe a building that is:

(a) located on land zoned the same as the land on which the building described in the previously approved plans is located; and

(b) subject to the same geological and meteorological conditions and the same law as the building described in the previously approved plans.

(21) "Impact fee" means a payment of money imposed under Title 11, Chapter [~~36~~] 36a, Impact Fees Act.

(22) "Improvement assurance" means a surety bond, letter of credit, cash, or other security:

(a) to guaranty the proper completion of an improvement;

(b) that is required as a condition precedent to:

(i) recording a subdivision plat; or

(ii) beginning development activity; and

(c) that is offered to a land use authority to induce the land use authority, before actual construction of required improvements, to:

(i) consent to the recording of a subdivision plat; or

(ii) issue a permit for development activity.

(23) "Improvement assurance warranty" means a promise that the materials and workmanship of improvements:

(a) comport with standards that the county has officially adopted; and

(b) will not fail in any material respect within a warranty period.

(24) "Interstate pipeline company" means a person or entity engaged in natural gas transportation subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

(25) "Intrastate pipeline company" means a person or entity engaged in natural gas transportation that is not subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

(26) "Land use application" means an application required by a county's land use ordinance.

(27) "Land use authority" means a person, board, commission, agency, or other body designated by the local legislative body to act upon a land use application.

(28) "Land use ordinance" means a planning, zoning, development, or subdivision ordinance of the county, but does not include the general plan.

(29) "Land use permit" means a permit issued by a land use authority.

(30) "Legislative body" means the county legislative body, or for a county that has adopted an alternative form of government, the body exercising legislative powers.

(31) "Local district" means any entity under Title 17B, Limited Purpose Local Government Entities - Local Districts, and any other governmental or quasi-governmental entity that is not a county, municipality, school district, or the state.

(32) "Lot line adjustment" means the relocation of the property boundary line in a subdivision between two adjoining lots with the consent of the owners of record.

(33) "Moderate income housing" means housing occupied or reserved for occupancy by households with a gross household income equal to or less than 80% of the median gross income for households of the same size in the county in which the housing is located.

(34) "Nominal fee" means a fee that reasonably reimburses a county only for time spent and expenses incurred in:

(a) verifying that building plans are identical plans; and

(b) reviewing and approving those minor aspects of identical plans that differ from the previously reviewed and approved building plans.

(35) "Noncomplying structure" means a structure that:

(a) legally existed before its current land use designation; and

(b) because of one or more subsequent land use ordinance changes, does not conform to the setback, height restrictions, or other regulations, excluding those regulations that govern the use of land.

(36) "Nonconforming use" means a use of land that:

(a) legally existed before its current land use designation;

(b) has been maintained continuously since the time the land use ordinance regulation governing the land changed; and

(c) because of one or more subsequent land use ordinance changes, does not conform to the regulations that now govern the use of the land.

(37) "Official map" means a map drawn by county authorities and recorded in the county recorder's office that:

(a) shows actual and proposed rights-of-way, centerline alignments, and setbacks for highways and other transportation facilities;

(b) provides a basis for restricting development in designated rights-of-way or between designated setbacks to allow the government authorities time to purchase or otherwise reserve the land; and

(c) has been adopted as an element of the county's general plan.

(38) "Person" means an individual, corporation, partnership, organization, association, trust, governmental agency, or any other legal entity.

(39) "Plan for moderate income housing" means a written document adopted by a county legislative body that includes:

(a) an estimate of the existing supply of moderate income housing located within the county;

(b) an estimate of the need for moderate income housing in the county for the next five years as revised biennially;

(c) a survey of total residential land use;

(d) an evaluation of how existing land uses and zones affect opportunities for moderate income housing; and

(e) a description of the county's program to encourage an adequate supply of moderate income housing.

(40) "Plat" means a map or other graphical representation of lands being laid out and prepared in accordance with Section 17-27a-603, 17-23-17, or 57-8-13.

(41) "Potential geologic hazard area" means an area that:

(a) is designated by a Utah Geological Survey map, county geologist map, or other relevant map or report as needing further study to determine the area's potential for geologic hazard; or

(b) has not been studied by the Utah Geological Survey or a county geologist but presents the potential of geologic hazard because the area has characteristics similar to those of a designated geologic hazard area.

(42) "Public agency" means:

(a) the federal government;

(b) the state;

(c) a county, municipality, school district, local district, special service district, or other political subdivision of the state; or

(d) a charter school.

(43) "Public hearing" means a hearing at which members of the public are provided a reasonable opportunity to comment on the subject of the hearing.

(44) "Public meeting" means a meeting that is required to be open to the public under Title 52, Chapter 4, Open and Public Meetings Act.

(45) "Receiving zone" means an unincorporated area of a county that the county's land use authority designates as an area in which an owner of land may receive transferrable development rights.

(46) "Record of survey map" means a map of a survey of land prepared in accordance with Section 17-23-17.

(47) "Residential facility for elderly persons" means a single-family or multiple-family dwelling unit that meets the requirements of Section 17-27a-515, but does not include a health care facility as defined by Section 26-21-2.

(48) "Residential facility for persons with a disability" means a residence:

(a) in which more than one person with a disability resides; and

(b) (i) is licensed or certified by the Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities; or

(ii) is licensed or certified by the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

(49) "Sanitary sewer authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of sanitary sewer services or onsite wastewater systems.

(50) "Sending zone" means an unincorporated area of a county that the county's land use authority designates as an area from which an owner of land may transfer transferrable development rights to an owner of land in a receiving zone.

(51) "Specified public agency" means:

(a) the state;

(b) a school district; or

(c) a charter school.

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

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

(54) "Street" means a public right-of-way, including a highway, avenue, boulevard, parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement, or other

way.

(55) (a) "Subdivision" means any land that is divided, resubdivided or proposed to be divided into two or more lots, parcels, sites, units, plots, or other division of land for the purpose, whether immediate or future, for offer, sale, lease, or development either on the installment plan or upon any and all other plans, terms, and conditions.

(b) "Subdivision" includes:

(i) the division or development of land whether by deed, metes and bounds description, devise and testacy, map, plat, or other recorded instrument; and

(ii) except as provided in Subsection (55)(c), divisions of land for residential and nonresidential uses, including land used or to be used for commercial, agricultural, and industrial purposes.

(c) "Subdivision" does not include:

(i) a bona fide division or partition of agricultural land for agricultural purposes;

(ii) a recorded agreement between owners of adjoining properties adjusting their mutual boundary if:

(A) no new lot is created; and

(B) the adjustment does not violate applicable land use ordinances;

(iii) a recorded document, executed by the owner of record:

(A) revising the legal description of more than one contiguous unsubdivided parcel of property into one legal description encompassing all such parcels of property; or

(B) joining a subdivided parcel of property to another parcel of property that has not been subdivided, if the joinder does not violate applicable land use ordinances;

(iv) a bona fide division or partition of land in a county other than a first class county for the purpose of siting, on one or more of the resulting separate parcels:

(A) an electrical transmission line or a substation;

(B) a natural gas pipeline or a regulation station; or

(C) an unmanned telecommunications, microwave, fiber optic, electrical, or other utility service regeneration, transformation, retransmission, or amplification facility;

(v) a recorded agreement between owners of adjoining subdivided properties adjusting their mutual boundary if:

(A) no new dwelling lot or housing unit will result from the adjustment; and

(B) the adjustment will not violate any applicable land use ordinance; or

(vi) a bona fide division or partition of land by deed or other instrument where the land use authority expressly approves in writing the division in anticipation of further land use approvals on the parcel or parcels.

(d) The joining of a subdivided parcel of property to another parcel of property that has not been subdivided does not constitute a subdivision under this Subsection (55) as to the unsubdivided parcel of property or subject the unsubdivided parcel to the county's subdivision ordinance.

(56) "Township" means a contiguous, geographically defined portion of the unincorporated area of a county, established under this part or reconstituted or reinstated under Section 17-27a-306, with planning and zoning functions as exercised through the township planning commission, as provided in this chapter, but with no legal or political identity separate from the county and no taxing authority, except that "township" means a former township under Laws of Utah 1996, Chapter 308, where the context so indicates.

(57) "Transferrable development right" means the entitlement to develop land within a sending zone that would vest according to the county's existing land use ordinances on the date that a completed land use application is filed seeking the approval of development activity on the land.

(58) "Unincorporated" means the area outside of the incorporated area of a municipality.

(59) "Water interest" means any right to the beneficial use of water, including:

(a) each of the rights listed in Section 73-1-11; and

(b) an ownership interest in the right to the beneficial use of water represented by:

(i) a contract; or

(ii) a share in a water company, as defined in Section 73-3-3.5.

(60) "Zoning map" means a map, adopted as part of a land use ordinance, that depicts land use zones, overlays, or districts.

Section 35. 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~~] 36a, Impact Fees Act;

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

(g) for a land use or a structure owned or operated by a school district or charter school that is not an educational facility but is used in support of providing instruction to pupils, impose a regulation that:

(i) is not imposed on a similar land use or structure in the zone in which the land use or structure is approved; or

(ii) uses the tax exempt status of the school district or charter school as criteria for prohibiting or regulating the land use or location of the structure.

(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(14)~~] 11-36a-102(15)(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 36. 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(14)~~] 11-36a-102(15)(a), (b), (c), (d), (e), or (g), subject to any applicable credit under Subsection [~~11-36-202(2)(b)~~] 11-36a-402(2).

Section 37. Section **17B-1-111** is amended to read:

17B-1-111. Impact fee resolution -- Notice and hearing requirements.

(1) (a) If a local district wishes to impose impact fees, the board of trustees of the local district shall:

(i) prepare a proposed impact fee resolution that meets the requirements of Title 11, Chapter [~~36~~] 36a, Impact Fees Act;

(ii) make a copy of the impact fee resolution available to the public at least 14 days before the date of the public hearing and hold a public hearing on the proposed impact fee resolution; and

(iii) provide reasonable notice of the public hearing at least 14 days before the date of the hearing.

(b) After the public hearing, the board of trustees may:

(i) adopt the impact fee resolution as proposed;

(ii) amend the impact fee resolution and adopt or reject it as amended; or

(iii) reject the resolution.

(2) A local district meets the requirements of reasonable notice required by this section if it:

(a) posts notice of the hearing or meeting in at least three public places within the jurisdiction and publishes notice of the hearing or meeting in a newspaper of general circulation in the jurisdiction, if one is available; or

(b) gives actual notice of the hearing or meeting.

(3) The local district's board of trustees may enact a resolution establishing stricter notice requirements than those required by this section.

(4) (a) Proof that one of the two forms of notice required by this section was given is prima facie evidence that notice was properly given.

(b) If notice given under authority of this section is not challenged within 30 days from the date of the meeting for which the notice was given, the notice is considered adequate and proper.

Section 38. 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~~] 11-36a-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(14)~~] 11-36a-102(15)(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 39. Section **17B-1-643** is amended to read:

17B-1-643. Imposing or increasing a fee for service provided by local district.

(1) (a) Before imposing a new fee or increasing an existing fee for a service provided

by a local district, each local district board of trustees shall first hold a public hearing at which any interested person may speak for or against the proposal to impose a fee or to increase an existing fee.

(b) Each public hearing under Subsection (1)(a) shall be held in the evening beginning no earlier than 6 p.m.

(c) A public hearing required under this Subsection (1) may be combined with a public hearing on a tentative budget required under Section 17B-1-610.

(d) Except to the extent that this section imposes more stringent notice requirements, the local district board shall comply with Title 52, Chapter 4, Open and Public Meetings Act, in holding the public hearing under Subsection (1)(a).

(2) (a) Each local district board shall give notice of a hearing under Subsection (1) as provided in Subsection (2)(b)(i) or (ii).

(b) (i) (A) The notice required under Subsection (2)(a) shall be published:

(I) in a newspaper or combination of newspapers of general circulation in the local district, if there is a newspaper or combination of newspapers of general circulation in the local district; or

(II) if there is no newspaper or combination of newspapers of general circulation in the local district, the local district board shall post at least one notice per 1,000 population within the local district, at places within the local district that are most likely to provide actual notice to residents within the local district.

(B) The notice described in Subsection (2)(b)(i)(A)(I):

(I) shall be no less than 1/4 page in size and the type used shall be no smaller than 18 point, and surrounded by a 1/4-inch border;

(II) may not be placed in that portion of the newspaper where legal notices and classified advertisements appear;

(III) whenever possible, shall appear in a newspaper that is published at least one day per week;

(IV) shall be in a newspaper or combination of newspapers of general interest and readership in the local district, and not of limited subject matter; and

(V) shall be run once each week for the two weeks preceding the hearing.

(ii) The notice described in Subsection (2)(b)(i)(A) shall state that the local district

board intends to impose or increase a fee for a service provided by the local district and will hold a public hearing on a certain day, time, and place fixed in the notice, which shall be not less than seven days after the day the first notice is published, for the purpose of hearing comments regarding the proposed imposition or increase of a fee and to explain the reasons for the proposed imposition or increase.

(c) (i) In lieu of providing notice under Subsection (2)(b), the local district board of trustees may give the notice required under Subsection (2)(a) by mailing the notice to those within the district who:

(A) will be charged the fee for a district service, if the fee is being imposed for the first time; or

(B) are being charged a fee, if the fee is proposed to be increased.

(ii) Each notice under Subsection (2)(c)(i) shall comply with Subsection (2)(b)(ii).

(iii) A notice under Subsection (2)(c)(i) may accompany a district bill for an existing fee.

(d) If the hearing required under this section is combined with the public hearing required under Section 17B-1-610, the notice requirement under this Subsection (2) is satisfied if a notice that meets the requirements of Subsection (2)(b)(ii) is combined with the notice required under Section 17B-1-609.

(e) Proof that notice was given as provided in Subsection (2)(b) or (c) is prima facie evidence that notice was properly given.

(f) If no challenge is made to the notice given of a hearing required by Subsection (1) within 30 days after the date of the hearing, the notice is considered adequate and proper.

(3) After holding a public hearing under Subsection (1), a local district board may:

(a) impose the new fee or increase the existing fee as proposed;

(b) adjust the amount of the proposed new fee or the increase of the existing fee and then impose the new fee or increase the existing fee as adjusted; or

(c) decline to impose the new fee or increase the existing fee.

(4) This section applies to each new fee imposed and each increase of an existing fee that occurs on or after July 1, 1998.

(5) (a) This section does not apply to an impact fee.

(b) The imposition or increase of an impact fee is governed by Title 11, Chapter [~~36~~]

36a, Impact Fees Act.

Section 40. Section **17B-2a-1004** is amended to read:

17B-2a-1004. Additional water conservancy district powers -- Limitations on water conservancy districts.

(1) In addition to the powers conferred on a water conservancy district under Section 17B-1-103, a water conservancy district may:

(a) issue bonds as provided in and subject to Chapter 1, Part 11, Local District Bonds, to carry out the purposes of the district;

(b) acquire or lease any real or personal property or acquire any interest in real or personal property, as provided in Subsections 17B-1-103(2)(a) and (b), whether inside or outside the district;

(c) acquire or construct works, facilities, or improvements, as provided in Subsection 17B-1-103(2)(d), whether inside or outside the district;

(d) acquire water, works, water rights, and sources of water necessary or convenient to the full exercise of the district's powers, whether the water, works, water rights, or sources of water are inside or outside the district, and encumber, sell, lease, transfer an interest in, or dispose of water, works, water rights, and sources of water;

(e) fix rates and terms for the sale, lease, or other disposal of water;

(f) acquire rights to the use of water from works constructed or operated by the district or constructed or operated pursuant to a contract to which the district is a party, and sell rights to the use of water from those works;

(g) levy assessments against lands within the district to which water is allotted on the basis of:

(i) a uniform district-wide value per acre foot of irrigation water; or

(ii) a uniform unit-wide value per acre foot of irrigation water, if the board divides the district into units and fixes a different value per acre foot of water in the respective units;

(h) fix rates for the sale, lease, or other disposal of water, other than irrigation water, at rates that are equitable, though not necessarily equal or uniform, for like classes of service;

(i) adopt and modify plans and specifications for the works for which the district was organized;

(j) investigate and promote water conservation and development;

(k) appropriate and otherwise acquire water and water rights inside or outside the state;

(l) develop, store, treat, and transport water;

(m) acquire stock in canal companies, water companies, and water users associations;

(n) acquire, construct, operate, or maintain works for the irrigation of land;

(o) subject to Subsection (2), sell water and water services to individual customers and charge sufficient rates for the water and water services supplied;

(p) own property for district purposes within the boundaries of a municipality; and

(q) coordinate water resource planning among public entities.

(2) (a) A water conservancy district and another political subdivision of the state may contract with each other, and a water conservancy district may contract with one or more public entities and private persons, for:

(i) the joint operation or use of works owned by any party to the contract; or

(ii) the sale, purchase, lease, exchange, or loan of water, water rights, works, or related services.

(b) An agreement under Subsection (2)(a) may provide for the joint use of works owned by one of the contracting parties if the agreement provides for reasonable compensation.

(c) A statutory requirement that a district supply water to its own residents on a priority basis does not apply to a contract under Subsection (2)(a).

(d) An agreement under Subsection (2)(a) may include terms that the parties determine, including:

(i) a term of years specified by the contract;

(ii) a requirement that the purchasing party make specified payments, without regard to actual taking or use;

(iii) a requirement that the purchasing party pay user charges, charges for the availability of water or water facilities, or other charges for capital costs, debt service, operating and maintenance costs, and the maintenance of reasonable reserves, whether or not the related water, water rights, or facilities are acquired, completed, operable, or operating, and notwithstanding the suspension, interruption, interference, reduction, or curtailment of water or services for any reason;

(iv) provisions for one or more parties to acquire an undivided ownership interest in, or a contractual right to the capacity, output, or services of, joint water facilities, and establishing:

(A) the methods for financing the costs of acquisition, construction, and operation of the joint facilities;

(B) the method for allocating the costs of acquisition, construction, and operation of the facilities among the parties consistent with their respective interests in or rights to the facilities;

(C) a management committee comprised of representatives of the parties, which may be responsible for the acquisition, construction, and operation of the facilities as the parties determine; and

(D) the remedies upon a default by any party in the performance of its obligations under the contract, which may include a provision obligating or enabling the other parties to succeed to all or a portion of the ownership interest or contractual rights and obligations of the defaulting party; and

(v) provisions that a purchasing party make payments from:

(A) general or other funds of the purchasing party;

(B) the proceeds of assessments levied under this part;

(C) the proceeds of impact fees imposed by any party under Title 11, Chapter [~~36~~] 36a, Impact Fees Act;

(D) revenues from the operation of the water system of a party receiving water or services under the contract;

(E) proceeds of any revenue-sharing arrangement between the parties, including amounts payable as a percentage of revenues or net revenues of the water system of a party receiving water or services under the contract; and

(F) any combination of the sources of payment listed in Subsections (2)(d)(v)(A) through (E).

(3) (a) A water conservancy district may enter into a contract with another state or a political subdivision of another state for the joint construction, operation, or ownership of a water facility.

(b) Water from any source in the state may be appropriated and used for beneficial purposes within another state only as provided in Title 73, Chapter 3a, Water Exports.

(4) (a) Except as provided in Subsection (4)(b), a water conservancy district may not sell water to a customer located within a municipality for domestic or culinary use without the

consent of the municipality.

(b) Subsection (4)(a) does not apply if:

(i) the property of a customer to whom a water conservancy district sells water was, at the time the district began selling water to the customer, within an unincorporated area of a county; and

(ii) after the district begins selling water to the customer, the property becomes part of a municipality through municipal incorporation or annexation.

(5) A water conservancy district may not carry or transport water in transmountain diversion if title to the water was acquired by a municipality by eminent domain.

(6) A water conservancy district may not be required to obtain a franchise for the acquisition, ownership, operation, or maintenance of property.

(7) A water conservancy district may not acquire by eminent domain title to or beneficial use of vested water rights for transmountain diversion.

Section 41. **Repealer.**

This bill repeals:

Section **11-36-101, Title.**

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

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

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

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

Section **11-36-301, Impact fees -- Accounting -- Report.**

Section **11-36-302, Impact fees -- Expenditure.**

Section **11-36-303, Refunds.**

Section **11-36-401, Impact fees -- Challenges -- Appeals.**

Section **11-36-401.5, Mediation.**

Section **11-36-402, Challenging an impact fee by arbitration -- Procedure -- Appeal -- Costs.**

Section **11-36-501, Private entity assessment of impact fees -- Notice and hearing -- Audit.**

Section 42. **Effective date.**

This bill takes effect on May 11, 2011.

Legislative Review Note
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