

IMPACT FEES AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel McCay

Senate Sponsor: J. Stuart Adams

LONG TITLE

General Description:

This bill amends provisions related to an impact fee.

Highlighted Provisions:

This bill:

- ▶ defines terms;
 - ▶ amends provisions governing certain entities that are required to comply with an impact fee facilities plan;
 - ▶ amends provisions related to required information in an impact fee facilities plan;
 - ▶ authorizes a private entity to establish an administrative appeals procedure to consider and decide a challenge to an impact fee;
 - ▶ amends provisions governing a request for an advisory opinion on an impact fee;
- and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-9a-305, as last amended by Laws of Utah 2011, Chapters 47, 92, and 407



- 28 **10-9a-510**, as last amended by Laws of Utah 2011, Chapters 47 and 92
- 29 **11-36a-102**, as enacted by Laws of Utah 2011, Chapter 47
- 30 **11-36a-301**, as enacted by Laws of Utah 2011, Chapter 47
- 31 **11-36a-302**, as enacted by Laws of Utah 2011, Chapter 47
- 32 **11-36a-703**, as enacted by Laws of Utah 2011, Chapter 47
- 33 **13-43-205**, as last amended by Laws of Utah 2012, Chapter 172
- 34 **17-27a-305**, as last amended by Laws of Utah 2011, Chapters 47, 92, and 407
- 35 **17-27a-509**, as last amended by Laws of Utah 2011, Chapters 47 and 92
- 36 **17B-1-118**, as last amended by Laws of Utah 2011, Chapter 47

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

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

40 **10-9a-305. Other entities required to conform to municipality's land use**
 41 **ordinances -- Exceptions -- School districts and charter schools -- Submission of**
 42 **development plan and schedule.**

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

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

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

- 55 (i) rail fixed guideway public transit facility that extends across two or more counties;
- 56 or
- 57 (ii) structure that serves a rail fixed guideway public transit facility that extends across
- 58 two or more counties, including:

- 59 (A) platforms;
- 60 (B) passenger terminals or stations;
- 61 (C) park and ride facilities;
- 62 (D) maintenance facilities;
- 63 (E) all related utility lines, roadways, and other facilities serving the public transit
- 64 facility; or

65 (F) other auxiliary facilities.

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

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

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

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

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

83 (F) other auxiliary facilities.

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

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

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

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

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

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

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

100 (4) A municipality may not:

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

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

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

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

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

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

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

121 impose a regulation that:

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

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

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

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

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

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

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

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

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

136 (i) a municipal building inspector;

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

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

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

142 (A) not an employee of the contractor;

143 (B) approved by:

144 (I) a municipal building inspector; or

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

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

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

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

151 (c) If a school district or charter school uses a school district or independent building

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

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

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

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

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

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

167 (A) the state superintendent of public instruction, as provided in Subsection
168 53A-20-104(3), if the school district or charter school used an independent building inspector
169 for inspection of the school building; or

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

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

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

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

182 (9) (a) A specified public agency intending to develop its land shall submit to the land

183 use authority a development plan and schedule:

184 (i) as early as practicable in the development process, but no later than the

185 commencement of construction; and

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

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

188 (B) the demand for public facilities listed in Subsections 11-36a-102[~~(+5)~~] (16)(a), (b),

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

190 (C) the amount of any applicable fee described in Section 10-9a-510;

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

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

193 (b) The land use authority shall respond to a specified public agency's submission

194 under Subsection (9)(a) with reasonable promptness in order to allow the specified public

195 agency to consider information the municipality provides under Subsection (9)(a)(ii) in the

196 process of preparing the budget for the development.

197 (10) Nothing in this section may be construed to:

198 (a) modify or supersede Section 10-9a-304; or

199 (b) authorize a municipality to enforce an ordinance in a way, or enact an ordinance,

200 that fails to comply with Title 57, Chapter 21, Utah Fair Housing Act, the federal Fair Housing

201 Amendments Act of 1988, 42 U.S.C. Sec. 3601 et seq., the Americans with Disabilities Act of

202 1990, 42 U.S.C. 12102, or any other provision of federal law.

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

204 **10-9a-510. Limit on fees -- Requirement to itemize fees -- Appeal of fee --**

205 **Provider of culinary or secondary water.**

206 (1) A municipality may not impose or collect a fee for reviewing or approving the

207 plans for a commercial or residential building that exceeds the lesser of:

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

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

210 building.

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

212 fee for reviewing and approving identical floor plans.

213 (3) A municipality may not impose or collect a hookup fee that exceeds the reasonable

214 cost of installing and inspecting the pipe, line, meter, and appurtenance to connect to the
215 municipal water, sewer, storm water, power, or other utility system.

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

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

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

221 (5) (a) If requested by an applicant who is charged a fee or an owner of residential
222 property upon which a fee is imposed, the municipality shall provide an itemized fee statement
223 that shows the calculation method for each fee.

224 (b) If an applicant who is charged a fee or an owner of residential property upon which
225 a fee is imposed submits a request for an itemized fee statement no later than 30 days after the
226 day on which the applicant or owner pays the fee, the municipality shall no later than 10 days
227 after the day on which the request is received provide or commit to provide within a specific
228 time:

229 (i) for each fee, any studies, reports, or methods relied upon by the municipality to
230 create the calculation method described in Subsection (5)(a);

231 (ii) an accounting of each fee paid;

232 (iii) how each fee will be distributed; and

233 (iv) information on filing a fee appeal through the process described in Subsection
234 (5)(c).

235 (c) A municipality shall establish a fee appeal process subject to an appeal authority
236 described in Part 7, Appeal Authority and Variances, and district court review in accordance
237 with Part 8, District Court Review, to determine whether a fee reflects only the reasonable
238 estimated cost of:

239 (i) regulation;

240 (ii) processing an application;

241 (iii) issuing a permit; or

242 (iv) delivering the service for which the applicant or owner paid the fee.

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

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

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

248 (c) an impact fee for a public facility listed in Subsection 11-36a-102[(15)] (16)(a), (b),
249 (c), (d), (e), or (g), subject to any applicable credit under Subsection 11-36a-402(2).

250 (7) A provider of culinary or secondary water that commits to provide a water service
251 required by a land use application process is subject to the following as if it were a
252 municipality:

253 (a) Subsections (5) and (6);

254 (b) Section 10-9a-508; and

255 (c) Section 10-9a-509.5.

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

257 **11-36a-102. Definitions.**

258 As used in this chapter:

259 (1) (a) "Affected entity" means each county, municipality, local district under Title
260 17B, Limited Purpose Local Government Entities - Local Districts, special service district
261 under Title 17D, Chapter 1, Special Service District Act, school district, interlocal cooperation
262 entity established under Chapter 13, Interlocal Cooperation Act, and specified public utility:

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

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

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

270 (2) "Charter school" includes:

271 (a) an operating charter school;

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

275 (c) an entity that is working on behalf of a charter school or approved charter applicant

276 to develop or construct a charter school building.

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

280 (4) "Development approval" means:

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

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

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

287 (i) to reserve or provide:

288 (A) a water right;

289 (B) a system capacity; or

290 (C) a distribution facility; or

291 (ii) to deliver for a development activity:

292 (A) culinary water; or

293 (B) irrigation water; or

294 (d) a written authorization from a sanitary sewer authority, as defined in Section
295 10-9a-103:

296 (i) to reserve or provide:

297 (A) sewer collection capacity; or

298 (B) treatment capacity; or

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

300 (5) "Enactment" means:

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

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

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

305 (6) "Encumber" means:

306 (a) a pledge to retire a debt; or

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

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

311 (8) (a) "Impact fee" means a payment of money imposed upon new development
312 activity as a condition of development approval to mitigate the impact of the new development
313 on public infrastructure.

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

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

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

319 (11) "Level of service" means the defined performance standard or unit of demand for
320 each capital component of a public facility within a service area.

321 ~~[(H)]~~ (12) (a) "Local political subdivision" means a county, a municipality, a local
322 district under Title 17B, Limited Purpose Local Government Entities - Local Districts, or a
323 special service district under Title 17D, Chapter 1, Special Service District Act.

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

326 ~~[(I2)]~~ (13) "Private entity" means an entity ~~[with] in private ownership [that provides~~
327 ~~culinary water that is required to be used as a condition of development.]~~ with at least 100
328 individual shareholders, customers, or connections, that is located in a first, second, third, or
329 fourth class county and provides water to an applicant for development approval who is
330 required to obtain water from the private entity either as a:

331 (a) specific condition of development approval by a local political subdivision acting in
332 coordination with the private entity; or

333 (b) functional condition of development approval because the private entity:

334 (i) has no reasonably equivalent competition in the immediate market; and

335 (ii) is the only realistic source of water for the applicant's development.

336 ~~[(I3)]~~ (14) (a) "Project improvements" means site improvements and facilities that are:

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

338 development activity;

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

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

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

343 [~~14~~] (15) "Proportionate share" means the cost of public facility improvements that
344 are roughly proportionate and reasonably related to the service demands and needs of any
345 development activity.

346 [~~15~~] (16) "Public facilities" means only the following impact fee facilities that have a
347 life expectancy of 10 or more years and are owned or operated by or on behalf of a local
348 political subdivision or private entity:

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

350 (b) wastewater collection and treatment facilities;

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

352 (d) municipal power facilities;

353 (e) roadway facilities;

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

355 (g) public safety facilities; or

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

357 [~~16~~] (17) (a) "Public safety facility" means:

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

359 or

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

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

363 [~~17~~] (18) (a) "Roadway facilities" means a street or road that has been designated on
364 an officially adopted subdivision plat, roadway plan, or general plan of a political subdivision,
365 together with all necessary appurtenances.

366 (b) "Roadway facilities" includes associated improvements to a federal or state
367 roadway only when the associated improvements:

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

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

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

371 ~~[(18)]~~ (19) (a) "Service area" means a geographic area designated by ~~[a local political~~
372 ~~subdivision]~~ an entity that imposes an impact fee on the basis of sound planning or engineering
373 principles in which a public facility, or a defined set of public facilities, provides service within
374 the area.

375 (b) "Service area" may include the entire local political subdivision or an entire area
376 served by a private entity.

377 ~~[(19)]~~ (20) "Specified public agency" means:

378 (a) the state;

379 (b) a school district; or

380 (c) a charter school.

381 ~~[(20)]~~ (21) (a) "System improvements" means:

382 (i) existing public facilities that are:

383 (A) identified in the impact fee analysis under Section 11-36a-304; and

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

385 (ii) future public facilities identified in the impact fee analysis under Section

386 11-36a-304 that are intended to provide services to service areas within the community at large.

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

388 Section 4. Section **11-36a-301** is amended to read:

389 **11-36a-301. Impact fee facilities plan.**

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

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

396 (3) (a) A local political subdivision or a private entity with a population, or serving a
397 population, of less than 5,000 as of the last federal census that charges impact fees of less than
398 \$250,000 annually need not comply with the impact fee facilities plan requirements of this part,
399 but shall ensure that:

400 (i) the impact fees that the local political subdivision or private entity imposes are
401 based upon a reasonable plan that otherwise complies with the common law and this chapter;
402 and

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

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

405 Section 5. Section **11-36a-302** is amended to read:

406 **11-36a-302. Impact fee facilities plan requirements -- Limitations -- School**
407 **district or charter school.**

408 (1) (a) An impact fee facilities plan shall [~~identify:~~
409 [~~(a) demands placed upon existing public facilities by new development activity; and]~~
410 [~~(b) the proposed means by which the local political subdivision will meet those~~
411 ~~demands;]~~

412 (i) identify the existing level of service;

413 (ii) subject to Subsection (1)(c), establish a proposed level of service;

414 (iii) identify any excess capacity to accommodate future growth at the proposed level
415 of service;

416 (iv) identify demands placed upon existing public facilities by new development
417 activity at the proposed level of service; and

418 (v) identify the means by which the political subdivision or private entity will meet
419 those growth demands.

420 (b) A proposed level of service may diminish or equal the existing level of service.

421 (c) A proposed level of service may:

422 (i) exceed the existing level of service if, independent of the use of impact fees, the
423 political subdivision or private entity provides, implements, and maintains the means to
424 increase the existing level of service for existing demand within six years of the date on which
425 new growth is charged for the proposed level of service; or

426 (ii) establish a new public facility if, independent of the use of impact fees, the political
427 subdivision or private entity provides, implements, and maintains the means to increase the
428 existing level of service for existing demand within six years of the date on which new growth
429 is charged for the proposed level of service.

430 (2) In preparing an impact fee facilities plan, each local political subdivision shall

431 generally consider all revenue sources[~~, including impact fees and anticipated dedication of~~
 432 ~~system improvements;~~] to finance the impacts on system improvements[~~;~~], including:

433 (a) grants;

434 (b) bonds;

435 (c) interfund loans;

436 (d) impact fees; and

437 (e) anticipated or accepted dedications of system improvements.

438 (3) A local political subdivision or private entity may only impose impact fees on
 439 development activities when the local political subdivision's or private entity's plan for
 440 financing system improvements establishes that impact fees are necessary to [~~achieve an~~
 441 ~~equitable allocation to the costs borne in the past and to be borne in the future, in comparison~~
 442 ~~to the benefits already received and yet to be received] maintain a proposed level of service that
 443 complies with Subsection (1)(b) or (c).~~

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

448 (i) through the planning process; or

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

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

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

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

459 Section 6. Section **11-36a-703** is amended to read:

460 **11-36a-703. Procedures for challenging an impact fee.**

461 (1) (a) A local political subdivision may establish, by ordinance or resolution, or a

462 private entity may establish by prior written policy, an administrative appeals procedure to
463 consider and decide a challenge to an impact fee.

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

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

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

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

473 (c) an action in district court.

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

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

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

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

488 Section 7. Section **13-43-205** is amended to read:

489 **13-43-205. Advisory opinion.**

490 A local government, private entity, or a potentially aggrieved person may, in accordance
491 with Section 13-43-206, request a written advisory opinion:

492 (1) from a neutral third party to determine compliance with:

493 (a) Section 10-9a-505.5 and Sections 10-9a-507 through 10-9a-511;
 494 (b) Section 17-27a-505.5 and Sections 17-27a-506 through 17-27a-510; and
 495 (c) Title 11, Chapter 36a, Impact Fees Act; and
 496 (2) (a) at any time before a final decision on a land use application by a local appeal
 497 authority under Title 11, Chapter 36a, Impact Fees Act, or Section 10-9a-708 or 17-27a-708;
 498 [or]

499 (b) at any time before the deadline for filing an appeal with the district court under
 500 Title 11, Chapter 36a, Impact Fees Act, or Section 10-9a-801 or 17-27a-801, if no local appeal
 501 authority is designated to hear the issue that is the subject of the request for an advisory
 502 opinion[-]; or

503 (c) at any time prior to the enactment of an impact fee, if the request for an advisory
 504 opinion is a request to review and comment on a proposed impact fee facilities plan or a
 505 proposed impact fee analysis as defined in Section 11-36a-102.

506 Section 8. Section **17-27a-305** is amended to read:

507 **17-27a-305. Other entities required to conform to county's land use ordinances --**
 508 **Exceptions -- School districts and charter schools -- Submission of development plan and**
 509 **schedule.**

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

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

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

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

522 or

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

524 two or more counties, including:

525 (A) platforms;

526 (B) passenger terminals or stations;

527 (C) park and ride facilities;

528 (D) maintenance facilities;

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

530 facility; or

531 (F) other auxiliary facilities.

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

535 (c) A county of the first class may not, through an agreement under Title 11, Chapter
536 13, Interlocal Cooperation Act, require a public transit district under Title 17B, Chapter 2a,
537 Part 8, Public Transit District Act, to obtain approval from the county prior to constructing a:

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

539 or

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

541 two or more counties, including:

542 (A) platforms;

543 (B) passenger terminals or stations;

544 (C) park and ride facilities;

545 (D) maintenance facilities;

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

547 facility; or

548 (F) other auxiliary facilities.

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

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

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

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

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

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

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

565 (4) A county may not:

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

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

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

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

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

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

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

586 impose a regulation that:

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

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

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

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

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

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

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

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

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

601 (i) a county building inspector;

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

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

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

607 (A) not an employee of the contractor;

608 (B) approved by:

609 (I) a county building inspector; or

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

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

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

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

616 (c) If a school district or charter school uses a school district or independent building

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

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

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

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

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

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

632 (A) the state superintendent of public instruction, as provided in Subsection
633 53A-20-104(3), if the school district or charter school used an independent building inspector
634 for inspection of the school building; or

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

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

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

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

647 (9) (a) A specified public agency intending to develop its land shall submit to the land

648 use authority a development plan and schedule:

649 (i) as early as practicable in the development process, but no later than the

650 commencement of construction; and

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

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

653 (B) the demand for public facilities listed in Subsections 11-36a-102[~~(+5)~~] (16)(a), (b),

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

655 (C) the amount of any applicable fee described in Section 17-27a-509;

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

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

658 (b) The land use authority shall respond to a specified public agency's submission

659 under Subsection (9)(a) with reasonable promptness in order to allow the specified public

660 agency to consider information the municipality provides under Subsection (9)(a)(ii) in the

661 process of preparing the budget for the development.

662 (10) Nothing in this section may be construed to:

663 (a) modify or supersede Section 17-27a-304; or

664 (b) authorize a county to enforce an ordinance in a way, or enact an ordinance, that

665 fails to comply with Title 57, Chapter 21, Utah Fair Housing Act, the federal Fair Housing

666 Amendments Act of 1988, 42 U.S.C. Sec. 3601 et seq., the Americans with Disabilities Act of

667 1990, 42 U.S.C. 12102, or any other provision of federal law.

668 Section 9. Section **17-27a-509** is amended to read:

669 **17-27a-509. Limit on fees -- Requirement to itemize fees -- Appeal of fee --**

670 **Provider of culinary or secondary water.**

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

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

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

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

677 (3) A county may not impose or collect a hookup fee that exceeds the reasonable cost
678 of installing and inspecting the pipe, line, meter, or appurtenance to connect to the county

679 water, sewer, storm water, power, or other utility system.

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

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

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

685 (5) (a) If requested by an applicant who is charged a fee or an owner of residential
686 property upon which a fee is imposed, the county shall provide an itemized fee statement that
687 shows the calculation method for each fee.

688 (b) If an applicant who is charged a fee or an owner of residential property upon which
689 a fee is imposed submits a request for an itemized fee statement no later than 30 days after the
690 day on which the applicant or owner pays the fee, the county shall no later than 10 days after
691 the day on which the request is received provide or commit to provide within a specific time:

692 (i) for each fee, any studies, reports, or methods relied upon by the county to create the
693 calculation method described in Subsection (5)(a);

694 (ii) an accounting of each fee paid;

695 (iii) how each fee will be distributed; and

696 (iv) information on filing a fee appeal through the process described in Subsection
697 (5)(c).

698 (c) A county shall establish a fee appeal process subject to an appeal authority
699 described in Part 7, Appeal Authority and Variances, and district court review in accordance
700 with Part 8, District Court Review, to determine whether a fee reflects only the reasonable
701 estimated cost of:

702 (i) regulation;

703 (ii) processing an application;

704 (iii) issuing a permit; or

705 (iv) delivering the service for which the applicant or owner paid the fee.

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

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

710 (b) subject to Subsection (3), a hookup fee; and
711 (c) an impact fee for a public facility listed in Subsection 11-36a-102~~[(15)]~~ (16)(a), (b),
712 (c), (d), (e), or (g), subject to any applicable credit under Subsection 11-36a-402(2).

713 (7) A provider of culinary or secondary water that commits to provide a water service
714 required by a land use application process is subject to the following as if it were a county:

- 715 (a) Subsections (5) and (6);
- 716 (b) Section 17-27a-507; and
- 717 (c) Section 17-27a-509.5.

718 Section 10. Section **17B-1-118** is amended to read:

719 **17B-1-118. Local district hookup fee -- Preliminary design or site plan from a**
720 **specified public agency.**

721 (1) As used in this section:

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

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

726 (c) "Specified public agency" means:

- 727 (i) the state;
- 728 (ii) a school district; or
- 729 (iii) a charter school.

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

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

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

- 737 (i) as early as practicable in the development process, but no later than the
738 commencement of construction; and
- 739 (ii) with sufficient detail to enable the local district to assess:

740 (A) the demand for public facilities listed in Subsections 11-36a-102~~[(15)]~~ (16)(a), (b),

741 (c), (d), (e), and (g) caused by the development;
742 (B) the amount of any hookup fees, or impact fees or substantive equivalent;
743 (C) any credit against an impact fee; and
744 (D) the potential for waiving an impact fee.
745 (b) The local district shall respond to a specified public agency's submission under
746 Subsection (3)(a) with reasonable promptness in order to allow the specified public agency to
747 consider information the local district provides under Subsection (3)(a)(ii) in the process of
748 preparing the budget for the development.
749 (4) Upon a specified public agency's submission of a development plan and schedule as
750 required in Subsection (3) that complies with the requirements of that subsection, the specified
751 public agency vests in the local district's hookup fees and impact fees in effect on the date of
752 submission.

Legislative Review Note
as of 2-5-13 12:47 PM

Office of Legislative Research and General Counsel