

IMPACT FEE AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Walt Brooks

Senate Sponsor: Don L. Ipson

LONG TITLE

General Description:

This bill modifies provisions relating to impact fees.

Highlighted Provisions:

This bill:

- ▶ modifies a provision relating to spending or encumbering impact fees; and
- ▶ provides a process for a refund of unspent and unencumbered impact fees.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

11-36a-602, as enacted by Laws of Utah 2011, Chapter 47

11-36a-603, as enacted by Laws of Utah 2011, Chapter 47

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

Section 1. Section **11-36a-602** is amended to read:

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

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



- 28 (a) identified in the impact fee facilities plan; and
- 29 (b) for the specific public facility type for which the fee was collected.
- 30 (2) (a) Except as provided in Subsection (2)(b), a local political subdivision shall
- 31 expend or encumber ~~[the]~~ an impact [fees] fee collected with respect to a lot:
- 32 (i) for a permissible use; and
- 33 (ii) within six years [of their receipt.] after the impact fee with respect to that lot is
- 34 collected.
- 35 (b) A local political subdivision may hold the fees for longer than six years if it
- 36 identifies, in writing:
- 37 (i) an extraordinary and compelling reason why the fees should be held longer than six
- 38 years; and
- 39 (ii) an absolute date by which the fees will be expended.

40 Section 2. Section 11-36a-603 is amended to read:

41 **11-36a-603. Refunds.**

42 (1) A local political subdivision shall refund any impact fee paid by a developer, plus
43 interest earned, when:

- 44 ~~[(1)]~~ (a) the developer does not proceed with the development activity and has filed a
- 45 written request for a refund;
- 46 ~~[(2)]~~ (b) the fee has not been spent or encumbered; and
- 47 ~~[(3)]~~ (c) no impact has resulted.

48 (2) (a) As used in this Subsection (2):

49 (i) "Affected lot" means the lot with respect to which a local political subdivision
50 collected an impact fee that is subject to a refund under this Subsection (2).

51 (ii) "Claimant" means:

- 52 (A) the original owner; or
- 53 (B) another person who, under Subsection (2)(d), submits a timely notice of the
- 54 person's valid legal claim to an impact fee refund.

55 (iii) "Original owner" means the record owner of an affected lot at the time the local
56 political subdivision collected the impact fee.

57 (iv) "Unclaimed refund" means an impact fee that:

- 58 (A) is subject to refund under this Subsection (2); and

59 (B) the local political subdivision has not refunded after application of Subsections
60 (2)(b) and (c).

61 (b) If an impact fee is not spent or encumbered within the time specified in Subsection
62 11-36a-602(2), the local political subdivision shall, subject to Subsection (2)(c):

63 (i) refund the impact fee to:

64 (A) the original owner, if the original owner is the sole claimant; or

65 (B) to the claimants, as the claimants agree, if there are multiple claimants; or

66 (ii) interplead the impact fee refund to a court of competent jurisdiction for a
67 determination of the entitlement to the refund, if there are multiple claimants who fail to agree
68 on how the refund should be paid to the claimants.

69 (c) If the original owner's last known address is no longer valid at the time a local
70 political subdivision attempts under Subsection (2)(b) to refund an impact fee to the original
71 owner, the local political subdivision shall:

72 (i) post a notice on the local political subdivision's website, stating the local political
73 subdivision's intent to refund the impact fee and identifying the original owner;

74 (ii) maintain the notice on the website for a period of one year; and

75 (iii) disqualify the original owner as a claimant unless the original owner submits a
76 written request for the refund within one year after the first posting of the notice under
77 Subsection (2)(c)(i).

78 (d) (i) In order to be considered as a claimant for an impact fee refund under this
79 Subsection (2), a person, other than the original owner, shall submit a written notice of the
80 person's valid legal claim to the impact fee refund.

81 (ii) A notice under Subsection (2)(d)(i) shall:

82 (A) explain the person's valid legal claim to the refund; and

83 (B) be submitted to the local political subdivision no later than 30 days after expiration
84 of the time specified in Subsection 11-36a-602(2) for the impact fee that is the subject of the
85 refund.

86 (e) A local political subdivision:

87 (i) may retain an unclaimed refund; and

88 (ii) shall expend any unclaimed refund on capital facilities identified in the current
89 capital facilities plan for the type of public facility for which the impact fee was collected.

Legislative Review Note
Office of Legislative Research and General Counsel