

BUILDING PERMIT AND IMPACT FEES AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mike Schultz

Senate Sponsor: J. Stuart Adams

LONG TITLE

General Description:

This bill amends provisions of Title 11, Chapter 36a, Impact Fees Act.

Highlighted Provisions:

This bill:

- ▶ allows a claimant to challenge whether a local political subdivision spent or encumbered an impact fee in accordance with law;
- ▶ establishes a time by which a claimant may challenge whether a local political subdivision spent or encumbered an impact fee in accordance with law;
- ▶ transmits a portion of the surcharge on building permits to the Office of the Property Rights Ombudsman to provide certain land use education and training; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

11-36a-603, as last amended by Laws of Utah 2017, Chapter 190

11-36a-701, as enacted by Laws of Utah 2011, Chapter 47

11-36a-702, as enacted by Laws of Utah 2011, Chapter 47



28 13-43-203, as last amended by Laws of Utah 2015, Chapter 75

29 15A-1-209, as last amended by Laws of Utah 2012, Chapter 278



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

32 Section 1. Section 11-36a-603 is amended to read:

33 **11-36a-603. Refunds.**

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

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

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

39 (c) no impact has resulted.

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

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

43 (ii) "Claimant" means:

44 (A) the original owner; ~~[or]~~

45 (B) the person who paid an impact fee; or

46 ~~[(B)]~~ (C) another person who, under Subsection (2)(d), submits a timely notice of the
47 person's valid legal claim to an impact fee refund.

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

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

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

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

54 (b) If an impact fee is not spent or encumbered ~~[within the time specified in Subsection~~
55 ~~11-36a-602(2)]~~ in accordance with Section 11-36a-602, the local political subdivision shall,
56 subject to Subsection (2)(c):

57 (i) refund the impact fee to:

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

59 (B) to the claimants, as the claimants agree, if there are multiple claimants; or
60 (ii) interplead the impact fee refund to a court of competent jurisdiction for a
61 determination of the entitlement to the refund, if there are multiple claimants who fail to agree
62 on how the refund should be paid to the claimants.

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

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

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

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

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

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

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

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

80 (e) A local political subdivision:

81 (i) may retain an unclaimed refund; and

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

84 Section 2. Section 11-36a-701 is amended to read:

85 **11-36a-701. Impact fee challenge.**

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

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

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

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

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

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

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

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

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

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

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

115 (4) (a) Subject to Subsection (4)(d), if an impact fee that is the subject of an advisory
116 opinion under Section 13-43-205 is listed as a cause of action in litigation, and that cause of
117 action is litigated on the same facts and circumstances and is resolved consistent with the
118 advisory opinion:

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

120 (A) may collect reasonable attorney fees and court costs pertaining to the development

121 of that cause of action from the date of the delivery of the advisory opinion to the date of the
122 court's resolution; and

123 (B) shall be refunded an impact fee held to be in violation of this chapter, based on the
124 difference between the impact fee paid and what the impact fee should have been if the
125 ~~[government entity]~~ local political subdivision had correctly calculated the impact fee; and

126 (ii) in accordance with Section 13-43-206, a ~~[government entity]~~ local political
127 subdivision shall refund an impact fee held to be in violation of this chapter to the person who
128 was in record title of the property on the day on which the impact fee for the property was paid
129 if:

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

133 (B) the person described in Subsection (3)(a)(ii) requests the impact fee refund from
134 the ~~[government entity]~~ local political subdivision within 30 days after the day on which the
135 court issued the final ruling on the impact fee.

136 (b) A ~~[government entity]~~ local political subdivision subject to Subsection (3)(a)(ii)
137 shall refund the impact fee based on the difference between the impact fee paid and what the
138 impact fee should have been if the ~~[government entity]~~ local political subdivision had correctly
139 calculated the impact fee.

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

142 (d) Subsection ~~[(3)]~~ (4)(a) does not apply unless the ~~[resolution described in~~
143 ~~Subsection (3)(a) is final]~~ cause of action described in Subsection (4)(a) is resolved and final.

144 (5) Subject to the time limitations described in Section 11-36a-702 and procedures
145 described in Section 11-36a-703, a claimant, as defined in Section 11-36a-603, may challenge
146 whether a local political subdivision spent or encumbered an impact fee in accordance with
147 Section 11-36a-602.

148 Section 3. Section **11-36a-702** is amended to read:

149 **11-36a-702. Time limitations.**

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

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

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

156 (c) for a challenge under Subsection [11-36a-701\(5\)](#):

157 (i) if the local political subdivision has spent or encumbered the impact fee, one year
158 after the expiration of the time specified in Subsection [11-36a-602\(2\)](#); or

159 (ii) if the local political subdivision has not yet spent or encumbered the impact fee,
160 two years after the expiration of the time specified in Subsection [11-36a-602\(2\)](#); or

161 ~~[(e)]~~ (d) for a challenge under Subsection [11-36a-701\(3\)\(a\)\(ii\)](#), one year after the day
162 on which the person or entity pays the impact fee.

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

166 Section 4. Section **13-43-203** is amended to read:

167 **13-43-203. Office of the Property Rights Ombudsman -- Duties.**

168 (1) ~~[(a)]~~ The Office of the Property Rights Ombudsman shall:

169 ~~[(i)]~~ (a) develop and maintain expertise in and understanding of takings, eminent
170 domain, and land use law;

171 ~~[(ii)]~~ (b) clearly identify the specific information that is prepared for distribution to
172 property owners whose land is being acquired under the provisions of Section [78B-6-505](#);

173 ~~[(iii)]~~ (c) assist state agencies and local governments in developing the guidelines
174 required by Title 63L, Chapter 4, Constitutional Taking Issues Act;

175 ~~[(iv)]~~ (d) at the request of a state agency or local government, assist the state agency or
176 local government, in analyzing actions with potential takings implications or other land use
177 issues;

178 ~~[(v)]~~ (e) advise real property owners who:

179 ~~[(A)]~~ (i) have a legitimate potential or actual takings claim against a state or local
180 government entity or have questions about takings, eminent domain, and land use law; or

181 ~~[(B)]~~ (ii) own a parcel of property that is landlocked, as to the owner's rights and
182 options with respect to obtaining access to a public street;

183 ~~[(vi)]~~ (f) identify state or local government actions that have potential takings
184 implications and, if appropriate, advise those state or local government entities about those
185 implications; ~~[and]~~

186 ~~[(vii)]~~ (g) provide information to private citizens, civic groups, government entities,
187 and other interested parties about takings, eminent domain, and land use law and their rights,
188 including a right to just compensation, and responsibilities under the takings, eminent domain,
189 or land use laws through seminars and publications, and by other appropriate means[-];

190 ~~[(b) The Office of the Property Rights Ombudsman shall:]~~

191 (h) (i) provide the information described in Section 78B-6-505 on [its] the Office of the
192 Property Rights Ombudsman's website in a form that is easily accessible; and

193 (ii) ensure that the information is current[-]; and

194 (i) (i) provide education and training regarding:

195 (A) land use laws and regulations; and

196 (B) land use dispute resolution; and

197 (ii) use any money transmitted in accordance with Subsection 15A-1-209(5) to pay for
198 any expenses required to provide the education and training described in Subsection (1)(i)(i),
199 including grants to a land use training organization.

200 (2) (a) Neither the Office of the Property Rights Ombudsman nor its individual
201 attorneys may represent private parties, state agencies, local governments, or any other
202 individual or entity in a legal action that arises from or relates to a matter addressed in this
203 chapter.

204 (b) An action by an attorney employed by the Office of the Property Rights
205 Ombudsman, by a neutral third party acting as mediator or arbitrator under Section 13-43-204,
206 or by a neutral third party rendering an advisory opinion under Section 13-43-205 or
207 13-43-206, taken within the scope of the duties set forth in this chapter, does not create an
208 attorney-client relationship between the Office of the Property Rights Ombudsman, or the
209 office's attorneys or appointees, and an individual or entity.

210 (3) No member of the Office of the Property Rights Ombudsman nor a neutral third
211 party rendering an advisory opinion under Section 13-43-205 or 13-43-206, may be compelled
212 to testify in a civil action filed concerning the subject matter of any review, mediation, or
213 arbitration by, or arranged through, the office.

214 (4) (a) Except as provided in Subsection (4)(b), evidence of a review by the Office of
215 the Property Rights Ombudsman and the opinions, writings, findings, and determinations of the
216 Office of the Property Rights Ombudsman are not admissible as evidence in a judicial action.

217 (b) Subsection (4)(a) does not apply to:

218 (i) actions brought under authority of Title 78A, Chapter 8, Small Claims Courts;

219 (ii) a judicial confirmation or review of the arbitration itself as authorized in Title 78B,
220 Chapter 11, Utah Uniform Arbitration Act;

221 (iii) actions for de novo review of an arbitration award or issue brought under the
222 authority of Subsection 13-43-204(3)(a)(i); or

223 (iv) advisory opinions provided for in Sections 13-43-205 and 13-43-206.

224 Section 5. Section 15A-1-209 is amended to read:

225 **15A-1-209. Building permit requirements.**

226 (1) As used in this section, "project" means a "construction project" as defined in
227 Section 38-1a-102.

228 (2) (a) The division shall develop a standardized building permit numbering system for
229 use by any compliance agency in the state that issues a permit for construction.

230 (b) The standardized building permit numbering system described under Subsection
231 (2)(a) shall include a combination of alpha or numeric characters arranged in a format
232 acceptable to the compliance agency.

233 (c) A compliance agency issuing a permit for construction shall use the standardized
234 building permit numbering system described under Subsection (2)(a).

235 (d) A compliance agency may not use a numbering system other than the system
236 described under Subsection (2)(a) to define a building permit number.

237 (3) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
238 the division shall adopt a standardized building permit form by rule.

239 (b) The standardized building permit form created under this Subsection (3) shall
240 include fields for indicating the following information:

241 (i) the name and address of the owner of each parcel of property on which the project
242 will occur;

243 (ii) the name and address of the contractor for the project;

244 (iii) (A) the address of the project; or

- 245 (B) a general description of the project;
- 246 (iv) the county in which the property on which the project will occur is located;
- 247 (v) the tax parcel identification number of each parcel of the property; and
- 248 (vi) whether the permit applicant is an original contractor or owner-builder.
- 249 (c) The standardized building permit form created under this Subsection (3) may
- 250 include any other information the division considers useful.
- 251 (d) A compliance agency shall issue a permit for construction only on a standardized
- 252 building permit form approved by the division.
- 253 (e) A permit for construction issued by a compliance agency under Subsection (3)(d)
- 254 shall print the standardized building permit number assigned under Subsection (2) in the upper
- 255 right-hand corner of the building permit form in at least 12-point font.
- 256 (f) (i) Except as provided in Subsection (3)(f)(ii), a compliance agency may not issue a
- 257 permit for construction if the information required by Subsection (3)(b) is not completed on the
- 258 building permit form.
- 259 (ii) If a compliance agency does not issue a separate permit for different aspects of the
- 260 same project, the compliance agency may issue a permit for construction without the
- 261 information required by Subsection (3)(b)(vi).
- 262 (g) A compliance agency may require additional information for the issuance of a
- 263 permit for construction.
- 264 (4) A local regulator issuing a single-family residential building permit application
- 265 shall include in the application or attach to the building permit the following notice
- 266 prominently placed in at least 14-point font: "Decisions relative to this application are subject
- 267 to review by the chief executive officer of the municipal or county entity issuing the
- 268 single-family residential building permit and appeal under the International Residential Code as
- 269 adopted by the Legislature."
- 270 (5) (a) A compliance agency shall:
- 271 (i) charge a 1% surcharge on a building permit [it] the compliance agency issues; and
- 272 (ii) transmit 80% of the amount collected to the division to be used by the division in
- 273 accordance with Subsection (5)(c).
- 274 (b) The portion of the surcharge transmitted to the division shall be deposited as a
- 275 dedicated credit.

276 (c) (i) The division shall use 20% of the money received under ~~[this]~~ Subsection
277 (5)(a)(ii) to provide education~~[-(i)]~~ to building inspectors regarding the codes and code
278 amendments ~~[that]~~ under Section 15A-1-204 that are adopted, approved, or being considered
279 for adoption or approval~~[-and]~~.

280 ~~[(ii) to:]~~

281 ~~[(A) building inspectors; and]~~

282 ~~[(B) individuals engaged in construction-related trades or professions.]~~

283 (ii) The division shall transmit 80% of the money received under Subsection (5)(a)(ii)
284 to the Office of the Property Rights Ombudsman created in Title 13, Chapter 43, Property
285 Rights Ombudsman Act, to provide education and training regarding:

286 (A) land use laws and regulations; and

287 (B) land use dispute resolution.

Legislative Review Note
Office of Legislative Research and General Counsel