

Utah Code
Impact Fees Act
Title 11, Chapter 36
(Text is current through the 2009 General Session)

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- 1 11-36-101. Title.
 - 2 This chapter is known as the "Impact Fees Act."
 - 3 11-36-102. Definitions.
 - 4 As used in this chapter:

- 5 (1) "Building permit fee" means the fees charged to enforce the uniform codes adopted
6 pursuant to Title 58, Chapter 56, Utah Uniform Building Standards Act, that are not
7 greater than the fees indicated in the appendix to the International Building Code.
- 8 (2) "Capital facilities plan" means the plan required by Section 11-36-201.
- 9 (3) "Charter school" includes:
- 10 (a) an operating charter school;
- 11 (b) an applicant for a charter school whose application has been approved by a
12 chartering entity as provided in Title 53A, Chapter 1a, Part 5, The Utah Charter
13 Schools Act; and
- 14 (c) an entity that is working on behalf of a charter school or approved charter
15 applicant to develop or construct a charter school building.
- 16 (4) "Development activity" means any construction or expansion of a building, structure, or
17 use, any change in use of a building or structure, or any changes in the use of land that
18 creates additional demand and need for public facilities.
- 19 (5) "Development approval" means:
- 20 (a) except as provided in Subsection (5)(b), any written authorization from a local
21 political subdivision that authorizes the commencement of development activity; or
- 22 (b) development activity, for a public entity that may develop without written
23 authorization from a local political subdivision.
- 24 (6) "Enactment" means:
- 25 (a) a municipal ordinance, for a municipality;
- 26 (b) a county ordinance, for a county; and
- 27 (c) a governing board resolution, for a local district, special service district, or private
28 entity.
- 29 (7) "Hookup fee" means a fee for the installation and inspection of any pipe, line, meter, or
30 appurtenance to connect to a gas, water, sewer, storm water, power, or other utility
31 system of a municipality, county, local district, special service district, or private entity.
- 32 (8) (a) "Impact fee" means a payment of money imposed upon new development activity
33 as a condition of development approval to mitigate the impact of the new
34 development on public facilities.
- 35 (b) "Impact fee" does not mean a tax, a special assessment, a building permit fee, a
36 hookup fee, a fee for project improvements, or other reasonable permit or
37 application fee.
- 38 (9) (a) "Local political subdivision" means a county, a municipality, a local district under
39 Title 17B, Limited Purpose Local Government Entities - Local Districts, or a special
40 service district under Title 17D, Chapter 1, Special Service District Act.

- 41 (b) "Local political subdivision" does not mean a school district, whose impact fee
42 activity is governed by Section 53A-20-100.5.
- 43 (10) "Private entity" means an entity with private ownership that provides culinary water that
44 is required to be used as a condition of development.
- 45 (11) (a) "Project improvements" means site improvements and facilities that are:
46 (i) planned and designed to provide service for development resulting from a
47 development activity;
48 (ii) necessary for the use and convenience of the occupants or users of
49 development resulting from a development activity; and
50 (iii) not identified or reimbursed as a system improvement.
- 51 (b) "Project improvements" does not mean system improvements.
- 52 (12) "Proportionate share" means the cost of public facility improvements that are roughly
53 proportionate and reasonably related to the service demands and needs of any
54 development activity.
- 55 (13) "Public facilities" means only the following capital facilities that have a life expectancy of
56 ten or more years and are owned or operated by or on behalf of a local political
57 subdivision or private entity:
58 (a) water rights and water supply, treatment, and distribution facilities;
59 (b) wastewater collection and treatment facilities;
60 (c) storm water, drainage, and flood control facilities;
61 (d) municipal power facilities;
62 (e) roadway facilities;
63 (f) parks, recreation facilities, open space, and trails; and
64 (g) public safety facilities.
- 65 (14) (a) "Public safety facility" means:
66 (i) a building constructed or leased to house police, fire, or other public safety
67 entities; or
68 (ii) a fire suppression vehicle costing in excess of \$500,000.
- 69 (b) "Public safety facility" does not mean a jail, prison, or other place of involuntary
70 incarceration.
- 71 (15) (a) "Roadway facilities" means streets or roads that have been designated on an
72 officially adopted subdivision plat, roadway plan, or general plan of a political
73 subdivision, together with all necessary appurtenances.
- 74 (b) "Roadway facilities" includes associated improvements to federal or state
75 roadways only when the associated improvements:
76 (i) are necessitated by the new development; and
77 (ii) are not funded by the state or federal government.

- 78 (c) "Roadway facilities" does not mean federal or state roadways.
- 79 (16) (a) "Service area" means a geographic area designated by a local political subdivision
80 on the basis of sound planning or engineering principles in which a defined set of
81 public facilities provide service within the area.
- 82 (b) "Service area" may include the entire local political subdivision.
- 83 (17) "Specified public agency" means:
- 84 (a) the state;
- 85 (b) a school district; or
- 86 (c) a charter school.
- 87 (18) (a) "System improvements" means:
- 88 (i) existing public facilities that are:
- 89 (A) identified in the impact fee analysis under Section 11-36-201; and
- 90 (B) designed to provide services to service areas within the community at
91 large; and
- 92 (ii) future public facilities identified in the impact fee analysis under Section
93 11-36-201 that are intended to provide services to service areas within the
94 community at large.
- 95 (b) "System improvements" does not mean project improvements.

96 **Part 2 - Impact Fee - Process**

97 **11-36-201. Impact fees -- Analysis -- Capital facilities plan -- Notice of plan -- Summary**
98 **-- Exemptions.**

- 99 (1) (a) (i) Each local political subdivision and private entity shall comply with the
100 requirements of this chapter before establishing or modifying any impact fee.
- 101 (ii) A fee that meets the definition of impact fee under Section 11-36-102 is an
102 impact fee subject to this chapter, regardless of what term the local political
103 subdivision or private entity uses to refer to the fee.
- 104 (iii) A local political subdivision or private entity may not avoid application of this
105 chapter to a fee that meets the definition of an impact fee under Section
106 11-36-102 by referring to the fee by another name.
- 107 (b) A local political subdivision may not:
- 108 (i) establish any new impact fees that are not authorized by this chapter; or
- 109 (ii) impose or charge any other fees as a condition of development approval
110 unless those fees are a reasonable charge for the service provided.

- 111 (c) Each local political subdivision shall ensure that the impact fees comply with the
112 requirements of this chapter.
- 113 (d) (i) Each local political subdivision and private entity shall ensure that each
114 impact fee collected on or after May 12, 2009 complies with the provisions of
115 this chapter, even if the impact fee was imposed but not paid before
116 May 12, 2009.
- 117 (ii) Subsection (1)(d)(i) does not apply to an impact fee that was paid before May
118 12, 2009.
- 119 (2) (a) Before imposing impact fees, each local political subdivision and private entity
120 shall, except as provided in Subsection (2)(f), prepare a capital facilities plan to
121 determine the public facilities required to serve development resulting from new
122 development activity.
- 123 (b) (i) As used in this Subsection (2)(b):
- 124 (A) (I) "Affected entity" means each county, municipality, local district
125 under Title 17B, Limited Purpose Local Government Entities -
126 Local Districts, special service district under Title 17D,
127 Chapter 1, Special Service District Act, school district, interlocal
128 cooperation entity established under Chapter 13, Interlocal
129 Cooperation Act, and specified public utility:
- 130 (Aa) whose services or facilities are likely to require
131 expansion or significant modification because of the
132 facilities proposed in the proposed capital facilities plan;
133 or
- 134 (Ab) that has filed with the local political subdivision or private
135 entity a copy of the general or long-range plan of the
136 county, municipality, local district, special service district,
137 school district, interlocal cooperation entity, or specified
138 public utility.
- 139 (II) "Affected entity" does not include the local political subdivision
140 or private entity that is required under this Subsection (2) to
141 provide notice.
- 142 (B) "Specified public utility" means an electrical corporation, gas
143 corporation, or telephone corporation, as those terms are defined in
144 Section 54-2-1.
- 145 (ii) Before preparing or amending a capital facilities plan, each local political
146 subdivision and each private entity shall provide written notice, as provided in

147 this Subsection (2)(b), of its intent to prepare or amend a capital facilities
148 plan.

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

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

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

154 (C) be:

155 (I) sent to each county in whose unincorporated area and each
156 municipality in whose boundaries is located the land on which
157 the proposed facilities will be located;

158 (II) sent to each affected entity;

159 (III) sent to the Automated Geographic Reference Center created in
160 Section 63F-1-506;

161 (IV) sent to the association of governments, established pursuant to
162 an interlocal agreement under Chapter 13, Interlocal
163 Cooperation Act, in which the facilities are proposed to be
164 located;

165 (V) (Aa) placed on the Utah Public Notice Website created under
166 Section 63F-1-701, if the local political subdivision:
167 (Ii) is required under Subsection 52-4-203(3) to use
168 that website to provide public notice of a meeting;
169 or
170 (Iiii) voluntarily chooses to place notice on that
171 website despite not being required to do so under
172 Subsection (2)(b)(iii)(C)(V)(Aa)(Ii); or

173 (Bb) sent to the state planning coordinator appointed under
174 Section 63J-4-202, if the local political subdivision does
175 not provide notice on the Utah Public Notice Website
176 under Subsection (2)(b)(iii)(C)(V)(Aa) or for a private
177 entity;

178 (VI) sent to the registered agent of the Utah Home Builders
179 Association;

180 (VII) sent to the registered agent of the Utah Association of Realtors;
181 and

182 (VIII) sent to the registered agent of the Utah Chapter of the
183 Associated General Contractors of America; and

- 184 (D) with respect to the notice to an affected entity, invite the affected entity
185 to provide information for the local political subdivision or private entity
186 to consider in the process of preparing, adopting, and implementing or
187 amending a capital facilities plan concerning:
- 188 (I) impacts that the facilities proposed in the capital facilities plan
189 may have on the affected entity; and
 - 190 (II) facilities or uses of land that the affected entity is planning or
191 considering that may conflict with the facilities proposed in the
192 capital facilities plan.
- 193 (c) The plan shall identify:
- 194 (i) demands placed upon existing public facilities by new development activity;
195 and
 - 196 (ii) the proposed means by which the local political subdivision will meet those
197 demands.
- 198 (d) A municipality or county need not prepare a separate capital facilities plan if the
199 general plan required by Section 10-9a-401 or 17-27a-401, respectively, contains
200 the elements required by Subsection (2)(c).
- 201 (e) (i) If a local political subdivision chooses to prepare an independent capital
202 facilities plan rather than include a capital facilities element in the general
203 plan, the local political subdivision shall:
- 204 (A) before preparing or contracting to prepare or amending or contracting
205 to amend the independent capital facilities plan, send written notice:
 - 206 (I) to:
 - 207 (Aa) the registered agent of the Utah Home Builders
208 Association;
 - 209 (Bb) the registered agent of the Utah Association of Realtors;
210 and
 - 211 (Cc) the registered agent of the Utah Chapter of the
212 Associated General Contractors of America;
 - 213 (II) stating the local political subdivision's intent to prepare or
214 amend a capital facilities plan; and
 - 215 (III) inviting each of the notice recipients to participate in the
216 preparation of or amendment to the capital facilities plan; and
 - 217 (B) before adopting or amending the capital facilities plan:
 - 218 (I) give public notice of the plan or amendment according to
219 Subsection (2)(e)(ii)(A), (B), or (C), as the case may be, at least
220 ten days before the date of the public hearing;

- 221 (II) make a copy of the plan or amendment, together with a
222 summary designed to be understood by a lay person, available
223 to the public;
- 224 (III) place a copy of the plan or amendment and summary in each
225 public library within the local political subdivision; and
- 226 (IV) hold a public hearing to hear public comment on the plan or
227 amendment.
- 228 (ii) With respect to the public notice required under Subsection (2)(e)(i)(B)(I):
- 229 (A) each municipality shall comply with the notice and hearing
230 requirements of, and, except as provided in Subsection
231 11-36-401(4)(f), receive the protections of Sections 10-9a-205 and
232 10-9a-801 and Subsection 10-9a-502(2);
- 233 (B) each county shall comply with the notice and hearing requirements of,
234 and, except as provided in Subsection 11-36-401(4)(f), receive the
235 protections of Sections 17-27a-205 and 17-27a-801 and Subsection
236 17-27a-502(2); and
- 237 (C) each local district, special service district, and private entity shall
238 comply with the notice and hearing requirements of, and receive the
239 protections of, Section 17B-1-111.
- 240 (iii) Nothing contained in this Subsection (2)(e) or in the subsections referenced
241 in Subsections (2)(e)(ii)(A) and (B) may be construed to require involvement
242 by a planning commission in the capital facilities planning process.
- 243 (f) (i) A local political subdivision with a population or serving a population of less
244 than 5,000 as of the last federal census need not comply with the capital
245 facilities plan requirements of this part, but shall ensure that:
- 246 (A) the impact fees that the local political subdivision imposes are based
247 upon a reasonable plan; and
- 248 (B) each applicable notice required by this chapter is given.
- 249 (ii) Subsection (2)(f)(i) does not apply to private entities.
- 250 (3) In preparing the plan, each local political subdivision shall generally consider all revenue
251 sources, including impact fees and anticipated dedication of system improvements, to
252 finance the impacts on system improvements.
- 253 (4) A local political subdivision or private entity may only impose impact fees on
254 development activities when its plan for financing system improvements establishes that
255 impact fees are necessary to achieve an equitable allocation to the costs borne in the
256 past and to be borne in the future, in comparison to the benefits already received and
257 yet to be received.

- 258 (5) (a) Subject to the notice requirement of Subsection (5)(b), each local political
259 subdivision and private entity intending to impose an impact fee shall prepare a
260 written analysis of each impact fee that:
- 261 (i) identifies the anticipated impact on or consumption of any existing capacity of
262 a public facility by the anticipated development activity;
 - 263 (ii) identifies the anticipated impact on system improvements required by the
264 anticipated development activity to maintain the established level of service
265 for each public facility;
 - 266 (iii) demonstrates how those anticipated impacts are reasonably related to the
267 anticipated development activity;
 - 268 (iv) estimates the proportionate share of:
 - 269 (A) the costs for existing capacity that will be recouped; and
 - 270 (B) the costs of impacts on system improvements that are reasonably
271 related to the new development activity; and
 - 272 (v) based upon those factors and the requirements of this chapter, identifies how
273 the impact fee was calculated.
- 274 (b) Before preparing or contracting to prepare the written analysis required under
275 Subsection (5)(a), each local political subdivision or private entity shall provide:
- 276 (i) public notice; and
 - 277 (ii) written notice:
 - 278 (A) to:
 - 279 (I) the registered agent of the Utah Home Builders Association;
 - 280 (II) the registered agent of the Utah Association of Realtors; and
 - 281 (III) the registered agent of the Utah Chapter of the Associated
282 General Contractors of America;
 - 283 (B) indicating the local political subdivision or private entity's intent to
284 prepare or contract to prepare a written analysis of an impact fee; and
 - 285 (C) inviting each notice recipient to participate in the preparation of the
286 written analysis.
- 287 (c) In analyzing whether or not the proportionate share of the costs of public facilities
288 are reasonably related to the new development activity, the local political
289 subdivision or private entity, as the case may be, shall identify, if applicable:
- 290 (i) the cost of each existing public facility that has excess capacity to serve the
291 anticipated development resulting from the new development activity;
 - 292 (ii) the cost of system improvements for each public facility;

- 293 (iii) other than impact fees, the manner of financing each public facility, such as
294 user charges, special assessments, bonded indebtedness, general taxes, or
295 federal grants;
- 296 (iv) the relative extent to which development activity will contribute to financing
297 the excess capacity of and system improvements for each existing public
298 facility, by such means as user charges, special assessments, or payment
299 from the proceeds of general taxes;
- 300 (v) the relative extent to which development activity will contribute to the cost of
301 existing public facilities and system improvements in the future;
- 302 (vi) the extent to which the development activity is entitled to a credit against
303 impact fees because the development activity will dedicate system
304 improvements or public facilities that will offset the demand for system
305 improvements, inside or outside the proposed development;
- 306 (vii) extraordinary costs, if any, in servicing the newly developed properties; and
307 (viii) the time-price differential inherent in fair comparisons of amounts paid at
308 different times.
- 309 (d) Each local political subdivision and private entity that prepares a written analysis
310 under this Subsection (5) shall also prepare a summary of the written analysis,
311 designed to be understood by a lay person.
- 312 (6) Each local political subdivision that adopts an impact fee enactment under Section
313 11-36-202 on or after July 1, 2000 shall, at least ten days before adopting the
314 enactment:
- 315 (a) submit a copy of the written analysis required by Subsection (5)(a) and a copy of
316 the summary required by Subsection (5)(d) to:
- 317 (i) each public library within the local political subdivision;
- 318 (ii) the registered agent of the Utah Home Builders Association;
- 319 (iii) the registered agent of the Utah Association of Realtors; and
- 320 (iv) the registered agent of the Utah Chapter of the Associated General
321 Contractors of America; and
- 322 (b) obtain a written certification from the person or entity that prepares the written
323 analysis which states as follows:
- 324 "I certify that the attached impact fee analysis:
- 325 1. includes only the costs for qualifying public facilities that are:
- 326 a. allowed under the Impact Fees Act; and
- 327 b. projected to be incurred or encumbered within six years
328 after each impact fee is paid;
- 329 2. contains no cost for operation and maintenance of public facilities;

- 330 3. offsets costs with grants or other alternate sources of payment;
331 4. does not include costs for qualifying public facilities that will raise
332 the level of service for the facilities, through impact fees, above the
333 level of service that is supported by existing residents; and
334 5. complies in each and every relevant respect with the Impact Fees
335 Act."
- 336 (7) Nothing in this chapter may be construed to repeal or otherwise eliminate any impact
337 fee in effect on the effective date of this chapter that is pledged as a source of revenues
338 to pay bonded indebtedness that was incurred before the effective date of this chapter.

339 **11-36-202. Impact fees -- Enactment -- Required and allowed provisions -- Limitations**
340 **-- Effective date.**

- 341 (1) (a) Each local political subdivision and private entity wishing to impose impact fees
342 shall pass an impact fee enactment.
- 343 (b) The impact fee imposed by that enactment may not exceed the highest fee
344 justified by the impact fee analysis performed pursuant to Section 11-36-201.
- 345 (c) In calculating the impact fee, a local political subdivision or private entity may
346 include:
- 347 (i) the construction contract price;
- 348 (ii) the cost of acquiring land, improvements, materials, and fixtures;
- 349 (iii) the cost for planning, surveying, and engineering fees for services provided
350 for and directly related to the construction of the system improvements; and
- 351 (iv) debt service charges, if the political subdivision might use impact fees as a
352 revenue stream to pay the principal and interest on bonds, notes, or other
353 obligations issued to finance the costs of the system improvements.
- 354 (d) In calculating an impact fee, a local political subdivision may not include an
355 expense for overhead unless the expense is calculated pursuant to a methodology
356 that is consistent with:
- 357 (i) generally accepted cost accounting practices; and
- 358 (ii) the methodological standards set forth by the federal Office of Management
359 and Budget for federal grant reimbursement.
- 360 (e) In calculating an impact fee, each local political subdivision shall base amounts
361 calculated under Subsection (1)(c) on realistic estimates, and the assumptions
362 underlying those estimates shall be disclosed in the impact fee analysis.
- 363 (f) Each local political subdivision and private entity that intends to enact an impact
364 fee enactment shall:
- 365 (i) at least ten days before the date of the public hearing:

- 366 (A) make a copy of the impact fee enactment available to the public; and
 367 (B) mail a written copy of the impact fee enactment to:
- 368 (I) the registered agent of the Utah Home Builders Association;
 - 369 (II) the registered agent of the Utah Association of Realtors; and
 - 370 (III) the registered agent of the Utah Chapter of the Associated
 371 General Contractors of America; and
- 372 (ii) (A) for a municipality, comply with the notice and hearing requirements of,
 373 and, except as provided in Subsection 11-36-401(4)(f), receive the
 374 protections of Sections 10-9a-205 and 10-9a-801;
- 375 (B) for a county, comply with the notice and hearing requirements of, and,
 376 except as provided in Subsection 11-36-401(4)(f), receive the
 377 protections of Sections 17-27a-205 and 17-27a-801; and
- 378 (C) for a local district or special service district, comply with the notice and
 379 hearing requirements of, and receive the protections of, Section
 380 17B-1-111.
- 381 (g) Nothing contained in Subsection (1)(f) may be construed to require involvement by
 382 a planning commission in the impact fee enactment process.
- 383 (2) The local political subdivision or private entity shall ensure that the impact fee
 384 enactment:
- 385 (a) contains:
- 386 (i) a provision establishing one or more service areas within which the local
 387 political subdivision or private entity calculates and imposes impact fees for
 388 various land use categories;
 - 389 (ii) (A) a schedule of impact fees for each type of development activity that
 390 specifies the amount of the impact fee to be imposed for each type of
 391 system improvement; or
 - 392 (B) the formula that the local political subdivision or private entity, as the
 393 case may be, will use to calculate each impact fee;
 - 394 (iii) a provision authorizing the local political subdivision or private entity, as the
 395 case may be, to adjust the standard impact fee at the time the fee is charged
 396 to:
- 397 (A) respond to:
 - 398 (I) unusual circumstances in specific cases; or
 - 399 (II) a request for a prompt and individualized impact fee review for
 400 the development activity of the state or a school district or
 401 charter school; and
 - 402 (B) ensure that the impact fees are imposed fairly; and

- 403 (iv) a provision governing calculation of the amount of the impact fee to be
404 imposed on a particular development that permits adjustment of the amount
405 of the fee based upon studies and data submitted by the developer; and
406 (b) allows a developer to receive a credit against or proportionate reimbursement of
407 an impact fee if the developer:
408 (i) dedicates land for a system improvement;
409 (ii) builds and dedicates some or all of a system improvement; or
410 (iii) dedicates a public facility that the local political subdivision or private entity
411 and the developer agree will reduce the need for a system improvement.
- 412 (3) (a) A local political subdivision or private entity may include a provision in an impact
413 fee enactment that:
414 (i) provides an impact fee exemption for:
415 (A) development activity attributable to:
416 (I) low income housing;
417 (II) the state;
418 (III) a school district; or
419 (IV) a charter school; or
420 (B) other development activity with a broad public purpose; and
421 (ii) establishes one or more sources of funds other than impact fees to pay for
422 that development activity.
- 423 (b) An impact fee enactment that provides an impact fee exemption for development
424 activity attributable to a school district or charter school shall allow either a school
425 district or a charter school to qualify for the exemption on the same basis.
- 426 (4) A local political subdivision or private entity shall include a provision in an impact fee
427 enactment that requires a credit against impact fees for any dedication of land for,
428 improvement to, or new construction of, any system improvements provided by the
429 developer if the facilities:
430 (a) are system improvements; or
431 (b) (i) are dedicated to the public; and
432 (ii) offset the need for an identified system improvement.
- 433 (5) A local political subdivision may not impose an impact fee to:
434 (a) cure deficiencies in a public facility serving existing development; or
435 (b) raise the established level of service of a public facility serving existing
436 development.
- 437 (6) Notwithstanding the requirements and prohibitions of this chapter, a local political
438 subdivision may impose and assess an impact fee for environmental mitigation when:

- 439 (a) the local political subdivision has formally agreed to fund a Habitat Conservation
440 Plan to resolve conflicts with the Endangered Species Act of 1973, 16 U.S.C. Sec
441 1531, et seq. or other state or federal environmental law or regulation;
- 442 (b) the impact fee bears a reasonable relationship to the environmental mitigation
443 required by the Habitat Conservation Plan; and
- 444 (c) the legislative body of the local political subdivision adopts an ordinance or
445 resolution:
- 446 (i) declaring that an impact fee is required to finance the Habitat Conservation
447 Plan;
- 448 (ii) establishing periodic sunset dates for the impact fee; and
- 449 (iii) requiring the legislative body to:
- 450 (A) review the impact fee on those sunset dates;
- 451 (B) determine whether or not the impact fee is still required to finance the
452 Habitat Conservation Plan; and
- 453 (C) affirmatively reauthorize the impact fee if the legislative body finds that
454 the impact fee must remain in effect.
- 455 (7) (a) Notwithstanding any other provision of this chapter:
- 456 (i) an impact fee to pay for a public safety facility that is a fire suppression
457 vehicle may not be imposed on residential components of development;
- 458 (ii) an impact fee may not be imposed on a school district or charter school for a
459 park, recreation facility, open space, or trail;
- 460 (iii) an impact fee may not be imposed on development activity that consists of
461 the construction of a school, whether by a school district or a charter school,
462 if:
- 463 (A) the school is intended to replace another school, whether on the same
464 or a different parcel;
- 465 (B) the new school creates no greater demand or need for public facilities
466 than the school being replaced; and
- 467 (C) the new school and the school being replaced are both within:
- 468 (I) the boundary of the local political subdivision; or
- 469 (II) the jurisdiction of the private entity;
- 470 (iv) an impact fee may not be imposed on a school district or charter school
471 unless:
- 472 (A) the development resulting from the school district or charter school's
473 development activity directly results in a need for additional system
474 improvements for which the impact fee is imposed; and

- 475 (B) the impact fee is calculated to cover only the school district or charter
476 school's proportionate share of the cost of those additional system
477 improvements;
- 478 (v) an impact fee for a road facility may be imposed on the state only if and to
479 the extent that:
- 480 (A) the state's development causes an impact on the road facility; and
481 (B) the portion of the road facility related to an impact fee is not funded by
482 the state or by the federal government; and
- 483 (vi) to the extent that the impact fee includes a component for a law enforcement
484 facility, the impact fee may not be imposed on development activity for:
- 485 (A) the Utah National Guard;
486 (B) the Utah Highway Patrol; or
487 (C) a state institution of higher education that has its own police force.
- 488 (b) If the imposition of an impact fee on a new school is not prohibited under
489 Subsection (7)(a)(iii) because the new school creates a greater demand or need
490 for public facilities than the school being replaced, the impact fee may be based
491 only on the demand or need that the new school creates for public facilities that
492 exceeds the demand or need that the school being replaced creates for those
493 public facilities.
- 494 (8) Notwithstanding any other provision of this chapter, a local political subdivision may
495 impose and collect impact fees on behalf of a school district if authorized by Section
496 53A-20-100.5.
- 497 (9) An impact fee enactment may not take effect until 90 days after it is enacted.

498 **Part 3 - Accounting for, Expenditure of, and Refund of Impact Fees**

499 **11-36-301. Impact fees -- Accounting -- Report.**

500 Each local political subdivision collecting impact fees shall:

- 501 (1) establish separate interest bearing ledger accounts for each type of public facility for
502 which an impact fee is collected;
- 503 (2) deposit impact fee receipts in the appropriate ledger account;
- 504 (3) retain the interest earned on each fund or account in the fund or account; and
- 505 (4) at the end of each fiscal year, prepare a report on each fund or account showing:
- 506 (a) the source and amount of all monies collected, earned, and received by the fund
507 or account; and
- 508 (b) each expenditure from the fund or account; and

- 509 (5) establish a report that:
- 510 (a) identifies impact fee funds by the year in which they were received, the project
- 511 from which the funds were collected, the capital projects for which the funds were
- 512 budgeted, and the projected schedule for expenditure;
- 513 (b) is in a format developed by the state auditor;
- 514 (c) is certified by the local political subdivision's chief financial officer; and
- 515 (d) is transmitted annually to the state auditor.

516 **11-36-302. Impact fees -- Expenditure.**

- 517 (1) A local political subdivision may expend impact fees only for a system improvement:
- 518 (a) identified in the capital facilities plan; and
- 519 (b) for the specific public facility type for which the fee was collected.
- 520 (2) (a) Except as provided in Subsection (2)(b), a local political subdivision shall expend
- 521 or encumber the impact fees for a permissible use within six years of their receipt.
- 522 (b) A local political subdivision may hold the fees for longer than six years if it
- 523 identifies, in writing:
- 524 (i) an extraordinary and compelling reason why the fees should be held longer
- 525 than six years; and
- 526 (ii) an absolute date by which the fees will be expended.

527 **11-36-303. Refunds.**

528 A local political subdivision shall refund any impact fees paid by a developer, plus interest

529 earned, when:

- 530 (1) the developer does not proceed with the development activity and has filed a written
- 531 request for a refund;
- 532 (2) the fees have not been spent or encumbered; and
- 533 (3) no impact has resulted.

534 **Part 4 - Challenging Impact Fees**

535 **11-36-401. Impact fees -- Challenges -- Appeals.**

- 536 (1) Any person or entity residing in or owning property within a service area, and any
- 537 organization, association, or corporation representing the interests of persons or entities
- 538 owning property within a service area, may file a declaratory judgment action
- 539 challenging the validity of the fee.

- 540 (2) (a) Any person or entity required to pay an impact fee who believes the fee does not
541 meet the requirements of law may file a written request for information with the
542 local political subdivision who established the fee.
- 543 (b) Within two weeks after the receipt of the request for information, the local political
544 subdivision shall provide the person or entity with the written analysis required by
545 Section 11-36-201, the capital facilities plan, and with any other relevant
546 information relating to the impact fee.
- 547 (3) (a) Any local political subdivision may establish, by ordinance or resolution, an
548 administrative appeals procedure to consider and decide challenges to impact
549 fees.
- 550 (b) If the local political subdivision establishes an administrative appeals procedure,
551 the local political subdivision shall ensure that the procedure includes a
552 requirement that the local political subdivision make its decision no later than 30
553 days after the date the challenge to the impact fee is filed.
- 554 (4) (a) In addition to the method of challenging an impact fee under Subsection (1), a
555 person or entity that has paid an impact fee that was imposed by a local political
556 subdivision may challenge:
- 557 (i) if the impact fee enactment was adopted on or after July 1, 2000:
- 558 (A) whether the local political subdivision complied with the notice
559 requirements of this chapter with respect to the imposition of the
560 impact fee; and
- 561 (B) whether the local political subdivision complied with other procedural
562 requirements of this chapter for imposing the impact fee; and
- 563 (ii) except as limited by Subsection (4)(a)(i), the impact fee.
- 564 (b) A challenge under Subsection (4)(a) may not be initiated unless it is initiated
565 within:
- 566 (i) for a challenge under Subsection (4)(a)(i)(A), 30 days after the person or
567 entity pays the impact fee;
- 568 (ii) for a challenge under Subsection (4)(a)(i)(B), 180 days after the person or
569 entity pays the impact fee; or
- 570 (iii) for a challenge under Subsection (4)(a)(ii), one year after the person or entity
571 pays the impact fee.
- 572 (c) A challenge under Subsection (4)(a) is initiated by filing:
- 573 (i) if the local political subdivision has established an administrative appeals
574 procedure under Subsection (3), the necessary document, under the
575 administrative appeals procedure, for initiating the administrative appeal;
- 576 (ii) a request for arbitration as provided in Subsection 11-36-402(1); or

- 577 (iii) an action in district court.
- 578 (d) (i) The sole remedy for a challenge under Subsection (4)(a)(i)(A) is the
579 equitable remedy of requiring the local political subdivision to correct the
580 defective notice and repeat the process.
- 581 (ii) The sole remedy for a challenge under Subsection (4)(a)(i)(B) is the
582 equitable remedy of requiring the local political subdivision to correct the
583 defective process.
- 584 (iii) The sole remedy for a challenge under Subsection (4)(a)(ii) is a refund of the
585 difference between what the person or entity paid as an impact fee and the
586 amount the impact fee should have been if it had been correctly calculated.
- 587 (e) Nothing in this Subsection (4) may be construed as requiring a person or entity to
588 exhaust administrative remedies with the local political subdivision before filing an
589 action in district court under this Subsection (4).
- 590 (f) The protections given to a municipality under Section 10-9a-801 and to a county
591 under Section 17-27a-801 do not apply in a challenge under Subsection
592 (4)(a)(i)(A).
- 593 (5) The judge may award reasonable attorneys' fees and costs to the prevailing party in any
594 action brought under this section.
- 595 (6) Nothing in this chapter may be construed as restricting or limiting any rights to challenge
596 impact fees that were paid before the effective date of this chapter.

597 **11-36-401.5. Mediation.**

- 598 (1) In addition to the methods of challenging an impact fee under Section 11-36-401, a
599 specified public agency may require a local political subdivision or private entity to
600 participate in mediation of any applicable fee.
- 601 (2) To require mediation, the specified public agency shall submit a written request for
602 mediation to the local political subdivision or private entity.
- 603 (3) The specified public agency may submit a request for mediation under this section at
604 any time, but no later than 30 days after the impact fee is paid.
- 605 (4) Upon the submission of a request for mediation under this section, the local political
606 subdivision or private entity shall:
- 607 (a) cooperate with the specified public agency in the selection of a mediator; and
608 (b) participate in the mediation process.

609 **11-36-402. Challenging an impact fee by arbitration -- Procedure -- Appeal -- Costs.**

- 610 (1) Each person or entity intending to challenge an impact fee under Subsection
611 11-36-401(4)(c)(ii) shall file a written request for arbitration with the local political

612 subdivision within the time limitation provided in Subsection 11-36-401(4)(b) for the
613 applicable type of challenge.

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

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

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

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

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

625 (3) The arbitration panel shall hold a hearing on the challenge within 30 days after the date:

626 (a) the single arbitrator is agreed on under Subsection (2)(a); or
627 (b) the two arbitrators are selected under Subsection (2)(b)(i).

628 (4) The arbitrator or arbitration panel shall issue a decision in writing within ten days from
629 the date the hearing under Subsection (3) is completed.

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

632 (6) The parties may agree to:

633 (a) binding arbitration;
634 (b) formal, nonbinding arbitration; or
635 (c) informal, nonbinding arbitration.

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

637 (a) the arbitration shall be binding;
638 (b) the decision of the arbitration panel shall be final;
639 (c) neither party may appeal the decision of the arbitration panel; and
640 (d) notwithstanding Subsection (10), the person or entity challenging the impact fee
641 may not also challenge the impact fee under Subsection 11-36-401(1), (4)(c)(i), or
642 (4)(c)(iii).

643 (8) (a) Except as provided in Subsection (8)(b), if the parties agree to formal, nonbinding
644 arbitration, the arbitration shall be governed by the provisions of Title 63G,
645 Chapter 4, Administrative Procedures Act.

646 (b) For purposes of applying Title 63G, Chapter 4, Administrative Procedures Act, to a
647 formal, nonbinding arbitration under this section, notwithstanding Section
648 63G-4-502, "agency" means a local political subdivision.

- 649 (9) (a) An appeal from a decision in an informal, nonbinding arbitration may be filed with
650 the district court in which the local political subdivision is located.
- 651 (b) Each appeal under Subsection (9)(a) shall be filed within 30 days after the date
652 the arbitration panel issues a decision under Subsection (4).
- 653 (c) The district court shall consider de novo each appeal filed under this
654 Subsection (9).
- 655 (d) Notwithstanding Subsection (10), a person or entity that files an appeal under this
656 Subsection (9) may not also challenge the impact fee under Subsection
657 11-36-401(1), (4)(c)(i), or (4)(c)(iii).
- 658 (10) (a) Except as provided in Subsections (7)(d) and (9)(d), this section may not be
659 construed to prohibit a person or entity from challenging an impact fee as provided
660 in Subsection 11-36-401(1), (4)(c)(i), or (4)(c)(iii).
- 661 (b) The filing of a written request for arbitration within the required time in accordance
662 with Subsection (1) tolls all time limitations under Section 11-36-401 until the date
663 the arbitration panel issues a decision.
- 664 (11) The person or entity filing a request for arbitration and the local political subdivision shall
665 equally share all costs of an arbitration proceeding under this section.

666 **Part 5 - Private Entity Assessment of Impact Fees**

667 **11-36-501. Private entity assessment of impact fees -- Notice and hearing -- Audit.**

- 668 (1) A private entity may only impose a charge for public facilities as a condition of
669 development approval by imposing an impact fee. A private entity shall comply with the
670 requirements of this chapter before imposing an impact fee.
- 671 (2) Except as otherwise specified in this chapter, a private entity is subject to the same
672 requirements of this chapter as a local political subdivision.
- 673 (3) Where notice and hearing requirements are specified, a private entity shall comply with
674 the notice and hearing requirements for local districts.
- 675 (4) A private entity that assesses an impact fee under this chapter is subject to the audit
676 requirements of Title 51, Chapter 2a, Accounting Reports from Political Subdivisions,
677 Interlocal Organizations, and Other Local Entities Act.