

1 **IMPACT FEES AMENDMENTS**

2 2021 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Candice B. Pierucci**

5 Senate Sponsor: Lincoln Fillmore

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions related to impact fees.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms;
- 13 ▶ modifies provisions regarding the calculation of impact fees; and
- 14 ▶ makes technical and conforming changes.

15 **Money Appropriated in this Bill:**

16 None

17 **Other Special Clauses:**

18 None

19 **Utah Code Sections Affected:**

20 AMENDS:

- 21 **10-9a-305**, as last amended by Laws of Utah 2018, Chapter 415
- 22 **10-9a-510**, as last amended by Laws of Utah 2013, Chapter 200
- 23 **11-36a-102**, as last amended by Laws of Utah 2018, Chapters 196 and 415
- 24 **11-36a-202**, as last amended by Laws of Utah 2018, Chapter 415
- 25 **11-36a-305**, as enacted by Laws of Utah 2011, Chapter 47
- 26 **11-36a-306**, as last amended by Laws of Utah 2013, Chapter 278
- 27 **17-27a-305**, as last amended by Laws of Utah 2018, Chapter 415
- 28 **17-27a-509**, as last amended by Laws of Utah 2013, Chapter 200
- 29 **17B-1-118**, as last amended by Laws of Utah 2013, Chapter 200

30 **17B-1-121**, as last amended by Laws of Utah 2014, Chapter 189



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

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

34 **10-9a-305. Other entities required to conform to municipality's land use**
35 **ordinances -- Exceptions -- School districts and charter schools -- Submission of**
36 **development plan and schedule.**

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

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

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

47 (b) (i) Notwithstanding Subsection (3), a municipality may:

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

51 (B) impose regulations upon the location of a project that are necessary to avoid
52 unreasonable risks to health or safety, as provided in Subsection (3)(f).

53 (ii) The standards to which a municipality may subject a charter school under
54 Subsection (2)(b)(i) shall be objective standards only and may not be subjective.

55 (iii) Except as provided in Subsection (7)(d), the only basis upon which a municipality
56 may deny or withhold approval of a charter school's land use application is the charter school's
57 failure to comply with a standard imposed under Subsection (2)(b)(i).

58 (iv) Nothing in Subsection (2)(b)(iii) may be construed to relieve a charter school of an
59 obligation to comply with a requirement of an applicable building or safety code to which it is
60 otherwise obligated to comply.

61 (3) A municipality may not:

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

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

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

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

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

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

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

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

85 (ii) uses the tax exempt status of the school district or charter school as criteria for

86 prohibiting or regulating the land use or location of the structure.

87 (4) Subject to Section 53E-3-710, a school district or charter school shall coordinate
88 the siting of a new school with the municipality in which the school is to be located, to:

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

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

92 (5) Notwithstanding Subsection (3)(d), a municipality may, at its discretion:

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

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

96 (6) (a) Notwithstanding Subsection (3)(d), a school district or charter school shall use:

97 (i) a municipal building inspector;

98 (ii) (A) for a school district, a school district building inspector from that school
99 district; or

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

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

103 (A) not an employee of the contractor;

104 (B) approved by:

105 (I) a municipal building inspector; or

106 (II) (Aa) for a school district, a school district building inspector from that school
107 district; or

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

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

111 (b) The approval under Subsection (6)(a)(iii)(B) may not be unreasonably withheld.

112 (c) If a school district or charter school uses a school district or independent building
113 inspector under Subsection (6)(a)(ii) or (iii), the school district or charter school shall submit to

114 the state superintendent of public instruction and municipal building official, on a monthly
115 basis during construction of the school building, a copy of each inspection certificate regarding
116 the school building.

117 (7) (a) A charter school shall be considered a permitted use in all zoning districts
118 within a municipality.

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

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

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

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

128 (A) the state superintendent of public instruction, as provided in Subsection
129 [53E-3-706\(3\)](#), if the school district or charter school used an independent building inspector for
130 inspection of the school building; or

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

133 (ii) A school district may issue its own certificate authorizing permanent occupancy of
134 a school building if it used its own building inspector for inspection of the school building,
135 subject to the notification requirement of Subsection [53E-3-706\(3\)\(a\)\(ii\)](#).

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

139 (iv) A certificate authorizing permanent occupancy issued by the state superintendent
140 of public instruction under Subsection [53E-3-706\(3\)](#) or a school district official with authority
141 to issue the certificate shall be considered to satisfy any municipal requirement for an

142 inspection or a certificate of occupancy.

143 (8) (a) A specified public agency intending to develop its land shall submit to the land
144 use authority a development plan and schedule:

145 (i) as early as practicable in the development process, but no later than the
146 commencement of construction; and

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

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

149 (B) the demand for public facilities listed in Subsections [11-36a-102](#)~~(+6)~~(17)(a), (b),
150 (c), (d), (e), and (g) caused by the development;

151 (C) the amount of any applicable fee described in Section [10-9a-510](#);

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

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

154 (b) The land use authority shall respond to a specified public agency's submission
155 under Subsection (8)(a) with reasonable promptness in order to allow the specified public
156 agency to consider information the municipality provides under Subsection (8)(a)(ii) in the
157 process of preparing the budget for the development.

158 (9) Nothing in this section may be construed to:

159 (a) modify or supersede Section [10-9a-304](#); or

160 (b) authorize a municipality to enforce an ordinance in a way, or enact an ordinance,
161 that fails to comply with Title 57, Chapter 21, Utah Fair Housing Act, the federal Fair Housing
162 Amendments Act of 1988, 42 U.S.C. Sec. 3601 et seq., the Americans with Disabilities Act of
163 1990, 42 U.S.C. 12102, or any other provision of federal law.

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

165 **10-9a-510. Limit on fees -- Requirement to itemize fees -- Appeal of fee --**
166 **Provider of culinary or secondary water.**

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

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

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

172 (2) Subject to Subsection (1), a municipality may impose and collect only a nominal
173 fee for reviewing and approving identical floor plans.

174 (3) A municipality may not impose or collect a hookup fee that exceeds the reasonable
175 cost of installing and inspecting the pipe, line, meter, and appurtenance to connect to the
176 municipal water, sewer, storm water, power, or other utility system.

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

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

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

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

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

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

192 (ii) an accounting of each fee paid;

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

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

196 (c) A municipality shall establish a fee appeal process subject to an appeal authority
197 described in Part 7, Appeal Authority and Variances, and district court review in accordance

198 with Part 8, District Court Review, to determine whether a fee reflects only the reasonable
199 estimated cost of:

- 200 (i) regulation;
- 201 (ii) processing an application;
- 202 (iii) issuing a permit; or
- 203 (iv) delivering the service for which the applicant or owner paid the fee.

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

- 206 (a) subject to Subsection (4), a fee for a development service that the public agency
207 does not itself provide;
- 208 (b) subject to Subsection (3), a hookup fee; and
- 209 (c) an impact fee for a public facility listed in Subsection 11-36a-102[(16)](17)(a), (b),
210 (c), (d), (e), or (g), subject to any applicable credit under Subsection 11-36a-402(2).

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

- 214 (a) Subsections (5) and (6);
- 215 (b) Section 10-9a-508; and
- 216 (c) Section 10-9a-509.5.

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

218 **11-36a-102. Definitions.**

219 As used in this chapter:

220 (1) (a) "Affected entity" means each county, municipality, local district under Title
221 17B, Limited Purpose Local Government Entities - Local Districts, special service district
222 under Title 17D, Chapter 1, Special Service District Act, school district, interlocal cooperation
223 entity established under Chapter 13, Interlocal Cooperation Act, and specified public utility:

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

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

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

231 (2) "Charter school" includes:

232 (a) an operating charter school;

233 (b) an applicant for a charter school whose application has been approved by a charter
234 school authorizer as provided in Title 53G, Chapter 5, Part 6, Charter School Credit
235 Enhancement Program; and

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

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

241 (4) "Development approval" means:

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

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

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

248 (i) to reserve or provide:

249 (A) a water right;

250 (B) a system capacity; or

251 (C) a distribution facility; or

252 (ii) to deliver for a development activity:

253 (A) culinary water; or

254 (B) irrigation water; or
 255 (d) a written authorization from a sanitary sewer authority, as defined in Section
 256 10-9a-103:

257 (i) to reserve or provide:
 258 (A) sewer collection capacity; or
 259 (B) treatment capacity; or
 260 (ii) to provide sewer service for a development activity.

261 (5) "Enactment" means:
 262 (a) a municipal ordinance, for a municipality;
 263 (b) a county ordinance, for a county; and
 264 (c) a governing board resolution, for a local district, special service district, or private
 265 entity.

266 (6) "Encumber" means:
 267 (a) a pledge to retire a debt; or
 268 (b) an allocation to a current purchase order or contract.

269 (7) "Expense for overhead" means a cost that a local political subdivision or private
 270 entity:

271 (a) incurs in connection with:
 272 (i) developing an impact fee facilities plan;
 273 (ii) developing an impact fee analysis; or
 274 (iii) imposing an impact fee, including any related overhead expenses; and
 275 (b) calculates in accordance with a methodology that is consistent with generally
 276 accepted cost accounting practices.

277 [~~(7)~~] (8) "Hookup fee" means a fee for the installation and inspection of any pipe, line,
 278 meter, or appurtenance to connect to a gas, water, sewer, storm water, power, or other utility
 279 system of a municipality, county, local district, special service district, or private entity.

280 [~~(8)~~] (9) (a) "Impact fee" means a payment of money imposed upon new development
 281 activity as a condition of development approval to mitigate the impact of the new development

282 on public infrastructure.

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

285 ~~[(9)]~~ (10) "Impact fee analysis" means the written analysis of each impact fee required
286 by Section 11-36a-303.

287 ~~[(10)]~~ (11) "Impact fee facilities plan" means the plan required by Section 11-36a-301.

288 ~~[(11)]~~ (12) "Level of service" means the defined performance standard or unit of
289 demand for each capital component of a public facility within a service area.

290 ~~[(12)]~~ (13) (a) "Local political subdivision" means a county, a municipality, a local
291 district under Title 17B, Limited Purpose Local Government Entities - Local Districts, or a
292 special service district under Title 17D, Chapter 1, Special Service District Act.

293 (b) "Local political subdivision" does not mean a school district, whose impact fee
294 activity is governed by Section 11-36a-206.

295 ~~[(13)]~~ (14) "Private entity" means an entity in private ownership with at least 100
296 individual shareholders, customers, or connections, that is located in a first, second, third, or
297 fourth class county and provides water to an applicant for development approval who is
298 required to obtain water from the private entity either as a:

299 (a) specific condition of development approval by a local political subdivision acting
300 pursuant to a prior agreement, whether written or unwritten, with the private entity; or

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

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

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

304 ~~[(14)]~~ (15) (a) "Project improvements" means site improvements and facilities that are:

305 (i) planned and designed to provide service for development resulting from a
306 development activity;

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

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

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

311 ~~[(15)]~~ (16) "Proportionate share" means the cost of public facility improvements that
312 are roughly proportionate and reasonably related to the service demands and needs of any
313 development activity.

314 ~~[(16)]~~ (17) "Public facilities" means only the following impact fee facilities that have a
315 life expectancy of 10 or more years and are owned or operated by or on behalf of a local
316 political subdivision or private entity:

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

318 (b) wastewater collection and treatment facilities;

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

320 (d) municipal power facilities;

321 (e) roadway facilities;

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

323 (g) public safety facilities;

324 (h) environmental mitigation as provided in Section [11-36a-205](#); or

325 (i) municipal natural gas facilities.

326 ~~[(17)]~~ (18) (a) "Public safety facility" means:

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

328 or

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

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

332 ~~[(18)]~~ (19) (a) "Roadway facilities" means a street or road that has been designated on
333 an officially adopted subdivision plat, roadway plan, or general plan of a political subdivision,
334 together with all necessary appurtenances.

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

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

338 (ii) are not funded by the state or federal government.
339 (c) "Roadway facilities" does not mean federal or state roadways.
340 ~~[(19)]~~ (20) (a) "Service area" means a geographic area designated by an entity that
341 imposes an impact fee on the basis of sound planning or engineering principles in which a
342 public facility, or a defined set of public facilities, provides service within the area.
343 (b) "Service area" may include the entire local political subdivision or an entire area
344 served by a private entity.
345 ~~[(20)]~~ (21) "Specified public agency" means:
346 (a) the state;
347 (b) a school district; or
348 (c) a charter school.
349 ~~[(21)]~~ (22) (a) "System improvements" means:
350 (i) existing public facilities that are:
351 (A) identified in the impact fee analysis under Section 11-36a-304; and
352 (B) designed to provide services to service areas within the community at large; and
353 (ii) future public facilities identified in the impact fee analysis under Section
354 11-36a-304 that are intended to provide services to service areas within the community at large.
355 (b) "System improvements" does not mean project improvements.
356 Section 4. Section 11-36a-202 is amended to read:
357 **11-36a-202. Prohibitions on impact fees.**
358 (1) A local political subdivision or private entity may not:
359 (a) impose an impact fee to:
360 (i) cure deficiencies in a public facility serving existing development;
361 (ii) raise the established level of service of a public facility serving existing
362 development; or
363 (iii) recoup more than the local political subdivision's or private entity's costs actually
364 incurred for excess capacity in an existing system improvement; ~~[or]~~
365 ~~[(iv) include an expense for overhead, unless the expense is calculated pursuant to a~~

366 methodology that is consistent with:]

367 [~~(A) generally accepted cost accounting practices; and]~~

368 [~~(B) the methodological standards set forth by the federal Office of Management and~~
369 ~~Budget for federal grant reimbursement;]~~

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

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

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

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

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

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

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

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

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

388 (A) the Utah National Guard;

389 (B) the Utah Highway Patrol; or

390 (C) a state institution of higher education that has its own police force; or

391 (v) on development activity on the state fair park, as defined in Section [63H-6-102](#).

392 (b) (i) Notwithstanding any other provision of this chapter, a political subdivision or
393 private entity may not impose an impact fee on development activity that consists of the

394 construction of a school, whether by a school district or a charter school, if:

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

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

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

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

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

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

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

413 (3) Notwithstanding any other provision of this chapter, a local political subdivision
414 may impose and collect impact fees on behalf of a school district if authorized by Section
415 [11-36a-206](#).

416 Section 5. Section **11-36a-305** is amended to read:

417 **11-36a-305. Calculating impact fees.**

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

420 (a) the construction contract price;

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

422 (c) ~~[the cost for planning, surveying, and engineering fees]~~ for services provided for
423 and directly related to the construction of the system improvements~~[-; and]~~, the cost for
424 planning and surveying, and engineering fees;

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

428 (e) one or more expenses for overhead.

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

432 Section 6. Section **11-36a-306** is amended to read:

433 **11-36a-306. Certification of impact fee analysis.**

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

436 "I certify that the attached impact fee facilities plan:

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

438 a. allowed under the Impact Fees Act; and

439 b. actually incurred; or

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

442 2. does not include:

443 a. costs of operation and maintenance of public facilities; or

444 b. costs for qualifying public facilities that will raise the level of service for the
445 facilities, through impact fees, above the level of service that is supported by existing residents;
446 ~~[or]~~ and

447 ~~[e. an expense for overhead, unless the expense is calculated pursuant to a~~
448 ~~methodology that is consistent with generally accepted cost accounting practices and the~~
449 ~~methodological standards set forth by the federal Office of Management and Budget for federal~~

450 ~~grant reimbursement; and]~~

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

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

454 "I certify that the attached impact fee analysis:

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

456 a. allowed under the Impact Fees Act; and

457 b. actually incurred; or

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

460 2. does not include:

461 a. costs of operation and maintenance of public facilities; or

462 b. costs for qualifying public facilities that will raise the level of service for the
463 facilities, through impact fees, above the level of service that is supported by existing residents;

464 [~~or~~]

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

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

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

471 Section 7. Section **17-27a-305** is amended to read:

472 **17-27a-305. Other entities required to conform to county's land use ordinances --**
473 **Exceptions -- School districts and charter schools -- Submission of development plan and**
474 **schedule.**

475 (1) (a) Each county, municipality, school district, charter school, local district, special
476 service district, and political subdivision of the state shall conform to any applicable land use
477 ordinance of any county when installing, constructing, operating, or otherwise using any area,

478 land, or building situated within a mountainous planning district or the unincorporated portion
479 of the county, as applicable.

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

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

486 (b) (i) Notwithstanding Subsection (3), a county may:

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

490 (B) impose regulations upon the location of a project that are necessary to avoid
491 unreasonable risks to health or safety, as provided in Subsection (3)(f).

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

494 (iii) Except as provided in Subsection (7)(d), the only basis upon which a county may
495 deny or withhold approval of a charter school's land use application is the charter school's
496 failure to comply with a standard imposed under Subsection (2)(b)(i).

497 (iv) Nothing in Subsection (2)(b)(iii) may be construed to relieve a charter school of an
498 obligation to comply with a requirement of an applicable building or safety code to which it is
499 otherwise obligated to comply.

500 (3) A county may not:

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

505 (b) except as otherwise provided in this section, require a school district or charter

506 school to participate in the cost of any roadway or sidewalk, or a study on the impact of a
507 school on a roadway or sidewalk, that is not reasonably necessary for the safety of school
508 children and not located on or contiguous to school property, unless the roadway or sidewalk is
509 required to connect an otherwise isolated school site to an existing roadway;

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

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

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

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

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

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

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

526 (4) Subject to Section [53E-3-710](#), a school district or charter school shall coordinate
527 the siting of a new school with the county in which the school is to be located, to:

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

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

531 (5) Notwithstanding Subsection (3)(d), a county may, at its discretion:

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

- 534 (b) provide recommendations based upon the walk-through.
- 535 (6) (a) Notwithstanding Subsection (3)(d), a school district or charter school shall use:
- 536 (i) a county building inspector;
- 537 (ii) (A) for a school district, a school district building inspector from that school
- 538 district; or
- 539 (B) for a charter school, a school district building inspector from the school district in
- 540 which the charter school is located; or
- 541 (iii) an independent, certified building inspector who is:
- 542 (A) not an employee of the contractor;
- 543 (B) approved by:
- 544 (I) a county building inspector; or
- 545 (II) (Aa) for a school district, a school district building inspector from that school
- 546 district; or
- 547 (Bb) for a charter school, a school district building inspector from the school district in
- 548 which the charter school is located; and
- 549 (C) licensed to perform the inspection that the inspector is requested to perform.
- 550 (b) The approval under Subsection (6)(a)(iii)(B) may not be unreasonably withheld.
- 551 (c) If a school district or charter school uses a school district or independent building
- 552 inspector under Subsection (6)(a)(ii) or (iii), the school district or charter school shall submit to
- 553 the state superintendent of public instruction and county building official, on a monthly basis
- 554 during construction of the school building, a copy of each inspection certificate regarding the
- 555 school building.
- 556 (7) (a) A charter school shall be considered a permitted use in all zoning districts
- 557 within a county.
- 558 (b) Each land use application for any approval required for a charter school, including
- 559 an application for a building permit, shall be processed on a first priority basis.
- 560 (c) Parking requirements for a charter school may not exceed the minimum parking
- 561 requirements for schools or other institutional public uses throughout the county.

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

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

567 (A) the state superintendent of public instruction, as provided in Subsection
568 53E-3-706(3), if the school district or charter school used an independent building inspector for
569 inspection of the school building; or

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

572 (ii) A school district may issue its own certificate authorizing permanent occupancy of
573 a school building if it used its own building inspector for inspection of the school building,
574 subject to the notification requirement of Subsection 53E-3-706(3)(a)(ii).

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

578 (iv) A certificate authorizing permanent occupancy issued by the state superintendent
579 of public instruction under Subsection 53E-3-706(3) or a school district official with authority
580 to issue the certificate shall be considered to satisfy any county requirement for an inspection or
581 a certificate of occupancy.

582 (8) (a) A specified public agency intending to develop its land shall submit to the land
583 use authority a development plan and schedule:

584 (i) as early as practicable in the development process, but no later than the
585 commencement of construction; and

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

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

588 (B) the demand for public facilities listed in Subsections 11-36a-102[~~(16)~~](17)(a), (b),
589 (c), (d), (e), and (g) caused by the development;

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

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

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

593 (b) The land use authority shall respond to a specified public agency's submission
594 under Subsection (8)(a) with reasonable promptness in order to allow the specified public
595 agency to consider information the municipality provides under Subsection (8)(a)(ii) in the
596 process of preparing the budget for the development.

597 (9) Nothing in this section may be construed to:

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

599 (b) authorize a county to enforce an ordinance in a way, or enact an ordinance, that
600 fails to comply with Title 57, Chapter 21, Utah Fair Housing Act, the federal Fair Housing
601 Amendments Act of 1988, 42 U.S.C. Sec. 3601 et seq., the Americans with Disabilities Act of
602 1990, 42 U.S.C. 12102, or any other provision of federal law.

603 Section 8. Section 17-27a-509 is amended to read:

604 **17-27a-509. Limit on fees -- Requirement to itemize fees -- Appeal of fee --**
605 **Provider of culinary or secondary water.**

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

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

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

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

612 (3) A county may not impose or collect a hookup fee that exceeds the reasonable cost
613 of installing and inspecting the pipe, line, meter, or appurtenance to connect to the county
614 water, sewer, storm water, power, or other utility system.

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

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

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

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

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

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

629 (ii) an accounting of each fee paid;

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

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

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

637 (i) regulation;

638 (ii) processing an application;

639 (iii) issuing a permit; or

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

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

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

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

646 (c) an impact fee for a public facility listed in Subsection ~~11-36a-102~~(17)(a), (b),
647 (c), (d), (e), or (g), subject to any applicable credit under Subsection 11-36a-402(2).

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

- 650 (a) Subsections (5) and (6);
- 651 (b) Section 17-27a-507; and
- 652 (c) Section 17-27a-509.5.

653 Section 9. Section **17B-1-118** is amended to read:

654 **17B-1-118. Local district hookup fee -- Preliminary design or site plan from a**
655 **specified public agency.**

656 (1) As used in this section:

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

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

661 (c) "Specified public agency" means:

- 662 (i) the state;
- 663 (ii) a school district; or
- 664 (iii) a charter school.

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

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

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

- 672 (i) as early as practicable in the development process, but no later than the
673 commencement of construction; and

- 674 (ii) with sufficient detail to enable the local district to assess:
- 675 (A) the demand for public facilities listed in Subsections 11-36a-102[(16)](17)(a), (b),
- 676 (c), (d), (e), and (g) caused by the development;
- 677 (B) the amount of any hookup fees, or impact fees or substantive equivalent;
- 678 (C) any credit against an impact fee; and
- 679 (D) the potential for waiving an impact fee.

680 (b) The local district shall respond to a specified public agency's submission under
681 Subsection (3)(a) with reasonable promptness in order to allow the specified public agency to
682 consider information the local district provides under Subsection (3)(a)(ii) in the process of
683 preparing the budget for the development.

684 (4) Upon a specified public agency's submission of a development plan and schedule as
685 required in Subsection (3) that complies with the requirements of that subsection, the specified
686 public agency vests in the local district's hookup fees and impact fees in effect on the date of
687 submission.

688 Section 10. Section 17B-1-121 is amended to read:

689 **17B-1-121. Limit on fees -- Requirement to itemize and account for fees --**

690 **Appeals.**

- 691 (1) A local district may not impose or collect:
- 692 (a) an application fee that exceeds the reasonable cost of processing the application; or
- 693 (b) an inspection or review fee that exceeds the reasonable cost of performing an
694 inspection or review.

695 (2) (a) Upon request by a service applicant who is charged a fee or an owner of
696 residential property upon which a fee is imposed, a local district shall provide a statement of
697 each itemized fee and calculation method for each fee.

698 (b) If an applicant who is charged a fee or an owner of residential property upon which
699 a fee is imposed submits a request for a statement of each itemized fee no later than 30 days
700 after the day on which the applicant or owner pays the fee, the local district shall, no later than
701 10 days after the day on which the request is received, provide or commit to provide within a

702 specific time:

703 (i) for each fee, any studies, reports, or methods relied upon by the local district to
704 create the calculation method described in Subsection (2)(a);

705 (ii) an accounting of each fee paid;

706 (iii) how each fee will be distributed by the local district; and

707 (iv) information on filing a fee appeal through the process described in Subsection
708 (2)(c).

709 (c) (i) A local district shall establish an impartial fee appeal process to determine
710 whether a fee reflects only the reasonable estimated cost of delivering the service for which the
711 fee was paid.

712 (ii) A party to a fee appeal described in Subsection (2)(c)(i) may petition for judicial
713 review of the local district's final decision.

714 (3) A local district may not impose on or collect from a public agency a fee associated
715 with the public agency's development of the public agency's land other than:

716 (a) subject to Subsection (1), a hookup fee; or

717 (b) an impact fee, as defined in Section 11-36a-102 and subject to Section 11-36a-402,
718 for a public facility listed in Subsection 11-36a-102~~(16)~~(17)(a), (b), (c), (d), (e), or (g).