

EDUCATION IMPACT FEE AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael L. Kohler

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions of the Impact Fees Act.

Highlighted Provisions:

This bill:

- ▶ modifies the definition of the term "local political subdivision" in the Impact Fees Act to include a school district;
- ▶ repeals provisions that prohibit certain impact fees related to a school district; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

11-36a-102, as last amended by Laws of Utah 2021, Chapter 35

REPEALS:

11-36a-206, as renumbered and amended by Laws of Utah 2018, Chapter 3

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

Section 1. Section **11-36a-102** is amended to read:



28 **11-36a-102. Definitions.**

29 As used in this chapter:

30 (1) (a) "Affected entity" means each county, municipality, local district under Title
31 17B, Limited Purpose Local Government Entities - Local Districts, special service district
32 under Title 17D, Chapter 1, Special Service District Act, school district, interlocal cooperation
33 entity established under Chapter 13, Interlocal Cooperation Act, and specified public utility:

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

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

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

41 (2) "Charter school" includes:

42 (a) an operating charter school;

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

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

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

51 (4) "Development approval" means:

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

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

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

58 (i) to reserve or provide:

- 59 (A) a water right;
- 60 (B) a system capacity; or
- 61 (C) a distribution facility; or
- 62 (ii) to deliver for a development activity:
- 63 (A) culinary water; or
- 64 (B) irrigation water; or
- 65 (d) a written authorization from a sanitary sewer authority, as defined in Section
- 66 10-9a-103:
- 67 (i) to reserve or provide:
- 68 (A) sewer collection capacity; or
- 69 (B) treatment capacity; or
- 70 (ii) to provide sewer service for a development activity.
- 71 (5) "Enactment" means:
- 72 (a) a municipal ordinance, for a municipality;
- 73 (b) a county ordinance, for a county; and
- 74 (c) a governing board resolution, for a local district, special service district, or private
- 75 entity.
- 76 (6) "Encumber" means:
- 77 (a) a pledge to retire a debt; or
- 78 (b) an allocation to a current purchase order or contract.
- 79 (7) "Expense for overhead" means a cost that a local political subdivision or private
- 80 entity:
- 81 (a) incurs in connection with:
- 82 (i) developing an impact fee facilities plan;
- 83 (ii) developing an impact fee analysis; or
- 84 (iii) imposing an impact fee, including any related overhead expenses; and
- 85 (b) calculates in accordance with a methodology that is consistent with generally
- 86 accepted cost accounting practices.
- 87 (8) "Hookup fee" means a fee for the installation and inspection of any pipe, line,
- 88 meter, or appurtenance to connect to a gas, water, sewer, storm water, power, or other utility
- 89 system of a municipality, county, local district, special service district, or private entity.

90 (9) (a) "Impact fee" means a payment of money imposed upon new development
91 activity as a condition of development approval to mitigate the impact of the new development
92 on public infrastructure.

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

95 (10) "Impact fee analysis" means the written analysis of each impact fee required by
96 Section 11-36a-303.

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

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

100 (13) ~~(a)~~ "Local political subdivision" means a county, a municipality, a school
101 district, a local district under Title 17B, Limited Purpose Local Government Entities - Local
102 Districts, or a special service district under Title 17D, Chapter 1, Special Service District Act.

103 ~~[(b) "Local political subdivision" does not mean a school district, whose impact fee~~
104 ~~activity is governed by Section 11-36a-206.]~~

105 (14) "Private entity" means an entity in private ownership with at least 100 individual
106 shareholders, customers, or connections, that is located in a first, second, third, or fourth class
107 county and provides water to an applicant for development approval who is required to obtain
108 water from the private entity either as a:

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

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

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

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

114 (15) (a) "Project improvements" means site improvements and facilities that are:

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

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

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

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

121 (16) "Proportionate share" means the cost of public facility improvements that are
122 roughly proportionate and reasonably related to the service demands and needs of any
123 development activity.

124 (17) "Public facilities" means only the following impact fee facilities that have a life
125 expectancy of 10 or more years and are owned or operated by or on behalf of a local political
126 subdivision or private entity:

- 127 (a) water rights and water supply, treatment, storage, and distribution facilities;
- 128 (b) wastewater collection and treatment facilities;
- 129 (c) storm water, drainage, and flood control facilities;
- 130 (d) municipal power facilities;
- 131 (e) roadway facilities;
- 132 (f) parks, recreation facilities, open space, and trails;
- 133 (g) public safety facilities;
- 134 (h) environmental mitigation as provided in Section [11-36a-205](#); or
- 135 (i) municipal natural gas facilities.

136 (18) (a) "Public safety facility" means:

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

138 or

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

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

142 (19) (a) "Roadway facilities" means a street or road that has been designated on an
143 officially adopted subdivision plat, roadway plan, or general plan of a political subdivision,
144 together with all necessary appurtenances.

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

- 147 (i) are necessitated by the new development; and
- 148 (ii) are not funded by the state or federal government.
- 149 (c) "Roadway facilities" does not mean federal or state roadways.

150 (20) (a) "Service area" means a geographic area designated by an entity that imposes an
151 impact fee on the basis of sound planning or engineering principles in which a public facility,

152 or a defined set of public facilities, provides service within the area.

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

155 (21) "Specified public agency" means:

156 (a) the state;

157 (b) a school district; or

158 (c) a charter school.

159 (22) (a) "System improvements" means:

160 (i) existing public facilities that are:

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

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

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

164 11-36a-304 that are intended to provide services to service areas within the community at large.

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

166 **Section 2. Repealer.**

167 This bill repeals:

168 Section 11-36a-206, **Prohibition of school impact fees.**