

IMPACT FEE AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen E. Sandstrom

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends impact fee provisions relating to school districts and charter schools.

Highlighted Provisions:

This bill:

▶ requires that an impact fee enactment allow, in certain circumstances, a developer to receive a credit against or proportionate reimbursement of an impact fee if the developer is a school district or charter school;

▶ requires that a local political subdivision or private entity imposing an impact fee on a school district or charter school include a provision in the impact fee enactment that requires credit against the impact fee for a facility that is not for the exclusive use of the school district or charter school, regardless of whether the facility is identified as a system improvement in a capital facilities plan;

▶ prohibits a local political subdivision from imposing an impact fee on a school district or charter school for:

• a storm water drainage system or a storm water collection system that is enclosed on school property;

• with certain exceptions, roadway facilities; or

• development activity for construction of a replacement school if the replacement school is built for a student capacity that is less than or equal to a 10% increase of the student capacity of the old school; and



28 ▶ makes technical corrections.

29 **Monies Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **11-36-202**, as last amended by Laws of Utah 2009, Chapters 181, 286, and 323



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

38 Section 1. Section **11-36-202** is amended to read:

39 **11-36-202. Impact fees -- Enactment -- Required and allowed provisions --**

40 **Limitations -- Effective date.**

41 (1) (a) Each local political subdivision and private entity wishing to impose impact fees
42 shall pass an impact fee enactment.

43 (b) The impact fee imposed by that enactment may not exceed the highest fee justified
44 by the impact fee analysis performed pursuant to Section 11-36-201.

45 (c) In calculating the impact fee, a local political subdivision or private entity may
46 include:

47 (i) the construction contract price;

48 (ii) the cost of acquiring land, improvements, materials, and fixtures;

49 (iii) the cost for planning, surveying, and engineering fees for services provided for and
50 directly related to the construction of the system improvements; and

51 (iv) debt service charges, if the political subdivision might use impact fees as a revenue
52 stream to pay the principal and interest on bonds, notes, or other obligations issued to finance
53 the costs of the system improvements.

54 (d) In calculating an impact fee, a local political subdivision may not include an
55 expense for overhead unless the expense is calculated pursuant to a methodology that is
56 consistent with:

57 (i) generally accepted cost accounting practices; and

58 (ii) the methodological standards set forth by the federal Office of Management and

59 Budget for federal grant reimbursement.

60 (e) In calculating an impact fee, each local political subdivision shall base amounts
61 calculated under Subsection (1)(c) on realistic estimates, and the assumptions underlying those
62 estimates shall be disclosed in the impact fee analysis.

63 (f) Each local political subdivision and private entity that intends to enact an impact fee
64 enactment shall:

65 (i) at least 10 days before the date of the public hearing:

66 (A) make a copy of the impact fee enactment available to the public; and

67 (B) mail a written copy of the impact fee enactment to:

68 (I) the registered agent of the Utah Home Builders Association;

69 (II) the registered agent of the Utah Association of Realtors; and

70 (III) the registered agent of the Utah Chapter of the Associated General Contractors of
71 America; and

72 (ii) (A) for a municipality, comply with the notice and hearing requirements of, and,
73 except as provided in Subsection 11-36-401(4)(f), receive the protections of Sections
74 10-9a-205 and 10-9a-801;

75 (B) for a county, comply with the notice and hearing requirements of, and, except as
76 provided in Subsection 11-36-401(4)(f), receive the protections of Sections 17-27a-205 and
77 17-27a-801; and

78 (C) for a local district or special service district, comply with the notice and hearing
79 requirements of, and receive the protections of, Section 17B-1-111.

80 (g) Nothing contained in Subsection (1)(f) may be construed to require involvement by
81 a planning commission in the impact fee enactment process.

82 (2) The local political subdivision or private entity shall ensure that the impact fee
83 enactment:

84 (a) contains:

85 (i) a provision establishing one or more service areas within which the local political
86 subdivision or private entity calculates and imposes impact fees for various land use categories;

87 (ii) (A) a schedule of impact fees for each type of development activity that specifies
88 the amount of the impact fee to be imposed for each type of system improvement; or

89 (B) the formula that the local political subdivision or private entity, as the case may be,

90 will use to calculate each impact fee;

91 (iii) a provision authorizing the local political subdivision or private entity, as the case
92 may be, to adjust the standard impact fee at the time the fee is charged to:

93 (A) respond to:

94 (I) unusual circumstances in specific cases; or

95 (II) a request for a prompt and individualized impact fee review for the development
96 activity of the state or a school district or charter school; and

97 (B) ensure that the impact fees are imposed fairly; and

98 (iv) a provision governing calculation of the amount of the impact fee to be imposed on
99 a particular development that permits adjustment of the amount of the fee based upon studies
100 and data submitted by the developer; and

101 (b) allows a developer, if the developer is a school district or charter school, to receive
102 a credit against or proportionate reimbursement of an impact fee if the developer:

103 (i) dedicates land for a system improvement;

104 (ii) builds and dedicates some or all of a system improvement; or

105 (iii) dedicates a public facility that the local political subdivision or private entity and
106 the developer agree will reduce the need for a system improvement.

107 (3) (a) A local political subdivision or private entity may include a provision in an
108 impact fee enactment that:

109 (i) provides an impact fee exemption for:

110 (A) development activity attributable to:

111 (I) low income housing;

112 (II) the state;

113 (III) a school district; or

114 (IV) a charter school; or

115 (B) other development activity with a broad public purpose; and

116 (ii) establishes one or more sources of funds other than impact fees to pay for that
117 development activity.

118 (b) An impact fee enactment that provides an impact fee exemption for development
119 activity attributable to a school district or charter school shall allow either a school district or a
120 charter school to qualify for the exemption on the same basis.

121 (4) A local political subdivision or private entity shall include a provision in an impact
 122 fee enactment that requires a credit against impact fees for any dedication of land for,
 123 improvement to, or new construction of [~~any system improvements provided by the developer~~
 124 ~~if the facilities~~] a facility if:

125 (a) the developer is a school district or charter school; and

126 (b) the facility:

127 [~~(a) are~~] (i) is a system [improvements; or] improvement;

128 [~~(b) (i) are~~] (ii) (A) is dedicated to the public; and

129 [~~(ii) offset~~] (B) offsets the need for an identified system improvement[-]; or

130 (iii) is not for the exclusive use of the school district or charter school, regardless of

131 whether the facility is identified as a system improvement in a capital facilities plan.

132 (5) A local political subdivision may not impose an impact fee to:

133 (a) cure deficiencies in a public facility serving existing development; or

134 (b) raise the established level of service of a public facility serving existing

135 development.

136 (6) Notwithstanding the requirements and prohibitions of this chapter, a local political
 137 subdivision may impose and assess an impact fee for environmental mitigation when:

138 (a) the local political subdivision has formally agreed to fund a Habitat Conservation
 139 Plan to resolve conflicts with the Endangered Species Act of 1973, 16 U.S.C. Sec 1531, et seq.
 140 or other state or federal environmental law or regulation;

141 (b) the impact fee bears a reasonable relationship to the environmental mitigation
 142 required by the Habitat Conservation Plan; and

143 (c) the legislative body of the local political subdivision adopts an ordinance or
 144 resolution:

145 (i) declaring that an impact fee is required to finance the Habitat Conservation Plan;

146 (ii) establishing periodic sunset dates for the impact fee; and

147 (iii) requiring the legislative body to:

148 (A) review the impact fee on those sunset dates;

149 (B) determine whether or not the impact fee is still required to finance the Habitat
 150 Conservation Plan; and

151 (C) affirmatively reauthorize the impact fee if the legislative body finds that the impact

152 fee must remain in effect.

153 (7) (a) Notwithstanding any other provision of this chapter:

154 (i) an impact fee to pay for a public safety facility that is a fire suppression vehicle may
155 not be imposed on residential components of development;

156 (ii) an impact fee may not be imposed on a school district or charter school for:

157 (A) a park, a recreation facility, open space, ~~or trail;~~ a trail, or a public facility
158 designed for a storm water drainage system or a storm water collection system that is enclosed
159 on school property; or

160 (B) roadway facilities for a school or charter school, unless:

161 (I) in an incorporated area, 60% or more of the students attending the school live
162 outside of the municipality charging the roadway facilities impact fee; or

163 (II) in an unincorporated area, 60% or more of the students attending the school live
164 five miles or more away from the school;

165 (iii) an impact fee may not be imposed on development activity that consists of the
166 construction of a school, whether by a school district or a charter school, if:

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

169 (B) the new school ~~[creates no greater demand or need for public facilities than]~~ is built
170 for a student capacity that is less than or equal to a 10% increase of the student capacity of the
171 school being replaced; and

172 (C) the new school and the school being replaced are both within:

173 (I) the boundary of the local political subdivision; or

174 (II) the jurisdiction of the private entity;

175 (iv) an impact fee may not be imposed on a school district or charter school unless:

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

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

181 (v) an impact fee for a road facility may be imposed on the state only if and to the
182 extent that:

- 183 (A) the state's development causes an impact on the road facility; and
184 (B) the portion of the road facility related to an impact fee is not funded by the state or
185 by the federal government; and
186 (vi) to the extent that the impact fee includes a component for a law enforcement
187 facility, the impact fee may not be imposed on development activity for:
188 (A) the Utah National Guard;
189 (B) the Utah Highway Patrol; or
190 (C) a state institution of higher education that has its own police force.
191 (b) If the imposition of an impact fee on a new school is not prohibited under
192 Subsection (7)(a)(iii) [~~because the new school creates a greater demand or need for public~~
193 ~~facilities than the school being replaced~~], the impact fee may be based only on the demand or
194 need that the increased student population in the new school creates for public facilities that
195 exceeds the demand or need that the school being replaced creates for those public facilities.
196 (8) Notwithstanding any other provision of this chapter, a local political subdivision
197 may impose and collect impact fees on behalf of a school district if authorized by Section
198 53A-20-100.5.
199 (9) An impact fee enactment may not take effect until 90 days after it is enacted.

Legislative Review Note
as of 11-24-09 10:53 AM

Office of Legislative Research and General Counsel

H.B. 205 - Impact Fee Amendments

Fiscal Note

2010 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Credits allowed in the bill for school districts and charter schools may result in some savings to them depending upon the projects undertaken by local districts and charters. However, these savings will likely be passed on as lost revenue to cities and counties who will be required to waive impact fees for local education authorities. Those savings/lost revenues are estimated at approximately \$250,000 annually.
