

**IMPACT FEES REVISIONS**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Paul Ray**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies provisions of the Impact Fees Act.

**Highlighted Provisions:**

This bill:

- ▶ limits when a local political subdivision may require payment of an impact fee imposed on a residential project; and
- ▶ addresses the timing for when a local political subdivision may adopt an impact fee facilities plan.

**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 2014, Chapter 363

**11-36a-301**, as last amended by Laws of Utah 2013, Chapter 200

ENACTS:

**11-36a-206**, Utah Code Annotated 1953

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



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

29 **11-36a-102. Definitions.**

30 As used in this chapter:

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

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

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

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

42 (2) "Charter school" includes:

43 (a) an operating charter school;

44 (b) an applicant for a charter school whose application has been approved by a charter  
45 school authorizer as provided in Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act;  
46 and

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

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

52 (4) "Development approval" means:

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

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

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

- 59 (i) to reserve or provide:
- 60 (A) a water right;
- 61 (B) a system capacity; or
- 62 (C) a distribution facility; or
- 63 (ii) to deliver for a development activity:
- 64 (A) culinary water; or
- 65 (B) irrigation water; or
- 66 (d) a written authorization from a sanitary sewer authority, as defined in Section
- 67 [10-9a-103](#):
- 68 (i) to reserve or provide:
- 69 (A) sewer collection capacity; or
- 70 (B) treatment capacity; or
- 71 (ii) to provide sewer service for a development activity.
- 72 (5) "Enactment" means:
- 73 (a) a municipal ordinance, for a municipality;
- 74 (b) a county ordinance, for a county; and
- 75 (c) a governing board resolution, for a local district, special service district, or private
- 76 entity.
- 77 (6) "Encumber" means:
- 78 (a) a pledge to retire a debt; or
- 79 (b) an allocation to a current purchase order or contract.
- 80 (7) "Hookup fee" means a fee for the installation and inspection of any pipe, line,
- 81 meter, or appurtenance to connect to a gas, water, sewer, storm water, power, or other utility
- 82 system of a municipality, county, local district, special service district, or private entity.
- 83 (8) (a) "Impact fee" means a payment of money imposed upon new development
- 84 activity as a condition of development approval to mitigate the impact of the new development
- 85 on public infrastructure.
- 86 (b) "Impact fee" does not mean a tax, a special assessment, a building permit fee, a
- 87 hookup fee, a fee for project improvements, or other reasonable permit or application fee.
- 88 (9) "Impact fee analysis" means the written analysis of each impact fee required by
- 89 Section [11-36a-303](#).

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

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

93 (12) (a) "Local political subdivision" means a county, a municipality, a local district  
94 under Title 17B, Limited Purpose Local Government Entities - Local Districts, or a special  
95 service district under Title 17D, Chapter 1, Special Service District Act.

96 (b) "Local political subdivision" does not mean a school district, whose impact fee  
97 activity is governed by Section [53A-20-100.5](#).

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

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

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

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

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

107 (14) (a) "Project improvements" means site improvements and facilities that are:

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

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

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

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

114 (15) "Proportionate share" means the cost of public facility improvements that are  
115 roughly proportionate and reasonably related to the service demands and needs of any  
116 development activity.

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

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

- 121 (b) wastewater collection and treatment facilities;
- 122 (c) storm water, drainage, and flood control facilities;
- 123 (d) municipal power facilities;
- 124 (e) roadway facilities;
- 125 (f) parks, recreation facilities, open space, and trails;
- 126 (g) public safety facilities; or
- 127 (h) environmental mitigation as provided in Section 11-36a-205.

128 (17) (a) "Public safety facility" means:

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

130 or

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

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

134 (18) "Residential project" means development activity on a project that consists  
135 primarily of:

136 (a) one or more single-family residences; or

137 (b) one or more multi-family residences.

138 [~~18~~] (19) (a) "Roadway facilities" means a street or road that has been designated on  
139 an officially adopted subdivision plat, roadway plan, or general plan of a political subdivision,  
140 together with all necessary appurtenances.

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

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

144 (ii) are not funded by the state or federal government.

145 (c) "Roadway facilities" does not mean federal or state roadways.

146 [~~19~~] (20) (a) "Service area" means a geographic area designated by an entity that  
147 imposes an impact fee on the basis of sound planning or engineering principles in which a  
148 public facility, or a defined set of public facilities, provides service within the area.

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

151 [~~20~~] (21) "Specified public agency" means:

- 152 (a) the state;
- 153 (b) a school district; or
- 154 (c) a charter school.
- 155 [~~(21)~~] (22) (a) "System improvements" means:
- 156 (i) existing public facilities that are:
- 157 (A) identified in the impact fee analysis under Section 11-36a-304; and
- 158 (B) designed to provide services to service areas within the community at large; and
- 159 (ii) future public facilities identified in the impact fee analysis under Section
- 160 11-36a-304 that are intended to provide services to service areas within the community at large.
- 161 (b) "System improvements" does not mean project improvements.

Section 2. Section 11-36a-206 is enacted to read:

**11-36a-206. Time of collection for residential development.**

A local political subdivision or private entity may not require payment of an impact fee imposed on a residential project until a building permit is issued for the development activity for which the impact fee is imposed.

Section 3. Section 11-36a-301 is amended to read:

**11-36a-301. Impact fee facilities plan.**

- 169 (1) Before imposing an impact fee, each local political subdivision or private entity
- 170 shall, except as provided in Subsection (3), prepare an impact fee facilities plan to determine
- 171 the public facilities required to serve development resulting from new development activity.
- 172 (2) A municipality or county need not prepare a separate impact fee facilities plan if the
- 173 general plan required by Section 10-9a-401 or 17-27a-401, respectively, contains the elements
- 174 required by Section 11-36a-302.
- 175 (3) A local political subdivision or a private entity with a population, or serving a
- 176 population, of less than 5,000 as of the last federal census that charges impact fees of less than
- 177 \$250,000 annually need not comply with the impact fee facilities plan requirements of this part,
- 178 but shall ensure that:
- 179 (a) the impact fees that the local political subdivision or private entity imposes are
- 180 based upon a reasonable plan that otherwise complies with the common law and this chapter;
- 181 and
- 182 (b) each applicable notice required by this chapter is given.

183           (4) A local political subdivision may not adopt an impact fee facilities plan sooner than  
184 90 days after the day on which the local political subdivision holds the public hearing described  
185 in Subsection [11-36a-502](#)(1)(d).

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**Legislative Review Note**  
**Office of Legislative Research and General Counsel**