

**IMPACT FEES AMENDMENTS**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Logan Wilde**

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

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**LONG TITLE**

**General Description:**

This bill allows a county of the sixth class or a special service district to impose an impact fee to pay for certain fire suppression vehicles.

**Highlighted Provisions:**

This bill:

- ▶ allows a county of the sixth class or a special service district to impose an impact fee to pay for certain fire suppression vehicles; and
- ▶ makes technical and conforming 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 2018, Chapters 196 and 415

**11-36a-202**, as last amended by Laws of Utah 2018, Chapter 415

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

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

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



28 As used in this chapter:

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

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

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

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

40 (2) "Charter school" includes:

41 (a) an operating charter school;

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

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

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

50 (4) "Development approval" means:

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

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

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

57 (i) to reserve or provide:

58 (A) a water right;

- 59 (B) a system capacity; or
- 60 (C) a distribution facility; or
- 61 (ii) to deliver for a development activity:
- 62 (A) culinary water; or
- 63 (B) irrigation water; or
- 64 (d) a written authorization from a sanitary sewer authority, as defined in Section
- 65 [10-9a-103](#):
- 66 (i) to reserve or provide:
- 67 (A) sewer collection capacity; or
- 68 (B) treatment capacity; or
- 69 (ii) to provide sewer service for a development activity.
- 70 (5) "Enactment" means:
- 71 (a) a municipal ordinance, for a municipality;
- 72 (b) a county ordinance, for a county; and
- 73 (c) a governing board resolution, for a local district, special service district, or private
- 74 entity.
- 75 (6) "Encumber" means:
- 76 (a) a pledge to retire a debt; or
- 77 (b) an allocation to a current purchase order or contract.
- 78 (7) "Hookup fee" means a fee for the installation and inspection of any pipe, line,
- 79 meter, or appurtenance to connect to a gas, water, sewer, storm water, power, or other utility
- 80 system of a municipality, county, local district, special service district, or private entity.
- 81 (8) (a) "Impact fee" means a payment of money imposed upon new development
- 82 activity as a condition of development approval to mitigate the impact of the new development
- 83 on public infrastructure.
- 84 (b) "Impact fee" does not mean a tax, a special assessment, a building permit fee, a
- 85 hookup fee, a fee for project improvements, or other reasonable permit or application fee.
- 86 (9) "Impact fee analysis" means the written analysis of each impact fee required by
- 87 Section [11-36a-303](#).
- 88 (10) "Impact fee facilities plan" means the plan required by Section [11-36a-301](#).
- 89 (11) "Level of service" means the defined performance standard or unit of demand for

90 each capital component of a public facility within a service area.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

119 (b) wastewater collection and treatment facilities;

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

- 121 (d) municipal power facilities;
- 122 (e) roadway facilities;
- 123 (f) parks, recreation facilities, open space, and trails;
- 124 (g) public safety facilities;
- 125 (h) environmental mitigation as provided in Section [11-36a-205](#); or
- 126 (i) municipal natural gas facilities.

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

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

129 or

130 (ii) except for a fire suppression vehicle described in Subsection [11-36a-202\(2\)\(b\)](#), a  
131 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) (a) "Roadway facilities" means a street or road that has been designated on an  
135 officially adopted subdivision plat, roadway plan, or general plan of a political subdivision,  
136 together with all necessary appurtenances.

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

- 139 (i) are necessitated by the new development; and
- 140 (ii) are not funded by the state or federal government.

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

142 (19) (a) "Service area" means a geographic area designated by an entity that imposes an  
143 impact fee on the basis of sound planning or engineering principles in which a public facility,  
144 or a defined set of public facilities, provides service within the area.

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

147 (20) "Specified public agency" means:

- 148 (a) the state;
- 149 (b) a school district; or
- 150 (c) a charter school.

151 (21) (a) "System improvements" means:

- 152 (i) existing public facilities that are:
- 153 (A) identified in the impact fee analysis under Section 11-36a-304; and
- 154 (B) designed to provide services to service areas within the community at large; and
- 155 (ii) future public facilities identified in the impact fee analysis under Section
- 156 11-36a-304 that are intended to provide services to service areas within the community at large.
- 157 (b) "System improvements" does not mean project improvements.

158 Section 2. Section 11-36a-202 is amended to read:

159 **11-36a-202. Prohibitions on impact fees.**

- 160 (1) A local political subdivision or private entity may not:
- 161 (a) impose an impact fee to:
- 162 (i) cure deficiencies in a public facility serving existing development;
- 163 (ii) raise the established level of service of a public facility serving existing
- 164 development;
- 165 (iii) recoup more than the local political subdivision's or private entity's costs actually
- 166 incurred for excess capacity in an existing system improvement; or
- 167 (iv) include an expense for overhead, unless the expense is calculated pursuant to a
- 168 methodology that is consistent with:
- 169 (A) generally accepted cost accounting practices; and
- 170 (B) the methodological standards set forth by the federal Office of Management and
- 171 Budget for federal grant reimbursement;
- 172 (b) delay the construction of a school or charter school because of a dispute with the
- 173 school or charter school over impact fees; or
- 174 (c) impose or charge any other fees as a condition of development approval unless
- 175 those fees are a reasonable charge for the service provided.
- 176 (2) (a) Notwithstanding any other provision of this chapter, a political subdivision or
- 177 private entity may not impose an impact fee:
- 178 (i) except as provided in Subsection (2)(b), on residential components of development
- 179 to pay for a public safety facility that is a fire suppression vehicle;
- 180 (ii) on a school district or charter school for a park, recreation facility, open space, or
- 181 trail;
- 182 (iii) on a school district or charter school unless:

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

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

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

190 (A) the Utah National Guard;

191 (B) the Utah Highway Patrol; or

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

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

194 (b) A county of the sixth class or a special service district may impose an impact fee on  
 195 residential components of development to pay for a fire suppression vehicle costing in excess  
 196 of \$100,000.

197 ~~[(b)(i)]~~ (3) (a) Notwithstanding any other provision of this chapter, a political  
 198 subdivision or private entity may not impose an impact fee on development activity that  
 199 consists of the construction of a school, whether by a school district or a charter school, if:

200 ~~[(A)]~~ (i) the school is intended to replace another school, whether on the same or a  
 201 different parcel;

202 ~~[(B)]~~ (ii) the new school creates no greater demand or need for public facilities than the  
 203 school or school facilities, including any portable or modular classrooms that are on the site of  
 204 the replaced school at the time that the new school is proposed; and

205 ~~[(C)]~~ (iii) the new school and the school being replaced are both within the boundary of  
 206 the local political subdivision or the jurisdiction of the private entity.

207 ~~[(i)]~~ (b) If the imposition of an impact fee on a new school is not prohibited under  
 208 Subsection ~~[(2)(b)(i)]~~ (3)(a) because the new school creates a greater demand or need for public  
 209 facilities than the school being replaced, the impact fee shall be based only on the demand or  
 210 need that the new school creates for public facilities that exceeds the demand or need that the  
 211 school being replaced creates for those public facilities.

212 ~~[(e)]~~ (4) Notwithstanding any other provision of this chapter, a political subdivision or  
 213 private entity may impose an impact fee for a road facility on the state only if and to the extent

214 that:

215           ~~[(i)]~~ (a) the state's development causes an impact on the road facility; and

216           ~~[(ii)]~~ (b) the portion of the road facility related to an impact fee is not funded by the  
217 state or by the federal government.

218           ~~[(3)]~~ (5) Notwithstanding any other provision of this chapter, a local political  
219 subdivision may impose and collect impact fees on behalf of a school district if authorized by  
220 Section [11-36a-206](#).