

HB0315S01 compared with HB0315

~~{deleted text}~~ shows text that was in HB0315 but was deleted in HB0315S01.

inserted text shows text that was not in HB0315 but was inserted into HB0315S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

~~{BUILDING PERMIT}~~ Representative Mike Schultz proposes the following substitute bill:

LOCAL PERMITTING AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mike Schultz

Senate Sponsor: _____

LONG TITLE

General Description:

This bill ~~{establishes requirements and conditions for a land use authority to authorize an applicant to post an improvement completion assurance}~~ amends provisions related to a county's or municipality's issuance of a building permit or a certificate of occupancy.

Highlighted Provisions:

This bill:

- ▶ ~~{establishes requirements and conditions for a municipal or county land use authority to authorize an applicant to post an improvement completion assurance}~~ prohibits a municipality or a county from withholding the issuance of a certificate of occupancy for an incomplete nonessential improvement;
- ▶ prohibits a municipality or a county from denying a building permit for an

HB0315S01 compared with HB0315

incomplete nonessential improvement; and

▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

~~{ This bill provides a special effective date. }~~ None

Utah Code Sections Affected:

AMENDS:

10-9a-509, as last amended by Laws of Utah 2014, Chapter 136

~~{10-9a-604.5}~~10-9a-802, as ~~{repealed}~~renumbered and ~~{reenacted}~~amended by Laws of Utah ~~{2013, Chapter 309}~~

~~———— 17-27a-604.5, as repealed and reenacted }~~2005, Chapter 254

17-27a-508, as last amended by Laws of Utah 2014, Chapter 136

17-27a-802, as renumbered and amended by Laws of Utah ~~{2013}~~2005, Chapter ~~{309}~~254

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

Section 1. Section 10-9a-509 is amended to read:

10-9a-509. Applicant's entitlement to land use application approval -- Exceptions -- Application relating to land in a high priority transportation corridor -- Municipality's requirements and limitations -- Vesting upon submission of development plan and schedule.

(1) (a) (i) An applicant who has filed a complete land use application, including the payment of all application fees, is entitled to substantive land use review of the land use application under the land use laws in effect on the date that the application is complete and as further provided in this section. ~~{ }~~

(ii) Except as provided in Subsection (1)(b), an applicant is entitled to approval of a land use application if the application conforms to the requirements of the municipality's land use maps, zoning map, a municipal specification for public improvements applicable to a subdivision or development, and an applicable land use ordinance in effect when a complete application is submitted and all application fees have been paid, unless:

HB0315S01 compared with HB0315

(A) the land use authority, on the record, finds that a compelling, countervailing public interest would be jeopardized by approving the application; or

(B) in the manner provided by local ordinance and before the application is submitted, the municipality has formally initiated proceedings to amend its ordinances in a manner that would prohibit approval of the application as submitted.

(b) (i) Except as provided in Subsection (1)(c), an applicant is not entitled to approval of a land use application until the requirements of this Subsection (1)(b) have been met if the land use application relates to land located within the boundaries of a high priority transportation corridor designated in accordance with Section 72-5-403.

(ii) (A) A municipality shall notify the executive director of the Department of Transportation of any land use applications that relate to land located within the boundaries of a high priority transportation corridor.

(B) The notification under Subsection (1)(b)(ii)(A) shall be in writing and mailed by certified or registered mail to the executive director of the Department of Transportation.

(iii) Except as provided in Subsection (1)(c), a municipality may not approve a land use application that relates to land located within the boundaries of a high priority transportation corridor until:

(A) 30 days after the notification under Subsection (1)(b)(ii)(A) is received by the Department of Transportation if the land use application is for a building permit; or

(B) 45 days after the notification under Subsection (1)(b)(ii)(A) is received by the Department of Transportation if the land use application is for any land use other than a building permit.

(iv) (A) If an application is an application for a subdivision approval, including any land, subject to Subsection (1)(b)(iv)(C), located within 100 feet of the center line of a canal, the land use authority shall:

(I) within 30 days after the day on which the application is filed, notify the canal company or canal operator responsible for the canal, if the canal company or canal operator has provided information under Section 10-9a-211; and

(II) wait at least 10 days after the day on which the land use authority notifies a canal company or canal operator under Subsection (1)(b)(iv)(A)(I) to approve or reject the subdivision application described in Subsection (1)(b)(iv)(A).

HB0315S01 compared with HB0315

(B) The notification under Subsection (1)(b)(iv)(A) shall be in writing and mailed by certified or registered mail to the canal company or canal operator contact described in Section 10-9a-211.

(C) The location of land described in Subsection (1)(b)(iv)(A) shall be:

(I) provided by a canal company or canal operator to the land use authority; and

(II) (Aa) determined by use of mapping-grade global positioning satellite units; or

(Bb) digitized from the most recent aerial photo available to the canal company or canal operator.

(c) (i) A land use application is exempt from the requirements of Subsections (1)(b)(i) and (ii) if:

(A) the land use application relates to land that was the subject of a previous land use application; and

(B) the previous land use application described under Subsection (1)(c)(i)(A) complied with the requirements of Subsections (1)(b)(i) and (ii).

(ii) A municipality may approve a land use application without making the required notifications under Subsection (1)(b)(ii)(A) if:

(A) the land use application relates to land that was the subject of a previous land use application; and

(B) the previous land use application described under Subsection (1)(c)(ii)(A) complied with the requirements of Subsections (1)(b)(i) and (ii).

(d) After a municipality has complied with the requirements of Subsection (1)(b) for a land use application, the municipality may not withhold approval of the land use application for which the applicant is otherwise entitled under Subsection (1)(a).

(e) The municipality shall process an application without regard to proceedings initiated to amend the municipality's ordinances as provided in Subsection (1)(a)(ii)(B) if:

(i) 180 days have passed since the proceedings were initiated; and

(ii) the proceedings have not resulted in an enactment that prohibits approval of the application as submitted.

(f) An application for a land use approval is considered submitted and complete when the application is provided in a form that complies with the requirements of applicable ordinances and all applicable fees have been paid.

HB0315S01 compared with HB0315

(g) The continuing validity of an approval of a land use application is conditioned upon the applicant proceeding after approval to implement the approval with reasonable diligence.

(h) A municipality may not impose on an applicant who has submitted a complete application for preliminary subdivision approval a requirement that is not expressed in:

(i) this chapter;

(ii) a municipal ordinance; or

(iii) a municipal specification for public improvements applicable to a subdivision or development that is in effect on the date that the applicant submits an application.

(i) A municipality may not impose on a holder of an issued land use permit or a final, unexpired subdivision plat a requirement that is not expressed:

(i) in a land use permit;

(ii) on the subdivision plat;

(iii) in a document on which the land use permit or subdivision plat is based;

(iv) in the written record evidencing approval of the land use permit or subdivision plat;

(v) in this chapter; or

(vi) in a municipal ordinance.

(j) A municipality may not withhold:

(i) issuance of a certificate of occupancy or acceptance of subdivision improvements because of an applicant's failure to comply with a requirement that is not expressed:

[(i)] (A) in the building permit or subdivision plat, documents on which the building permit or subdivision plat is based, or the written record evidencing approval of the land use permit or subdivision plat; or

[(ii)] (B) in this chapter or the municipality's ordinances [-]; or

(ii) issuance of a certificate of occupancy because the applicant has not completed an improvement:

(A) that is a landscaping, fencing, or other improvement that is not essential to meet basic safety standards; and

(B) for which the municipality has a financial assurance in the form of a bond, letter of credit, cash, or other security, to guarantee proper completion of the improvement.

(2) A municipality is bound by the terms and standards of applicable land use

HB0315S01 compared with HB0315

ordinances and shall comply with mandatory provisions of those ordinances.

(3) A municipality may not, as a condition of land use application approval, require a person filing a land use application to obtain documentation regarding a school district's willingness, capacity, or ability to serve the development proposed in the land use application.

(4) Upon a specified public agency's submission of a development plan and schedule as required in Subsection 10-9a-305(8) that complies with the requirements of that subsection, the specified public agency vests in the municipality's applicable land use maps, zoning map, hookup fees, impact fees, other applicable development fees, and land use ordinances in effect on the date of submission.

Section ~~{1}~~2. Section ~~{10-9a-604.5}~~10-9a-802 is amended to read:

~~{~~**10-9a-604.5. Subdivision plat recording or development activity before required infrastructure is completed -- Infrastructure completion assurance -- Infrastructure warranty.**

~~_____~~(1) A land use authority shall establish objective inspection standards for acceptance of a landscaping or infrastructure improvement required by the land use authority as a condition of:

~~_____~~(a) subdivision; or

~~_____~~(b) development activity.

~~_____~~(2) (a) [A] Except as provided in Subsection (2)(b), a land use authority shall require an applicant to complete a required landscaping or infrastructure improvement prior to any plat recordation or development activity.

~~_____~~(b) [Subsection (2)(a) does not apply if] A land use authority shall:

~~_____~~(i) upon the applicant's request, [the land use authority has authorized] authorize the applicant to post an improvement completion assurance in a manner that is consistent with local ordinance and Subsection (2)(c); and

~~_____~~(ii) [the land use authority has established] establish a system for the partial release of the improvement completion assurance as portions of required improvements are completed and accepted.

~~_____~~(c) As a condition for authorizing an applicant to post an improvement completion assurance under Subsection (2)(b), a land use authority:

~~_____~~(i) may require the applicant to make improvements to meet basic safety standards; and

HB0315S01 compared with HB0315

~~(ii) may not require the applicant to complete all landscaping or infrastructure improvements:~~

~~(3) At any time up to the land use authority's acceptance of a landscaping or infrastructure improvement, and for the duration of each improvement warranty period, the land use authority may require the developer to:~~

~~(a) execute an improvement warranty for the improvement warranty period; and~~

~~(b) post a cash deposit, surety bond, letter of credit, or other similar security, as required by the municipality, in the amount of up to 10% of the lesser of the:~~

~~(i) engineer's original estimated cost of completion; or~~

~~(ii) applicant's reasonable proven cost of completion.~~

‡ **10-9a-802. Enforcement.**

(1) (a) A municipality or any adversely affected owner of real estate within the municipality in which violations of this chapter or ordinances enacted under the authority of this chapter occur or are about to occur may, in addition to other remedies provided by law, institute:

(i) injunctions, mandamus, abatement, or any other appropriate actions; or

(ii) proceedings to prevent, enjoin, abate, or remove the unlawful building, use, or act.

(b) A municipality need only establish the violation to obtain the injunction.

(2) (a) ~~[The] A~~ municipality may enforce the municipality's ordinance by withholding a building ~~[permits] permit~~.

(b) It is unlawful to erect, construct, reconstruct, alter, or change the use of any building or other structure within a municipality without approval of a building permit.

(c) ~~[The] A~~ municipality may not issue a building permit unless the plans of and for the proposed erection, construction, reconstruction, alteration, or use fully conform to all regulations then in effect.

(d) A municipality may not deny an applicant a building permit because the applicant has not completed a utility, infrastructure, landscaping, or other improvement:

(i) that is not essential to meet basic safety standards for fire protection or passable roads; and

(ii) for which the municipality has an improvement completion assurance.

Section 3. Section 17-27a-508 is amended to read:

HB0315S01 compared with HB0315

17-27a-508. Applicant's entitlement to land use application approval -- Exceptions -- Application relating to land in a high priority transportation corridor -- County's requirements and limitations -- Vesting upon submission of development plan and schedule.

(1) (a) (i) An applicant who has filed a complete land use application, including the payment of all application fees, is entitled to substantive land use review of the land use application under the land use laws in effect on the date that the application is complete and as further provided in this section.

(ii) Except as provided in Subsection (1)(b), an applicant is entitled to approval of a land use application if the application conforms to the requirements of the county's land use maps, zoning map, and applicable land use ordinance in effect when a complete application is submitted and all application fees have been paid, unless:

(A) the land use authority, on the record, finds that a compelling, countervailing public interest would be jeopardized by approving the application; or

(B) in the manner provided by local ordinance and before the application is submitted, the county has formally initiated proceedings to amend its ordinances in a manner that would prohibit approval of the application as submitted.

(b) (i) Except as provided in Subsection (1)(c), an applicant is not entitled to approval of a land use application until the requirements of this Subsection (1)(b)(i) and Subsection (1)(b)(ii) have been met if the land use application relates to land located within the boundaries of a high priority transportation corridor designated in accordance with Section 72-5-403.

(ii) (A) A county shall notify the executive director of the Department of Transportation of any land use applications that relate to land located within the boundaries of a high priority transportation corridor.

(B) The notification under Subsection (1)(b)(ii)(A) shall be in writing and mailed by certified or registered mail to the executive director of the Department of Transportation.

(iii) Except as provided in Subsection (1)(c), a county may not approve a land use application that relates to land located within the boundaries of a high priority transportation corridor until:

(A) 30 days after the notification under Subsection (1)(b)(ii)(A) is received by the Department of Transportation if the land use application is for a building permit; or

HB0315S01 compared with HB0315

(B) 45 days after the notification under Subsection (1)(b)(ii)(A) is received by the Department of Transportation if the land use application is for any land use other than a building permit.

(iv) (A) If an application is an application for a subdivision approval, including any land, subject to Subsection (1)(b)(iv)(C), located within 100 feet of the center line of a canal, the land use authority shall:

(I) within 30 days after the day on which the application is filed, notify the canal company or canal operator responsible for the canal, if the canal company or canal owner has provided information under Section 17-27a-211; and

(II) wait at least 10 days after the day on which the land use authority notifies a canal company or canal operator under Subsection (1)(b)(iv)(A)(I) to approve or reject the subdivision application described in Subsection (1)(b)(iv)(A).

(B) The notification under Subsection (1)(b)(iv)(A) shall be in writing and mailed by certified or registered mail to the canal company or canal operator contact described in Section 17-27a-211.

(C) The location of land described in Subsection (1)(b)(iv)(A) shall be:

(I) provided by a canal company or canal operator to the land use authority; and

(II) (Aa) determined by use of mapping-grade global positioning satellite units; or

(Bb) digitized from the most recent aerial photo available to the canal company or canal operator.

(c) (i) A land use application is exempt from the requirements of Subsection (1)(b)(i) if:

(A) the land use application relates to land that was the subject of a previous land use application; and

(B) the previous land use application described under Subsection (1)(c)(i)(A) complied with the requirements of Subsections (1)(b)(i) and (ii).

(ii) A county may approve a land use application without making the required notifications under Subsections (1)(b)(i) and (ii) if:

(A) the land use application relates to land that was the subject of a previous land use application; and

(B) the previous land use application described under Subsection (1)(c)(ii)(A)

HB0315S01 compared with HB0315

complied with the requirements of Subsections (1)(b)(i) and (ii).

(d) After a county has complied with the requirements of Subsection (1)(b) for a land use application, the county may not withhold approval of the land use application for which the applicant is otherwise entitled under Subsection (1)(a).

(e) The county shall process an application without regard to proceedings initiated to amend the county's ordinances as provided in Subsection (1)(a)(ii)(B) if:

(i) 180 days have passed since the proceedings were initiated; and

(ii) the proceedings have not resulted in an enactment that prohibits approval of the application as submitted.

(f) An application for a land use approval is considered submitted and complete when the application is provided in a form that complies with the requirements of applicable ordinances and all applicable fees have been paid.

(g) The continuing validity of an approval of a land use application is conditioned upon the applicant proceeding after approval to implement the approval with reasonable diligence.

(h) A county may not impose on an applicant who has submitted a complete application for preliminary subdivision approval a requirement that is not expressed:

(i) in this chapter;

(ii) in a county ordinance; or

(iii) in a county specification for public improvements applicable to a subdivision or development that is in effect on the date that the applicant submits an application.

(i) A county may not impose on a holder of an issued land use permit or a final, unexpired subdivision plat a requirement that is not expressed:

(i) in a land use permit;

(ii) on the subdivision plat;

(iii) in a document on which the land use permit or subdivision plat is based;

(iv) in the written record evidencing approval of the land use permit or subdivision plat;

(v) in this chapter; or

(vi) in a county ordinance.

(j) A county may not withhold:

(i) issuance of a certificate of occupancy or acceptance of subdivision improvements

HB0315S01 compared with HB0315

because of an applicant's failure to comply with a requirement that is not expressed:

~~[(i)] (A)~~ in the building permit or subdivision plat, documents on which the building permit or subdivision plat is based, or the written record evidencing approval of the building permit or subdivision plat; or

~~[(ii)] (B)~~ in this chapter or the county's ordinances~~[-]; or~~

(ii) issuance of a certificate of occupancy because the applicant has not completed an improvement:

(A) that is a landscaping, fencing, or other improvement that is not essential to meet basic safety standards; and

(B) for which the county has a financial assurance in the form of a bond, letter of credit, cash, or other security, to guarantee proper completion of the improvement.

(2) A county is bound by the terms and standards of applicable land use ordinances and shall comply with mandatory provisions of those ordinances.

(3) A county may not, as a condition of land use application approval, require a person filing a land use application to obtain documentation regarding a school district's willingness, capacity, or ability to serve the development proposed in the land use application.

(4) Upon a specified public agency's submission of a development plan and schedule as required in Subsection 17-27a-305(8) that complies with the requirements of that subsection, the specified public agency vests in the county's applicable land use maps, zoning map, hookup fees, impact fees, other applicable development fees, and land use ordinances in effect on the date of submission.

Section ~~{2}4~~. Section ~~{17-27a-604.5}~~17-27a-802 is amended to read:

~~{17-27a-604.5. Subdivision plat recording or development activity before required infrastructure is completed -- Infrastructure completion assurance -- Infrastructure warranty.~~

~~—— (1) A land use authority shall establish objective inspection standards for acceptance of a landscaping or infrastructure improvement required by the land use authority as a condition of:~~

~~—— (a) subdivision; or~~

~~—— (b) development activity.~~

~~—— (2) (a) [A] Except as provided in Subsection (2)(b), a land use authority shall require~~

HB0315S01 compared with HB0315

~~an applicant to complete a required landscaping or infrastructure improvement prior to any plat recordation or development activity:~~

~~—— (b) [Subsection (2)(a) does not apply if] A land use authority shall:~~

~~—— (i) upon the applicant's request, [the land use authority has authorized] authorize the applicant to post } **17-27a-802. Enforcement.**~~

(1) (a) A county or any adversely affected owner of real estate within the county in which violations of this chapter or ordinances enacted under the authority of this chapter occur or are about to occur may, in addition to other remedies provided by law, institute:

(i) injunctions, mandamus, abatement, or any other appropriate actions; or

(ii) proceedings to prevent, enjoin, abate, or remove the unlawful building, use, or act.

(b) A county need only establish the violation to obtain the injunction.

(2) (a) [The] A county may enforce the county's ordinance by withholding a building [permits] permit.

(b) It is unlawful to erect, construct, reconstruct, alter, or change the use of any building or other structure within a county without approval of a building permit.

(c) The county may not issue a building permit unless the plans of and for the proposed erection, construction, reconstruction, alteration, or use fully conform to all regulations then in effect.

(d) A county may not deny an applicant a building permit because the applicant has not completed a utility, infrastructure, landscaping, or other improvement:

(i) that is not essential to meet basic safety standards for fire protection or passable roads; and

(ii) for which the county has an improvement completion assurance { in a manner that is consistent with local ordinance and Subsection (2)(c); and

~~—— (ii) [the land use authority has established] establish a system for the partial release of the improvement completion assurance as portions of required improvements are completed and accepted:~~

~~—— (c) As a condition for authorizing an applicant to post an improvement completion assurance under Subsection (2)(b), a land use authority:~~

~~—— (i) may require the applicant to make improvements to meet basic safety standards; and~~

~~—— (ii) may not require the applicant to complete all landscaping or infrastructure~~

HB0315S01 compared with HB0315

~~improvements}.~~

~~{ (3) At any time up to the land use authority's acceptance of a landscaping or infrastructure improvement, and for the duration of each improvement warranty period, the land use authority may require the developer to:~~

~~— (a) execute an improvement warranty for the improvement warranty period; and~~

~~— (b) post a cash deposit, surety bond, letter of credit, or other similar security, as required by the county, in the amount of up to 10% of the lesser of the:~~

~~— (i) engineer's original estimated cost of completion; or~~

~~— (ii) applicant's reasonable proven cost of completion.~~

~~— Section 3. **Effective date.**~~

~~— This bill takes effect on January 1, 2016.~~

~~**Legislative Review Note**~~

~~— as of **2-10-15 5:14 PM**~~

~~— **Office of Legislative Research and General Counsel}**~~