

1                                   **CHARTER SCHOOL CONSTRUCTION**

2   **AMENDMENTS**

3   2005 GENERAL SESSION

4   STATE OF UTAH

5   **Sponsor: James A. Ferrin**

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7   **LONG TITLE**

8   **General Description:**

9           This bill modifies provisions relating to the construction of charter schools.

10 **Highlighted Provisions:**

11       This bill:

- 12           ▶ exempts charter schools from certain municipal land use regulations;
- 13           ▶ exempts charter schools from certain county land use regulations;
- 14           ▶ allows the termination of the nonconforming status of charter school property when
- 15 the property ceases to be used for charter school purposes;
- 16           ▶ requires charter schools to provide local governments of intent to purchase a school
- 17 site or construct a school building; and
- 18           ▶ makes technical corrections.

19 **Monies Appropriated in this Bill:**

20       None

21 **Other Special Clauses:**

22       None

23 **Utah Code Sections Affected:**

24 AMENDS:

25       **10-9-106**, as last amended by Chapter 149, Laws of Utah 1999

26       **10-9-408**, as last amended by Chapter 138, Laws of Utah 2004

27       **17-27-105**, as last amended by Chapter 149, Laws of Utah 1999



28           17-27-407, as last amended by Chapter 138, Laws of Utah 2004  
 29           53A-20-104, as last amended by Chapter 149, Laws of Utah 1999  
 30           53A-20-104.5, as enacted by Chapter 150, Laws of Utah 1999  
 31           53A-20-108, as last amended by Chapter 78, Laws of Utah 1990

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

34           Section 1. Section 10-9-106 is amended to read:

35           **10-9-106. Property owned by other government units -- Effect of land use and**  
 36 **development ordinances.**

37           (1) (a) Each county, municipality, school district, charter school, special district, and  
 38 political subdivision of Utah shall conform to the land use and development ordinances of any  
 39 municipality when installing, constructing, operating, or otherwise using any area, land, or  
 40 building situated within that municipality only in a manner or for a purpose that conforms to  
 41 that municipality's ordinances.

42           (b) In addition to any other remedies provided by law, when a municipality's land use  
 43 and development ordinances are being violated or about to be violated by another political  
 44 subdivision, that municipality may institute an injunction, mandamus, abatement, or other  
 45 appropriate action or proceeding to prevent, enjoin, abate, or remove the improper installation,  
 46 improvement, or use.

47           (2) A school district or charter school is subject to a municipality's land use regulations  
 48 under this chapter, except that a municipality may not:

49           (a) impose requirements for landscaping, fencing, aesthetic considerations,  
 50 construction methods or materials, building codes, building use for educational purposes, or the  
 51 placement or use of temporary classroom facilities on school property;

52           (b) require a school district or charter school to participate in the cost of any roadway  
 53 or sidewalk not reasonably necessary for the safety of school children and not located on or  
 54 contiguous to school property, unless the roadway or sidewalk is required to connect an  
 55 otherwise isolated school site to an existing roadway;

56           (c) require a district or charter school to pay fees not authorized by this section;

57           (d) provide for inspection of school construction or assess a fee or other charges for  
 58 inspection, unless the school district or charter school is unable to provide for inspection by an

59 inspector, other than the project architect or contractor, who is qualified under criteria  
60 established by the state superintendent;

61 (e) require a school district or charter school to pay any impact fee for an improvement  
62 project that is not reasonably related to the impact of the project upon the need that the  
63 improvement is to address; or

64 (f) impose regulations upon the location of a project except as necessary to avoid  
65 unreasonable risks to health or safety.

66 (3) Subject to Section 53A-20-108, a school district or charter school shall coordinate  
67 the siting of a new school with the municipality in which the school is to be located, to avoid or  
68 mitigate existing and potential traffic hazards to maximize school safety.

69 Section 2. Section **10-9-408** is amended to read:

70 **10-9-408. Nonconforming uses and structures.**

71 (1) (a) Except as provided in this section, a nonconforming use or structure may be  
72 continued.

73 (b) A nonconforming use may be extended through the same building, provided no  
74 structural alteration of the building is proposed or made for the purpose of the extension.

75 (c) For purposes of this Subsection (1), the addition of a solar energy device to a  
76 building is not a structural alteration.

77 (2) The legislative body may provide in any zoning ordinance or amendment for:

78 (a) the establishment, restoration, reconstruction, extension, alteration, expansion, or  
79 substitution of nonconforming uses upon the terms and conditions set forth in the zoning  
80 ordinance;

81 (b) the termination of all nonconforming uses, except billboards, by providing a  
82 formula establishing a reasonable time period during which the owner can recover or amortize  
83 the amount of his investment in the nonconforming use, if any; and

84 (c) the termination of a billboard that is a nonconforming use by acquiring the billboard  
85 and associated property rights through:

86 (i) gift;

87 (ii) purchase;

88 (iii) agreement;

89 (iv) exchange; or

90 (v) eminent domain.

91 (3) (a) A municipality is considered to have initiated the acquisition of a billboard  
92 structure by eminent domain under Subsection (2)(c)(v) if the municipality prevents a billboard  
93 owner from:

94 (i) rebuilding, maintaining, repairing, or restoring a billboard structure that is damaged  
95 by casualty, an act of God, or vandalism; or

96 (ii) except as provided in Subsection (3)(b), relocating or rebuilding a billboard  
97 structure, or taking other measures, to correct a mistake in the placement or erection of a  
98 billboard for which the municipality has issued a permit, if the proposed relocation, rebuilding,  
99 or other measure is consistent with the intent of that permit.

100 (b) A municipality's denial of a billboard owner's request to relocate or rebuild a  
101 billboard structure, or to take other measures, in order to correct a mistake in the placement or  
102 erection of a billboard does not constitute the initiation of acquisition by eminent domain under  
103 Subsection (3)(a) if the mistake in placement or erection of the billboard is determined by clear  
104 and convincing evidence to have resulted from an intentionally false or misleading statement:

105 (i) by the billboard applicant in the application; and

106 (ii) regarding the placement or erection of the billboard.

107 (4) Notwithstanding Subsections (2) and (3), a municipality may remove a billboard  
108 without providing compensation if:

109 (a) the municipality determines:

110 (i) by clear and convincing evidence that the applicant for a permit intentionally made a  
111 false or misleading statement in the applicant's application regarding the placement or erection  
112 of the billboard; or

113 (ii) by substantial evidence that the billboard:

114 (A) is structurally unsafe;

115 (B) is in an unreasonable state of repair; or

116 (C) has been abandoned for at least 12 months;

117 (b) the municipality notifies the owner in writing that the owner's billboard meets one  
118 or more of the conditions listed in Subsections (4)(a)(i) and (ii);

119 (c) the owner fails to remedy the condition or conditions within:

120 (i) except as provided in Subsection (4)(c)(ii), 90 days following the billboard owner's

121 receipt of written notice under Subsection (4)(b); or

122 (ii) if the condition forming the basis of the municipality's intention to remove the  
123 billboard is that it is structurally unsafe, ten business days, or a longer period if necessary  
124 because of a natural disaster, following the billboard owner's receipt of written notice under  
125 Subsection (4)(b); and

126 (d) following the expiration of the applicable period under Subsection (4)(c) and after  
127 providing the owner with reasonable notice of proceedings and an opportunity for a hearing,  
128 the municipality finds:

129 (i) by clear and convincing evidence, that the applicant for a permit intentionally made  
130 a false or misleading statement in the application regarding the placement or erection of the  
131 billboard; or

132 (ii) by substantial evidence that the billboard is structurally unsafe, is in an  
133 unreasonable state of repair, or has been abandoned for at least 12 months.

134 (5) A municipality may not allow a nonconforming billboard to be rebuilt for a reason  
135 other than:

136 (a) those specified in Subsections (3) and (4);

137 (b) those provided in Title 72, Chapter 7, Part 5, Utah Outdoor Advertising Act; and

138 (c) those specified in the municipality's ordinance requiring or allowing a billboard  
139 owner to relocate and rebuild an existing nonconforming billboard to an area within the  
140 municipality where outdoor advertising is otherwise allowed under Title 72, Chapter 7, Part 5,  
141 Utah Outdoor Advertising Act.

142 (6) A municipality may terminate the nonconforming status of school district or charter  
143 school property when the property ceases to be used for school district or charter school  
144 purposes.

145 Section 3. Section **17-27-105** is amended to read:

146 **17-27-105. Property owned by other government units -- Effect of land use and**  
147 **development ordinances.**

148 (1) (a) Each county, municipality, school district, charter school, special district, and  
149 political subdivision of Utah shall conform to the land use and development ordinances of any  
150 county when installing, constructing, operating, or otherwise using any area, land, or building  
151 situated within that county only in a manner or for a purpose that conforms to that county's

152 ordinances.

153 (b) In addition to any other remedies provided by law, when a county's land use and  
154 development ordinances are being violated or about to be violated by another political  
155 subdivision, that county may institute injunction, mandamus, abatement, or other appropriate  
156 action or proceeding to prevent, enjoin, abate, or remove the improper installation,  
157 improvement, or use.

158 (2) A school district or charter school is subject to a county's land use regulations under  
159 this chapter, except that a county may not:

160 (a) impose requirements for landscaping, fencing, aesthetic considerations,  
161 construction methods or materials, building codes, building use for educational purposes, or the  
162 placement or use of temporary classroom facilities on school property;

163 (b) require a school district or charter school to participate in the cost of any roadway  
164 or sidewalk not reasonably necessary for the safety of school children and not located on or  
165 contiguous to school property, unless the roadway or sidewalk is required to connect an  
166 otherwise isolated school site to an existing roadway;

167 (c) require a district or charter school to pay fees not authorized by this section;

168 (d) provide for inspection of school construction or assess a fee or other charges for  
169 inspection, unless the school district or charter school is unable to provide for inspection by an  
170 inspector, other than the project architect or contractor, who is qualified under criteria  
171 established by the state superintendent;

172 (e) require a school district or charter school to pay any impact fee for an improvement  
173 project that is not reasonably related to the impact of the project upon the need that the  
174 improvement is to address; or

175 (f) impose regulations upon the location of a project except as necessary to avoid  
176 unreasonable risks to health or safety.

177 (3) Subject to Section 53A-20-108, a school district or charter school shall coordinate  
178 the siting of a new school with the county in which the school is to be located, to avoid or  
179 mitigate existing and potential traffic hazards to maximize school safety.

180 Section 4. Section **17-27-407** is amended to read:

181 **17-27-407. Nonconforming uses and structures.**

182 (1) (a) Except as provided in this section, a nonconforming use or structure may be

183 continued.

184 (b) A nonconforming use may be extended through the same building, provided no  
185 structural alteration of the building is proposed or made for the purpose of the extension.

186 (c) For purposes of this Subsection (1), the addition of a solar energy device to a  
187 building is not a structural alteration.

188 (d) If any county acquires title to any property because of tax delinquency and the  
189 property is not redeemed as provided by law, the future use of the property shall conform with  
190 the existing provisions of the county ordinances equally applicable to other like properties  
191 within the district in which the property acquired by the county is located.

192 (2) The legislative body may provide in any zoning ordinance or amendment for:

193 (a) the establishment, restoration, reconstruction, extension, alteration, expansion, or  
194 substitution of nonconforming uses upon the terms and conditions set forth in the zoning  
195 ordinance;

196 (b) the termination of all nonconforming uses, except billboards by providing a  
197 formula establishing a reasonable time period during which the owner can recover or amortize  
198 the amount of his investment in the nonconforming use, if any; and

199 (c) the termination of a billboard that is a nonconforming use by acquiring the billboard  
200 and associated property rights through:

201 (i) gift;

202 (ii) purchase;

203 (iii) agreement;

204 (iv) exchange; or

205 (v) eminent domain.

206 (3) (a) A county is considered to have initiated the acquisition of a billboard structure  
207 by eminent domain under Subsection (2)(c)(v) if the county prevents a billboard owner from:

208 (i) rebuilding, maintaining, repairing, or restoring a billboard structure that is damaged  
209 by casualty, an act of God, or vandalism; or

210 (ii) except as provided in Subsection (3)(b), relocating or rebuilding a billboard  
211 structure, or taking other measures, to correct a mistake in the placement or erection of a  
212 billboard for which the county has issued a permit, if the proposed relocation, rebuilding, or  
213 other measure is consistent with the intent of that permit.

214 (b) A county's denial of a billboard owner's request to relocate or rebuild a billboard  
215 structure, or to take other measures, in order to correct a mistake in the placement or erection of  
216 a billboard does not constitute the initiation of acquisition by eminent domain under Subsection  
217 (3)(a) if the mistake in placement or erection of the billboard is determined by clear and  
218 convincing evidence to have resulted from an intentionally false or misleading statement:

- 219 (i) by the billboard applicant in the application; and
- 220 (ii) regarding the placement or erection of the billboard.

221 (4) Notwithstanding Subsections (2) and (3), a county may remove a billboard without  
222 providing compensation if:

223 (a) the county determines:

224 (i) by clear and convincing evidence that the applicant for a permit intentionally made a  
225 false or misleading statement in the applicant's application regarding the placement or erection  
226 of the billboard; or

227 (ii) by substantial evidence that the billboard:

- 228 (A) is structurally unsafe;
- 229 (B) is in an unreasonable state of repair; or
- 230 (C) has been abandoned for at least 12 months;

231 (b) the county notifies the owner in writing that the owner's billboard meets one or  
232 more of the conditions listed in Subsections (4)(a)(i) and (ii);

233 (c) the owner fails to remedy the condition or conditions within:

234 (i) except as provided in Subsection (4)(c)(ii), 90 days following the billboard owner's  
235 receipt of written notice under Subsection (4)(b); or

236 (ii) if the condition forming the basis of the county's intention to remove the billboard  
237 is that it is structurally unsafe, ten business days, or a longer period if necessary because of a  
238 natural disaster, following the billboard owner's receipt of written notice under Subsection  
239 (4)(b); and

240 (d) following the expiration of the applicable period under Subsection (4)(c) and after  
241 providing the owner with reasonable notice of proceedings and an opportunity for a hearing,  
242 the county finds:

243 (i) by clear and convincing evidence, that the applicant for a permit intentionally made  
244 a false or misleading statement in the application regarding the placement or erection of the



245 billboard; or

246 (ii) by substantial evidence that the billboard is structurally unsafe, is in an  
247 unreasonable state of repair, or has been abandoned for at least 12 months.

248 (5) A county may not allow a nonconforming billboard to be rebuilt for a reason other  
249 than:

250 (a) those specified in Subsections (3) and (4);

251 (b) those provided in Title 72, Chapter 7, Part 5, Utah Outdoor Advertising Act; and

252 (c) those specified in the county's ordinance requiring or allowing a billboard owner to  
253 relocate and rebuild an existing nonconforming billboard to an area within the county where  
254 outdoor advertising is otherwise allowed under Title 72, Chapter 7, Part 5, Utah Outdoor  
255 Advertising Act.

256 (6) A county may terminate the nonconforming status of school district or charter  
257 school property when the property ceases to be used for school district or charter school  
258 purposes.

259 Section 5. Section **53A-20-104** is amended to read:

260 **53A-20-104. Enforcement of chapter by state superintendent -- Employment of**  
261 **personnel -- Certificate of occupancy.**

262 (1) The state superintendent of public instruction shall enforce this chapter.

263 (2) The superintendent may employ architects or other qualified personnel, or contract  
264 with the State Building Board, the state fire marshal, or a local governmental entity to:

265 (a) examine the plans and specifications of any school building or alteration submitted  
266 under this chapter;

267 (b) verify the inspection of any school building during or following construction; and

268 (c) perform other functions necessary to ensure compliance with this chapter.

269 (3) (a) A local school board or charter school shall file certificates of occupancy with  
270 the local governmental entity's building official and the State Office of Education for the  
271 purpose of advising those entities that the school district or charter school has complied with  
272 the inspection provisions of this chapter.

273 (b) For purposes of this Subsection (3):

274 (i) "local governmental entity" means either a municipality, for a school building  
275 located within a municipality, or a county, for a school building located within an

276 unincorporated area in the county; and

277 (ii) "certificate of occupancy" means standard inspection forms developed by the state  
278 superintendent in consultation with local school boards and charter schools to verify that  
279 inspections by qualified inspectors have occurred.

280 Section 6. Section **53A-20-104.5** is amended to read:

281 **53A-20-104.5. School building construction and inspection manual -- Annual**  
282 **construction and inspection conference -- Verification of school construction inspections.**

283 (1) (a) The State Board of Education, through the state superintendent of public  
284 instruction, shall develop and distribute to each school district a school building construction  
285 and inspection resource manual.

286 (b) The manual shall be provided to a charter school upon request of the charter school.

287 (2) (a) The manual shall include current legal requirements and information on school  
288 building construction and inspections.

289 (b) The state superintendent shall review and update the manual at least once every  
290 three years.

291 (3) The board shall provide for an annual school construction conference to allow a  
292 representative from each school district and charter school to:

293 (a) receive current information on the design, construction, and inspection of school  
294 buildings;

295 (b) receive training on such matters as:

296 (i) using properly certified building inspectors;

297 (ii) filing construction inspection summary reports and the final inspection certification  
298 with the local governmental authority's building official;

299 (iii) the roles and relationships between a school district or charter school and the local  
300 governmental authority, either a county or municipality, as related to the construction and  
301 inspection of school buildings; and

302 (iv) adequate documentation of school building inspections; and

303 (c) provide input on any changes that may be needed to improve the existing school  
304 building inspection program.

305 (4) [~~a~~] The board shall develop a process to verify that inspections by qualified  
306 inspectors occur in each school district or charter school.

307           ~~[(b) The board shall make a report on its implementation of the process to the~~  
308 ~~Education Interim Committee prior to the 2000 Legislative General Session.]~~

309           Section 7. Section **53A-20-108** is amended to read:

310           **53A-20-108. Notification to local government of intent to purchase school site or**  
311 **construction of school building -- Negotiation of fees -- Confidentiality.**

312           (1) A school district or charter school shall notify the affected local governmental  
313 entity without delay prior to the purchase of a school site or construction of a school building  
314 of its intent to purchase or construct.

315           (2) Representatives of the local governmental entity and the school district or charter  
316 school shall meet as soon as possible after the purchase of a school site to discuss concerns that  
317 each may have, including potential community impacts, and to negotiate any fees that might be  
318 charged by the local governmental entity in connection with a building project.

319           (3) A local governmental entity may not increase a previously agreed-upon fee after the  
320 district or charter school has signed contracts to begin construction.

321           (4) Prior to the filing of a formal application by the affected school district or charter  
322 school, a local governmental entity may not disclose information obtained from a school  
323 district or charter school regarding the district's or charter school's consideration of, or intent to,  
324 purchase a school site or construct a school building, without first obtaining the consent of the  
325 district or charter school.

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**Legislative Review Note**  
**as of 12-7-04 8:42 AM**

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

**Office of Legislative Research and General Counsel**

**Legislative Committee Note**  
**as of 12-08-04 12:42 PM**

The School Building Legislative Task Force recommended this bill.

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**Fiscal Note**  
**Bill Number HB0036**

**Charter School Construction Amendments**

*13-Jan-05*

*11:35 AM*

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**State Impact**

No fiscal impact.

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**Individual and Business Impact**

No fiscal impact.

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**Office of the Legislative Fiscal Analyst**