

Representative James A. Ferrin proposes the following substitute bill:

CHARTER SCHOOL CONSTRUCTION

AMENDMENTS

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: James A. Ferrin

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ exempts charter schools from certain municipal land use regulations;
- ▶ exempts charter schools from certain county land use regulations;
- ▶ provides certain land use regulation authority over charter schools for municipalities and counties;
- ▶ allows the termination of the nonconforming status of charter school property when the property ceases to be used for charter school purposes;
- ▶ requires charter schools to provide local governments of intent to purchase a school site or construct a school building; and
- ▶ makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

Utah Code Sections Affected:



26 AMENDS:

27 **10-9-103**, as last amended by Chapters 34 and 209, Laws of Utah 2000

28 **10-9-106**, as last amended by Chapter 149, Laws of Utah 1999

29 **10-9-408**, as last amended by Chapter 138, Laws of Utah 2004

30 **17-27-103**, as last amended by Chapters 66 and 241, Laws of Utah 2001

31 **17-27-105**, as last amended by Chapter 149, Laws of Utah 1999

32 **17-27-407**, as last amended by Chapter 138, Laws of Utah 2004

33 **53A-20-104**, as last amended by Chapter 149, Laws of Utah 1999

34 **53A-20-104.5**, as enacted by Chapter 150, Laws of Utah 1999

35 **53A-20-108**, as last amended by Chapter 78, Laws of Utah 1990

36

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

38 Section 1. Section **10-9-103** is amended to read:

39 **10-9-103. Definitions -- Notice.**

40 (1) As used in this chapter:

41 (a) "Billboard" means a freestanding ground sign located on industrial, commercial, or
42 residential property if the sign is designed or intended to direct attention to a business, product,
43 or service that is not sold, offered, or existing on the property where the sign is located.

44 (b) "Charter school" includes:

45 (i) an operating charter school;

46 (ii) a charter school applicant that has its application approved by a chartering entity in
47 accordance with Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act; and

48 (iii) an entity who is working on behalf of a charter school or approved charter
49 applicant to develop or construct a charter school building.

50 [~~(b)~~] (c) "Chief executive officer" means:

51 (i) the mayor in municipalities operating under all forms of municipal government
52 except the council-manager form; or

53 (ii) the city manager in municipalities operating under the council-manager form of
54 municipal government.

55 [~~(c)~~] (d) "Conditional use" means a land use that, because of its unique characteristics
56 or potential impact on the municipality, surrounding neighbors, or adjacent land uses, may not

57 be compatible in some areas or may be compatible only if certain conditions are required that
58 mitigate or eliminate the detrimental impacts.

59 ~~[(d)]~~ (e) "Constitutional taking" has the meaning as defined in Section 63-34-13.

60 ~~[(e)]~~ (f) "County" means the unincorporated area of the county.

61 ~~[(f)]~~ (g) "Elderly person" means a person who is 60 years old or older, who desires or
62 needs to live with other elderly persons in a group setting, but who is capable of living
63 independently.

64 ~~[(g)]~~ (h) (i) "General plan" means a document that a municipality adopts that sets forth
65 general guidelines for proposed future development of the land within the municipality, as set
66 forth in Sections 10-9-301 and 10-9-302.

67 (ii) "General plan" includes what is also commonly referred to as a "master plan."

68 ~~[(h)]~~ (i) "Legislative body" means the city council or city commission.

69 ~~[(i)]~~ (j) "Lot line adjustment" in a subdivision means the relocation of the property
70 boundary line between two adjoining lots with the consent of the owners of record.

71 ~~[(j)]~~ (k) "Municipality" means a city or town.

72 ~~[(k)]~~ (l) "Nonconforming structure" means a structure that:

73 (i) legally existed before its current zoning designation; and

74 (ii) because of subsequent zoning changes, does not conform with the zoning
75 regulation's setback, height restrictions, or other regulations that govern the structure.

76 ~~[(l)]~~ (m) "Nonconforming use" means a use of land that:

77 (i) legally existed before its current zoning designation;

78 (ii) has been maintained continuously since the time the zoning regulation governing
79 the land changed; and

80 (iii) because of subsequent zoning changes, does not conform with the zoning
81 regulations that now govern the land.

82 ~~[(m)]~~ (n) "Official map" has the same meaning as provided in Section 72-5-401.

83 ~~[(n)]~~ (o) "Plat" means a map or other graphical representation of lands being laid out
84 and prepared in accordance with Section 10-9-804.

85 ~~[(o)]~~ (p) "Record of survey map" means a map of a survey of land prepared in
86 accordance with Section 17-23-17.

87 ~~[(p)]~~ (q) (i) "Residential facility for elderly persons" means a single-family or

88 multiple-family dwelling unit that meets the requirements of Part 5 and any ordinance adopted
89 under authority of that part.

90 (ii) "Residential facility for elderly persons" does not include a health care facility as
91 defined by Section 26-21-2.

92 [~~(r)~~] (r) "Special district" means all entities established under the authority of Title
93 17A, Special Districts, and any other governmental or quasi-governmental entity that is not a
94 county, municipality, school district, or unit of the state.

95 [~~(s)~~] (s) "Street" means public rights-of-way, including highways, avenues, boulevards,
96 parkways, roads, lanes, walks, alleys, viaducts, subways, tunnels, bridges, public easements,
97 and other ways.

98 [~~(t)~~] (t) (i) "Subdivision" means any land that is divided, resubdivided or proposed to
99 be divided into two or more lots, parcels, sites, units, plots, or other division of land for the
100 purpose, whether immediate or future, for offer, sale, lease, or development either on the
101 installment plan or upon any and all other plans, terms, and conditions.

102 (ii) "Subdivision" includes:

103 (A) the division or development of land whether by deed, metes and bounds
104 description, devise and testacy, lease, map, plat, or other recorded instrument; and

105 (B) except as provided in Subsection (1)[~~(s)~~] (t)(iii), divisions of land for all residential
106 and nonresidential uses, including land used or to be used for commercial, agricultural, and
107 industrial purposes.

108 (iii) "Subdivision" does not include:

109 (A) a bona fide division or partition of agricultural land for the purpose of joining one
110 of the resulting separate parcels to a contiguous parcel of unsubdivided agricultural land, if
111 neither the resulting combined parcel nor the parcel remaining from the division or partition
112 violates an applicable zoning ordinance;

113 (B) a recorded agreement between owners of adjoining properties adjusting their
114 mutual boundary if:

115 (I) no new lot is created; and

116 (II) the adjustment does not result in a violation of applicable zoning ordinances; or

117 (C) a recorded document, executed by the owner of record, revising the legal
118 description of more than one contiguous parcel of property into one legal description

119 encompassing all such parcels of property.

120 (iv) The joining of a subdivided parcel of property to another parcel of property that
121 has not been subdivided does not constitute a "subdivision" under this Subsection (1)[~~(s)~~] (t) as
122 to the unsubdivided parcel of property or subject the unsubdivided parcel to the municipality's
123 subdivision ordinance.

124 [~~(t)~~] (u) "Unincorporated" means the area outside of the incorporated boundaries of
125 cities and towns.

126 (2) (a) A municipality meets the requirements of reasonable notice required by this
127 chapter if it:

128 (i) posts notice of the hearing or meeting in at least three public places within the
129 jurisdiction and publishes notice of the hearing or meeting in a newspaper of general
130 circulation in the jurisdiction, if one is available; or

131 (ii) gives actual notice of the hearing or meeting.

132 (b) A municipal legislative body may enact an ordinance establishing stricter notice
133 requirements than those required by this Subsection (2).

134 (c) (i) Proof that one of the two forms of notice authorized by this Subsection (2) was
135 given is prima facie evidence that notice was properly given.

136 (ii) If notice given under authority of this section is not challenged as provided in
137 Section 10-9-1001 within 30 days from the date of the meeting for which the notice was given,
138 the notice is considered adequate and proper.

139 Section 2. Section **10-9-106** is amended to read:

140 **10-9-106. Property owned by other government units -- Effect of land use and**
141 **development ordinances.**

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

147 (b) In addition to any other remedies provided by law, when a municipality's land use
148 and development ordinances are being violated or about to be violated by another political
149 subdivision, that municipality may institute an injunction, mandamus, abatement, or other

150 appropriate action or proceeding to prevent, enjoin, abate, or remove the improper installation,
151 improvement, or use.

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

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

157 (b) except as otherwise provided in this section, require a school district or charter
158 school to participate in the cost of any roadway or sidewalk not reasonably necessary for the
159 safety of school children and not located on or contiguous to school property, unless the
160 roadway or sidewalk is required to connect an otherwise isolated school site to an existing
161 roadway;

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

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

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

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

172 (3) Subject to Section 53A-20-108, a school district or charter school shall coordinate
173 the siting of a new school with the municipality in which the school is to be located, to:

174 (a) avoid or mitigate existing and potential traffic hazards, including consideration of
175 the impacts between the new school and future highways; and

176 (b) to maximize school, student, and site safety.

177 (4) Notwithstanding Subsection (2)(d), a municipality may, at its discretion:

178 (a) provide a walk-through of school construction at no cost and at a time convenient to
179 the district or charter school; and

180 (b) provide recommendations based upon the walk-through.

181 (5) (a) Notwithstanding Subsection (2)(d), a school district or charter school shall use:
182 (i) a municipal building inspector;
183 (ii) a school district building inspector; or
184 (iii) an independent, certified building inspector who is:
185 (A) not an employee of the contractor; and
186 (B) approved and supervised by a municipal building inspector or a school district
187 building inspector.

188 (b) The approval under Subsection (5)(a)(iii)(B) may not be unreasonably withheld.

189 (6) (a) A charter school shall be:

190 (i) considered a permitted use and shall be processed on a first priority basis in all
191 zoning districts within a municipality; and

192 (ii) subject only to objective standards within each zone pertaining to setback, height,
193 bulk and massing regulations, off-site parking, curb cut, traffic circulation, and construction
194 staging requirements.

195 (b) Parking requirements for a charter school may not exceed the minimum parking
196 requirements for schools or other institutional public uses throughout the municipality.

197 (c) If a municipality has designated zones for a sexually oriented business, or a
198 business which sells alcohol, a charter school may be prohibited from a location which would
199 otherwise defeat the purpose for the zone unless the charter school provides a waiver.

200 Section 3. Section **10-9-408** is amended to read:

201 **10-9-408. Nonconforming uses and structures.**

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

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

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

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

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

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

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

- 217 (i) gift;
- 218 (ii) purchase;
- 219 (iii) agreement;
- 220 (iv) exchange; or
- 221 (v) eminent domain.

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

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

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

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

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

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

240 (a) the municipality determines:

241 (i) by clear and convincing evidence that the applicant for a permit intentionally made a
242 false or misleading statement in the applicant's application regarding the placement or erection

243 of the billboard; or
244 (ii) by substantial evidence that the billboard:
245 (A) is structurally unsafe;
246 (B) is in an unreasonable state of repair; or
247 (C) has been abandoned for at least 12 months;
248 (b) the municipality notifies the owner in writing that the owner's billboard meets one
249 or more of the conditions listed in Subsections (4)(a)(i) and (ii);
250 (c) the owner fails to remedy the condition or conditions within:
251 (i) except as provided in Subsection (4)(c)(ii), 90 days following the billboard owner's
252 receipt of written notice under Subsection (4)(b); or
253 (ii) if the condition forming the basis of the municipality's intention to remove the
254 billboard is that it is structurally unsafe, ten business days, or a longer period if necessary
255 because of a natural disaster, following the billboard owner's receipt of written notice under
256 Subsection (4)(b); and
257 (d) following the expiration of the applicable period under Subsection (4)(c) and after
258 providing the owner with reasonable notice of proceedings and an opportunity for a hearing,
259 the municipality finds:
260 (i) by clear and convincing evidence, that the applicant for a permit intentionally made
261 a false or misleading statement in the application regarding the placement or erection of the
262 billboard; or
263 (ii) by substantial evidence that the billboard is structurally unsafe, is in an
264 unreasonable state of repair, or has been abandoned for at least 12 months.
265 (5) A municipality may not allow a nonconforming billboard to be rebuilt for a reason
266 other than:
267 (a) those specified in Subsections (3) and (4);
268 (b) those provided in Title 72, Chapter 7, Part 5, Utah Outdoor Advertising Act; and
269 (c) those specified in the municipality's ordinance requiring or allowing a billboard
270 owner to relocate and rebuild an existing nonconforming billboard to an area within the
271 municipality where outdoor advertising is otherwise allowed under Title 72, Chapter 7, Part 5,
272 Utah Outdoor Advertising Act.
273 (6) A municipality may terminate the nonconforming status of school district or charter

274 school property when the property ceases to be used for school district or charter school
275 purposes.

276 Section 4. Section 17-27-103 is amended to read:

277 **17-27-103. Definitions -- Notice.**

278 (1) As used in this chapter:

279 (a) "Billboard" means a freestanding ground sign located on industrial, commercial, or
280 residential property if the sign is designed or intended to direct attention to a business, product,
281 or service that is not sold, offered, or existing on the property where the sign is located.

282 (b) "Charter school" includes:

283 (i) an operating charter school;

284 (ii) a charter school applicant that has its application approved by a chartering entity in
285 accordance with Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act; and

286 (iii) an entity who is working on behalf of a charter school or approved charter
287 applicant to develop or construct a charter school building.

288 [~~(b)~~] (c) "Chief executive officer" means the person or body that exercises the
289 executive powers of the county.

290 [~~(c)~~] (d) "Conditional use" means a land use that, because of its unique characteristics
291 or potential impact on the county, surrounding neighbors, or adjacent land uses, may not be
292 compatible in some areas or may be compatible only if certain conditions are required that
293 mitigate or eliminate the detrimental impacts.

294 [~~(d)~~] (e) "Constitutional taking" has the meaning as defined in Section 63-34-13.

295 [~~(e)~~] (f) "County" means the unincorporated area of the county.

296 [~~(f)~~] (g) "Elderly person" means a person who is 60 years old or older, who desires or
297 needs to live with other elderly persons in a group setting, but who is capable of living
298 independently.

299 [~~(g)~~] (h) "Gas corporation" has the same meaning as defined in Section 54-2-1.

300 [~~(h)~~] (i) (i) "General plan" means a document that a county adopts that sets forth
301 general guidelines for proposed future development of the land within the county, as set forth
302 in Sections 17-27-301 and 17-27-302.

303 (ii) "General plan" includes what is also commonly referred to as a "master plan."

304 [~~(i)~~] (j) "Interstate pipeline company" means a person or entity engaged in natural gas

305 transportation subject to the jurisdiction of the Federal Energy Regulatory Commission under
306 the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

307 ~~[(j)]~~ (k) "Intrastate pipeline company" means a person or entity engaged in natural gas
308 transportation that is not subject to the jurisdiction of the Federal Energy Regulatory
309 Commission under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

310 ~~[(k)]~~ (l) "Legislative body" means the county legislative body, or for a county that has
311 adopted an alternative form of government, the body exercising legislative powers.

312 ~~[(l)]~~ (m) "Lot line adjustment" means the relocation of the property boundary line
313 between two adjoining lots with the consent of the owners of record.

314 ~~[(m)]~~ (n) "Municipality" means a city or town.

315 ~~[(n)]~~ (o) "Nonconforming structure" means a structure that:

316 (i) legally existed before its current zoning designation; and

317 (ii) because of subsequent zoning changes, does not conform with the zoning
318 regulation's setback, height restrictions, or other regulations that govern the structure.

319 ~~[(o)]~~ (p) "Nonconforming use" means a use of land that:

320 (i) legally existed before its current zoning designation;

321 (ii) has been maintained continuously since the time the zoning regulation governing
322 the land changed; and

323 (iii) because of subsequent zoning changes, does not conform with the zoning
324 regulations that now govern the land.

325 ~~[(p)]~~ (q) "Official map" has the same meaning as provided in Section 72-5-401.

326 ~~[(q)]~~ (r) "Person" means an individual, corporation, partnership, organization,
327 association, trust, governmental agency, or any other legal entity.

328 ~~[(r)]~~ (s) "Plat" means a map or other graphical representation of lands being laid out
329 and prepared in accordance with Section 17-27-804.

330 ~~[(s)]~~ (t) "Record of survey map" means a map of a survey of land prepared in
331 accordance with Section 17-23-17.

332 ~~[(t)]~~ (u) (i) "Residential facility for elderly persons" means a single-family or
333 multiple-family dwelling unit that meets the requirements of Part 5 and any ordinance adopted
334 under authority of that part.

335 (ii) "Residential facility for elderly persons" does not include a health care facility as

336 defined by Section 26-21-2.

337 [~~(t)~~] (v) "Special district" means all entities established under the authority of Title
338 17A, Special Districts, and any other governmental or quasi-governmental entity that is not a
339 county, municipality, school district, or unit of the state.

340 [~~(v)~~] (w) "Street" means public rights-of-way, including highways, avenues,
341 boulevards, parkways, roads, lanes, walks, alleys, viaducts, subways, tunnels, bridges, public
342 easements, and other ways.

343 [~~(w)~~] (x) (i) "Subdivision" means any land that is divided, resubdivided or proposed to
344 be divided into two or more lots, parcels, sites, units, plots, or other division of land for the
345 purpose, whether immediate or future, for offer, sale, lease, or development either on the
346 installment plan or upon any and all other plans, terms, and conditions.

347 (ii) "Subdivision" includes the division or development of land whether by deed, metes
348 and bounds description, devise and testacy, lease, map, plat, or other recorded instrument.

349 (iii) "Subdivision" does not include:

350 (A) a bona fide division or partition of agricultural land for agricultural purposes;

351 (B) a recorded agreement between owners of adjoining properties adjusting their
352 mutual boundary if:

353 (I) no new lot is created; and

354 (II) the adjustment does not result in a violation of applicable zoning ordinances;

355 (C) a recorded document, executed by the owner of record, revising the legal
356 description of more than one contiguous parcel of property into one legal description
357 encompassing all such parcels of property; or

358 (D) a bona fide division or partition of land in a county other than a first class county
359 for the purpose of siting, on one or more of the resulting separate parcels:

360 (I) an unmanned facility appurtenant to a pipeline owned or operated by a gas
361 corporation, interstate pipeline company, or intrastate pipeline company; or

362 (II) an unmanned telecommunications, microwave, fiber optic, electrical, or other
363 utility service regeneration, transformation, retransmission, or amplification facility.

364 (iv) The joining of a subdivided parcel of property to another parcel of property that
365 has not been subdivided does not constitute a "subdivision" under this Subsection (1)[~~(w)~~] (x)
366 as to the unsubdivided parcel of property or subject the unsubdivided parcel to the county's

367 subdivision ordinance.

368 [~~(x)~~] (y) "Unincorporated" means the area outside of the incorporated boundaries of
369 cities and towns.

370 (2) (a) A county meets the requirements of reasonable notice required by this chapter if
371 it:

372 (i) posts notice of the hearing or meeting in at least three public places within the
373 jurisdiction and publishes notice of the hearing or meeting in a newspaper of general
374 circulation in the jurisdiction, if one is available; or

375 (ii) gives actual notice of the hearing or meeting.

376 (b) A county legislative body may enact an ordinance establishing stricter notice
377 requirements than those required by this Subsection (2).

378 (c) (i) Proof that one of the two forms of notice authorized by this Subsection (2) was
379 given is prima facie evidence that notice was properly given.

380 (ii) If notice given under authority of this section is not challenged as provided in
381 Section 17-27-1001 within 30 days from the date of the meeting for which the notice was
382 given, the notice is considered adequate and proper.

383 Section 5. Section **17-27-105** is amended to read:

384 **17-27-105. Property owned by other government units -- Effect of land use and**
385 **development ordinances.**

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

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

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

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

401 (b) except as otherwise provided in this section, require a school district or charter
402 school to participate in the cost of any roadway or sidewalk not reasonably necessary for the
403 safety of school children and not located on or contiguous to school property, unless the
404 roadway or sidewalk is required to connect an otherwise isolated school site to an existing
405 roadway;

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

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

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

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

416 (3) Subject to Section 53A-20-108, a school district or charter school shall coordinate
417 the siting of a new school with the county in which the school is to be located, to:

418 (a) avoid or mitigate existing and potential traffic hazards, including consideration of
419 the impacts between the new school and future highways; and

420 (b) to maximize school, student, and site safety.

421 (4) Notwithstanding Subsection (2)(d), a county may, at its discretion :

422 (a) provide a walk-through of school construction at no cost and at a time convenient to
423 the district or charter school; and

424 (b) provide recommendations based upon the walk-through.

425 (5) (a) Notwithstanding Subsection (2)(d), a school district or charter school shall use:

426 (i) a county building inspector;

427 (ii) a school district building inspector; or

428 (iii) an independent, certified building inspector who is:

429 (A) not an employee of the contractor; and
430 (B) approved and supervised by a county building inspector or a school district
431 building inspector.

432 (b) The approval under Subsection (5)(a)(iii)(B) may not be unreasonably withheld.

433 (6) (a) A charter school shall be:

434 (i) considered a permitted use and shall be processed on a first priority basis in all
435 zoning districts within a county; and

436 (ii) subject only to objective standards within each zone pertaining to setback, height,
437 bulk and massing regulations, off-site parking, curb cut, traffic circulation, and construction
438 staging requirements.

439 (b) Parking requirements for a charter school may not exceed the minimum parking
440 requirements for schools or other institutional public uses throughout the county.

441 (c) If a county has designated zones for a sexually oriented business, or a business
442 which sells alcohol, a charter school may be prohibited from a location which would otherwise
443 defeat the purpose for the zone unless the charter school provides a waiver.

444 Section 6. Section **17-27-407** is amended to read:

445 **17-27-407. Nonconforming uses and structures.**

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

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

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

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

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

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

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

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

- 465 (i) gift;
- 466 (ii) purchase;
- 467 (iii) agreement;
- 468 (iv) exchange; or
- 469 (v) eminent domain.

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

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

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

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

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

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

487 (a) the county determines:

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

491 (ii) by substantial evidence that the billboard:
492 (A) is structurally unsafe;
493 (B) is in an unreasonable state of repair; or
494 (C) has been abandoned for at least 12 months;
495 (b) the county notifies the owner in writing that the owner's billboard meets one or
496 more of the conditions listed in Subsections (4)(a)(i) and (ii);
497 (c) the owner fails to remedy the condition or conditions within:
498 (i) except as provided in Subsection (4)(c)(ii), 90 days following the billboard owner's
499 receipt of written notice under Subsection (4)(b); or
500 (ii) if the condition forming the basis of the county's intention to remove the billboard
501 is that it is structurally unsafe, ten business days, or a longer period if necessary because of a
502 natural disaster, following the billboard owner's receipt of written notice under Subsection
503 (4)(b); and
504 (d) following the expiration of the applicable period under Subsection (4)(c) and after
505 providing the owner with reasonable notice of proceedings and an opportunity for a hearing,
506 the county finds:
507 (i) by clear and convincing evidence, that the applicant for a permit intentionally made
508 a false or misleading statement in the application regarding the placement or erection of the
509 billboard; or
510 (ii) by substantial evidence that the billboard is structurally unsafe, is in an
511 unreasonable state of repair, or has been abandoned for at least 12 months.
512 (5) A county may not allow a nonconforming billboard to be rebuilt for a reason other
513 than:
514 (a) those specified in Subsections (3) and (4);
515 (b) those provided in Title 72, Chapter 7, Part 5, Utah Outdoor Advertising Act; and
516 (c) those specified in the county's ordinance requiring or allowing a billboard owner to
517 relocate and rebuild an existing nonconforming billboard to an area within the county where
518 outdoor advertising is otherwise allowed under Title 72, Chapter 7, Part 5, Utah Outdoor
519 Advertising Act.
520 (6) A county may terminate the nonconforming status of school district or charter
521 school property when the property ceases to be used for school district or charter school

522 purposes.

523 Section 7. Section **53A-20-104** is amended to read:

524 **53A-20-104. Enforcement of chapter by state superintendent -- Employment of**
525 **personnel -- Certificate of occupancy.**

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

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

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

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

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

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

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

538 (i) "local governmental entity" means either a municipality, for a school building
539 located within a municipality, or a county, for a school building located within an
540 unincorporated area in the county; and

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

544 Section 8. Section **53A-20-104.5** is amended to read:

545 **53A-20-104.5. School building construction and inspection manual -- Annual**
546 **construction and inspection conference -- Verification of school construction inspections.**

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

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

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

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

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

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

559 (b) receive training on such matters as:

560 (i) using properly certified building inspectors;

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

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

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

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

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

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

573 Section 9. Section **53A-20-108** is amended to read:

574 **53A-20-108. Notification to local government of intent to purchase school site or**
575 **construction of school building -- Negotiation of fees -- Confidentiality.**

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

579 (b) Representatives of the local governmental entity and the school district or charter
580 school shall meet as soon as possible after delivery of the notice under Subsection (1)(a) to:

581 (i) discuss concerns that each may have, including potential community impacts and
582 site safety;

583 (ii) assess the availability of infrastructure for the site; and

584 (iii) discuss any fees that might be charged by the local governmental entity in
585 connection with a building project.

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

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

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

597 Section 10. **Effective date.**

598 If approved by two-thirds of all the members elected to each house, this bill takes effect
599 upon approval by the governor, or the day following the constitutional time limit of Utah
600 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
601 the date of veto override.

Fiscal Note
Bill Number HB0036S02

Charter School Construction Amendments

08-Feb-05

12:36 PM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst