

**LOCAL LAND USE PROVISIONS RELATING  
TO SCHOOLS**

2006 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: James A. Ferrin**

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

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**LONG TITLE**

**General Description:**

This bill modifies county and municipal land use provisions applicable to schools and charter schools.

**Highlighted Provisions:**

This bill:

- ▶ prohibits counties and municipalities from requiring school districts and charter schools to participate in the cost of a study on the impact of a school on roads that are not contiguous to the school or on other infrastructure and facilities not within 1/4 mile of the school;
- ▶ clarifies that the standards that a county and municipality are authorized to impose on a charter school must be objective and not subjective;
- ▶ provides that the only basis on which a county or municipality may deny or withhold approval of a charter school's land use application is the failure to comply with those objective standards;
- ▶ establishes a procedure for a charter school to obtain a certificate authorizing permanent occupancy of a school from the state superintendent of public instruction or an authorized school district official;
- ▶ provides that a certificate authorizing permanent occupancy of a school building from the state superintendent of public instruction or authorized school district



28 official satisfies any county or municipal requirements for inspection or a certificate of  
29 occupancy;

30 ▶ authorizes the state superintendent of public instruction to charge a fee for an  
31 inspection required to issue a certificate authorizing permanent occupancy; and

32 ▶ makes technical changes.

33 **Monies Appropriated in this Bill:**

34 None

35 **Other Special Clauses:**

36 None

37 **Utah Code Sections Affected:**

38 AMENDS:

39 **10-9a-305**, as last amended by Chapter 7 and renumbered and amended by Chapter  
40 254, Laws of Utah 2005

41 **17-27a-305**, as last amended by Chapter 7 and renumbered and amended by Chapter  
42 254, Laws of Utah 2005

43 **53A-20-104**, as last amended by Chapter 7, Laws of Utah 2005



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

46 Section 1. Section **10-9a-305** is amended to read:

47 **10-9a-305. Property owned by other government units -- Effect of land use**  
48 **ordinances.**

49 (1) (a) Each county, municipality, school district, charter school, special district, and  
50 political subdivision of the state shall conform to any applicable land use ordinance of any  
51 municipality when installing, constructing, operating, or otherwise using any area, land, or  
52 building situated within that municipality.

53 (b) In addition to any other remedies provided by law, when a municipality's land use  
54 ordinances is violated or about to be violated by another political subdivision, that municipality  
55 may institute an injunction, mandamus, abatement, or other appropriate action or proceeding to  
56 prevent, enjoin, abate, or remove the improper installation, improvement, or use.

57 (2) [A] (a) Except as provided in Subsection (3), a school district or charter school is  
58 subject to a municipality's land use ordinances[~~,-except that a~~].

59 (b) (i) Notwithstanding Subsection (3), a municipality may subject a charter school to  
60 standards within each zone pertaining to setback, height, bulk and massing regulations, off-site  
61 parking, curb cut, traffic circulation, and construction staging.

62 (ii) The standards to which a municipality may subject a charter school under  
63 Subsection (2)(b)(i) shall be objective standards only and may not be subjective.

64 (iii) The only basis upon which a municipality may deny or withhold approval of a  
65 charter school's land use application is the charter school's failure to comply with a standard  
66 imposed under Subsection (2)(b)(i).

67 (3) A municipality may not:

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

71 (b) except as otherwise provided in this section, require a school district or charter  
72 school to participate in the cost of:

73 (i) any roadway or sidewalk not reasonably necessary for the safety of school children  
74 and not located on or contiguous to school property, unless the roadway or sidewalk is required  
75 to connect an otherwise isolated school site to an existing roadway; or

76 (ii) a study on the impact of a school on:

77 (A) roadways that are not contiguous to the school property; or

78 (B) other infrastructure or facilities that are more than 1/4 mile from the school;

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

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

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

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

89 ~~[(3)]~~ (4) Subject to Section 53A-20-108, a school district or charter school shall

90 coordinate the siting of a new school with the municipality in which the school is to be located,  
91 to:

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

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

95 ~~[(4)]~~ (5) Notwithstanding Subsection ~~[(2)]~~ (3)(d), a municipality may, at its discretion:

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

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

99 ~~[(5)]~~ (6) (a) Notwithstanding Subsection ~~[(2)]~~ (3)(d), a school district or charter school  
100 shall use:

101 (i) a municipal building inspector;

102 (ii) a school district building inspector; or

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

104 (A) not an employee of the contractor; and

105 (B) approved ~~[and supervised]~~ by a municipal building inspector or a school district  
106 building inspector.

107 (b) The approval under Subsection ~~[(5)]~~ (6)(a)(iii)(B) may not be unreasonably  
108 withheld.

109 ~~[(6)]~~ (7) (a) A charter school shall be ~~[-(i)]~~ considered a permitted use ~~[and shall be~~  
110 ~~processed on a first priority basis]~~ in all zoning districts within a municipality ~~[-and]~~.

111 ~~[(ii) subject only to objective standards within each zone pertaining to setback, height,~~  
112 ~~bulk and massing regulations, off-site parking, curb cut, traffic circulation, and construction~~  
113 ~~staging requirements.]~~

114 (b) Each land use application for any approval required for a charter school, including  
115 an application for a building permit, shall be processed on a first priority basis ahead of all  
116 other applications.

117 ~~[(b)]~~ (c) Parking requirements for a charter school may not exceed the minimum  
118 parking requirements for schools or other institutional public uses throughout the municipality.

119 ~~[(c)]~~ (d) If a municipality has designated zones for a sexually oriented business, or a  
120 business which sells alcohol, a charter school may be prohibited from a location which would

121 otherwise defeat the purpose for the zone unless the charter school provides a waiver.

122 (e) (i) A charter school may seek a certificate authorizing permanent occupancy of a  
123 school building from:

124 (A) the state superintendent of public instruction, as provided in Subsection  
125 53A-20-104(3); or

126 (B) a municipal or school district official with authority to issue a certificate of  
127 occupancy.

128 (ii) A certificate authorizing permanent occupancy issued by the state superintendent of  
129 public instruction under Subsection 53A-20-104(3) or a school district official with authority to  
130 issue a certificate of occupancy shall be considered to satisfy any municipal requirement for an  
131 inspection or a certificate of occupancy.

132 Section 2. Section **17-27a-305** is amended to read:

133 **17-27a-305. Property owned by other government units -- Effect of land use and**  
134 **development ordinances.**

135 (1) (a) Each county, municipality, school district, charter school, special district, and  
136 political subdivision of the state shall conform to any applicable land use ordinance of any  
137 county when installing, constructing, operating, or otherwise using any area, land, or building  
138 situated within the unincorporated portion of the county.

139 (b) In addition to any other remedies provided by law, when a county's land use  
140 ordinance is violated or about to be violated by another political subdivision, that county may  
141 institute an injunction, mandamus, abatement, or other appropriate action or proceeding to  
142 prevent, enjoin, abate, or remove the improper installation, improvement, or use.

143 (2) ~~[A]~~ (a) Except as provided in Subsection (3), a school district or charter school is  
144 subject to a county's land use ordinances~~[, except that a]~~.

145 (b) (i) Notwithstanding Subsection (3), a county may subject a charter school to  
146 standards within each zone pertaining to setback, height, bulk and massing regulations, off-site  
147 parking, curb cut, traffic circulation, and construction staging.

148 (ii) The standards to which a county may subject a charter school under Subsection  
149 (2)(b)(i) shall be objective standards only and may not be subjective.

150 (iii) The only basis upon which a county may deny or withhold approval of a charter  
151 school's land use application is the charter school's failure to comply with a standard imposed

152 under Subsection (2)(b)(i).

153 (3) A county 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:

159 (i) any roadway or sidewalk not reasonably necessary for the safety of school children  
160 and not located on or contiguous to school property, unless the roadway or sidewalk is required  
161 to connect an otherwise isolated school site to an existing roadway; or

162 (ii) a study on the impact of a school on:

163 (A) roadways that are not contiguous to the school property; or

164 (B) other infrastructure or facilities that are more than 1/4 mile from the school;

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

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

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

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

175 ~~[(3)]~~ (4) Subject to Section 53A-20-108, a school district or charter school shall  
176 coordinate the siting of a new school with the county in which the school is to be located, to:

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

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

180 ~~[(4)]~~ (5) Notwithstanding Subsection ~~[(2)]~~ (3)(d), a county may, at its discretion:

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

183 (b) provide recommendations based upon the walk-through.  
 184 ~~[(5)]~~ (6) (a) Notwithstanding Subsection ~~[(2)]~~ (3)(d), a school district or charter school  
 185 shall use:

186 (i) a county building inspector;  
 187 (ii) a school district building inspector; or  
 188 (iii) an independent, certified building inspector who is:  
 189 (A) not an employee of the contractor; and  
 190 (B) approved and supervised by a county building inspector or a school district  
 191 building inspector.

192 (b) The approval under Subsection ~~[(5)]~~ (6)(a)(iii)(B) may not be unreasonably  
 193 withheld.

194 ~~[(6)]~~ (7) (a) A charter school shall be ~~[-(i)]~~ considered a permitted use ~~[and shall be~~  
 195 ~~processed on a first priority basis]~~ in all zoning districts within a county ~~[-and]~~.

196 ~~[(ii) subject only to objective standards within each zone pertaining to setback, height,~~  
 197 ~~bulk and massing regulations, off-site parking, curb cut, traffic circulation, and construction~~  
 198 ~~staging requirements.]~~

199 (b) Each land use application for any approval required for a charter school, including  
 200 an application for a building permit, shall be processed on a first priority basis ahead of all  
 201 other applications.

202 ~~[(b)]~~ (c) Parking requirements for a charter school may not exceed the minimum  
 203 parking requirements for schools or other institutional public uses throughout the county.

204 ~~[(c)]~~ (d) If a county has designated zones for a sexually oriented business, or a business  
 205 which sells alcohol, a charter school may be prohibited from a location which would otherwise  
 206 defeat the purpose for the zone unless the charter school provides a waiver.

207 (e) (i) A charter school may seek a certificate authorizing permanent occupancy of a  
 208 school building from:

209 (A) the state superintendent of public instruction, as provided in Subsection  
 210 53A-20-104(3); or

211 (B) a county or school district official with authority to issue a certificate of occupancy.

212 (ii) A certificate authorizing permanent occupancy issued by the state superintendent of  
 213 public instruction or a school district official with authority to issue a certificate of occupancy

214 shall be considered to satisfy any county requirement for an inspection or a certificate of  
215 occupancy.

216 Section 3. Section **53A-20-104** is amended to read:

217 **53A-20-104. Enforcement of chapter by state superintendent -- Employment of**  
218 **personnel -- Certificate of occupancy.**

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

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

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

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

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

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

230 (ii) In conjunction with a charter school's filing of certificates of occupancy with the  
231 State Office of Education under Subsection (3)(a)(i), the charter school may file a written  
232 request with the state superintendent of public instruction to issue a certificate authorizing the  
233 permanent occupancy of the school building.

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

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

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

241 (c) Upon a charter school's filing the certificates of occupancy as provided in  
242 Subsection (3)(a), the charter school shall be entitled to occupy the school that is the subject of  
243 those certificates for a period of 90 days, beginning the date the certificates are filed.

244 (d) (i) Within 30 days after a charter school files a request under Subsection (3)(a)(ii)



245 for a certificate authorizing permanent occupancy of the school building, the state  
246 superintendent of public instruction shall:

247 (A) issue to the charter school a certificate authorizing permanent occupancy of the  
248 school building; or

249 (B) deliver to the charter school a written notice indicating deficiencies in the charter  
250 school's compliance with the inspection provisions of this chapter.

251 (ii) Upon the charter school remedying the deficiencies indicated in the notice under  
252 Subsection (3)(d)(i)(B) and notifying the state superintendent of public instruction that the  
253 deficiencies have been remedied, the state superintendent of public instruction shall issue a  
254 certificate authorizing permanent occupancy of the school.

255 (iii) (A) The state superintendent of public instruction may charge the charter school a  
256 fee for an inspection that the superintendent considers necessary to enable the superintendent to  
257 issue a certificate authorizing permanent occupancy of the school building.

258 (B) A fee under Subsection (3)(d)(iii)(A) may not exceed the actual cost of performing  
259 the inspection.

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**Legislative Review Note**  
**as of 2-1-06 9:36 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**

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**Fiscal Note**  
**Bill Number HB0172**

**Local Land Use Provisions Relating to Schools**

*07-Feb-06*

*11:58 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**