

Representative James A. Ferrin proposes the following substitute bill:

**LOCAL LAND USE PROVISIONS RELATING
TO SCHOOLS**

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Ferrin

Senate Sponsor: _____

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 certain roads and sidewalks;
- ▶ 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;
- ▶ clarifies that a charter school's obligation to comply with applicable building and safety codes is not affected by the provision on denial or withholding approval of a charter school;
- ▶ establishes a procedure for a charter school to obtain a certificate authorizing



26 permanent occupancy of a school from the state superintendent of public instruction or an
27 authorized school district official;

28 ▶ provides that a certificate authorizing permanent occupancy of a school building
29 from the state superintendent of public instruction or authorized school district
30 official satisfies any county or municipal requirements for inspection or a certificate
31 of occupancy;

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

34 ▶ makes technical changes.

35 **Monies Appropriated in this Bill:**

36 None

37 **Other Special Clauses:**

38 None

39 **Utah Code Sections Affected:**

40 AMENDS:

41 **10-9a-305**, as last amended by Chapter 7 and renumbered and amended by Chapter
42 254, Laws of Utah 2005

43 **17-27a-305**, as last amended by Chapter 7 and renumbered and amended by Chapter
44 254, Laws of Utah 2005

45 **53A-20-104**, as last amended by Chapter 7, Laws of Utah 2005



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

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

49 **10-9a-305. Property owned by other government units -- Effect of land use**
50 **ordinances.**

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

55 (b) In addition to any other remedies provided by law, when a municipality's land use
56 ordinances is violated or about to be violated by another political subdivision, that municipality

57 may institute an injunction, mandamus, abatement, or other appropriate action or proceeding to
58 prevent, enjoin, abate, or remove the improper installation, improvement, or use.

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

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

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

66 (iii) Except as provided in Subsection (7)(d), the only basis upon which a municipality
67 may deny or withhold approval of a charter school's land use application is the charter school's
68 failure to comply with a standard imposed under Subsection (2)(b)(i).

69 (iv) Nothing in Subsection (2)(b)(iii) may be construed to relieve a charter school of an
70 obligation to comply with a requirement of an applicable building or safety code to which it is
71 otherwise obligated to comply.

72 (3) A municipality may not:

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

76 (b) except as otherwise provided in this section, require a school district or charter
77 school to participate in the cost of any roadway or sidewalk, or a study on the impact of a
78 school on a roadway or sidewalk, that is not reasonably necessary for the safety of school
79 children and not located on or contiguous to school property, unless the roadway or sidewalk is
80 required to connect an otherwise isolated school site to an existing roadway;

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

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

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

88 improvement is to address; or

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

91 ~~[(3)]~~ (4) Subject to Section 53A-20-108, a school district or charter school shall
92 coordinate the siting of a new school with the municipality in which the school is to be located,
93 to:

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

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

97 ~~[(4)]~~ (5) Notwithstanding Subsection ~~[(2)]~~ (3)(d), a municipality may, at its discretion:

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

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

101 ~~[(5)]~~ (6) (a) Notwithstanding Subsection ~~[(2)]~~ (3)(d), a school district or charter school
102 shall use:

103 (i) a municipal building inspector;

104 (ii) a school district building inspector; or

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

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

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

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

111 ~~[(6)]~~ (7) (a) A charter school shall be ~~[-(i)]~~ considered a permitted use ~~[and shall be
112 processed on a first priority basis]~~ in all zoning districts within a municipality ~~[-and]~~.

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

116 (b) Each land use application for any approval required for a charter school, including
117 an application for a building permit, shall be processed on a first priority basis.

118 ~~[(b)]~~ (c) Parking requirements for a charter school may not exceed the minimum

119 parking requirements for schools or other institutional public uses throughout the municipality.

120 ~~[(e)]~~ (d) If a municipality has designated zones for a sexually oriented business, or a
 121 business which sells alcohol, a charter school may be prohibited from a location which would
 122 otherwise defeat the purpose for the zone unless the charter school provides a waiver.

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

125 (A) the state superintendent of public instruction, as provided in Subsection
 126 53A-20-104(3); or

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

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

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

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

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

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

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

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

149 (ii) The standards to which a county may subject a charter school under Subsection

150 (2)(b)(i) shall be objective standards only and may not be subjective.

151 (iii) Except as provided in Subsection (7)(d), the only basis upon which a county may
152 deny or withhold approval of a charter school's land use application is the charter school's
153 failure to comply with a standard imposed under Subsection (2)(b)(i).

154 (iv) Nothing in Subsection (2)(b)(iii) may be construed to relieve a charter school of an
155 obligation to comply with a requirement of an applicable building or safety code to which it is
156 otherwise obligated to comply.

157 (3) A county may not:

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

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

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

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

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

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

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

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179 the impacts between the new school and future highways; and

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183 the district or charter school; and

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

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187 (i) a county building inspector;

188 (ii) a school district building inspector; or

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

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

191 (B) approved and supervised by a county building inspector or a school district
192 building inspector.

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

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

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

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

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

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

251 (B) mail a copy of the certificate authorizing permanent occupancy or the notice of
252 deficiency to the building official of the municipality in which the charter school is located.

253 (ii) Upon the charter school remedying the deficiencies indicated in the notice under
254 Subsection (3)(d)(i)(B) and notifying the state superintendent of public instruction that the
255 deficiencies have been remedied, the state superintendent of public instruction shall issue a
256 certificate authorizing permanent occupancy of the school and mail a copy of the certificate to
257 the building official of the municipality in which the charter school is located.

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

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

Fiscal Note
Bill Number HB0172S01

Local Land Use Provisions Relating to Schools

16-Feb-06

3:58 PM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst