

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: Howard A. Stephenson

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 ▶ requires a school district and a charter school to provide on a monthly basis copies
- 29 of inspection certificates to the state superintendent of public instruction if the
- 30 school district or charter school uses an independent building inspector;
- 31 ▶ provides that a certificate authorizing permanent occupancy of a school building
- 32 from the state superintendent of public instruction or authorized school district
- 33 official satisfies any county or municipal requirements for inspection or a certificate
- 34 of occupancy;
- 35 ▶ authorizes the state superintendent of public instruction to charge a fee for an
- 36 inspection required to issue a certificate authorizing permanent occupancy; and
- 37 ▶ makes technical changes.

38 **Monies Appropriated in this Bill:**

39 None

40 **Other Special Clauses:**

41 None

42 **Utah Code Sections Affected:**

43 AMENDS:

44 **10-9a-305**, as last amended by Chapter 7 and renumbered and amended by Chapter
45 254, Laws of Utah 2005

46 **17-27a-305**, as last amended by Chapter 7 and renumbered and amended by Chapter
47 254, Laws of Utah 2005

48 **53A-20-104**, as last amended by Chapter 7, Laws of Utah 2005



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

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

52 **10-9a-305. Property owned by other government units -- Effect of land use**
53 **ordinances.**

54 (1) (a) Each county, municipality, school district, charter school, special district, and
55 political subdivision of the state shall conform to any applicable land use ordinance of any
56 municipality when installing, constructing, operating, or otherwise using any area, land, or

57 building situated within that municipality.

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

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

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

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

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

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

75 (3) A municipality may not:

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

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

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

85 (d) provide for inspection of school construction or assess a fee or other charges for
86 inspection, unless the school district or charter school is unable to provide for inspection by an
87 inspector, other than the project architect or contractor, who is qualified under criteria

88 established by the state superintendent;

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

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

94 ~~[(3)]~~ (4) Subject to Section 53A-20-108, a school district or charter school shall
95 coordinate the siting of a new school with the municipality in which the school is to be located,
96 to:

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

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

100 ~~[(4)]~~ (5) Notwithstanding Subsection ~~[(2)]~~ (3)(d), a municipality may, at its discretion:

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

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

104 ~~[(5)]~~ (6) (a) Notwithstanding Subsection ~~[(2)]~~ (3)(d), a school district or charter school
105 shall use:

106 (i) a municipal building inspector;

107 (ii) a school district building inspector; or

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

109 (A) not an employee of the contractor; ~~and~~

110 (B) approved ~~and supervised~~ by a municipal building inspector or a school district
111 building inspector~~[-]; and~~

112 (C) licensed to perform the inspection that the inspector is requested to perform.

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

115 (c) If a school district or charter school uses an independent building inspector under
116 Subsection (6)(a)(iii), the school district or charter school shall submit to the state
117 superintendent of public instruction, on a monthly basis during construction of the school
118 building, a copy of each inspection certificate regarding the school building.

119 ~~[(6)] (7)~~ (a) A charter school shall be ~~[-(f)]~~ considered a permitted use ~~[and shall be~~
120 ~~processed on a first priority basis]~~ in all zoning districts within a municipality ~~[-and]~~.

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

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

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

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

131 (e) (i) A school district or a charter school may seek a certificate authorizing permanent
132 occupancy of a school building from:

133 (A) the state superintendent of public instruction, as provided in Subsection
134 53A-20-104(3), if the school district or charter school used an independent building inspector
135 for inspection of the school building; or

136 (B) a municipal official with authority to issue the certificate, if the school district or
137 charter school used a municipal building inspector for inspection of the school building.

138 (ii) A school district may issue its own certificate authorizing permanent occupancy of
139 a school building if it used its own building inspector for inspection of the school building,
140 subject to the notification requirement of Subsection 53A-20-104(3)(a)(ii).

141 (iii) A charter school may seek a certificate authorizing permanent occupancy of a
142 school building from a school district official with authority to issue the certificate, if the
143 charter school used a school district building inspector for inspection of the school building.

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

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

149 **17-27a-305. Property owned by other government units -- Effect of land use and**

150 **development ordinances.**

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

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

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

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

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

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

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

172 (3) A county may not:

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

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

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

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

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

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

191 ~~[(3)]~~ (4) Subject to Section 53A-20-108, a school district or charter school shall
192 coordinate the siting of a new school with the county in which the school is to be located, to:

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

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

196 ~~[(4)]~~ (5) Notwithstanding Subsection ~~[(2)]~~ (3)(d), a county may, at its discretion:

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

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

200 ~~[(5)]~~ (6) (a) Notwithstanding Subsection ~~[(2)]~~ (3)(d), a school district or charter school
201 shall use:

202 (i) a county building inspector;

203 (ii) a school district building inspector; or

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

205 (A) not an employee of the contractor; ~~[and]~~

206 (B) approved ~~[and supervised]~~ by a county building inspector or a school district
207 building inspector~~[-]; and~~

208 (C) licensed to perform the inspection that the inspector is requested to perform.

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

211 (c) If a school district or charter school uses an independent building inspector under

212 Subsection (6)(a)(iii), the school district or charter school shall submit to the state
213 superintendent of public instruction, on a monthly basis during construction of the school
214 building, a copy of each inspection certificate regarding the school building.

215 ~~[(6)]~~ (7) (a) A charter school shall be~~[-(i)]~~ considered a permitted use ~~[and shall be~~
216 ~~processed on a first priority basis]~~ in all zoning districts within a county~~[-and]~~.

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

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

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

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

227 (e) (i) A school district or a charter school may seek a certificate authorizing permanent
228 occupancy of a school building from:

229 (A) the state superintendent of public instruction, as provided in Subsection
230 53A-20-104(3), if the school district or charter school used an independent building inspector
231 for inspection of the school building; or

232 (B) a county official with authority to issue the certificate, if the school district or
233 charter school used a county building inspector for inspection of the school building.

234 (ii) A school district may issue its own certificate authorizing permanent occupancy of
235 a school building if it used its own building inspector for inspection of the school building,
236 subject to the notification requirement of Subsection 53A-20-104(3)(a)(ii).

237 (iii) A charter school may seek a certificate authorizing permanent occupancy of a
238 school building from a school district official with authority to issue the certificate, if the
239 charter school used a school district building inspector for inspection of the school building.

240 (iv) A certificate authorizing permanent occupancy issued by the state superintendent
241 of public instruction under Subsection 53A-20-104(3) or a school district official with authority
242 to issue the certificate shall be considered to satisfy any county requirement for an inspection or

243 a certificate of occupancy.

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

245 **53A-20-104. Enforcement of chapter by state superintendent -- Employment of**
246 **personnel -- Certificate of occupancy.**

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

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

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

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

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

254 (3) (a) (i) ~~[A]~~ If a local school board [or charter school] uses the school district's
255 building inspector under Subsection 10-9a-305(6)(a)(ii) or 17-27a-305(6)(a)(ii) and issues its
256 own certificate authorizing permanent occupancy of the school building, the local school board
257 shall file [certificates of occupancy] a certificate of inspection verification with the local
258 governmental entity's building official and the State Office of Education [for the purpose of],
259 advising those entities that the school district [or charter school] has complied with the
260 inspection provisions of this chapter.

261 (ii) If a charter school uses a school district building inspector under Subsection
262 10-9a-305(6)(a)(ii) or 17-27a-305(6)(a)(ii) and the school district issues to the charter school a
263 certificate authorizing permanent occupancy of the school building, the charter school shall file
264 with the State Office of Education a certificate of inspection verification.

265 (iii) If a local school board or charter school uses a local governmental entity's building
266 inspector under Subsection 10-9a-305(6)(a)(i) or 17-27a-305(6)(a)(i) and the local
267 governmental entity issues the local school board or charter school a certificate authorizing
268 permanent occupancy of the school building, the local school board or charter school shall file
269 with the State Office of Education a certificate of inspection verification.

270 (iv) (A) If a local school board or charter school uses an independent, certified building
271 inspector under Subsection 10-9a-305(6)(a)(iii) or 17-27a-305(6)(a)(iii), the local school board
272 or charter school shall, upon completion of all required inspections of the school building, file
273 with the State Office of Education a certificate of inspection verification and a request for the

274 issuance of a certificate authorizing permanent occupancy of the school building.

275 (B) Upon the local school board's or charter school's filing of the certificate and request
276 as provided in Subsection (3)(a)(iv)(A), the school district or charter school shall be entitled to
277 temporary occupancy of the school building that is the subject of the request for a period of 90
278 days, beginning the date the request is filed, if the school district or charter school has
279 complied with all applicable fire and life safety code requirements.

280 (C) Within 30 days after the local school board or charter school files a request under
281 Subsection (3)(a)(iv)(A) for a certificate authorizing permanent occupancy of the school
282 building, the state superintendent of public instruction shall:

283 (I) (Aa) issue to the local school board or charter school a certificate authorizing
284 permanent occupancy of the school building; or

285 (Bb) deliver to the local school board or charter school a written notice indicating
286 deficiencies in the school district's or charter school's compliance with the inspection
287 provisions of this chapter; and

288 (II) mail a copy of the certificate authorizing permanent occupancy or the notice of
289 deficiency to the building official of the local governmental entity in which the school building
290 is located.

291 (D) Upon the local school board or charter school remedying the deficiencies indicated
292 in the notice under Subsection (3)(a)(iv)(C)(Bb) and notifying the state superintendent of
293 public instruction that the deficiencies have been remedied, the state superintendent of public
294 instruction shall issue a certificate authorizing permanent occupancy of the school building and
295 mail a copy of the certificate to the building official of the local governmental entity in which
296 the school building is located.

297 (E) (I) The state superintendent of public instruction may charge the school district or
298 charter school a fee for an inspection that the superintendent considers necessary to enable the
299 superintendent to issue a certificate authorizing permanent occupancy of the school building.

300 (II) A fee under Subsection (3)(a)(iv)(E)(I) may not exceed the actual cost of
301 performing the inspection.

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

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

305 unincorporated area in the county; and

306 (ii) "certificate of [~~occupancy~~] inspection verification" means a standard inspection

307 [~~forms~~] form developed by the state superintendent in consultation with local school boards

308 and charter schools to verify that inspections by qualified inspectors have occurred.

Fiscal Note
Bill Number HB0172S02

Local Land Use Provisions Relating to Schools

22-Feb-06

4:32 PM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst