

Representative Larry B. Wiley proposes the following substitute bill:

COUNTY AND MUNICIPAL LAND USE

PROVISIONS REGARDING SCHOOLS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Larry B. Wiley

Senate Sponsor: Scott D. McCoy

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

▶ ~~Ĥ→ [removes building codes and]~~ ~~←Ĥ~~ adds additional building inspections to a list of requirements that a county and municipality may not impose on school districts or charter schools;

▶ modifies the criteria for an improvement project for which a county and municipality may not require a school district or charter school to pay an impact fee;

~~Ĥ→ [→ requires school districts and charter schools to site a new school in a way that ensures:~~

~~• compliance with the county or municipality's applicable land use laws and entitled land uses; and~~

~~• that government-provided services and utilities can be provided in a logical and cost-effective way;]~~ ~~←Ĥ~~

▶ clarifies that a school district building inspector that a school district or charter school may use is, for the school district, the school district's inspector or, for the

H.B. 69



26 charter school, the building inspector from the district in which the charter school is located;
27 and

28 ▶ makes technical changes.

29 **Monies Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **10-9a-305**, as last amended by Chapter 364, Laws of Utah 2006

36 **17-27a-305**, as last amended by Chapter 364, Laws of Utah 2006



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

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

40 **10-9a-305. Other entities required to conform to municipality's land use**
41 **ordinances -- Exceptions -- School districts and charter schools.**

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

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

50 (2) (a) Except as provided in Subsection (3), a school district or charter school is
51 subject to a municipality's land use ordinances.

52 (b) (i) Notwithstanding Subsection (3), a municipality ~~shall~~ **may** :

53 (A) ~~shall~~ **[may]** ~~subject~~ a charter school to standards within each zone pertaining
53a to setback,

54 height, bulk and massing regulations, off-site parking, curb cut, traffic circulation, and
55 construction staging[-]; and

56 (B) impose regulations upon the location of a project that are necessary to avoid

57 unreasonable risks to health or safety, as provided in Subsection (3)(f).

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

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

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

66 (3) A municipality may not:

67 (a) impose requirements for landscaping, fencing, aesthetic considerations,
68 construction methods or materials, additional building [~~codes~~] inspections, ~~H~~→ municipal
68a building codes, ~~←H~~ building use for
69 educational purposes, or the placement or use of temporary classroom facilities on school
70 property;

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

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

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

81 (e) require a school district or charter school to pay any impact fee for an improvement
82 project [that] unless the impact fee is [not reasonably related to the impact of the project upon
83 the need that the improvement is to address] imposed as provided in Title 11, Chapter 36,
84 Impact Fees Act; or

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

87 (4) Subject to Section 53A-20-108, a school district or charter school shall coordinate

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

- 89 ~~Ĥ→ [(a) ensure that the siting or expansion of a school in the intended location:~~
- 90 ~~—— (i) complies with applicable land use laws; and~~
- 91 ~~—— (ii) does not conflict with entitled land uses;~~
- 92 ~~—— (b) ensure that all local government services provided by and utilities constructed by a~~
- 93 ~~local government entity and that are required by the school construction activities can be~~
- 94 ~~provided or constructed in a logical and cost-effective manner;]~~

95 [F] (a) [f] [~~c~~] ~~←Ĥ~~ avoid or mitigate existing and potential traffic hazards,
 95a including consideration
 96 of the impacts between the new school and future highways; and
 97 [~~b~~→~~t~~] ~~Ĥ→~~ [~~t~~] (b) ~~←Ĥ~~ maximize school, student, and site safety.
 98 (5) Notwithstanding Subsection (3)(d), a municipality may, at its discretion:
 99 (a) provide a walk-through of school construction at no cost and at a time convenient to
 100 the district or charter school; and

101 (b) provide recommendations based upon the walk-through.
 102 (6) (a) Notwithstanding Subsection (3)(d), a school district or charter school shall use:
 103 (i) a municipal building inspector;
 104 (ii) (A) for a school district, a school district building inspector from that school
 105 district; or

106 (B) for a charter school, a school district building inspector from the school district in
 107 which the charter school is located; or
 108 (iii) an independent, certified building inspector who is:

109 (A) not an employee of the contractor;
 110 (B) approved by:
 111 (I) a municipal building inspector; or
 112 (II) (Aa) for a school district, a school district building inspector from that school
 113 district; or

114 (Bb) for a charter school, a school district building inspector from the school district in
 115 which the charter school is located; and
 116 (C) licensed to perform the inspection that the inspector is requested to perform.

117 (b) The approval under Subsection (6)(a)(iii)(B) may not be unreasonably withheld.
 118 (c) If a school district or charter school uses ~~Ĥ→~~ [~~an~~] a school district or ~~←Ĥ~~
 118a independent building inspector under

119 Subsection (6)(a) ~~H~~→ **(ii)** or ←~~H~~ (iii), the school district or charter school shall submit to the state
120 superintendent of public instruction and municipal building official, on a monthly basis during
121 construction of the school building, a copy of each inspection certificate regarding the school
122 building.

123 (7) (a) A charter school shall be considered a permitted use in all zoning districts
124 within a municipality.

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

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

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

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

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

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

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

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

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

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

150 **17-27a-305. Other entities required to conform to county's land use ordinances --**
 151 **Exceptions -- School districts and charter schools.**

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

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

160 (2) (a) Except as provided in Subsection (3), a school district or charter school is
 161 subject to a county's land use ordinances.

162 (b) (i) Notwithstanding Subsection (3), a county may:

163 (A) subject a charter school to standards within each zone pertaining to setback, height,
 164 bulk and massing regulations, off-site parking, curb cut, traffic circulation, and construction
 165 staging[-]; and

166 (B) impose regulations upon the location of a project that are necessary to avoid
 167 unreasonable risks to health or safety, as provided in Subsection (3)(f).

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

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

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

176 (3) A county may not:

177 (a) impose requirements for landscaping, fencing, aesthetic considerations,
 178 construction methods or materials, additional building [~~codes~~] inspections, ~~H~~→ county
 178a building codes, ←~~H~~ building use for
 179 educational purposes, or the placement or use of temporary classroom facilities on school
 180 property;

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

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

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

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192 project [that] unless the impact fee is [not reasonably related to the impact of the project upon
193 the need that the improvement is to address] imposed as provided in Title 11, Chapter 36,
194 Impact Fees Act; or

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

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198 the siting of a new school with the county in which the school is to be located, to:

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- 204 ~~provided or constructed in a logical and cost-effective manner;]~~

205 [F] (a) [f] [~~(c)~~] ←H avoid or mitigate existing and potential traffic hazards, including
205a consideration
206 of the impacts between the new school and future highways; and

207 H→ [F] (b) [f] [~~(d)~~] [to] ←H maximize school, student, and site safety.

208 (5) Notwithstanding Subsection (3)(d), a county may, at its discretion:

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210 the district or charter school; and

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214 (ii) (A) for a school district, a school district building inspector from that school

215 district; or

216 (B) for a charter school, a school district building inspector from the school district in

217 which the charter school is located; or

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

219 (A) not an employee of the contractor;

220 (B) approved by:

221 (I) a county building inspector; or

222 (II) (Aa) for a school district, a school district building inspector from that school

223 district; or

224 (Bb) for a charter school, a school district building inspector from the school district in

225 which the charter school is located; and

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

227 (b) The approval under Subsection (6)(a)(iii)(B) may not be unreasonably withheld.

228 (c) If a school district or charter school uses ~~H→~~ **[an] a school district or** ~~←H~~ independent

228a building inspector under

229 Subsection (6)(a) ~~H→~~ **(ii) or** ~~←H~~ (iii), the school district or charter school shall submit to the state

230 superintendent of public instruction and county building official, on a monthly basis during

231 construction of the school building, a copy of each inspection certificate regarding the school

232 building.

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238 requirements for schools or other institutional public uses throughout the county.

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240 which sells alcohol, a charter school may be prohibited from a location which would otherwise

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243 occupancy of a school building from:

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251 subject to the notification requirement of Subsection 53A-20-104(3)(a)(ii).

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253 school building from a school district official with authority to issue the certificate, if the
254 charter school used a school district building inspector for inspection of the school building.

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256 of public instruction under Subsection 53A-20-104(3) or a school district official with authority
257 to issue the certificate shall be considered to satisfy any county requirement for an inspection or
258 a certificate of occupancy.

Fiscal Note**H.B. 69 2nd Sub. (Gray) - County and Municipal Land Use Provisions Regarding
Schools**

2007 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

1/24/2007, 10:22:18 AM, Lead Analyst: Wilko, A.

Office of the Legislative Fiscal Analyst