

**COUNTY AND MUNICIPAL LAND USE
PROVISIONS REGARDING SCHOOLS**

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Larry B. Wiley

Senate Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ modifies the definition of "charter school" in county and municipal land use provisions;
- ▶ adds geologic hazards and environmental regulations to the types of standards to which counties and municipalities may subject charter schools;
- ▶ clarifies a charter school's obligation to conform to a county or municipality's general plan;
- ▶ removes building codes and 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;
- ▶ requires school districts and charter schools to site a new school in a way that ensures:
 - compliance with the county or municipality's general plan, applicable land use laws, and entitled land uses; and



28 • that government services and utilities can be provided in a logical and cost-
29 effective way;

30 ▶ conditions the consideration of a charter school as a permitted use in all zoning
31 districts upon its being consistent with the county or municipality's general plan;

32 and

33 ▶ makes technical changes.

34 **Monies Appropriated in this Bill:**

35 None

36 **Other Special Clauses:**

37 None

38 **Utah Code Sections Affected:**

39 AMENDS:

40 **10-9a-103**, as last amended by Chapters 14, 163, 240, 257 and 289, Laws of Utah 2006

41 **10-9a-305**, as last amended by Chapter 364, Laws of Utah 2006

42 **17-27a-103**, as last amended by Chapters 14, 163, 240, 257 and 289, Laws of Utah
43 2006

44 **17-27a-305**, as last amended by Chapter 364, Laws of Utah 2006



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

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

48 **10-9a-103. Definitions.**

49 As used in this chapter:

50 (1) "Affected entity" means a county, municipality, independent special district under
51 Title 17A, Chapter 2, Independent Special Districts, local district under Title 17B, Chapter 2,
52 Local Districts, school district, interlocal cooperation entity established under Title 11, Chapter
53 13, Interlocal Cooperation Act, specified public utility, a property owner, a property owners
54 association, or the Utah Department of Transportation, if:

55 (a) the entity's services or facilities are likely to require expansion or significant
56 modification because of an intended use of land;

57 (b) the entity has filed with the municipality a copy of the entity's general or long-range
58 plan; or

59 (c) the entity has filed with the municipality a request for notice during the same
60 calendar year and before the municipality provides notice to an affected entity in compliance
61 with a requirement imposed under this chapter.

62 (2) "Appeal authority" means the person, board, commission, agency, or other body
63 designated by ordinance to decide an appeal of a decision of a land use application or a
64 variance.

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

68 (4) "Charter school" includes:

69 (a) an operating charter school; and

70 (b) a charter school applicant that has its application approved by a chartering entity in
71 accordance with Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act[~~;~~and].

72 [~~(c) an entity who is working on behalf of a charter school or approved charter
73 applicant to develop or construct a charter school building.~~]

74 (5) "Chief executive officer" means the:

75 (a) mayor in municipalities operating under all forms of municipal government except
76 the council-manager form; or

77 (b) city manager in municipalities operating under the council-manager form of
78 municipal government.

79 (6) "Conditional use" means a land use that, because of its unique characteristics or
80 potential impact on the municipality, surrounding neighbors, or adjacent land uses, may not be
81 compatible in some areas or may be compatible only if certain conditions are required that
82 mitigate or eliminate the detrimental impacts.

83 (7) "Constitutional taking" means a governmental action that results in a taking of
84 private property so that compensation to the owner of the property is required by the:

85 (a) Fifth or Fourteenth Amendment of the Constitution of the United States; or

86 (b) Utah Constitution Article I, Section 22.

87 (8) "Culinary water authority" means the department, agency, or public entity with
88 responsibility to review and approve the feasibility of the culinary water system and sources for
89 the subject property.

90 (9) (a) "Disability" means a physical or mental impairment that substantially limits one
91 or more of a person's major life activities, including a person having a record of such an
92 impairment or being regarded as having such an impairment.

93 (b) "Disability" does not include current illegal use of, or addiction to, any federally
94 controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C.
95 802.

96 (10) "Elderly person" means a person who is 60 years old or older, who desires or
97 needs to live with other elderly persons in a group setting, but who is capable of living
98 independently.

99 (11) "General plan" means a document that a municipality adopts that sets forth general
100 guidelines for proposed future development of the land within the municipality.

101 (12) "Identical plans" means building plans submitted to a municipality that are
102 substantially identical to building plans that were previously submitted to and reviewed and
103 approved by the municipality and describe a building that is:

104 (a) located on land zoned the same as the land on which the building described in the
105 previously approved plans is located; and

106 (b) subject to the same geological and meteorological conditions and the same law as
107 the building described in the previously approved plans.

108 (13) "Land use application" means an application required by a municipality's land use
109 ordinance.

110 (14) "Land use authority" means a person, board, commission, agency, or other body
111 designated by the local legislative body to act upon a land use application.

112 (15) "Land use ordinance" means a planning, zoning, development, or subdivision
113 ordinance of the municipality, but does not include the general plan.

114 (16) "Land use permit" means a permit issued by a land use authority.

115 (17) "Legislative body" means the municipal council.

116 (18) "Lot line adjustment" means the relocation of the property boundary line in a
117 subdivision between two adjoining lots with the consent of the owners of record.

118 (19) "Moderate income housing" means housing occupied or reserved for occupancy
119 by households with a gross household income equal to or less than 80% of the median gross
120 income for households of the same size in the county in which the city is located.

121 (20) "Nominal fee" means a fee that reasonably reimburses a municipality only for time
122 spent and expenses incurred in:

- 123 (a) verifying that building plans are identical plans; and
- 124 (b) reviewing and approving those minor aspects of identical plans that differ from the
125 previously reviewed and approved building plans.

126 (21) "Noncomplying structure" means a structure that:

- 127 (a) legally existed before its current land use designation; and
- 128 (b) because of one or more subsequent land use ordinance changes, does not conform
129 to the setback, height restrictions, or other regulations, excluding those regulations, which
130 govern the use of land.

131 (22) "Nonconforming use" means a use of land that:

- 132 (a) legally existed before its current land use designation;
- 133 (b) has been maintained continuously since the time the land use ordinance governing
134 the land changed; and
- 135 (c) because of one or more subsequent land use ordinance changes, does not conform
136 to the regulations that now govern the use of the land.

137 (23) "Official map" means a map drawn by municipal authorities and recorded in a
138 county recorder's office that:

- 139 (a) shows actual and proposed rights-of-way, centerline alignments, and setbacks for
140 highways and other transportation facilities;
- 141 (b) provides a basis for restricting development in designated rights-of-way or between
142 designated setbacks to allow the government authorities time to purchase or otherwise reserve
143 the land; and
- 144 (c) has been adopted as an element of the municipality's general plan.

145 (24) "Person" means an individual, corporation, partnership, organization, association,
146 trust, governmental agency, or any other legal entity.

147 (25) "Plan for moderate income housing" means a written document adopted by a city
148 legislative body that includes:

- 149 (a) an estimate of the existing supply of moderate income housing located within the
150 city;
- 151 (b) an estimate of the need for moderate income housing in the city for the next five

152 years as revised biennially;

153 (c) a survey of total residential land use;

154 (d) an evaluation of how existing land uses and zones affect opportunities for moderate
155 income housing; and

156 (e) a description of the city's program to encourage an adequate supply of moderate
157 income housing.

158 (26) "Plat" means a map or other graphical representation of lands being laid out and
159 prepared in accordance with Section 10-9a-603, 17-23-17, or 57-8-13.

160 (27) "Public hearing" means a hearing at which members of the public are provided a
161 reasonable opportunity to comment on the subject of the hearing.

162 (28) "Public meeting" means a meeting that is required to be open to the public under
163 Title 52, Chapter 4, Open and Public Meetings Act.

164 (29) "Record of survey map" means a map of a survey of land prepared in accordance
165 with Section 17-23-17.

166 (30) "Residential facility for elderly persons" means a single-family or multiple-family
167 dwelling unit that meets the requirements of Section 10-9a-516, but does not include a health
168 care facility as defined by Section 26-21-2.

169 (31) "Residential facility for persons with a disability" means a residence:

170 (a) in which more than one person with a disability resides; and

171 (b) (i) is licensed or certified by the Department of Human Services under Title 62A,
172 Chapter 2, Licensure of Programs and Facilities; or

173 (ii) is licensed or certified by the Department of Health under Title 26, Chapter 21,
174 Health Care Facility Licensing and Inspection Act.

175 (32) "Sanitary sewer authority" means the department, agency, or public entity with
176 responsibility to review and approve the feasibility of sanitary sewer services or onsite
177 wastewater systems.

178 (33) "Special district" means an entity established under the authority of Title 17A,
179 Special Districts, and any other governmental or quasi-governmental entity that is not a county,
180 municipality, school district, or unit of the state.

181 (34) "Specified public utility" means an electrical corporation, gas corporation, or
182 telephone corporation, as those terms are defined in Section 54-2-1.

183 (35) "Street" means a public right-of-way, including a highway, avenue, boulevard,
184 parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement, or other
185 way.

186 (36) (a) "Subdivision" means any land that is divided, resubdivided or proposed to be
187 divided into two or more lots, parcels, sites, units, plots, or other division of land for the
188 purpose, whether immediate or future, for offer, sale, lease, or development either on the
189 installment plan or upon any and all other plans, terms, and conditions.

190 (b) "Subdivision" includes:

191 (i) the division or development of land whether by deed, metes and bounds description,
192 devise and testacy, map, plat, or other recorded instrument; and

193 (ii) except as provided in Subsection (36)(c), divisions of land for residential and
194 nonresidential uses, including land used or to be used for commercial, agricultural, and
195 industrial purposes.

196 (c) "Subdivision" does not include:

197 (i) a bona fide division or partition of agricultural land for the purpose of joining one of
198 the resulting separate parcels to a contiguous parcel of unsubdivided agricultural land, if
199 neither the resulting combined parcel nor the parcel remaining from the division or partition
200 violates an applicable land use ordinance;

201 (ii) a recorded agreement between owners of adjoining unsubdivided properties
202 adjusting their mutual boundary if:

203 (A) no new lot is created; and

204 (B) the adjustment does not violate applicable land use ordinances;

205 (iii) a recorded document, executed by the owner of record:

206 (A) revising the legal description of more than one contiguous unsubdivided parcel of
207 property into one legal description encompassing all such parcels of property; or

208 (B) joining a subdivided parcel of property to another parcel of property that has not
209 been subdivided, if the joinder does not violate applicable land use ordinances; or

210 (iv) a recorded agreement between owners of adjoining subdivided properties adjusting
211 their mutual boundary if:

212 (A) no new dwelling lot or housing unit will result from the adjustment; and

213 (B) the adjustment will not violate any applicable land use ordinance.

214 (d) The joining of a subdivided parcel of property to another parcel of property that has
215 not been subdivided does not constitute a subdivision under this Subsection (36) as to the
216 unsubdivided parcel of property or subject the unsubdivided parcel to the municipality's
217 subdivision ordinance.

218 (37) "Unincorporated" means the area outside of the incorporated area of a city or
219 town.

220 (38) "Zoning map" means a map, adopted as part of a land use ordinance, that depicts
221 land use zones, overlays, or districts.

222 Section 2. Section **10-9a-305** is amended to read:

223 **10-9a-305. Other entities required to conform to municipality's land use**
224 **ordinances -- Exceptions -- School districts and charter schools.**

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

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

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

235 (b) (i) Notwithstanding Subsection (3), a municipality may subject a charter school to
236 standards within each zone pertaining to setback, height, bulk and massing regulations, off-site
237 parking, curb cut, traffic circulation, geological hazards, environmental regulations, and
238 construction staging.

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

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

244 (iv) Nothing in Subsection (2)(b)(iii) may be construed to relieve a charter school of an

245 obligation;

246 (A) to comply with a requirement of an applicable building or safety code to which it is
247 otherwise obligated to comply[-]; or

248 (B) to conform to the municipality's general plan, as required by Section 10-9a-406.

249 (3) A municipality may not:

250 (a) impose requirements for landscaping, fencing, aesthetic considerations,
251 construction methods or materials, additional building [~~codes~~] inspections, building use for
252 educational purposes, or the placement or use of temporary classroom facilities on school
253 property;

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

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

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

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

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

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

272 (a) ensure that the siting or expansion of a school in the intended location:

273 (i) complies with the municipality's general plan and applicable land use laws; and

274 (ii) does not conflict with entitled land uses;

275 (b) ensure that all local government services and utilities required by the school

276 construction activities can be provided in a logical and cost-effective manner;

277 ~~[(a)]~~ (c) avoid or mitigate existing and potential traffic hazards, including consideration
278 of the impacts between the new school and future highways; and

279 ~~[(b) to]~~ (d) maximize school, student, and site safety.

280 (5) Notwithstanding Subsection (3)(d), a municipality may, at its discretion:

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

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

284 (6) (a) Notwithstanding Subsection (3)(d), a school district or charter school shall use:

285 (i) a municipal building inspector;

286 (ii) a school district building inspector from the district in which the charter school is
287 located; or

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

289 (A) not an employee of the contractor;

290 (B) approved by a municipal building inspector or a school district building inspector
291 from the school district in which the charter school is located; and

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

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

294 (c) If a school district or charter school uses an independent building inspector under
295 Subsection (6)(a)(iii), the school district or charter school shall submit to the state
296 superintendent of public instruction and municipal building official, on a monthly basis during
297 construction of the school building, a copy of each inspection certificate regarding the school
298 building.

299 (7) (a) ~~[A]~~ If consistent with the municipality's general plan, a charter school shall be
300 considered a permitted use in all zoning districts within a municipality.

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

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

305 (d) If a municipality has designated zones for a sexually oriented business, or a
306 business which sells alcohol, a charter school may be prohibited from a location which would

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

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

310 (A) the state superintendent of public instruction, as provided in Subsection
311 53A-20-104(3), if the school district or charter school used an independent building inspector
312 for inspection of the school building; or

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

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

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

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

325 Section 3. Section **17-27a-103** is amended to read:

326 **17-27a-103. Definitions.**

327 As used in this chapter:

328 (1) "Affected entity" means a county, municipality, independent special district under
329 Title 17A, Chapter 2, Independent Special Districts, local district under Title 17B, Chapter 2,
330 Local Districts, school district, interlocal cooperation entity established under Title 11, Chapter
331 13, Interlocal Cooperation Act, specified property owner, property owners association, public
332 utility, or the Utah Department of Transportation, if:

333 (a) the entity's services or facilities are likely to require expansion or significant
334 modification because of an intended use of land;

335 (b) the entity has filed with the county a copy of the entity's general or long-range plan;
336 or

337 (c) the entity has filed with the county a request for notice during the same calendar

338 year and before the county provides notice to an affected entity in compliance with a
339 requirement imposed under this chapter.

340 (2) "Appeal authority" means the person, board, commission, agency, or other body
341 designated by ordinance to decide an appeal of a decision of a land use application or a
342 variance.

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

346 (4) "Charter school" includes:

347 (a) an operating charter school; and

348 (b) a charter school applicant that has its application approved by a chartering entity in
349 accordance with Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act~~[-and]~~.

350 ~~[(c) an entity who is working on behalf of a charter school or approved charter~~
351 ~~applicant to develop or construct a charter school building.]~~

352 (5) "Chief executive officer" means the person or body that exercises the executive
353 powers of the county.

354 (6) "Conditional use" means a land use that, because of its unique characteristics or
355 potential impact on the county, surrounding neighbors, or adjacent land uses, may not be
356 compatible in some areas or may be compatible only if certain conditions are required that
357 mitigate or eliminate the detrimental impacts.

358 (7) "Constitutional taking" means a governmental action that results in a taking of
359 private property so that compensation to the owner of the property is required by the:

360 (a) Fifth or Fourteenth Amendment of the Constitution of the United States; or

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362 (8) "Culinary water authority" means the department, agency, or public entity with
363 responsibility to review and approve the feasibility of the culinary water system and sources for
364 the subject property.

365 (9) (a) "Disability" means a physical or mental impairment that substantially limits one
366 or more of a person's major life activities, including a person having a record of such an
367 impairment or being regarded as having such an impairment.

368 (b) "Disability" does not include current illegal use of, or addiction to, any federally

369 controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C.
370 802.

371 (10) "Elderly person" means a person who is 60 years old or older, who desires or
372 needs to live with other elderly persons in a group setting, but who is capable of living
373 independently.

374 (11) "Gas corporation" has the same meaning as defined in Section 54-2-1.

375 (12) "General plan" means a document that a county adopts that sets forth general
376 guidelines for proposed future development of the unincorporated land within the county.

377 (13) "Identical plans" means building plans submitted to a county that are substantially
378 identical building plans that were previously submitted to and reviewed and approved by the
379 county and describe a building that is:

380 (a) located on land zoned the same as the land on which the building described in the
381 previously approved plans is located; and

382 (b) subject to the same geological and meteorological conditions and the same law as
383 the building described in the previously approved plans.

384 (14) "Interstate pipeline company" means a person or entity engaged in natural gas
385 transportation subject to the jurisdiction of the Federal Energy Regulatory Commission under
386 the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

387 (15) "Intrastate pipeline company" means a person or entity engaged in natural gas
388 transportation that is not subject to the jurisdiction of the Federal Energy Regulatory
389 Commission under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

390 (16) "Land use application" means an application required by a county's land use
391 ordinance.

392 (17) "Land use authority" means a person, board, commission, agency, or other body
393 designated by the local legislative body to act upon a land use application.

394 (18) "Land use ordinance" means a planning, zoning, development, or subdivision
395 ordinance of the county, but does not include the general plan.

396 (19) "Land use permit" means a permit issued by a land use authority.

397 (20) "Legislative body" means the county legislative body, or for a county that has
398 adopted an alternative form of government, the body exercising legislative powers.

399 (21) "Lot line adjustment" means the relocation of the property boundary line in a

400 subdivision between two adjoining lots with the consent of the owners of record.

401 (22) "Moderate income housing" means housing occupied or reserved for occupancy
402 by households with a gross household income equal to or less than 80% of the median gross
403 income for households of the same size in the county in which the housing is located.

404 (23) "Nominal fee" means a fee that reasonably reimburses a county only for time spent
405 and expenses incurred in:

406 (a) verifying that building plans are identical plans; and

407 (b) reviewing and approving those minor aspects of identical plans that differ from the
408 previously reviewed and approved building plans.

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410 (a) legally existed before its current land use designation; and

411 (b) because of one or more subsequent land use ordinance changes, does not conform
412 to the setback, height restrictions, or other regulations, excluding those regulations that govern
413 the use of land.

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415 (a) legally existed before its current land use designation;

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417 governing the land changed; and

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419 to the regulations that now govern the use of the land.

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421 county recorder's office that:

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423 highways and other transportation facilities;

424 (b) provides a basis for restricting development in designated rights-of-way or between
425 designated setbacks to allow the government authorities time to purchase or otherwise reserve
426 the land; and

427 (c) has been adopted as an element of the county's general plan.

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429 trust, governmental agency, or any other legal entity.

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431 county legislative body that includes:

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433 county;

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435 years as revised biennially;

436 (c) a survey of total residential land use;

437 (d) an evaluation of how existing land uses and zones affect opportunities for moderate
438 income housing; and

439 (e) a description of the county's program to encourage an adequate supply of moderate
440 income housing.

441 (29) "Plat" means a map or other graphical representation of lands being laid out and
442 prepared in accordance with Section 17-27a-603, 17-23-17, or 57-8-13.

443 (30) "Public hearing" means a hearing at which members of the public are provided a
444 reasonable opportunity to comment on the subject of the hearing.

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446 Title 52, Chapter 4, Open and Public Meetings Act.

447 (32) "Record of survey map" means a map of a survey of land prepared in accordance
448 with Section 17-23-17.

449 (33) "Residential facility for elderly persons" means a single-family or multiple-family
450 dwelling unit that meets the requirements of Section 17-27a-515, but does not include a health
451 care facility as defined by Section 26-21-2.

452 (34) "Residential facility for persons with a disability" means a residence:

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454 (b) (i) is licensed or certified by the Department of Human Services under Title 62A,
455 Chapter 2, Licensure of Programs and Facilities; or

456 (ii) is licensed or certified by the Department of Health under Title 26, Chapter 21,
457 Health Care Facility Licensing and Inspection Act.

458 (35) "Sanitary sewer authority" means the department, agency, or public entity with
459 responsibility to review and approve the feasibility of sanitary sewer services or onsite
460 wastewater systems.

461 (36) "Special district" means any entity established under the authority of Title 17A,

462 Special Districts, and any other governmental or quasi-governmental entity that is not a county,
463 municipality, school district, or unit of the state.

464 (37) "Specified public utility" means an electrical corporation, gas corporation, or
465 telephone corporation, as those terms are defined in Section 54-2-1.

466 (38) "Street" means a public right-of-way, including a highway, avenue, boulevard,
467 parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement, or other
468 way.

469 (39) (a) "Subdivision" means any land that is divided, resubdivided or proposed to be
470 divided into two or more lots, parcels, sites, units, plots, or other division of land for the
471 purpose, whether immediate or future, for offer, sale, lease, or development either on the
472 installment plan or upon any and all other plans, terms, and conditions.

473 (b) "Subdivision" includes:

474 (i) the division or development of land whether by deed, metes and bounds description,
475 devise and testacy, map, plat, or other recorded instrument; and

476 (ii) except as provided in Subsection (39)(c), divisions of land for residential and
477 nonresidential uses, including land used or to be used for commercial, agricultural, and
478 industrial purposes.

479 (c) "Subdivision" does not include:

480 (i) a bona fide division or partition of agricultural land for agricultural purposes;

481 (ii) a recorded agreement between owners of adjoining properties adjusting their
482 mutual boundary if:

483 (A) no new lot is created; and

484 (B) the adjustment does not violate applicable land use ordinances;

485 (iii) a recorded document, executed by the owner of record:

486 (A) revising the legal description of more than one contiguous unsubdivided parcel of
487 property into one legal description encompassing all such parcels of property; or

488 (B) joining a subdivided parcel of property to another parcel of property that has not
489 been subdivided, if the joinder does not violate applicable land use ordinances;

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

492 (A) an unmanned facility appurtenant to a pipeline owned or operated by a gas

493 corporation, interstate pipeline company, or intrastate pipeline company; or

494 (B) an unmanned telecommunications, microwave, fiber optic, electrical, or other
495 utility service regeneration, transformation, retransmission, or amplification facility; or

496 (v) a recorded agreement between owners of adjoining subdivided properties adjusting
497 their mutual boundary if:

498 (A) no new dwelling lot or housing unit will result from the adjustment; and

499 (B) the adjustment will not violate any applicable land use ordinance.

500 (d) The joining of a subdivided parcel of property to another parcel of property that has
501 not been subdivided does not constitute a subdivision under this Subsection (39) as to the
502 unsubdivided parcel of property or subject the unsubdivided parcel to the county's subdivision
503 ordinance.

504 (40) "Township" means a contiguous, geographically defined portion of the
505 unincorporated area of a county, established under this part or reconstituted or reinstated under
506 Section 17-27a-306, with planning and zoning functions as exercised through the township
507 planning commission, as provided in this chapter, but with no legal or political identity
508 separate from the county and no taxing authority, except that "township" means a former
509 township under Chapter 308, Laws of Utah 1996 where the context so indicates.

510 (41) "Unincorporated" means the area outside of the incorporated area of a
511 municipality.

512 (42) "Zoning map" means a map, adopted as part of a land use ordinance, that depicts
513 land use zones, overlays, or districts.

514 Section 4. Section **17-27a-305** is amended to read:

515 **17-27a-305. Other entities required to conform to county's land use ordinances --**
516 **Exceptions -- School districts and charter schools.**

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

521 (b) In addition to any other remedies provided by law, when a county's land use
522 ordinance is violated or about to be violated by another political subdivision, that county may
523 institute an injunction, mandamus, abatement, or other appropriate action or proceeding to

524 prevent, enjoin, abate, or remove the improper installation, improvement, or use.

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

527 (b) (i) Notwithstanding Subsection (3), a county may subject a charter school to
528 standards within each zone pertaining to setback, height, bulk and massing regulations, off-site
529 parking, curb cut, traffic circulation, geological hazards, environmental regulations, and
530 construction staging.

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

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

536 (iv) Nothing in Subsection (2)(b)(iii) may be construed to relieve a charter school of an
537 obligation:

538 (A) to comply with a requirement of an applicable building or safety code to which it is
539 otherwise obligated to comply[-]; or

540 (B) to conform to the county's general plan, as required by Section 17-27a-406.

541 (3) A county may not:

542 (a) impose requirements for landscaping, fencing, aesthetic considerations,
543 construction methods or materials, additional building [~~codes~~] inspections, building use for
544 educational purposes, or the placement or use of temporary classroom facilities on school
545 property;

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

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

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

555 established by the state superintendent;

556 (e) require a school district or charter school to pay any impact fee for an improvement
557 project ~~[that] unless the impact fee is [not reasonably related to the impact of the project upon~~
558 ~~the need that the improvement is to address]~~ imposed as provided in Title 11, Chapter 36,

559 Impact Fees Act; or

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

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

564 (a) ensure that the siting or expansion of a school in the intended location:

565 (i) complies with the county's general plan and applicable land use laws; and

566 (ii) does not conflict with entitled land uses;

567 (b) ensure that all local government services and utilities required by the school
568 construction activities can be provided in a logical and cost-effective manner;

569 ~~[(a)]~~ (c) avoid or mitigate existing and potential traffic hazards, including consideration
570 of the impacts between the new school and future highways; and

571 ~~[(b)]~~ (d) to maximize school, student, and site safety.

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

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

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

576 (6) (a) Notwithstanding Subsection (3)(d), a school district or charter school shall use:

577 (i) a county building inspector;

578 (ii) a school district building inspector from the district in which the charter school is
579 located; or

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

581 (A) not an employee of the contractor;

582 (B) approved by a county building inspector or a school district building inspector from
583 the school district in which the charter school is located; and

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

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

586 (c) If a school district or charter school uses an independent building inspector under
587 Subsection (6)(a)(iii), the school district or charter school shall submit to the state
588 superintendent of public instruction and county building official, on a monthly basis during
589 construction of the school building, a copy of each inspection certificate regarding the school
590 building.

591 (7) (a) [~~A~~] If consistent with the county's general plan, a charter school shall be
592 considered a permitted use in all zoning districts within a county.

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

595 (c) Parking requirements for a charter school may not exceed the minimum parking
596 requirements for schools or other institutional public uses throughout the county.

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

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

602 (A) the state superintendent of public instruction, as provided in Subsection
603 53A-20-104(3), if the school district or charter school used an independent building inspector
604 for inspection of the school building; or

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

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

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

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

Legislative Review Note
as of 11-16-06 4:19 PM

Office of Legislative Research and General Counsel

H.B. 69 - County and Municipal Land Use Provisions Regarding Schools

Fiscal Note

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 could increase the compliance costs for some charter schools.

1/10/2007, 2:58:58 PM, Lead Analyst: Wilko, A.

Office of the Legislative Fiscal Analyst