

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: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ 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



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

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

30 and

31 ▶ makes technical changes.

32 **Monies Appropriated in this Bill:**

33 None

34 **Other Special Clauses:**

35 None

36 **Utah Code Sections Affected:**

37 AMENDS:

38 **10-9a-305**, as last amended by Chapter 364, Laws of Utah 2006

39 **17-27a-305**, as last amended by Chapter 364, Laws of Utah 2006



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

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

43 **10-9a-305. Other entities required to conform to municipality's land use**
44 **ordinances -- Exceptions -- School districts and charter schools.**

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

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

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

55 (b) (i) Notwithstanding Subsection (3), a municipality may subject a charter school to
56 standards within each zone pertaining to setback, height, bulk and massing regulations, off-site

57 parking, curb cut, traffic circulation, geological hazards, environmental regulations, and
58 construction staging.

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

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

64 (iv) Nothing in Subsection (2)(b)(iii) or (7)(a) may be construed to relieve a charter
65 school of an obligation;

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

68 (B) to conform to the municipality's general plan, as required by Section 10-9a-406 and
69 subject to Subsection (8).

70 (3) A municipality may not:

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

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

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

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

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

88 Impact Fees Act; or

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

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

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

94 (i) conforms to the municipality's general plan, subject to Subsection (8);

95 (ii) complies with applicable land use laws; and

96 (iii) does not conflict with entitled land uses;

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

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

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

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

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

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

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

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

107 (i) a municipal building inspector;

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

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

111 (A) not an employee of the contractor;

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

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

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

116 (c) If a school district or charter school uses an independent building inspector under
117 Subsection (6)(a)(iii), the school district or charter school shall submit to the state

118 superintendent of public instruction and municipal building official, on a monthly basis during

119 construction of the school building, a copy of each inspection certificate regarding the school
120 building.

121 (7) (a) [~~A~~] Subject to Subsection (2)(b)(iv), a charter school shall be considered a
122 permitted use in all zoning districts within a municipality.

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

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

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

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

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

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

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

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

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

147 (8) A charter school shall be considered to conform to a municipality's general plan if a
148 school district, under the same circumstances, would be found to conform.

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 subject a charter school to
163 standards within each zone pertaining to setback, height, bulk and massing regulations, off-site
164 parking, curb cut, traffic circulation, geological hazards, environmental regulations, and
165 construction staging.

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

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

171 (iv) Nothing in Subsection (2)(b)(iii) or (7)(a) may be construed to relieve a charter
172 school of an obligation:

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

175 (B) to conform to the county's general plan, as required by Section 17-27a-406 and
176 subject to Subsection (8).

177 (3) A county may not:

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

181 property;

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

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

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

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

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

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

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

201 (i) conforms to the county's general plan, subject to Subsection (8);

202 (ii) complies with applicable land use laws; and

203 (iii) does not conflict with entitled land uses;

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

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

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

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

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

- 212 (b) provide recommendations based upon the walk-through.
- 213 (6) (a) Notwithstanding Subsection (3)(d), a school district or charter school shall use:
- 214 (i) a county building inspector;
- 215 (ii) a school district building inspector from the district in which the charter school is
- 216 located; or
- 217 (iii) an independent, certified building inspector who is:
- 218 (A) not an employee of the contractor;
- 219 (B) approved by a county building inspector or a school district building inspector from
- 220 the school district in which the charter school is located; and
- 221 (C) licensed to perform the inspection that the inspector is requested to perform.
- 222 (b) The approval under Subsection (6)(a)(iii)(B) may not be unreasonably withheld.
- 223 (c) If a school district or charter school uses an independent building inspector under
- 224 Subsection (6)(a)(iii), the school district or charter school shall submit to the state
- 225 superintendent of public instruction and county building official, on a monthly basis during
- 226 construction of the school building, a copy of each inspection certificate regarding the school
- 227 building.
- 228 (7) (a) [~~A~~] Subject to Subsection (2)(b)(iv), a charter school shall be considered a
- 229 permitted use in all zoning districts within a county.
- 230 (b) Each land use application for any approval required for a charter school, including
- 231 an application for a building permit, shall be processed on a first priority basis.
- 232 (c) Parking requirements for a charter school may not exceed the minimum parking
- 233 requirements for schools or other institutional public uses throughout the county.
- 234 (d) If a county has designated zones for a sexually oriented business, or a business
- 235 which sells alcohol, a charter school may be prohibited from a location which would otherwise
- 236 defeat the purpose for the zone unless the charter school provides a waiver.
- 237 (e) (i) A school district or a charter school may seek a certificate authorizing permanent
- 238 occupancy of a school building from:
- 239 (A) the state superintendent of public instruction, as provided in Subsection
- 240 53A-20-104(3), if the school district or charter school used an independent building inspector
- 241 for inspection of the school building; or
- 242 (B) a county official with authority to issue the certificate, if the school district or

243 charter school used a county building inspector for inspection of the school building.

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245 a school building if it used its own building inspector for inspection of the school building,
246 subject to the notification requirement of Subsection 53A-20-104(3)(a)(ii).

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

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

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255 school district, under the same circumstances, would be found to conform.