

**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

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**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

- ▶ 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 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;
- ▶ 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



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:

53       (A) may subject a charter school to standards within each zone pertaining 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, 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 (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 ~~[(a)]~~ (c) avoid or mitigate existing and potential traffic hazards, including consideration

96 of the impacts between the new school and future highways; and

97 ~~[(b) to]~~ (d) 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 an independent building inspector under

119 Subsection (6)(a)(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, 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;

191 (e) require a school district or charter school to pay any impact fee for an improvement  
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

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

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

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

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

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

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

- 212 (6) (a) Notwithstanding Subsection (3)(d), a school district or charter school shall use:
- 213 (i) a county building inspector;
- 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 an independent building inspector under
- 229 Subsection (6)(a)(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.
- 233 (7) (a) A charter school shall be considered a permitted use in all zoning districts
- 234 within a county.
- 235 (b) Each land use application for any approval required for a charter school, including
- 236 an application for a building permit, shall be processed on a first priority basis.
- 237 (c) Parking requirements for a charter school may not exceed the minimum parking
- 238 requirements for schools or other institutional public uses throughout the county.
- 239 (d) If a county has designated zones for a sexually oriented business, or a business
- 240 which sells alcohol, a charter school may be prohibited from a location which would otherwise
- 241 defeat the purpose for the zone unless the charter school provides a waiver.
- 242 (e) (i) A school district or a charter school may seek a certificate authorizing permanent



243 occupancy of a school building from:

244 (A) the state superintendent of public instruction, as provided in Subsection  
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246 for inspection of the school building; or

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

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

252 (iii) A charter school may seek a certificate authorizing permanent occupancy of a  
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.

255 (iv) A certificate authorizing permanent occupancy issued by the state superintendent  
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.

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

2007 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**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.

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

**Office of the Legislative Fiscal Analyst**