

**TRANSPORTATION AND TRANSIT
AMENDMENTS**

2008 GENERAL SESSION
STATE OF UTAH

Chief Sponsor: Sheldon L. Killpack

House Sponsor: Kevin S. Garn

LONG TITLE

General Description:

This bill modifies the Municipal Land Use Development and Management Act and the County Land Use Development and Management Act by amending provisions relating to the construction of certain public transit facilities.

Highlighted Provisions:

This bill:

- ▶ provides that a public transit district is not required to conform to ~~§~~ [any municipal]

any municipal land use ordinances of a municipality that is located within the boundaries of a county of the first class ~~←§~~ or ~~§→~~ a ~~←§~~

county ~~§→~~ of the first class's ~~←§~~ land use ordinances when constructing:

- a rail fixed guideway public transit facility that extends across two or more counties; or
- a structure that serves a rail fixed guideway public transit facility that extends across two or more counties;

~~§→~~ ▶ provides that a municipality located within the boundaries of a county of the first class or a county of the first class may not require through an interlocal agreement a public transit district to obtain approval from the municipality or county prior to constructing a:

• rail fixed guideway public transit facility that extends across two or more counties; or

• structure that serves a rail fixed guideway public transit facility that ~~←§~~



20g extends across two or more counties; ←~~§~~

21 ▶ repeals the provisions providing that a public transit district is not required to
22 conform to ~~§~~→ certain ←~~§~~ municipal or county land use ordinances when constructing certain
23 public transit facilities on July 1, 2013; and

24 ▶ makes technical changes.

25 **Monies Appropriated in this Bill:**

26 None

27 **Other Special Clauses:**

28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **10-9a-305**, as last amended by Laws of Utah 2007, Chapters 197 and 329

32 **17-27a-305**, as last amended by Laws of Utah 2007, Chapters 197 and 329

33 **53A-20-104**, as last amended by Laws of Utah 2006, Chapter 364

34 **63-55b-110**, as last amended by Laws of Utah 2005, Chapter 28

35 ENACTS:

36 **63I-2-217**, Utah Code Annotated 1953



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, local district, special
43 service district, and political subdivision of the state shall conform to any applicable land use
44 ordinance of any municipality when installing, constructing, operating, or otherwise using any
45 area, land, or building situated within that municipality.

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

50 (2) ~~§~~ **(a)** ~~§~~ Notwithstanding Subsection (1), a public transit district under Title 17B, Chapter
51 2a, Part 8, Public Transit District Act, is not required to conform to any applicable land use
52 ordinance of a municipality ~~§~~ **located within the boundaries of a county of the first class** ~~§~~
52a when constructing a:

53 ~~§~~ **(a)** ~~(i)~~ ~~§~~ rail fixed guideway public transit facility that extends across two or more counties;

54 or

55 ~~§~~ **(b)** ~~(ii)~~ ~~§~~ structure that serves a rail fixed guideway public transit facility that extends across
56 two or more counties ~~§~~ **, including:**

56a **(A) platforms;**

56b **(B) passenger terminals or stations;**

56c **(C) park and ride facilities;**

56d **(D) maintenance facilities;** ~~§~~

56e **§→** (E) all related utility lines, roadways, and other facilities serving the public transit
56f facility; or
56g (F) other auxiliary facilities.
56h (b) The exemption from municipal land use ordinances under this Subsection (2) does not
56i extend to any property not necessary for the construction or operation of a rail fixed guideway
56j public transit facility.
56k (c) A municipality located within the boundaries of a county of the first class may not, through
56l an agreement under Title 11, Chapter 3, Interlocal Cooperation Act, require a public transit
56m district under Title 17B, Chapter 2a, Part 8, Public Transit District Act, to obtain approval
56n from the municipality prior to constructing a:
56o (i) rail fixed guideway public transit facility that extends across two or more counties;
56p or
56q (ii) structure that serves a rail fixed guideway public transit facility that extends across
56r two or more counties, including:
56s (A) platforms;
56t (B) passenger terminals or stations;
56u (C) park and ride facilities;
56v (D) maintenance facilities;
56w (E) all related utility lines, roadways, and other facilities serving the public transit
56x facility; or
56y (F) other auxiliary facilities. ←§ .
57 [~~2~~] (3) (a) Except as provided in Subsection [~~3~~] (4), a school district or charter
58 school is subject to a municipality's land use ordinances.

59 (b) (i) Notwithstanding Subsection [~~(3)~~] (4), a municipality may:
60 (A) subject a charter school to standards within each zone pertaining to setback, height,
61 bulk and massing regulations, off-site parking, curb cut, traffic circulation, and construction
62 staging; and
63 (B) impose regulations upon the location of a project that are necessary to avoid
64 unreasonable risks to health or safety, as provided in Subsection [~~(3)~~] (4)(f).
65 (ii) The standards to which a municipality may subject a charter school under
66 Subsection [~~(2)~~] (3)(b)(i) shall be objective standards only and may not be subjective.
67 (iii) Except as provided in Subsection [~~(7)~~] (8)(d), the only basis upon which a
68 municipality may deny or withhold approval of a charter school's land use application is the
69 charter school's failure to comply with a standard imposed under Subsection [~~(2)~~] (3)(b)(i).
70 (iv) Nothing in Subsection [~~(2)~~] (3)(b)(iii) may be construed to relieve a charter school
71 of an obligation to comply with a requirement of an applicable building or safety code to which
72 it is otherwise obligated to comply.
73 [~~(3)~~] (4) A municipality may not:
74 (a) impose requirements for landscaping, fencing, aesthetic considerations,
75 construction methods or materials, additional building inspections, municipal building codes,
76 building use for educational purposes, or the placement or use of temporary classroom facilities
77 on school property;
78 (b) except as otherwise provided in this section, require a school district or charter
79 school to participate in the cost of any roadway or sidewalk, or a study on the impact of a
80 school on a roadway or sidewalk, that is not reasonably necessary for the safety of school
81 children and not located on or contiguous to school property, unless the roadway or sidewalk is
82 required to connect an otherwise isolated school site to an existing roadway;
83 (c) require a district or charter school to pay fees not authorized by this section;
84 (d) provide for inspection of school construction or assess a fee or other charges for
85 inspection, unless the school district or charter school is unable to provide for inspection by an
86 inspector, other than the project architect or contractor, who is qualified under criteria
87 established by the state superintendent;
88 (e) require a school district or charter school to pay any impact fee for an improvement
89 project unless the impact fee is imposed as provided in Title 11, Chapter 36, Impact Fees Act;

90 or

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

93 [~~4~~] 5 Subject to Section 53A-20-108, a school district or charter school shall
94 coordinate the siting of a new school with the municipality in which the school is to be located,
95 to:

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

98 (b) maximize school, student, and site safety.

99 [~~5~~] 6 Notwithstanding Subsection [~~3~~] 4(d), a municipality may, at its discretion:

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

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

103 [~~6~~] 7 (a) Notwithstanding Subsection [~~3~~] 4(d), a school district or charter school
104 shall use:

105 (i) a municipal building inspector;

106 (ii) (A) for a school district, a school district building inspector from that school
107 district; or

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

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

111 (A) not an employee of the contractor;

112 (B) approved by:

113 (I) a municipal building inspector; or

114 (II) (Aa) for a school district, a school district building inspector from that school
115 district; or

116 (Bb) for a charter school, a school district building inspector from the school district in
117 which the charter school is located; and

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

119 (b) The approval under Subsection [~~6~~] 7(a)(iii)(B) may not be unreasonably
120 withheld.

121 (c) If a school district or charter school uses a school district or independent building
122 inspector under Subsection [~~(6)~~] (7)(a)(ii) or (iii), the school district or charter school shall
123 submit to the state superintendent of public instruction and municipal building official, on a
124 monthly basis during construction of the school building, a copy of each inspection certificate
125 regarding the school building.

126 [~~(7)~~] (8) (a) A charter school shall be considered a permitted use in all zoning districts
127 within a municipality.

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

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

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

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

137 (A) the state superintendent of public instruction, as provided in Subsection
138 53A-20-104(3), if the school district or charter school used an independent building inspector
139 for inspection of the school building; or

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

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

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

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

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

153 **17-27a-305. Other entities required to conform to county's land use ordinances --**
154 **Exceptions -- School districts and charter schools.**

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

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

163 (2) ~~§~~ **(a)** ~~§~~ Notwithstanding Subsection (1), a public transit district under Title 17B, Chapter
164 2a, Part 8, Public Transit District Act, is not required to conform to any applicable land use
165 ordinance of a county ~~§~~ **of the first class** ~~§~~ when constructing a:

166 ~~§~~ **[(a)] (i)** ~~§~~ rail fixed guideway public transit facility that extends across two or more counties;
167 or

168 ~~§~~ **[(b)] (ii)** ~~§~~ structure that serves a rail fixed guideway public transit facility that extends across
169 two or more counties ~~§~~ , including:

169a (A) platforms;

169b (B) passenger terminals or stations;

169c (C) park and ride facilities;

169d (D) maintenance facilities;

169e (E) all related utility lines, roadways, and other facilities serving the public transit
169f facility; or

169g (F) other auxiliary facilities.

169h (b) The exemption from county land use ordinances under this Subsection (2) does not
169i extend to any property not necessary for the construction or operation of a rail fixed guideway
169j public transit facility.

169k (c) A county of the first class may not, through an agreement under Title 11, Chapter 3,
169l Interlocal Cooperation Act, require a public transit district under Title 17B, Chapter 2a, Part
169m 8, Public Transit District Act, to obtain approval from the county prior to constructing a:

169n (i) rail fixed guideway public transit facility that extends across two or more counties;
169o or

169p (ii) structure that serves a rail fixed guideway public transit facility that extends ~~§~~

169q **§→ across two or more counties, including:**

169r **(A) platforms;**

169s **(B) passenger terminals or stations;**

169t **(C) park and ride facilities;**

169u **(D) maintenance facilities;**

169v **(E) all related utility lines, roadways, and other facilities serving the public transit**

169w **facility; or**

169x **(F) other auxiliary facilities. ←§ .**

170 [~~2~~] (3) (a) Except as provided in Subsection [~~3~~] (4), a school district or charter
171 school is subject to a county's land use ordinances.

172 (b) (i) Notwithstanding Subsection [~~3~~] (4), a county may:

173 (A) subject a charter school to standards within each zone pertaining to setback, height,
174 bulk and massing regulations, off-site parking, curb cut, traffic circulation, and construction
175 staging; and

176 (B) impose regulations upon the location of a project that are necessary to avoid
177 unreasonable risks to health or safety, as provided in Subsection [~~3~~] (4)(f).

178 (ii) The standards to which a county may subject a charter school under Subsection
179 [~~2~~] (3)(b)(i) shall be objective standards only and may not be subjective.

180 (iii) Except as provided in Subsection [~~7~~] (8)(d), the only basis upon which a county
181 may deny or withhold approval of a charter school's land use application is the charter school's
182 failure to comply with a standard imposed under Subsection [~~2~~] (3)(b)(i).

183 (iv) Nothing in Subsection [~~(2)~~] (3)(b)(iii) may be construed to relieve a charter school
184 of an obligation to comply with a requirement of an applicable building or safety code to which
185 it is otherwise obligated to comply.

186 [~~(3)~~] (4) A county may not:

187 (a) impose requirements for landscaping, fencing, aesthetic considerations,
188 construction methods or materials, additional building inspections, county building codes,
189 building use for educational purposes, or the placement or use of temporary classroom facilities
190 on school property;

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

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

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

201 (e) require a school district or charter school to pay any impact fee for an improvement
202 project unless the impact fee is imposed as provided in Title 11, Chapter 36, Impact Fees Act;
203 or

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

206 [~~(4)~~] (5) Subject to Section 53A-20-108, a school district or charter school shall
207 coordinate the siting of a new school with the county in which the school is to be located, to:

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

210 (b) maximize school, student, and site safety.

211 [~~(5)~~] (6) Notwithstanding Subsection [~~(3)~~] (4)(d), a county may, at its discretion:

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

- 214 (b) provide recommendations based upon the walk-through.
- 215 [~~(6)~~] (7) (a) Notwithstanding Subsection [~~(3)~~] (4)(d), a school district or charter school
- 216 shall use:
- 217 (i) a county building inspector;
- 218 (ii) (A) for a school district, a school district building inspector from that school
- 219 district; or
- 220 (B) for a charter school, a school district building inspector from the school district in
- 221 which the charter school is located; or
- 222 (iii) an independent, certified building inspector who is:
- 223 (A) not an employee of the contractor;
- 224 (B) approved by:
- 225 (I) a county building inspector; or
- 226 (II) (Aa) for a school district, a school district building inspector from that school
- 227 district; or
- 228 (Bb) for a charter school, a school district building inspector from the school district in
- 229 which the charter school is located; and
- 230 (C) licensed to perform the inspection that the inspector is requested to perform.
- 231 (b) The approval under Subsection [~~(6)~~] (7)(a)(iii)(B) may not be unreasonably
- 232 withheld.
- 233 (c) If a school district or charter school uses a school district or independent building
- 234 inspector under Subsection [~~(6)~~] (7)(a)(ii) or (iii), the school district or charter school shall
- 235 submit to the state superintendent of public instruction and county building official, on a
- 236 monthly basis during construction of the school building, a copy of each inspection certificate
- 237 regarding the school building.
- 238 [~~(7)~~] (8) (a) A charter school shall be considered a permitted use in all zoning districts
- 239 within a county.
- 240 (b) Each land use application for any approval required for a charter school, including
- 241 an application for a building permit, shall be processed on a first priority basis.
- 242 (c) Parking requirements for a charter school may not exceed the minimum parking
- 243 requirements for schools or other institutional public uses throughout the county.
- 244 (d) If a county has designated zones for a sexually oriented business, or a business

245 which sells alcohol, a charter school may be prohibited from a location which would otherwise
246 defeat the purpose for the zone unless the charter school provides a waiver.

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

249 (A) the state superintendent of public instruction, as provided in Subsection
250 53A-20-104(3), if the school district or charter school used an independent building inspector
251 for inspection of the school building; or

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

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

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

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

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

265 **53A-20-104. Enforcement of chapter by state superintendent -- Employment of**
266 **personnel -- School districts and charter schools -- Certificate of inspection verification.**

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

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

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

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

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

274 (3) (a) (i) If a local school board uses the school district's building inspector under
275 Subsection 10-9a-305[(6)](7)(a)(ii) or 17-27a-305[(6)](7)(a)(ii) and issues its own certificate

276 authorizing permanent occupancy of the school building, the local school board shall file a
277 certificate of inspection verification with the local governmental entity's building official and
278 the State Office of Education, advising those entities that the school district has complied with
279 the inspection provisions of this chapter.

280 (ii) If a charter school uses a school district building inspector under Subsection
281 10-9a-305[(6)](7)(a)(ii) or 17-27a-305[(6)](7)(a)(ii) and the school district issues to the charter
282 school a certificate authorizing permanent occupancy of the school building, the charter school
283 shall file with the State Office of Education a certificate of inspection verification.

284 (iii) If a local school board or charter school uses a local governmental entity's building
285 inspector under Subsection 10-9a-305[(6)](7)(a)(i) or 17-27a-305[(6)](7)(a)(i) and the local
286 governmental entity issues the local school board or charter school a certificate authorizing
287 permanent occupancy of the school building, the local school board or charter school shall file
288 with the State Office of Education a certificate of inspection verification.

289 (iv) (A) If a local school board or charter school uses an independent, certified building
290 inspector under Subsection 10-9a-305[(6)](7)(a)(iii) or 17-27a-305[(6)](7)(a)(iii), the local
291 school board or charter school shall, upon completion of all required inspections of the school
292 building, file with the State Office of Education a certificate of inspection verification and a
293 request for the issuance of a certificate authorizing permanent occupancy of the school
294 building.

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

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

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

305 (Bb) deliver to the local school board or charter school a written notice indicating
306 deficiencies in the school district's or charter school's compliance with the inspection

307 provisions of this chapter; and

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

311 (D) Upon the local school board or charter school remedying the deficiencies indicated
312 in the notice under Subsection (3)(a)(iv)(C)(I)(Bb) and notifying the state superintendent of
313 public instruction that the deficiencies have been remedied, the state superintendent of public
314 instruction shall issue a certificate authorizing permanent occupancy of the school building and
315 mail a copy of the certificate to the building official of the local governmental entity in which
316 the school building is located.

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

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

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

323 (i) "local governmental entity" means either a municipality, for a school building
324 located within a municipality, or a county, for a school building located within an
325 unincorporated area in the county; and

326 (ii) "certificate of inspection verification" means a standard inspection form developed
327 by the state superintendent in consultation with local school boards and charter schools to
328 verify that inspections by qualified inspectors have occurred.

329 Section 4. Section **63-55b-110** is amended to read:

330 **63-55b-110. Repeal dates -- Title 10.**

331 (1) Section 10-2-427 is repealed July 1, 2010.

332 (2) Subsection 10-9a-305(2) is repealed July 1, 2013.

333 Section 5. Section **63I-2-217** is enacted to read:

334 **63I-2-217. Repeal dates -- Title 17.**

335 Subsection 17-27a-305(2) is repealed July 1, 2013.

Legislative Review Note
as of 2-22-08 8:29 AM

Office of Legislative Research and General Counsel

S.B. 286 - Transportation and Transit Amendments

Fiscal Note

2008 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.
