

1 **TRANSPORTATION AND TRANSIT**

2 **AMENDMENTS**

3 2008 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Sheldon L. Killpack**

6 House Sponsor: Kevin S. Garn

7

8 **LONG TITLE**

9 **General Description:**

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

13 **Highlighted Provisions:**

14 This bill:

15 ▶ provides that a public transit district is not required to conform to any municipal land
16 use ordinances of a municipality that is located within the boundaries of a county of
17 the first class or a county of the first classes's land use ordinances when constructing:

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

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

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

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

28

29 • structure that serves a rail fixed guideway public transit facility that extends

30 across two or more counties;

31 ▶ repeals the provisions providing that a public transit district is not required to
32 conform to certain municipal or county land use ordinances when constructing
33 certain public transit facilities on July 1, 2013; and

34 ▶ makes technical changes.

35 **Monies Appropriated in this Bill:**

36 None

37 **Other Special Clauses:**

38 None

39 **Utah Code Sections Affected:**

40 AMENDS:

41 **10-9a-305**, as last amended by Laws of Utah 2007, Chapters 197 and 329

42 **17-27a-305**, as last amended by Laws of Utah 2007, Chapters 197 and 329

43 **53A-20-104**, as last amended by Laws of Utah 2006, Chapter 364

44 **63-55b-110**, as last amended by Laws of Utah 2005, Chapter 28

45 ENACTS:

46 **63I-2-217**, Utah Code Annotated 1953



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

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

50 **10-9a-305. Other entities required to conform to municipality's land use**
51 **ordinances -- Exceptions -- School districts and charter schools.**

52 (1) (a) Each county, municipality, school district, charter school, local district, special
53 service district, and political subdivision of the state shall conform to any applicable land use
54 ordinance of any municipality when installing, constructing, operating, or otherwise using any
55 area, land, or building situated within that municipality.

56 (b) In addition to any other remedies provided by law, when a municipality's land use
57 ordinance is violated or about to be violated by another political subdivision, that municipality

58 may institute an injunction, mandamus, abatement, or other appropriate action or proceeding to
59 prevent, enjoin, abate, or remove the improper installation, improvement, or use.

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

64 (i) rail fixed guideway public transit facility that extends across two or more counties;
65 or

66 (ii) structure that serves a rail fixed guideway public transit facility that extends across
67 two or more counties, including:

68 (A) platforms;

69 (B) passenger terminals or stations;

70 (C) park and ride facilities;

71 (D) maintenance facilities;

72 (E) all related utility lines, roadways, and other facilities serving the public transit
73 facility; or

74 (F) other auxiliary facilities.

75 (b) The exemption from municipal land use ordinances under this Subsection (2) does
76 not extend to any property not necessary for the construction or operation of a rail fixed
77 guideway public transit facility.

78 (c) A municipality located within the boundaries of a county of the first class may not,
79 through an agreement under Title 11, Chapter 3, Interlocal Cooperation Act, require a public
80 transit district under Title 17B, Chapter 2a, Part 8, Public Transit District Act, to obtain
81 approval from the municipality prior to constructing a:

82 (i) rail fixed guideway public transit facility that extends across two or more counties;
83 or

84 (ii) structure that serves a rail fixed guideway public transit facility that extends across
85 two or more counties, including:

- 86 (A) platforms;
- 87 (B) passenger terminals or stations;
- 88 (C) park and ride facilities;
- 89 (D) maintenance facilities;
- 90 (E) all related utility lines, roadways, and other facilities serving the public transit
- 91 facility; or
- 92 (F) other auxiliary facilities.

93 [~~2~~] (3) (a) Except as provided in Subsection [~~3~~] (4), a school district or charter
94 school is subject to a municipality's land use ordinances.

95 (b) (i) Notwithstanding Subsection [~~3~~] (4), a municipality may:

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

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

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

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

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

109 [~~3~~] (4) A municipality may not:

110 (a) impose requirements for landscaping, fencing, aesthetic considerations, construction
111 methods or materials, additional building inspections, municipal building codes, building use for
112 educational purposes, or the placement or use of temporary classroom facilities on school
113 property;

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

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

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

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

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

129 ~~[(4)]~~ (5) Subject to Section 53A-20-108, a school district or charter school shall
130 coordinate the siting of a new school with the municipality in which the school is to be located,
131 to:

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

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

135 ~~[(5)]~~ (6) Notwithstanding Subsection ~~[(3)]~~ (4)(d), a municipality may, at its discretion:

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

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

139 ~~[(6)]~~ (7) (a) Notwithstanding Subsection ~~[(3)]~~ (4)(d), a school district or charter school
140 shall use:

141 (i) a municipal building inspector;

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

143 or

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

145 which the charter school is located; or

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

147 (A) not an employee of the contractor;

148 (B) approved by:

149 (I) a municipal building inspector; or

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

151 district; or

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

153 which the charter school is located; and

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

155 (b) The approval under Subsection [~~(6)~~] (7)(a)(iii)(B) may not be unreasonably

156 withheld.

157 (c) If a school district or charter school uses a school district or independent building

158 inspector under Subsection [~~(6)~~] (7)(a)(ii) or (iii), the school district or charter school shall

159 submit to the state superintendent of public instruction and municipal building official, on a

160 monthly basis during construction of the school building, a copy of each inspection certificate

161 regarding the school building.

162 [~~(7)~~] (8) (a) A charter school shall be considered a permitted use in all zoning districts

163 within a municipality.

164 (b) Each land use application for any approval required for a charter school, including

165 an application for a building permit, shall be processed on a first priority basis.

166 (c) Parking requirements for a charter school may not exceed the minimum parking

167 requirements for schools or other institutional public uses throughout the municipality.

168 (d) If a municipality has designated zones for a sexually oriented business, or a business

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

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

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

173 (A) the state superintendent of public instruction, as provided in Subsection
174 53A-20-104(3), if the school district or charter school used an independent building inspector
175 for inspection of the school building; or

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

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

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

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

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

189 **17-27a-305. Other entities required to conform to county's land use ordinances --**
190 **Exceptions -- School districts and charter schools.**

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

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

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

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

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

203 or

204 (ii) structure that serves a rail fixed guideway public transit facility that extends across
205 two or more counties, including:

206 (A) platforms;

207 (B) passenger terminals or stations;

208 (C) park and ride facilities;

209 (D) maintenance facilities;

210 (E) all related utility lines, roadways, and other facilities serving the public transit
211 facility; or

212 (F) other auxiliary facilities.

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

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

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

220 or

221 (ii) structure that serves a rail fixed guideway public transit facility that extends across
222 two or more counties, including:

223 (A) platforms;

224 (B) passenger terminals or stations;

225 (C) park and ride facilities;

226 (D) maintenance facilities;

227 (E) all related utility lines, roadways, and other facilities serving the public transit
228 facility; or

229 (F) other auxiliary facilities.

230 [~~2~~] (3) (a) Except as provided in Subsection [~~3~~] (4), a school district or charter
231 school is subject to a county's land use ordinances.

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

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

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

238 (ii) The standards to which a county may subject a charter school under Subsection
239 [~~2~~] (3)(b)(i) shall be objective standards only and may not be subjective.

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

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

246 [~~3~~] (4) A county may not:

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

251 (b) except as otherwise provided in this section, require a school district or charter
252 school to participate in the cost of any roadway or sidewalk, or a study on the impact of a
253 school on a roadway or sidewalk, that is not reasonably necessary for the safety of school

254 children and not located on or contiguous to school property, unless the roadway or sidewalk is
255 required to connect an otherwise isolated school site to an existing roadway;

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

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

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

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

266 [~~4~~] (5) Subject to Section 53A-20-108, a school district or charter school shall
267 coordinate the siting of a new school with the county in which the school is to be located, to:

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

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

271 [~~5~~] (6) Notwithstanding Subsection [~~3~~] (4)(d), a county may, at its discretion:

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

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

275 [~~6~~] (7) (a) Notwithstanding Subsection [~~3~~] (4)(d), a school district or charter school
276 shall use:

277 (i) a county building inspector;

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

279 or

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

- 282 (iii) an independent, certified building inspector who is:
- 283 (A) not an employee of the contractor;
- 284 (B) approved by:
- 285 (I) a county building inspector; or
- 286 (II) (Aa) for a school district, a school district building inspector from that school
- 287 district; or
- 288 (Bb) for a charter school, a school district building inspector from the school district in
- 289 which the charter school is located; and
- 290 (C) licensed to perform the inspection that the inspector is requested to perform.
- 291 (b) The approval under Subsection [~~(6)~~] (7)(a)(iii)(B) may not be unreasonably
- 292 withheld.
- 293 (c) If a school district or charter school uses a school district or independent building
- 294 inspector under Subsection [~~(6)~~] (7)(a)(ii) or (iii), the school district or charter school shall
- 295 submit to the state superintendent of public instruction and county building official, on a
- 296 monthly basis during construction of the school building, a copy of each inspection certificate
- 297 regarding the school building.
- 298 [~~(7)~~] (8) (a) A charter school shall be considered a permitted use in all zoning districts
- 299 within a county.
- 300 (b) Each land use application for any approval required for a charter school, including
- 301 an application for a building permit, shall be processed on a first priority basis.
- 302 (c) Parking requirements for a charter school may not exceed the minimum parking
- 303 requirements for schools or other institutional public uses throughout the county.
- 304 (d) If a county has designated zones for a sexually oriented business, or a business
- 305 which sells alcohol, a charter school may be prohibited from a location which would otherwise
- 306 defeat the purpose for the zone unless the charter school provides a waiver.
- 307 (e) (i) A school district or a charter school may seek a certificate authorizing permanent
- 308 occupancy of a school building from:
- 309 (A) the state superintendent of public instruction, as provided in Subsection

310 53A-20-104(3), if the school district or charter school used an independent building inspector
311 for inspection of the school building; or

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

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

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

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

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

325 **53A-20-104. Enforcement of chapter by state superintendent -- Employment of**
326 **personnel -- School districts and charter schools -- Certificate of inspection verification.**

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

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

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

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

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

334 (3) (a) (i) If a local school board uses the school district's building inspector under
335 Subsection 10-9a-305~~[(6)]~~(7)(a)(ii) or 17-27a-305~~[(6)]~~(7)(a)(ii) and issues its own certificate
336 authorizing permanent occupancy of the school building, the local school board shall file a
337 certificate of inspection verification with the local governmental entity's building official and the

338 State Office of Education, advising those entities that the school district has complied with the
339 inspection provisions of this chapter.

340 (ii) If a charter school uses a school district building inspector under Subsection
341 10-9a-305[(6)](7)(a)(ii) or 17-27a-305[(6)](7)(a)(ii) and the school district issues to the charter
342 school a certificate authorizing permanent occupancy of the school building, the charter school
343 shall file with the State Office of Education a certificate of inspection verification.

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

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

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

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

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

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

366 of this chapter; and

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

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

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

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

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

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

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

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

389 **63-55b-110. Repeal dates -- Title 10.**

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

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

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

393 **63I-2-217. Repeal dates -- Title 17.**

394

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