

**TRANSPORTATION AND TRANSIT  
AMENDMENTS**

2008 GENERAL SESSION  
STATE OF UTAH

**Chief Sponsor: Sheldon L. Killpack**

House Sponsor: Kevin S. Garn

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**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 or county 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;

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

► makes technical changes.

**Monies Appropriated in this Bill:**

None

**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) 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 when constructing a:

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

54 or

55 (b) structure that serves a rail fixed guideway public transit facility that extends across  
56 two or more counties.

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) 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 when constructing a:

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

167 or

168 (b) structure that serves a rail fixed guideway public transit facility that extends across  
169 two or more counties.

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.

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

**Office of Legislative Research and General Counsel**

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**S.B. 286 - Transportation and Transit Amendments**

**Fiscal Note**

2008 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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