

DEVELOPMENT EXACTIONS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Patrick Painter

Senate Sponsor: _____

LONG TITLE

Committee Note:

The State Water Development Commission recommended this bill.

Membership: 10 legislators 16 non-legislators

Legislative Vote: 8 voting for 0 voting against 2 absent

General Description:

This bill modifies provisions relating to development exactions of counties and municipalities.

Highlighted Provisions:

This bill:

- ▶ enacts a definition of "water interest";
- ▶ places limitations and restrictions on a county or municipality's imposition of an exaction for a water interest; and
- ▶ requires culinary water authorities to provide the basis for its calculations of projected water right requirements.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



- 28 **10-9a-103**, as last amended by Laws of Utah 2008, Chapters 19, 112, 326, and 360
- 29 **10-9a-508**, as last amended by Laws of Utah 2008, Chapter 35
- 30 **17-27a-103**, as last amended by Laws of Utah 2008, Chapters 112, 250, 326, and 360
- 31 **17-27a-507**, as last amended by Laws of Utah 2008, Chapter 35

32

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

34 Section 1. Section **10-9a-103** is amended to read:

35 **10-9a-103. Definitions.**

36 As used in this chapter:

37 (1) "Affected entity" means a county, municipality, local district, special service
38 district under Title 17D, Chapter 1, Special Service District Act, school district, interlocal
39 cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, specified
40 public utility, a property owner, a property owners association, or the Utah Department of
41 Transportation, if:

42 (a) the entity's services or facilities are likely to require expansion or significant
43 modification because of an intended use of land;

44 (b) the entity has filed with the municipality a copy of the entity's general or long-range
45 plan; or

46 (c) the entity has filed with the municipality a request for notice during the same
47 calendar year and before the municipality provides notice to an affected entity in compliance
48 with a requirement imposed under this chapter.

49 (2) "Appeal authority" means the person, board, commission, agency, or other body
50 designated by ordinance to decide an appeal of a decision of a land use application or a
51 variance.

52 (3) "Billboard" means a freestanding ground sign located on industrial, commercial, or
53 residential property if the sign is designed or intended to direct attention to a business, product,
54 or service that is not sold, offered, or existing on the property where the sign is located.

55 (4) "Charter school" includes:

56 (a) an operating charter school;

57 (b) a charter school applicant that has its application approved by a chartering entity in
58 accordance with Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act; and

59 (c) an entity who is working on behalf of a charter school or approved charter applicant
60 to develop or construct a charter school building.

61 (5) "Conditional use" means a land use that, because of its unique characteristics or
62 potential impact on the municipality, surrounding neighbors, or adjacent land uses, may not be
63 compatible in some areas or may be compatible only if certain conditions are required that
64 mitigate or eliminate the detrimental impacts.

65 (6) "Constitutional taking" means a governmental action that results in a taking of
66 private property so that compensation to the owner of the property is required by the:

- 67 (a) Fifth or Fourteenth Amendment of the Constitution of the United States; or
- 68 (b) Utah Constitution Article I, Section 22.

69 (7) "Culinary water authority" means the department, agency, or public entity with
70 responsibility to review and approve the feasibility of the culinary water system and sources for
71 the subject property.

72 (8) "Development activity" means:

73 (a) any construction or expansion of a building, structure, or use that creates additional
74 demand and need for public facilities;

75 (b) any change in use of a building or structure that creates additional demand and need
76 for public facilities; or

77 (c) any change in the use of land that creates additional demand and need for public
78 facilities.

79 (9) (a) "Disability" means a physical or mental impairment that substantially limits one
80 or more of a person's major life activities, including a person having a record of such an
81 impairment or being regarded as having such an impairment.

82 (b) "Disability" does not include current illegal use of, or addiction to, any federally
83 controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C.
84 802.

85 (10) "Elderly person" means a person who is 60 years old or older, who desires or
86 needs to live with other elderly persons in a group setting, but who is capable of living
87 independently.

88 (11) "Fire authority" means the department, agency, or public entity with responsibility
89 to review and approve the feasibility of fire protection and suppression services for the subject

90 property.

91 (12) "Flood plain" means land that:

92 (a) is within the 100-year flood plain designated by the Federal Emergency
93 Management Agency; or

94 (b) has not been studied or designated by the Federal Emergency Management Agency
95 but presents a likelihood of experiencing chronic flooding or a catastrophic flood event because
96 the land has characteristics that are similar to those of a 100-year flood plain designated by the
97 Federal Emergency Management Agency.

98 (13) "General plan" means a document that a municipality adopts that sets forth general
99 guidelines for proposed future development of the land within the municipality.

100 (14) "Geologic hazard" means:

101 (a) a surface fault rupture;

102 (b) shallow groundwater;

103 (c) liquefaction;

104 (d) a landslide;

105 (e) a debris flow;

106 (f) unstable soil;

107 (g) a rock fall; or

108 (h) any other geologic condition that presents a risk:

109 (i) to life;

110 (ii) of substantial loss of real property; or

111 (iii) of substantial damage to real property.

112 (15) "Identical plans" means building plans submitted to a municipality that are
113 substantially identical to building plans that were previously submitted to and reviewed and
114 approved by the municipality and describe a building that is:

115 (a) located on land zoned the same as the land on which the building described in the
116 previously approved plans is located; and

117 (b) subject to the same geological and meteorological conditions and the same law as
118 the building described in the previously approved plans.

119 (16) "Improvement assurance" means a surety bond, letter of credit, cash, or other
120 security:

121 (a) to guaranty the proper completion of an improvement;
122 (b) that is required as a condition precedent to:
123 (i) recording a subdivision plat; or
124 (ii) beginning development activity; and
125 (c) that is offered to a land use authority to induce the land use authority, before actual
126 construction of required improvements, to:

127 (i) consent to the recording of a subdivision plat; or
128 (ii) issue a permit for development activity.

129 (17) "Improvement assurance warranty" means a promise that the materials and
130 workmanship of improvements:

131 (a) comport with standards that the municipality has officially adopted; and
132 (b) will not fail in any material respect within a warranty period.

133 (18) "Land use application" means an application required by a municipality's land use
134 ordinance.

135 (19) "Land use authority" means a person, board, commission, agency, or other body
136 designated by the local legislative body to act upon a land use application.

137 (20) "Land use ordinance" means a planning, zoning, development, or subdivision
138 ordinance of the municipality, but does not include the general plan.

139 (21) "Land use permit" means a permit issued by a land use authority.

140 (22) "Legislative body" means the municipal council.

141 (23) "Local district" means an entity under Title 17B, Limited Purpose Local
142 Government Entities - Local Districts, and any other governmental or quasi-governmental
143 entity that is not a county, municipality, school district, or unit of the state.

144 (24) "Lot line adjustment" means the relocation of the property boundary line in a
145 subdivision between two adjoining lots with the consent of the owners of record.

146 (25) "Moderate income housing" means housing occupied or reserved for occupancy
147 by households with a gross household income equal to or less than 80% of the median gross
148 income for households of the same size in the county in which the city is located.

149 (26) "Nominal fee" means a fee that reasonably reimburses a municipality only for time
150 spent and expenses incurred in:

151 (a) verifying that building plans are identical plans; and

152 (b) reviewing and approving those minor aspects of identical plans that differ from the
153 previously reviewed and approved building plans.

154 (27) "Noncomplying structure" means a structure that:

155 (a) legally existed before its current land use designation; and

156 (b) because of one or more subsequent land use ordinance changes, does not conform
157 to the setback, height restrictions, or other regulations, excluding those regulations, which
158 govern the use of land.

159 (28) "Nonconforming use" means a use of land that:

160 (a) legally existed before its current land use designation;

161 (b) has been maintained continuously since the time the land use ordinance governing
162 the land changed; and

163 (c) because of one or more subsequent land use ordinance changes, does not conform
164 to the regulations that now govern the use of the land.

165 (29) "Official map" means a map drawn by municipal authorities and recorded in a
166 county recorder's office that:

167 (a) shows actual and proposed rights-of-way, centerline alignments, and setbacks for
168 highways and other transportation facilities;

169 (b) provides a basis for restricting development in designated rights-of-way or between
170 designated setbacks to allow the government authorities time to purchase or otherwise reserve
171 the land; and

172 (c) has been adopted as an element of the municipality's general plan.

173 (30) "Person" means an individual, corporation, partnership, organization, association,
174 trust, governmental agency, or any other legal entity.

175 (31) "Plan for moderate income housing" means a written document adopted by a city
176 legislative body that includes:

177 (a) an estimate of the existing supply of moderate income housing located within the
178 city;

179 (b) an estimate of the need for moderate income housing in the city for the next five
180 years as revised biennially;

181 (c) a survey of total residential land use;

182 (d) an evaluation of how existing land uses and zones affect opportunities for moderate

183 income housing; and

184 (e) a description of the city's program to encourage an adequate supply of moderate
185 income housing.

186 (32) "Plat" means a map or other graphical representation of lands being laid out and
187 prepared in accordance with Section 10-9a-603, 17-23-17, or 57-8-13.

188 (33) "Potential geologic hazard area" means an area that:

189 (a) is designated by a Utah Geological Survey map, county geologist map, or other
190 relevant map or report as needing further study to determine the area's potential for geologic
191 hazard; or

192 (b) has not been studied by the Utah Geological Survey or a county geologist but
193 presents the potential of geologic hazard because the area has characteristics similar to those of
194 a designated geologic hazard area.

195 (34) "Public hearing" means a hearing at which members of the public are provided a
196 reasonable opportunity to comment on the subject of the hearing.

197 (35) "Public meeting" means a meeting that is required to be open to the public under
198 Title 52, Chapter 4, Open and Public Meetings Act.

199 (36) "Record of survey map" means a map of a survey of land prepared in accordance
200 with Section 17-23-17.

201 (37) "Receiving zone" means an area of a municipality that the municipality's land use
202 authority designates as an area in which an owner of land may receive transferrable
203 development rights.

204 (38) "Residential facility for elderly persons" means a single-family or multiple-family
205 dwelling unit that meets the requirements of Section 10-9a-516, but does not include a health
206 care facility as defined by Section 26-21-2.

207 (39) "Residential facility for persons with a disability" means a residence:

208 (a) in which more than one person with a disability resides; and

209 (b) (i) is licensed or certified by the Department of Human Services under Title 62A,
210 Chapter 2, Licensure of Programs and Facilities; or

211 (ii) is licensed or certified by the Department of Health under Title 26, Chapter 21,
212 Health Care Facility Licensing and Inspection Act.

213 (40) "Sanitary sewer authority" means the department, agency, or public entity with

214 responsibility to review and approve the feasibility of sanitary sewer services or onsite
215 wastewater systems.

216 (41) "Sending zone" means an area of a municipality that the municipality's land use
217 authority designates as an area from which an owner of land may transfer transferrable
218 development rights to an owner of land in a receiving zone.

219 (42) "Specified public utility" means an electrical corporation, gas corporation, or
220 telephone corporation, as those terms are defined in Section 54-2-1.

221 (43) "Street" means a public right-of-way, including a highway, avenue, boulevard,
222 parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement, or other
223 way.

224 (44) (a) "Subdivision" means any land that is divided, resubdivided or proposed to be
225 divided into two or more lots, parcels, sites, units, plots, or other division of land for the
226 purpose, whether immediate or future, for offer, sale, lease, or development either on the
227 installment plan or upon any and all other plans, terms, and conditions.

228 (b) "Subdivision" includes:

229 (i) the division or development of land whether by deed, metes and bounds description,
230 devise and testacy, map, plat, or other recorded instrument; and

231 (ii) except as provided in Subsection (44)(c), divisions of land for residential and
232 nonresidential uses, including land used or to be used for commercial, agricultural, and
233 industrial purposes.

234 (c) "Subdivision" does not include:

235 (i) a bona fide division or partition of agricultural land for the purpose of joining one of
236 the resulting separate parcels to a contiguous parcel of unsubdivided agricultural land, if
237 neither the resulting combined parcel nor the parcel remaining from the division or partition
238 violates an applicable land use ordinance;

239 (ii) a recorded agreement between owners of adjoining unsubdivided properties
240 adjusting their mutual boundary if:

241 (A) no new lot is created; and

242 (B) the adjustment does not violate applicable land use ordinances;

243 (iii) a recorded document, executed by the owner of record:

244 (A) revising the legal description of more than one contiguous unsubdivided parcel of

245 property into one legal description encompassing all such parcels of property; or

246 (B) joining a subdivided parcel of property to another parcel of property that has not
247 been subdivided, if the joinder does not violate applicable land use ordinances; or

248 (iv) a recorded agreement between owners of adjoining subdivided properties adjusting
249 their mutual boundary if:

250 (A) no new dwelling lot or housing unit will result from the adjustment; and

251 (B) the adjustment will not violate any applicable land use ordinance.

252 (d) The joining of a subdivided parcel of property to another parcel of property that has
253 not been subdivided does not constitute a subdivision under this Subsection (44) as to the
254 unsubdivided parcel of property or subject the unsubdivided parcel to the municipality's
255 subdivision ordinance.

256 (45) "Transferrable development right" means the entitlement to develop land within a
257 sending zone that would vest according to the municipality's existing land use ordinances on
258 the date that a completed land use application is filed seeking the approval of development
259 activity on the land.

260 (46) "Unincorporated" means the area outside of the incorporated area of a city or
261 town.

262 (47) "Water interest" means any right to the beneficial use of water, including:

263 (a) each of the rights listed in Section 73-1-11; and

264 (b) an ownership interest in the right to the beneficial use of water represented by:

265 (i) a contract; or

266 (ii) a share in a water company, as defined in Section 73-3-3.5.

267 [~~47~~] (48) "Zoning map" means a map, adopted as part of a land use ordinance, that
268 depicts land use zones, overlays, or districts.

269 Section 2. Section **10-9a-508** is amended to read:

270 **10-9a-508. Exactions -- Requirement to offer to original owner property acquired**
271 **by exaction.**

272 (1) A municipality may impose an exaction or exactions on development proposed in a
273 land use application, including, subject to Subsection (2), an exaction for a water interest, if:

274 (a) an essential link exists between a legitimate governmental interest and each
275 exaction; and

276 (b) each exaction is roughly proportionate, both in nature and extent, to the impact of
277 the proposed development.

278 (2) (a) A municipality:

279 (i) shall base any exaction for a water interest on the culinary water authority's
280 established calculations of projected water right requirements; and

281 (ii) may not impose an exaction for a water interest if the culinary water authority's
282 existing water rights exceed the water rights needed to meet the reasonable future water
283 requirement of the public, as determined under Subsection 73-1-4(2)(f).

284 (b) Upon an applicant's request, the culinary water authority shall provide the applicant
285 with the basis for the culinary water authority's calculations under Subsection (2)(a)(i) on
286 which an exaction for a water interest is based.

287 [~~2~~] (3) (a) If a municipality plans to dispose of surplus real property that was acquired
288 under this section and has been owned by the municipality for less than 15 years, the
289 municipality shall first offer to reconvey the property, without receiving additional
290 consideration, to the person who granted the property to the municipality.

291 (b) A person to whom a municipality offers to reconvey property under Subsection
292 [~~2~~] (3)(a) has 90 days to accept or reject the municipality's offer.

293 (c) If a person to whom a municipality offers to reconvey property declines the offer,
294 the municipality may offer the property for sale.

295 (d) Subsection [~~2~~] (3)(a) does not apply to the disposal of property acquired by
296 exaction by a community development [~~or urban~~] and renewal agency.

297 Section 3. Section **17-27a-103** is amended to read:

298 **17-27a-103. Definitions.**

299 As used in this chapter:

300 (1) "Affected entity" means a county, municipality, local district, special service
301 district under Title 17D, Chapter 1, Special Service District Act, school district, interlocal
302 cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, specified
303 property owner, property owners association, public utility, or the Utah Department of
304 Transportation, if:

305 (a) the entity's services or facilities are likely to require expansion or significant
306 modification because of an intended use of land;

307 (b) the entity has filed with the county a copy of the entity's general or long-range plan;
308 or

309 (c) the entity has filed with the county a request for notice during the same calendar
310 year and before the county provides notice to an affected entity in compliance with a
311 requirement imposed under this chapter.

312 (2) "Appeal authority" means the person, board, commission, agency, or other body
313 designated by ordinance to decide an appeal of a decision of a land use application or a
314 variance.

315 (3) "Billboard" means a freestanding ground sign located on industrial, commercial, or
316 residential property if the sign is designed or intended to direct attention to a business, product,
317 or service that is not sold, offered, or existing on the property where the sign is located.

318 (4) "Charter school" includes:

319 (a) an operating charter school;

320 (b) a charter school applicant that has its application approved by a chartering entity in
321 accordance with Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act; and

322 (c) an entity who is working on behalf of a charter school or approved charter applicant
323 to develop or construct a charter school building.

324 (5) "Chief executive officer" means the person or body that exercises the executive
325 powers of the county.

326 (6) "Conditional use" means a land use that, because of its unique characteristics or
327 potential impact on the county, surrounding neighbors, or adjacent land uses, may not be
328 compatible in some areas or may be compatible only if certain conditions are required that
329 mitigate or eliminate the detrimental impacts.

330 (7) "Constitutional taking" means a governmental action that results in a taking of
331 private property so that compensation to the owner of the property is required by the:

332 (a) Fifth or Fourteenth Amendment of the Constitution of the United States; or

333 (b) Utah Constitution Article I, Section 22.

334 (8) "Culinary water authority" means the department, agency, or public entity with
335 responsibility to review and approve the feasibility of the culinary water system and sources for
336 the subject property.

337 (9) "Development activity" means:

338 (a) any construction or expansion of a building, structure, or use that creates additional
339 demand and need for public facilities;

340 (b) any change in use of a building or structure that creates additional demand and need
341 for public facilities; or

342 (c) any change in the use of land that creates additional demand and need for public
343 facilities.

344 (10) (a) "Disability" means a physical or mental impairment that substantially limits
345 one or more of a person's major life activities, including a person having a record of such an
346 impairment or being regarded as having such an impairment.

347 (b) "Disability" does not include current illegal use of, or addiction to, any federally
348 controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C.
349 802.

350 (11) "Elderly person" means a person who is 60 years old or older, who desires or
351 needs to live with other elderly persons in a group setting, but who is capable of living
352 independently.

353 (12) "Fire authority" means the department, agency, or public entity with responsibility
354 to review and approve the feasibility of fire protection and suppression services for the subject
355 property.

356 (13) "Flood plain" means land that:

357 (a) is within the 100-year flood plain designated by the Federal Emergency
358 Management Agency; or

359 (b) has not been studied or designated by the Federal Emergency Management Agency
360 but presents a likelihood of experiencing chronic flooding or a catastrophic flood event because
361 the land has characteristics that are similar to those of a 100-year flood plain designated by the
362 Federal Emergency Management Agency.

363 (14) "Gas corporation" has the same meaning as defined in Section 54-2-1.

364 (15) "General plan" means a document that a county adopts that sets forth general
365 guidelines for proposed future development of the unincorporated land within the county.

366 (16) "Geologic hazard" means:

367 (a) a surface fault rupture;

368 (b) shallow groundwater;

- 369 (c) liquefaction;
- 370 (d) a landslide;
- 371 (e) a debris flow;
- 372 (f) unstable soil;
- 373 (g) a rock fall; or
- 374 (h) any other geologic condition that presents a risk:
- 375 (i) to life;
- 376 (ii) of substantial loss of real property; or
- 377 (iii) of substantial damage to real property.
- 378 (17) "Identical plans" means building plans submitted to a county that are substantially
- 379 identical building plans that were previously submitted to and reviewed and approved by the
- 380 county and describe a building that is:
- 381 (a) located on land zoned the same as the land on which the building described in the
- 382 previously approved plans is located; and
- 383 (b) subject to the same geological and meteorological conditions and the same law as
- 384 the building described in the previously approved plans.
- 385 (18) "Improvement assurance" means a surety bond, letter of credit, cash, or other
- 386 security:
- 387 (a) to guaranty the proper completion of an improvement;
- 388 (b) that is required as a condition precedent to:
- 389 (i) recording a subdivision plat; or
- 390 (ii) beginning development activity; and
- 391 (c) that is offered to a land use authority to induce the land use authority, before actual
- 392 construction of required improvements, to:
- 393 (i) consent to the recording of a subdivision plat; or
- 394 (ii) issue a permit for development activity.
- 395 (19) "Improvement assurance warranty" means a promise that the materials and
- 396 workmanship of improvements:
- 397 (a) comport with standards that the county has officially adopted; and
- 398 (b) will not fail in any material respect within a warranty period.
- 399 (20) "Interstate pipeline company" means a person or entity engaged in natural gas

400 transportation subject to the jurisdiction of the Federal Energy Regulatory Commission under
401 the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

402 (21) "Intrastate pipeline company" means a person or entity engaged in natural gas
403 transportation that is not subject to the jurisdiction of the Federal Energy Regulatory
404 Commission under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

405 (22) "Land use application" means an application required by a county's land use
406 ordinance.

407 (23) "Land use authority" means a person, board, commission, agency, or other body
408 designated by the local legislative body to act upon a land use application.

409 (24) "Land use ordinance" means a planning, zoning, development, or subdivision
410 ordinance of the county, but does not include the general plan.

411 (25) "Land use permit" means a permit issued by a land use authority.

412 (26) "Legislative body" means the county legislative body, or for a county that has
413 adopted an alternative form of government, the body exercising legislative powers.

414 (27) "Local district" means any entity under Title 17B, Limited Purpose Local
415 Government Entities - Local Districts, and any other governmental or quasi-governmental
416 entity that is not a county, municipality, school district, or unit of the state.

417 (28) "Lot line adjustment" means the relocation of the property boundary line in a
418 subdivision between two adjoining lots with the consent of the owners of record.

419 (29) "Moderate income housing" means housing occupied or reserved for occupancy
420 by households with a gross household income equal to or less than 80% of the median gross
421 income for households of the same size in the county in which the housing is located.

422 (30) "Nominal fee" means a fee that reasonably reimburses a county only for time spent
423 and expenses incurred in:

424 (a) verifying that building plans are identical plans; and

425 (b) reviewing and approving those minor aspects of identical plans that differ from the
426 previously reviewed and approved building plans.

427 (31) "Noncomplying structure" means a structure that:

428 (a) legally existed before its current land use designation; and

429 (b) because of one or more subsequent land use ordinance changes, does not conform
430 to the setback, height restrictions, or other regulations, excluding those regulations that govern

431 the use of land.

432 (32) "Nonconforming use" means a use of land that:

433 (a) legally existed before its current land use designation;

434 (b) has been maintained continuously since the time the land use ordinance regulation
435 governing the land changed; and

436 (c) because of one or more subsequent land use ordinance changes, does not conform
437 to the regulations that now govern the use of the land.

438 (33) "Official map" means a map drawn by county authorities and recorded in the
439 county recorder's office that:

440 (a) shows actual and proposed rights-of-way, centerline alignments, and setbacks for
441 highways and other transportation facilities;

442 (b) provides a basis for restricting development in designated rights-of-way or between
443 designated setbacks to allow the government authorities time to purchase or otherwise reserve
444 the land; and

445 (c) has been adopted as an element of the county's general plan.

446 (34) "Person" means an individual, corporation, partnership, organization, association,
447 trust, governmental agency, or any other legal entity.

448 (35) "Plan for moderate income housing" means a written document adopted by a
449 county legislative body that includes:

450 (a) an estimate of the existing supply of moderate income housing located within the
451 county;

452 (b) an estimate of the need for moderate income housing in the county for the next five
453 years as revised biennially;

454 (c) a survey of total residential land use;

455 (d) an evaluation of how existing land uses and zones affect opportunities for moderate
456 income housing; and

457 (e) a description of the county's program to encourage an adequate supply of moderate
458 income housing.

459 (36) "Plat" means a map or other graphical representation of lands being laid out and
460 prepared in accordance with Section 17-27a-603, 17-23-17, or 57-8-13.

461 (37) "Potential geologic hazard area" means an area that:

462 (a) is designated by a Utah Geological Survey map, county geologist map, or other
463 relevant map or report as needing further study to determine the area's potential for geologic
464 hazard; or

465 (b) has not been studied by the Utah Geological Survey or a county geologist but
466 presents the potential of geologic hazard because the area has characteristics similar to those of
467 a designated geologic hazard area.

468 (38) "Public hearing" means a hearing at which members of the public are provided a
469 reasonable opportunity to comment on the subject of the hearing.

470 (39) "Public meeting" means a meeting that is required to be open to the public under
471 Title 52, Chapter 4, Open and Public Meetings Act.

472 (40) "Receiving zone" means an unincorporated area of a county that the county's land
473 use authority designates as an area in which an owner of land may receive transferrable
474 development rights.

475 (41) "Record of survey map" means a map of a survey of land prepared in accordance
476 with Section 17-23-17.

477 (42) "Residential facility for elderly persons" means a single-family or multiple-family
478 dwelling unit that meets the requirements of Section 17-27a-515, but does not include a health
479 care facility as defined by Section 26-21-2.

480 (43) "Residential facility for persons with a disability" means a residence:

481 (a) in which more than one person with a disability resides; and

482 (b) (i) is licensed or certified by the Department of Human Services under Title 62A,
483 Chapter 2, Licensure of Programs and Facilities; or

484 (ii) is licensed or certified by the Department of Health under Title 26, Chapter 21,
485 Health Care Facility Licensing and Inspection Act.

486 (44) "Sanitary sewer authority" means the department, agency, or public entity with
487 responsibility to review and approve the feasibility of sanitary sewer services or onsite
488 wastewater systems.

489 (45) "Sending zone" means an unincorporated area of a county that the county's land
490 use authority designates as an area from which an owner of land may transfer transferrable
491 development rights to an owner of land in a receiving zone.

492 (46) "Specified public utility" means an electrical corporation, gas corporation, or

493 telephone corporation, as those terms are defined in Section 54-2-1.

494 (47) "Street" means a public right-of-way, including a highway, avenue, boulevard,
495 parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement, or other
496 way.

497 (48) (a) "Subdivision" means any land that is divided, resubdivided or proposed to be
498 divided into two or more lots, parcels, sites, units, plots, or other division of land for the
499 purpose, whether immediate or future, for offer, sale, lease, or development either on the
500 installment plan or upon any and all other plans, terms, and conditions.

501 (b) "Subdivision" includes:

502 (i) the division or development of land whether by deed, metes and bounds description,
503 devise and testacy, map, plat, or other recorded instrument; and

504 (ii) except as provided in Subsection (48)(c), divisions of land for residential and
505 nonresidential uses, including land used or to be used for commercial, agricultural, and
506 industrial purposes.

507 (c) "Subdivision" does not include:

508 (i) a bona fide division or partition of agricultural land for agricultural purposes;

509 (ii) a recorded agreement between owners of adjoining properties adjusting their
510 mutual boundary if:

511 (A) no new lot is created; and

512 (B) the adjustment does not violate applicable land use ordinances;

513 (iii) a recorded document, executed by the owner of record:

514 (A) revising the legal description of more than one contiguous unsubdivided parcel of
515 property into one legal description encompassing all such parcels of property; or

516 (B) joining a subdivided parcel of property to another parcel of property that has not
517 been subdivided, if the joinder does not violate applicable land use ordinances;

518 (iv) a bona fide division or partition of land in a county other than a first class county
519 for the purpose of siting, on one or more of the resulting separate parcels:

520 (A) an unmanned facility appurtenant to a pipeline owned or operated by a gas
521 corporation, interstate pipeline company, or intrastate pipeline company; or

522 (B) an unmanned telecommunications, microwave, fiber optic, electrical, or other
523 utility service regeneration, transformation, retransmission, or amplification facility; or

524 (v) a recorded agreement between owners of adjoining subdivided properties adjusting
525 their mutual boundary if:

526 (A) no new dwelling lot or housing unit will result from the adjustment; and

527 (B) the adjustment will not violate any applicable land use ordinance.

528 (d) The joining of a subdivided parcel of property to another parcel of property that has
529 not been subdivided does not constitute a subdivision under this Subsection (48) as to the
530 unsubdivided parcel of property or subject the unsubdivided parcel to the county's subdivision
531 ordinance.

532 (49) "Township" means a contiguous, geographically defined portion of the
533 unincorporated area of a county, established under this part or reconstituted or reinstated under
534 Section 17-27a-306, with planning and zoning functions as exercised through the township
535 planning commission, as provided in this chapter, but with no legal or political identity
536 separate from the county and no taxing authority, except that "township" means a former
537 township under Laws of Utah 1996, Chapter 308, where the context so indicates.

538 (50) "Transferrable development right" means the entitlement to develop land within a
539 sending zone that would vest according to the county's existing land use ordinances on the date
540 that a completed land use application is filed seeking the approval of development activity on
541 the land.

542 (51) "Unincorporated" means the area outside of the incorporated area of a
543 municipality.

544 (52) "Water interest" means any right to the beneficial use of water, including:

545 (a) each of the rights listed in Section 73-1-11; and

546 (b) an ownership interest in the right to the beneficial use of water represented by:

547 (i) a contract; or

548 (ii) a share in a water company, as defined in Section 73-3-3.5.

549 [~~52~~] (53) "Zoning map" means a map, adopted as part of a land use ordinance, that
550 depicts land use zones, overlays, or districts.

551 Section 4. Section **17-27a-507** is amended to read:

552 **17-27a-507. Exactions -- Requirement to offer to original owner property**
553 **acquired by exaction.**

554 (1) A county may impose an exaction or exactions on development proposed in a land

555 use application [~~provided that~~], including, subject to Subsection (2), an exaction for a water
556 interest, if:

557 (a) an essential link exists between a legitimate governmental interest and each
558 exaction; and

559 (b) each exaction is roughly proportionate, both in nature and extent, to the impact of
560 the proposed development.

561 (2) (a) A county:

562 (i) shall base any exaction for a water interest on the culinary water authority's
563 established calculations of projected water right requirements; and

564 (ii) may not impose an exaction for a water interest if the culinary water authority's
565 existing water rights exceed the water rights needed to meet the reasonable future water
566 requirement of the public, as determined under Subsection 73-1-4(2)(f).

567 (b) Upon an applicant's request, the culinary water authority shall provide the applicant
568 with the basis for the culinary water authority's calculations under Subsection (2)(a)(i) on
569 which an exaction for a water interest is based.

570 [~~(2)~~] (3) (a) If a county plans to dispose of surplus real property under Section
571 17-50-312 that was acquired under this section and has been owned by the county for less than
572 15 years, the county shall first offer to reconvey the property, without receiving additional
573 consideration, to the person who granted the property to the county.

574 (b) A person to whom a county offers to reconvey property under Subsection [~~(2)~~]
575 (3)(a) has 90 days to accept or reject the county's offer.

576 (c) If a person to whom a county offers to reconvey property declines the offer, the
577 county may offer the property for sale.

578 (d) Subsection [~~(2)~~] (3)(a) does not apply to the disposal of property acquired by
579 exaction by a community development or urban renewal agency.

Legislative Review Note
as of 12-17-08 8:49 AM

Office of Legislative Research and General Counsel

H.B. 68 - Development Exactions

Fiscal Note

2009 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.
