

Representative Patrick Painter proposes the following substitute bill:

DEVELOPMENT EXACTIONS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Patrick Painter

Senate Sponsor: Gregory S. Bell

LONG TITLE

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 the imposition of an exaction for a water interest by a county, a county's culinary water authority, or a municipality; 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:

10-9a-103, as last amended by Laws of Utah 2008, Chapters 19, 112, 326, and 360

10-9a-508, as last amended by Laws of Utah 2008, Chapter 35



26 17-27a-103, as last amended by Laws of Utah 2008, Chapters 112, 250, 326, and 360
27 17-27a-507, as last amended by Laws of Utah 2008, Chapter 35



28
29 *Be it enacted by the Legislature of the state of Utah:*

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

31 **10-9a-103. Definitions.**

32 As used in this chapter:

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

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

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

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

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

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

51 (4) "Charter school" includes:

52 (a) an operating charter school;

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

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

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

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

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

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

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

68 (8) "Development activity" means:

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

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

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

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

78 (b) "Disability" does not include current illegal use of, or addiction to, any federally
79 controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C.
80 802.

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

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

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

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

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

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

96 (14) "Geologic hazard" means:

97 (a) a surface fault rupture;

98 (b) shallow groundwater;

99 (c) liquefaction;

100 (d) a landslide;

101 (e) a debris flow;

102 (f) unstable soil;

103 (g) a rock fall; or

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

105 (i) to life;

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

107 (iii) of substantial damage to real property.

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

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

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

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

117 (a) to guaranty the proper completion of an improvement;

118 (b) that is required as a condition precedent to:

119 (i) recording a subdivision plat; or
120 (ii) beginning development activity; and
121 (c) that is offered to a land use authority to induce the land use authority, before actual
122 construction of required improvements, to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

150 (27) "Noncomplying structure" means a structure that:
151 (a) legally existed before its current land use designation; and
152 (b) because of one or more subsequent land use ordinance changes, does not conform
153 to the setback, height restrictions, or other regulations, excluding those regulations, which
154 govern the use of land.

155 (28) "Nonconforming use" means a use of land that:
156 (a) legally existed before its current land use designation;
157 (b) has been maintained continuously since the time the land use ordinance governing
158 the land changed; and
159 (c) because of one or more subsequent land use ordinance changes, does not conform
160 to the regulations that now govern the use of the land.

161 (29) "Official map" means a map drawn by municipal authorities and recorded in a
162 county recorder's office that:
163 (a) shows actual and proposed rights-of-way, centerline alignments, and setbacks for
164 highways and other transportation facilities;
165 (b) provides a basis for restricting development in designated rights-of-way or between
166 designated setbacks to allow the government authorities time to purchase or otherwise reserve
167 the land; and
168 (c) has been adopted as an element of the municipality's general plan.

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

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

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

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

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

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

180 (e) a description of the city's program to encourage an adequate supply of moderate

181 income housing.

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

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

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

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

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

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

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

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

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

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

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

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

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

209 (40) "Sanitary sewer authority" means the department, agency, or public entity with
210 responsibility to review and approve the feasibility of sanitary sewer services or onsite
211 wastewater systems.

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

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

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

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

224 (b) "Subdivision" includes:

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

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

230 (c) "Subdivision" does not include:

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

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

237 (A) no new lot is created; and

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

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

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

242 (B) joining a subdivided parcel of property to another parcel of property that has not

243 been subdivided, if the joinder does not violate applicable land use ordinances; or

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

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

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

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

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

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

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

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

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

261 (i) a contract; or

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

263 [(47)] (48) "Zoning map" means a map, adopted as part of a land use ordinance, that
264 depicts land use zones, overlays, or districts.

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

266 **10-9a-508. Exactions -- Requirement to offer to original owner property acquired**
267 **by exaction.**

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

270 (a) an essential link exists between a legitimate governmental interest and each
271 exaction; and

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

274 (2) (a) (i) A municipality shall base any exaction for a water interest on the culinary
 275 water authority's established calculations of projected water right requirements.

276 (ii) Upon an applicant's request, the culinary water authority shall provide the applicant
 277 with the basis for the culinary water authority's calculations under Subsection (2)(a)(i) on
 278 which an exaction for a water interest is based.

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

282 [~~(2)~~] (3) (a) If a municipality plans to dispose of surplus real property that was acquired
 283 under this section and has been owned by the municipality for less than 15 years, the
 284 municipality shall first offer to reconvey the property, without receiving additional
 285 consideration, to the person who granted the property to the municipality.

286 (b) A person to whom a municipality offers to reconvey property under Subsection
 287 [~~(2)~~] (3)(a) has 90 days to accept or reject the municipality's offer.

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

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

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

293 **17-27a-103. Definitions.**

294 As used in this chapter:

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

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

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

304 (c) the entity has filed with the county a request for notice during the same calendar

305 year and before the county provides notice to an affected entity in compliance with a
306 requirement imposed under this chapter.

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

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

313 (4) "Charter school" includes:

314 (a) an operating charter school;

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

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

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

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

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

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

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

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

332 (9) "Development activity" means:

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

335 (b) any change in use of a building or structure that creates additional demand and need

336 for public facilities; or

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

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

342 (b) "Disability" does not include current illegal use of, or addiction to, any federally
343 controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C.
344 802.

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

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

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

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

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

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

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

361 (16) "Geologic hazard" means:

362 (a) a surface fault rupture;

363 (b) shallow groundwater;

364 (c) liquefaction;

365 (d) a landslide;

366 (e) a debris flow;

- 367 (f) unstable soil;
- 368 (g) a rock fall; or
- 369 (h) any other geologic condition that presents a risk:
- 370 (i) to life;
- 371 (ii) of substantial loss of real property; or
- 372 (iii) of substantial damage to real property.
- 373 (17) "Identical plans" means building plans submitted to a county that are substantially
- 374 identical building plans that were previously submitted to and reviewed and approved by the
- 375 county and describe a building that is:
- 376 (a) located on land zoned the same as the land on which the building described in the
- 377 previously approved plans is located; and
- 378 (b) subject to the same geological and meteorological conditions and the same law as
- 379 the building described in the previously approved plans.
- 380 (18) "Improvement assurance" means a surety bond, letter of credit, cash, or other
- 381 security:
- 382 (a) to guaranty the proper completion of an improvement;
- 383 (b) that is required as a condition precedent to:
- 384 (i) recording a subdivision plat; or
- 385 (ii) beginning development activity; and
- 386 (c) that is offered to a land use authority to induce the land use authority, before actual
- 387 construction of required improvements, to:
- 388 (i) consent to the recording of a subdivision plat; or
- 389 (ii) issue a permit for development activity.
- 390 (19) "Improvement assurance warranty" means a promise that the materials and
- 391 workmanship of improvements:
- 392 (a) comport with standards that the county has officially adopted; and
- 393 (b) will not fail in any material respect within a warranty period.
- 394 (20) "Interstate pipeline company" means a person or entity engaged in natural gas
- 395 transportation subject to the jurisdiction of the Federal Energy Regulatory Commission under
- 396 the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.
- 397 (21) "Intrastate pipeline company" means a person or entity engaged in natural gas

398 transportation that is not subject to the jurisdiction of the Federal Energy Regulatory
399 Commission under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

491 way.

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

496 (b) "Subdivision" includes:

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

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

502 (c) "Subdivision" does not include:

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

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

506 (A) no new lot is created; and

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

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

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

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

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

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

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

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

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

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

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

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

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

537 (51) "Unincorporated" means the area outside of the incorporated area of a
538 municipality.

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

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

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

542 (i) a contract; or

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

544 [~~52~~] (53) "Zoning map" means a map, adopted as part of a land use ordinance, that
545 depicts land use zones, overlays, or districts.

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

547 **17-27a-507. Exactions -- Requirement to offer to original owner property**
548 **acquired by exaction.**

549 (1) A county may impose an exaction or exactions on development proposed in a land
550 use application [~~provided that~~], including, subject to Subsection (2), an exaction for a water
551 interest, if:

552 (a) an essential link exists between a legitimate governmental interest and each

553 exaction; and

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

556 (2) (a) (i) A county or, if applicable, the county's culinary water authority shall base any
557 exaction for a water interest on the culinary water authority's established calculations of
558 projected water right requirements.

559 (ii) Upon an applicant's request, the culinary water authority shall provide the applicant
560 with the basis for the culinary water authority's calculations under Subsection (2)(a)(i) on
561 which an exaction for a water interest is based.

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

566 [~~2~~] (3) (a) If a county plans to dispose of surplus real property under Section
567 17-50-312 that was acquired under this section and has been owned by the county for less than
568 15 years, the county shall first offer to reconvey the property, without receiving additional
569 consideration, to the person who granted the property to the county.

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

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

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

H.B. 68 1st Sub. (Buff) - 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.
