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**DEVELOPER FEES**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Michael T. Morley**

Senate Sponsor: Wayne L. Niederhauser

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**LONG TITLE**

**General Description:**

This bill amends provisions related to municipal or county land use authority.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ amends provisions related to certain fees a municipality or a county may charge;
- ▶ requires a municipality or a county to establish a fee appeal process;
- ▶ enacts provisions related to a provider of culinary or secondary water that commits to provide a water service required by a public land use application;
- ▶ amends provisions related to a municipal or a county appeal authority; and
- ▶ makes technical corrections.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**10-9a-103**, as last amended by Laws of Utah 2010, Chapters 269 and 330

**10-9a-305**, as last amended by Laws of Utah 2010, Chapters 203 and 330

**10-9a-510**, as last amended by Laws of Utah 2010, Chapter 203



- 28           **10-9a-701**, as enacted by Laws of Utah 2005, Chapter 254
- 29           **17-27a-103**, as last amended by Laws of Utah 2010, Chapters 269 and 330
- 30           **17-27a-305**, as last amended by Laws of Utah 2010, Chapters 203 and 330
- 31           **17-27a-509**, as last amended by Laws of Utah 2010, Chapter 203
- 32           **17-27a-701**, as enacted by Laws of Utah 2005, Chapter 254

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

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

36           **10-9a-103. Definitions.**

37           As used in this chapter:

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

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

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

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

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

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

56           ~~Ĥ→ [(4) "Building permit fee" means any fee charged to enforce the uniform codes adopted~~  
57 ~~pursuant to Title 58, Chapter 56, Utah Uniform Building Standards Act, that is no greater than~~  
58 ~~a fee indicated in the appendix to the International Building Code.] ←Ĥ~~

59 **H→** [f] (4) [f] [~~5~~] **←H** "Charter school" includes:

60 (a) an operating charter school;

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

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

65 **H→** [f] (5) [f] [~~6~~] **←H** "Conditional use" means a land use that, because of its unique  
65a characteristics

66 or potential impact on the municipality, surrounding neighbors, or adjacent land uses, may not  
67 be compatible in some areas or may be compatible only if certain conditions are required that  
68 mitigate or eliminate the detrimental impacts.

69 **H→** [f] (6) [f] [~~7~~] **←H** "Constitutional taking" means a governmental action that results in a  
69a taking of

70 private property so that compensation to the owner of the property is required by the:

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

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

73 **H→** [f] (7) [f] [~~8~~] **←H** "Culinary water authority" means the department, agency, or public  
73a entity with

74 responsibility to review and approve the feasibility of the culinary water system and sources for  
75 the subject property.

76 **H→** [f] (8) [f] [~~9~~] **←H** "Development activity" means:

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

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

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

83 **H→** [f] (9) [f] [~~10~~] **←H** (a) "Disability" means a physical or mental impairment that  
83a substantially

84 limits one or more of a person's major life activities, including a person having a record of such  
85 an impairment or being regarded as having such an impairment.

86 (b) "Disability" does not include current illegal use of, or addiction to, any federally  
87 controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C.  
88 802.

89 **H→** [f] (10) [f] [~~11~~] **←H** "Educational facility":

90 (a) means:

91 (i) a school district's building at which pupils assemble to receive instruction in a  
92 program for any combination of grades from preschool through grade 12, including  
93 kindergarten and a program for children with disabilities;

94 (ii) a structure or facility:

95 (A) located on the same property as a building described in Subsection [~~(10)~~]

96 (11)(a)(i); and

97 (B) used in support of the use of that building; and

98 (iii) a building to provide office and related space to a school district's administrative  
99 personnel; and

100 (b) does not include land or a structure, including land or a structure for inventory  
101 storage, equipment storage, food processing or preparing, vehicle storage or maintenance, or  
102 similar use that is:

103 (i) not located on the same property as a building described in Subsection [~~(10)~~]

104 (11)(a)(i); and

105 (ii) used in support of the purposes of a building described in Subsection [~~(10)~~]

106 (11)(a)(i).

107 [~~(11)~~] (12) "Elderly person" means a person who is 60 years old or older, who desires  
108 or needs to live with other elderly persons in a group setting, but who is capable of living  
109 independently.

110 [~~(12)~~] (13) "Fire authority" means the department, agency, or public entity with  
111 responsibility to review and approve the feasibility of fire protection and suppression services  
112 for the subject property.

113 [~~(13)~~] (14) "Flood plain" means land that:

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

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

120 [~~(14)~~] (15) "General plan" means a document that a municipality adopts that sets forth

121 general guidelines for proposed future development of the land within the municipality.

122 [~~(15)~~] (16) "Geologic hazard" means:

123 (a) a surface fault rupture;

124 (b) shallow groundwater;

125 (c) liquefaction;

126 (d) a landslide;

127 (e) a debris flow;

128 (f) unstable soil;

129 (g) a rock fall; or

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

131 (i) to life;

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

133 (iii) of substantial damage to real property.

134 [~~(16)~~] (17) "Hookup fee" means a fee for the installation and inspection of any pipe,  
135 line, meter, or appurtenance that connects to a municipal water, sewer, storm water, power, or  
136 other utility system.

137 [~~(17)~~] (18) "Identical plans" means building plans submitted to a municipality that:

138 (a) are clearly marked as "identical plans";

139 (b) are substantially identical to building plans that were previously submitted to and  
140 reviewed and approved by the municipality; and

141 (c) describe a building that ~~is~~:

142 [~~(a)~~] (i) is located on land zoned the same as the land on which the building described  
143 in the previously approved plans is located; ~~and~~

144 [~~(b)~~] (ii) is subject to the same geological and meteorological conditions and the same  
145 law as the building described in the previously approved plans~~[-]~~;

146 (iii) has a floor plan identical to the building plan previously submitted to and reviewed  
147 and approved by the municipality; and

148 (iv) does not require any additional engineering or analysis.

149 [~~(18)~~] (19) "Impact fee" means a payment of money imposed under Title 11, Chapter  
150 36, Impact Fees Act.

151 [~~(19)~~] (20) "Improvement assurance" means a surety bond, letter of credit, cash, or

152 other security:

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

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

155 (i) recording a subdivision plat; or

156 (ii) beginning development activity; and

157 (c) that is offered to a land use authority to induce the land use authority, before actual  
158 construction of required improvements, to:

159 (i) consent to the recording of a subdivision plat; or

160 (ii) issue a permit for development activity.

161 [~~20~~] (21) "Improvement assurance warranty" means a promise that the materials and  
162 workmanship of improvements:

163 (a) comport with standards that the municipality has officially adopted; and

164 (b) will not fail in any material respect within a warranty period.

165 [~~21~~] (22) "Internal lot restriction" means a platted note, platted demarcation, or  
166 platted designation that:

167 (a) runs with the land; and

168 (b) (i) creates a restriction that is enclosed within the perimeter of a lot described on  
169 the plat; or

170 (ii) designates a development condition that is enclosed within the perimeter of a lot  
171 described on the plat.

172 [~~22~~] (23) "Land use application" means an application required by a municipality's  
173 land use ordinance.

174 [~~23~~] (24) "Land use authority" means a person, board, commission, agency, or other  
175 body designated by the local legislative body to act upon a land use application.

176 [~~24~~] (25) "Land use ordinance" means a planning, zoning, development, or  
177 subdivision ordinance of the municipality, but does not include the general plan.

178 [~~25~~] (26) "Land use permit" means a permit issued by a land use authority.

179 [~~26~~] (27) "Legislative body" means the municipal council.

180 [~~27~~] (28) "Local district" means an entity under Title 17B, Limited Purpose Local  
181 Government Entities - Local Districts, and any other governmental or quasi-governmental  
182 entity that is not a county, municipality, school district, or the state.

183            [~~(28)~~] (29) "Lot line adjustment" means the relocation of the property boundary line in  
184 a subdivision between two adjoining lots with the consent of the owners of record.

185            [~~(29)~~] (30) "Moderate income housing" means housing occupied or reserved for  
186 occupancy by households with a gross household income equal to or less than 80% of the  
187 median gross income for households of the same size in the county in which the city is located.

188            [~~(30)~~] (31) "Nominal fee" means a fee that reasonably reimburses a municipality only  
189 for time spent and expenses incurred in:

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

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

193            [~~(31)~~] (32) "Noncomplying structure" means a structure that:

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

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

198            [~~(32)~~] (33) "Nonconforming use" means a use of land that:

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

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

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

204            [~~(33)~~] (34) "Official map" means a map drawn by municipal authorities and recorded in  
205 a county recorder's office that:

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

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

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

212            [~~(34)~~] (35) "Person" means an individual, corporation, partnership, organization,  
213 association, trust, governmental agency, or any other legal entity.

214            [~~(35)~~] (36) "Plan for moderate income housing" means a written document adopted by  
215 a city legislative body that includes:

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

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

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

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

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

225            [~~(36)~~] (37) "Plat" means a map or other graphical representation of lands being laid out  
226 and prepared in accordance with Section 10-9a-603, 17-23-17, or 57-8-13.

227            [~~(37)~~] (38) "Potential geologic hazard area" means an area that:

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

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

234            [~~(38)~~] (39) "Public agency" means:

235            (a) the federal government;

236            (b) the state;

237            (c) a county, municipality, school district, local district, special service district, or other  
238 political subdivision of the state; or

239            (d) a charter school.

240            [~~(39)~~] (40) "Public hearing" means a hearing at which members of the public are  
241 provided a reasonable opportunity to comment on the subject of the hearing.

242            [~~(40)~~] (41) "Public meeting" means a meeting that is required to be open to the public  
243 under Title 52, Chapter 4, Open and Public Meetings Act.

244            [~~(41)~~] (42) "Record of survey map" means a map of a survey of land prepared in



245 accordance with Section 17-23-17.

246 [~~(42)~~] (43) "Receiving zone" means an area of a municipality that the municipality's  
247 land use authority designates as an area in which an owner of land may receive transferrable  
248 development rights.

249 [~~(43)~~] (44) "Residential facility for elderly persons" means a single-family or  
250 multiple-family dwelling unit that meets the requirements of Section 10-9a-516, but does not  
251 include a health care facility as defined by Section 26-21-2.

252 [~~(44)~~] (45) "Residential facility for persons with a disability" means a residence:

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

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

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

258 [~~(45)~~] (46) "Sanitary sewer authority" means the department, agency, or public entity  
259 with responsibility to review and approve the feasibility of sanitary sewer services or onsite  
260 wastewater systems.

261 [~~(46)~~] (47) "Sending zone" means an area of a municipality that the municipality's land  
262 use authority designates as an area from which an owner of land may transfer transferrable  
263 development rights to an owner of land in a receiving zone.

264 [~~(47)~~] (48) "Specified public agency" means:

265 (a) the state;

266 (b) a school district; or

267 (c) a charter school.

268 [~~(48)~~] (49) "Specified public utility" means an electrical corporation, gas corporation,  
269 or telephone corporation, as those terms are defined in Section 54-2-1.

270 [~~(49)~~] (50) "State" includes any department, division, or agency of the state.

271 [~~(50)~~] (51) "Street" means a public right-of-way, including a highway, avenue,  
272 boulevard, parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement,  
273 or other way.

274 [~~(51)~~] (52) (a) "Subdivision" means any land that is divided, resubdivided or proposed  
275 to be divided into two or more lots, parcels, sites, units, plots, or other division of land for the

276 purpose, whether immediate or future, for offer, sale, lease, or development either on the  
277 installment plan or upon any and all other plans, terms, and conditions.

278 (b) "Subdivision" includes:

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

281 (ii) except as provided in Subsection [~~51~~] (52)(c), divisions of land for residential and  
282 nonresidential uses, including land used or to be used for commercial, agricultural, and  
283 industrial purposes.

284 (c) "Subdivision" does not include:

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

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

291 (A) no new lot is created; and

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

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

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

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

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

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

301 (B) the adjustment will not violate any applicable land use ordinance; or

302 (v) a bona fide division or partition of land by deed or other instrument where the land  
303 use authority expressly approves in writing the division in anticipation of further land use  
304 approvals on the parcel or parcels.

305 (d) The joining of a subdivided parcel of property to another parcel of property that has  
306 not been subdivided does not constitute a subdivision under this Subsection [~~51~~] (52) as to

307 the unsubdivided parcel of property or subject the unsubdivided parcel to the municipality's  
308 subdivision ordinance.

309 [~~(52)~~] (53) "Transferrable development right" means the entitlement to develop land  
310 within a sending zone that would vest according to the municipality's existing land use  
311 ordinances on the date that a completed land use application is filed seeking the approval of  
312 development activity on the land.

313 [~~(53)~~] (54) "Unincorporated" means the area outside of the incorporated area of a city  
314 or town.

315 [~~(54)~~] (55) "Water interest" means any right to the beneficial use of water, including:

- 316 (a) each of the rights listed in Section 73-1-11; and
- 317 (b) an ownership interest in the right to the beneficial use of water represented by:
  - 318 (i) a contract; or
  - 319 (ii) a share in a water company, as defined in Section 73-3-3.5.

320 [~~(55)~~] (56) "Zoning map" means a map, adopted as part of a land use ordinance, that  
321 depicts land use zones, overlays, or districts.

322 Section 2. Section **10-9a-305** is amended to read:

323 **10-9a-305. Other entities required to conform to municipality's land use**  
324 **ordinances -- Exceptions -- School districts and charter schools -- Submission of**  
325 **development plan and schedule.**

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

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

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

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

339 or

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

342 (A) platforms;

343 (B) passenger terminals or stations;

344 (C) park and ride facilities;

345 (D) maintenance facilities;

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

348 (F) other auxiliary facilities.

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

352 (c) A municipality located within the boundaries of a county of the first class may not,  
353 through an agreement under Title 11, Chapter 13, Interlocal Cooperation Act, require a public  
354 transit district under Title 17B, Chapter 2a, Part 8, Public Transit District Act, to obtain  
355 approval from the municipality prior to constructing a:

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

357 or

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

360 (A) platforms;

361 (B) passenger terminals or stations;

362 (C) park and ride facilities;

363 (D) maintenance facilities;

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

366 (F) other auxiliary facilities.

367 (3) (a) Except as provided in Subsection (4), a school district or charter school is  
368 subject to a municipality's land use ordinances.

369 (b) (i) Notwithstanding Subsection (4), a municipality may:  
370 (A) subject a charter school to standards within each zone pertaining to setback, height,  
371 bulk and massing regulations, off-site parking, curb cut, traffic circulation, and construction  
372 staging; and  
373 (B) impose regulations upon the location of a project that are necessary to avoid  
374 unreasonable risks to health or safety, as provided in Subsection (4)(f).  
375 (ii) The standards to which a municipality may subject a charter school under  
376 Subsection (3)(b)(i) shall be objective standards only and may not be subjective.  
377 (iii) Except as provided in Subsection (8)(d), the only basis upon which a municipality  
378 may deny or withhold approval of a charter school's land use application is the charter school's  
379 failure to comply with a standard imposed under Subsection (3)(b)(i).  
380 (iv) Nothing in Subsection (3)(b)(iii) may be construed to relieve a charter school of an  
381 obligation to comply with a requirement of an applicable building or safety code to which it is  
382 otherwise obligated to comply.  
383 (4) A municipality may not:  
384 (a) impose requirements for landscaping, fencing, aesthetic considerations,  
385 construction methods or materials, additional building inspections, municipal building codes,  
386 building use for educational purposes, or the placement or use of temporary classroom facilities  
387 on school property;  
388 (b) except as otherwise provided in this section, require a school district or charter  
389 school to participate in the cost of any roadway or sidewalk, or a study on the impact of a  
390 school on a roadway or sidewalk, that is not reasonably necessary for the safety of school  
391 children and not located on or contiguous to school property, unless the roadway or sidewalk is  
392 required to connect an otherwise isolated school site to an existing roadway;  
393 (c) require a district or charter school to pay fees not authorized by this section;  
394 (d) provide for inspection of school construction or assess a fee or other charges for  
395 inspection, unless the school district or charter school is unable to provide for inspection by an  
396 inspector, other than the project architect or contractor, who is qualified under criteria  
397 established by the state superintendent;  
398 (e) require a school district or charter school to pay any impact fee for an improvement  
399 project unless the impact fee is imposed as provided in Title 11, Chapter 36, Impact Fees Act;

400 (f) impose regulations upon the location of an educational facility except as necessary  
401 to avoid unreasonable risks to health or safety; or

402 (g) for a land use or a structure owned or operated by a school district or charter school  
403 that is not an educational facility but is used in support of providing instruction to pupils,  
404 impose a regulation that:

405 (i) is not imposed on a similar land use or structure in the zone in which the land use or  
406 structure is approved; or

407 (ii) uses the tax exempt status of the school district or charter school as criteria for  
408 prohibiting or regulating the land use or location of the structure.

409 (5) Subject to Section 53A-20-108, a school district or charter school shall coordinate  
410 the siting of a new school with the municipality in which the school is to be located, to:

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

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

414 (6) Notwithstanding Subsection (4)(d), a municipality may, at its discretion:

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

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

418 (7) (a) Notwithstanding Subsection (4)(d), a school district or charter school shall use:

419 (i) a municipal building inspector;

420 (ii) (A) for a school district, a school district building inspector from that school  
421 district; or

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

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

425 (A) not an employee of the contractor;

426 (B) approved by:

427 (I) a municipal building inspector; or

428 (II) (Aa) for a school district, a school district building inspector from that school  
429 district; or

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

431 which the charter school is located; and

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

433 (b) The approval under Subsection (7)(a)(iii)(B) may not be unreasonably withheld.

434 (c) If a school district or charter school uses a school district or independent building  
435 inspector under Subsection (7)(a)(ii) or (iii), the school district or charter school shall submit to  
436 the state superintendent of public instruction and municipal building official, on a monthly  
437 basis during construction of the school building, a copy of each inspection certificate regarding  
438 the school building.

439 (8) (a) A charter school shall be considered a permitted use in all zoning districts  
440 within a municipality.

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

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

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

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

450 (A) the state superintendent of public instruction, as provided in Subsection  
451 53A-20-104(3), if the school district or charter school used an independent building inspector  
452 for inspection of the school building; or

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

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

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

461 (iv) A certificate authorizing permanent occupancy issued by the state superintendent

462 of public instruction under Subsection 53A-20-104(3) or a school district official with authority  
463 to issue the certificate shall be considered to satisfy any municipal requirement for an  
464 inspection or a certificate of occupancy.

465 (9) (a) A specified public agency intending to develop its land shall submit to the land  
466 use authority a development plan and schedule:

467 (i) as early as practicable in the development process, but no later than the  
468 commencement of construction; and

469 (ii) with sufficient detail to enable the land use authority to assess:

470 (A) the specified public agency's compliance with applicable land use ordinances;

471 (B) the demand for public facilities listed in Subsections 11-36-102(14)(a), (b), (c), (d),  
472 (e), and (g) caused by the development;

473 (C) the amount of any applicable fee [~~listed in Subsection 10-9a-510(5)~~] described in  
474 Section 10-9a-510;

475 (D) any credit against an impact fee; and

476 (E) the potential for waiving an impact fee.

477 (b) The land use authority shall respond to a specified public agency's submission  
478 under Subsection (9)(a) with reasonable promptness in order to allow the specified public  
479 agency to consider information the municipality provides under Subsection (9)(a)(ii) in the  
480 process of preparing the budget for the development.

481 (10) Nothing in this section may be construed to modify or supersede Section  
482 10-9a-304.

483 Section 3. Section **10-9a-510** is amended to read:

484 **10-9a-510. Limit on fees -- Requirement to itemize fees -- Appeal of fee --**  
485 **Provider of culinary or secondary water.**

486 (1) A municipality may not impose or collect a fee for reviewing or approving the  
487 plans for a commercial or residential building that exceeds the lesser of:

488 (a) the actual cost of performing the plan review; and

489 (b) 65% of the amount the municipality charges for a building permit fee for that  
490 building.

491 (2) Subject to Subsection (1), a municipality may impose and collect only a nominal  
492 fee for reviewing and approving identical floor plans.



493 (3) A municipality may not impose or collect a hookup fee that exceeds the reasonable  
494 cost of installing and inspecting the pipe, line, meter, and appurtenance to connect to the  
495 municipal water, sewer, storm water, power, or other utility system.

496 (4) A municipality may not impose or collect:

497 (a) a land use application fee that exceeds the reasonable cost of processing the  
498 application or issuing the permit; or

499 (b) an inspection, regulation, or review fee that exceeds the reasonable cost of  
500 performing the inspection, regulation, or review.

501 (5) ~~(a) [Upon the request of]~~ If requested by an applicant who is charged a fee or an  
502 owner of residential property upon which a fee is imposed, the municipality shall [itemize each  
503 fee that the municipality imposes on the applicant or on the residential property, respectively,  
504 showing the basis of each calculation for each fee imposed] provide an itemized fee statement  
505 that shows the calculation method for each fee.

506 (b) If an applicant who is charged a fee or an owner of residential property upon which  
507 a fee is imposed submits a request for an itemized fee statement no later than 30 days after the  
508 day on which the applicant or owner pays the fee, the municipality shall no later than 10 days  
509 after the day on which the request is received provide or commit to provide within a specific  
510 time:

511 (i) for each fee, any studies, reports, or methods relied upon by the municipality to  
512 create the calculation method described in Subsection (5)(a);

513 (ii) an accounting of each fee paid;

514 (iii) how each fee will be distributed; and

515 (iv) information on filing a fee appeal through the process described in Subsection  
516 (5)(c).

517 (c) A municipality shall establish a fee appeal process subject to an appeal authority  
518 described in Part 7, Appeal Authority and Variances, and district court review in accordance  
519 with Part 8, District Court Review, to determine whether a fee reflects only the reasonable  
520 estimated cost of:

521 (i) regulation;

522 (ii) processing an application;

523 (iii) issuing a permit; or

524 (iv) delivering the service for which the applicant or owner paid the fee.

525 (6) A municipality may not impose on or collect from a public agency any fee  
526 associated with the public agency's development of its land other than:

527 (a) subject to Subsection (4), a fee for a development service that the public agency  
528 does not itself provide;

529 (b) subject to Subsection (3), a hookup fee; and

530 (c) an impact fee for a public facility listed in Subsection 11-36-102(14)(a), (b), (c),  
531 (d), (e), or (g), subject to any applicable credit under Subsection 11-36-202(2)(b).

532 (7) A provider of culinary or secondary water that commits to provide a water service  
533 required by a ~~§~~ → [public] ← ~~§~~ land use application process is subject to the following as if it were a  
534 municipality:

535 (a) Subsections (5) and (6);

536 (b) Section 10-9a-508; and

537 (c) Section 10-9a-509.5.

538 Section 4. Section **10-9a-701** is amended to read:

539 **10-9a-701. Appeal authority required -- Condition precedent to judicial review --**

540 **Appeal authority duties.**

541 (1) Each municipality adopting a land use ordinance shall, by ordinance, establish one  
542 or more appeal authorities to hear and decide:

543 (a) requests for variances from the terms of the land use ordinances; [~~and~~]

544 (b) appeals from decisions applying the land use ordinances[-]; and

545 (c) appeals from a fee charged in accordance with Section 10-9a-510.

546 (2) As a condition precedent to judicial review, each adversely affected person shall  
547 timely and specifically challenge a land use authority's decision, in accordance with local  
548 ordinance.

549 (3) An appeal authority:

550 (a) shall:

551 (i) act in a quasi-judicial manner; and

552 (ii) serve as the final arbiter of issues involving the interpretation or application of land  
553 use ordinances; and

554 (b) may not entertain an appeal of a matter in which the appeal authority, or any

555 participating member, had first acted as the land use authority.

556 (4) By ordinance, a municipality may:

557 (a) designate a separate appeal authority to hear requests for variances than the appeal  
558 authority it designates to hear appeals;

559 (b) designate one or more separate appeal authorities to hear distinct types of appeals  
560 of land use authority decisions;

561 (c) require an adversely affected party to present to an appeal authority every theory of  
562 relief that it can raise in district court;

563 (d) not require an adversely affected party to pursue duplicate or successive appeals  
564 before the same or separate appeal authorities as a condition of the adversely affected party's  
565 duty to exhaust administrative remedies; and

566 (e) provide that specified types of land use decisions may be appealed directly to the  
567 district court.

568 (5) If the municipality establishes or, prior to the effective date of this chapter, has  
569 established a multiperson board, body, or panel to act as an appeal authority, at a minimum the  
570 board, body, or panel shall:

571 (a) notify each of its members of any meeting or hearing of the board, body, or panel;

572 (b) provide each of its members with the same information and access to municipal  
573 resources as any other member;

574 (c) convene only if a quorum of its members is present; and

575 (d) act only upon the vote of a majority of its convened members.

576 Section 5. Section **17-27a-103** is amended to read:

577 **17-27a-103. Definitions.**

578 As used in this chapter:

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

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

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

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

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

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

597 **H→ [(4) "Building permit fee" means any fee charged to enforce the uniform codes adopted**  
598 **pursuant to Title 58, Chapter 56, Utah Uniform Building Standards Act, that is no greater than**  
599 **a fee indicated in the appendix to the International Building Code.]**

600 [F] (4) [F] [(5)] ←H "Charter school" includes:

- 601 (a) an operating charter school;
- 602 (b) a charter school applicant that has its application approved by a chartering entity in  
603 accordance with Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act; and
- 604 (c) an entity who is working on behalf of a charter school or approved charter applicant  
605 to develop or construct a charter school building.

606 H→ [F] (5) [F] [(6)] ←H "Chief executive officer" means the person or body that exercises the  
607 executive powers of the county.

608 H→ [F] (6) [F] [(7)] ←H "Conditional use" means a land use that, because of its unique  
608a characteristics  
609 or potential impact on the county, surrounding neighbors, or adjacent land uses, may not be  
610 compatible in some areas or may be compatible only if certain conditions are required that  
611 mitigate or eliminate the detrimental impacts.

612 H→ [F] (7) [F] [(8)] ←H "Constitutional taking" means a governmental action that results in a  
612a taking of  
613 private property so that compensation to the owner of the property is required by the:

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

616 H→ [F] (8) [F] [(9)] ←H "Culinary water authority" means the department, agency, or  
616a public entity with

617 responsibility to review and approve the feasibility of the culinary water system and sources for  
618 the subject property.

619 [~~9~~] (10) "Development activity" means:

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

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

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

626 [~~10~~] (11) (a) "Disability" means a physical or mental impairment that substantially  
627 limits one or more of a person's major life activities, including a person having a record of such  
628 an impairment or being regarded as having such an impairment.

629 (b) "Disability" does not include current illegal use of, or addiction to, any federally  
630 controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C.  
631 802.

632 [~~11~~] (12) "Educational facility":

633 (a) means:

634 (i) a school district's building at which pupils assemble to receive instruction in a  
635 program for any combination of grades from preschool through grade 12, including  
636 kindergarten and a program for children with disabilities;

637 (ii) a structure or facility:

638 (A) located on the same property as a building described in Subsection [~~11~~]

639 (12)(a)(i); and

640 (B) used in support of the use of that building; and

641 (iii) a building to provide office and related space to a school district's administrative  
642 personnel; and

643 (b) does not include land or a structure, including land or a structure for inventory  
644 storage, equipment storage, food processing or preparing, vehicle storage or maintenance, or  
645 similar use that is:

646 (i) not located on the same property as a building described in Subsection [~~11~~]

647 (12)(a)(i); and

648 (ii) used in support of the purposes of a building described in Subsection [~~(H)~~]  
649 (12)(a)(i).

650 [~~(12)~~] (13) "Elderly person" means a person who is 60 years old or older, who desires  
651 or needs to live with other elderly persons in a group setting, but who is capable of living  
652 independently.

653 [~~(13)~~] (14) "Fire authority" means the department, agency, or public entity with  
654 responsibility to review and approve the feasibility of fire protection and suppression services  
655 for the subject property.

656 [~~(14)~~] (15) "Flood plain" means land that:

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

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

663 [~~(15)~~] (16) "Gas corporation" has the same meaning as defined in Section 54-2-1.

664 [~~(16)~~] (17) "General plan" means a document that a county adopts that sets forth  
665 general guidelines for proposed future development of the unincorporated land within the  
666 county.

667 [~~(17)~~] (18) "Geologic hazard" means:

668 (a) a surface fault rupture;

669 (b) shallow groundwater;

670 (c) liquefaction;

671 (d) a landslide;

672 (e) a debris flow;

673 (f) unstable soil;

674 (g) a rock fall; or

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

676 (i) to life;

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

678 (iii) of substantial damage to real property.

679           ~~[(18)]~~ (19) "Internal lot restriction" means a platted note, platted demarcation, or  
680 platted designation that:

681           (a) runs with the land; and

682           (b) (i) creates a restriction that is enclosed within the perimeter of a lot described on  
683 the plat; or

684           (ii) designates a development condition that is enclosed within the perimeter of a lot  
685 described on the plat.

686           ~~[(19)]~~ (20) "Hookup fee" means a fee for the installation and inspection of any pipe,  
687 line, meter, or appurtenance to connect to a county water, sewer, storm water, power, or other  
688 utility system.

689           ~~[(20)]~~ (21) "Identical plans" means building plans submitted to a county that:

690           (a) are clearly marked as "identical plans";

691           (b) are substantially identical building plans that were previously submitted to and  
692 reviewed and approved by the county; and

693           (c) describe a building that ~~is~~:

694           ~~[(a)]~~ (i) is located on land zoned the same as the land on which the building described  
695 in the previously approved plans is located; ~~and~~

696           ~~[(b)]~~ (ii) is subject to the same geological and meteorological conditions and the same  
697 law as the building described in the previously approved plans~~[-]~~;

698           (iii) has a floor plan identical to the building plan previously submitted to and reviewed  
699 and approved by the county; and

700           (iv) does not require any additional engineering or analysis.

701           ~~[(21)]~~ (22) "Impact fee" means a payment of money imposed under Title 11, Chapter  
702 36, Impact Fees Act.

703           ~~[(22)]~~ (23) "Improvement assurance" means a surety bond, letter of credit, cash, or  
704 other security:

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

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

707           (i) recording a subdivision plat; or

708           (ii) beginning development activity; and

709           (c) that is offered to a land use authority to induce the land use authority, before actual

710 construction of required improvements, to:

711 (i) consent to the recording of a subdivision plat; or

712 (ii) issue a permit for development activity.

713 [~~23~~] (24) "Improvement assurance warranty" means a promise that the materials and  
714 workmanship of improvements:

715 (a) comport with standards that the county has officially adopted; and

716 (b) will not fail in any material respect within a warranty period.

717 [~~24~~] (25) "Interstate pipeline company" means a person or entity engaged in natural  
718 gas transportation subject to the jurisdiction of the Federal Energy Regulatory Commission  
719 under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

720 [~~25~~] (26) "Intrastate pipeline company" means a person or entity engaged in natural  
721 gas transportation that is not subject to the jurisdiction of the Federal Energy Regulatory  
722 Commission under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

723 [~~26~~] (27) "Land use application" means an application required by a county's land use  
724 ordinance.

725 [~~27~~] (28) "Land use authority" means a person, board, commission, agency, or other  
726 body designated by the local legislative body to act upon a land use application.

727 [~~28~~] (29) "Land use ordinance" means a planning, zoning, development, or  
728 subdivision ordinance of the county, but does not include the general plan.

729 [~~29~~] (30) "Land use permit" means a permit issued by a land use authority.

730 [~~30~~] (31) "Legislative body" means the county legislative body, or for a county that  
731 has adopted an alternative form of government, the body exercising legislative powers.

732 [~~31~~] (32) "Local district" means any entity under Title 17B, Limited Purpose Local  
733 Government Entities - Local Districts, and any other governmental or quasi-governmental  
734 entity that is not a county, municipality, school district, or the state.

735 [~~32~~] (33) "Lot line adjustment" means the relocation of the property boundary line in  
736 a subdivision between two adjoining lots with the consent of the owners of record.

737 [~~33~~] (34) "Moderate income housing" means housing occupied or reserved for  
738 occupancy by households with a gross household income equal to or less than 80% of the  
739 median gross income for households of the same size in the county in which the housing is  
740 located.



741            [~~(34)~~] (35) "Nominal fee" means a fee that reasonably reimburses a county only for  
742 time spent and expenses incurred in:

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

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

746            [~~(35)~~] (36) "Noncomplying structure" means a structure that:

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

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

751            [~~(36)~~] (37) "Nonconforming use" means a use of land that:

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

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

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

757            [~~(37)~~] (38) "Official map" means a map drawn by county authorities and recorded in  
758 the county recorder's office that:

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

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

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

765            [~~(38)~~] (39) "Person" means an individual, corporation, partnership, organization,  
766 association, trust, governmental agency, or any other legal entity.

767            [~~(39)~~] (40) "Plan for moderate income housing" means a written document adopted by  
768 a county legislative body that includes:

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

771            (b) an estimate of the need for moderate income housing in the county for the next five

772 years as revised biennially;

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

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

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

778 [~~(40)~~] (41) "Plat" means a map or other graphical representation of lands being laid out  
779 and prepared in accordance with Section 17-27a-603, 17-23-17, or 57-8-13.

780 [~~(41)~~] (42) "Potential geologic hazard area" means an area that:

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

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

787 [~~(42)~~] (43) "Public agency" means:

788 (a) the federal government;

789 (b) the state;

790 (c) a county, municipality, school district, local district, special service district, or other  
791 political subdivision of the state; or

792 (d) a charter school.

793 [~~(43)~~] (44) "Public hearing" means a hearing at which members of the public are  
794 provided a reasonable opportunity to comment on the subject of the hearing.

795 [~~(44)~~] (45) "Public meeting" means a meeting that is required to be open to the public  
796 under Title 52, Chapter 4, Open and Public Meetings Act.

797 [~~(45)~~] (46) "Receiving zone" means an unincorporated area of a county that the  
798 county's land use authority designates as an area in which an owner of land may receive  
799 transferrable development rights.

800 [~~(46)~~] (47) "Record of survey map" means a map of a survey of land prepared in  
801 accordance with Section 17-23-17.

802 [~~(47)~~] (48) "Residential facility for elderly persons" means a single-family or

803 multiple-family dwelling unit that meets the requirements of Section 17-27a-515, but does not  
804 include a health care facility as defined by Section 26-21-2.

805 ~~[(48)]~~ (49) "Residential facility for persons with a disability" means a residence:

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

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

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

811 ~~[(49)]~~ (50) "Sanitary sewer authority" means the department, agency, or public entity  
812 with responsibility to review and approve the feasibility of sanitary sewer services or onsite  
813 wastewater systems.

814 ~~[(50)]~~ (51) "Sending zone" means an unincorporated area of a county that the county's  
815 land use authority designates as an area from which an owner of land may transfer transferrable  
816 development rights to an owner of land in a receiving zone.

817 ~~[(51)]~~ (52) "Specified public agency" means:

818 (a) the state;

819 (b) a school district; or

820 (c) a charter school.

821 ~~[(52)]~~ (53) "Specified public utility" means an electrical corporation, gas corporation,  
822 or telephone corporation, as those terms are defined in Section 54-2-1.

823 ~~[(53)]~~ (54) "State" includes any department, division, or agency of the state.

824 ~~[(54)]~~ (55) "Street" means a public right-of-way, including a highway, avenue,  
825 boulevard, parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement,  
826 or other way.

827 ~~[(55)]~~ (56) (a) "Subdivision" means any land that is divided, resubdivided or proposed  
828 to be divided into two or more lots, parcels, sites, units, plots, or other division of land for the  
829 purpose, whether immediate or future, for offer, sale, lease, or development either on the  
830 installment plan or upon any and all other plans, terms, and conditions.

831 (b) "Subdivision" includes:

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

834 (ii) except as provided in Subsection [~~(55)~~] (56)(c), divisions of land for residential and  
835 nonresidential uses, including land used or to be used for commercial, agricultural, and  
836 industrial purposes.

837 (c) "Subdivision" does not include:

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

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

841 (A) no new lot is created; and

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

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

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

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

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

850 (A) an electrical transmission line or a substation;

851 (B) a natural gas pipeline or a regulation station; or

852 (C) an unmanned telecommunications, microwave, fiber optic, electrical, or other  
853 utility service regeneration, transformation, retransmission, or amplification facility;

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

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

857 (B) the adjustment will not violate any applicable land use ordinance; or

858 (vi) a bona fide division or partition of land by deed or other instrument where the land  
859 use authority expressly approves in writing the division in anticipation of further land use  
860 approvals on the parcel or parcels.

861 (d) The joining of a subdivided parcel of property to another parcel of property that has  
862 not been subdivided does not constitute a subdivision under this Subsection [~~(55)~~] (56) as to  
863 the unsubdivided parcel of property or subject the unsubdivided parcel to the county's  
864 subdivision ordinance.

865            [~~(56)~~] (57) "Township" means a contiguous, geographically defined portion of the  
866 unincorporated area of a county, established under this part or reconstituted or reinstated under  
867 Section 17-27a-306, with planning and zoning functions as exercised through the township  
868 planning commission, as provided in this chapter, but with no legal or political identity  
869 separate from the county and no taxing authority, except that "township" means a former  
870 township under Laws of Utah 1996, Chapter 308, where the context so indicates.

871            [~~(57)~~] (58) "Transferrable development right" means the entitlement to develop land  
872 within a sending zone that would vest according to the county's existing land use ordinances on  
873 the date that a completed land use application is filed seeking the approval of development  
874 activity on the land.

875            [~~(58)~~] (59) "Unincorporated" means the area outside of the incorporated area of a  
876 municipality.

877            [~~(59)~~] (60) "Water interest" means any right to the beneficial use of water, including:

- 878            (a) each of the rights listed in Section 73-1-11; and  
879            (b) an ownership interest in the right to the beneficial use of water represented by:  
880            (i) a contract; or  
881            (ii) a share in a water company, as defined in Section 73-3-3.5.

882            [~~(60)~~] (61) "Zoning map" means a map, adopted as part of a land use ordinance, that  
883 depicts land use zones, overlays, or districts.

884            Section 6. Section **17-27a-305** is amended to read:

885            **17-27a-305. Other entities required to conform to county's land use ordinances --**  
886 **Exceptions -- School districts and charter schools -- Submission of development plan and**  
887 **schedule.**

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

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

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

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

900 or

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

903 (A) platforms;

904 (B) passenger terminals or stations;

905 (C) park and ride facilities;

906 (D) maintenance facilities;

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

909 (F) other auxiliary facilities.

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

913 (c) A county of the first class may not, through an agreement under Title 11, Chapter  
914 13, Interlocal Cooperation Act, require a public transit district under Title 17B, Chapter 2a,  
915 Part 8, Public Transit District Act, to obtain approval from the county prior to constructing a:

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

917 or

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

920 (A) platforms;

921 (B) passenger terminals or stations;

922 (C) park and ride facilities;

923 (D) maintenance facilities;

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

926 (F) other auxiliary facilities.

927 (3) (a) Except as provided in Subsection (4), a school district or charter school is  
928 subject to a county's land use ordinances.

929 (b) (i) Notwithstanding Subsection (4), a county may:

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

933 (B) impose regulations upon the location of a project that are necessary to avoid  
934 unreasonable risks to health or safety, as provided in Subsection (4)(f).

935 (ii) The standards to which a county may subject a charter school under Subsection  
936 (3)(b)(i) shall be objective standards only and may not be subjective.

937 (iii) Except as provided in Subsection (8)(d), the only basis upon which a county may  
938 deny or withhold approval of a charter school's land use application is the charter school's  
939 failure to comply with a standard imposed under Subsection (3)(b)(i).

940 (iv) Nothing in Subsection (3)(b)(iii) may be construed to relieve a charter school of an  
941 obligation to comply with a requirement of an applicable building or safety code to which it is  
942 otherwise obligated to comply.

943 (4) A county may not:

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

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

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

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

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

960 (f) impose regulations upon the location of an educational facility except as necessary  
961 to avoid unreasonable risks to health or safety; or

962 (g) for a land use or a structure owned or operated by a school district or charter school  
963 that is not an educational facility but is used in support of providing instruction to pupils,  
964 impose a regulation that:

965 (i) is not imposed on a similar land use or structure in the zone in which the land use or  
966 structure is approved; or

967 (ii) uses the tax exempt status of the school district or charter school as criteria for  
968 prohibiting or regulating the land use or location of the structure.

969 (5) Subject to Section 53A-20-108, a school district or charter school shall coordinate  
970 the siting of a new school with the county in which the school is to be located, to:

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

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

974 (6) Notwithstanding Subsection (4)(d), a county may, at its discretion:

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

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

978 (7) (a) Notwithstanding Subsection (4)(d), a school district or charter school shall use:

979 (i) a county building inspector;

980 (ii) (A) for a school district, a school district building inspector from that school  
981 district; or

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

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

985 (A) not an employee of the contractor;

986 (B) approved by:

987 (I) a county building inspector; or

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



989 district; or

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

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

993 (b) The approval under Subsection (7)(a)(iii)(B) may not be unreasonably withheld.

994 (c) If a school district or charter school uses a school district or independent building  
995 inspector under Subsection (7)(a)(ii) or (iii), the school district or charter school shall submit to  
996 the state superintendent of public instruction and county building official, on a monthly basis  
997 during construction of the school building, a copy of each inspection certificate regarding the  
998 school building.

999 (8) (a) A charter school shall be considered a permitted use in all zoning districts  
1000 within a county.

1001 (b) Each land use application for any approval required for a charter school, including  
1002 an application for a building permit, shall be processed on a first priority basis.

1003 (c) Parking requirements for a charter school may not exceed the minimum parking  
1004 requirements for schools or other institutional public uses throughout the county.

1005 (d) If a county has designated zones for a sexually oriented business, or a business  
1006 which sells alcohol, a charter school may be prohibited from a location which would otherwise  
1007 defeat the purpose for the zone unless the charter school provides a waiver.

1008 (e) (i) A school district or a charter school may seek a certificate authorizing permanent  
1009 occupancy of a school building from:

1010 (A) the state superintendent of public instruction, as provided in Subsection  
1011 53A-20-104(3), if the school district or charter school used an independent building inspector  
1012 for inspection of the school building; or

1013 (B) a county official with authority to issue the certificate, if the school district or  
1014 charter school used a county building inspector for inspection of the school building.

1015 (ii) A school district may issue its own certificate authorizing permanent occupancy of  
1016 a school building if it used its own building inspector for inspection of the school building,  
1017 subject to the notification requirement of Subsection 53A-20-104(3)(a)(ii).

1018 (iii) A charter school may seek a certificate authorizing permanent occupancy of a  
1019 school building from a school district official with authority to issue the certificate, if the

1020 charter school used a school district building inspector for inspection of the school building.

1021 (iv) A certificate authorizing permanent occupancy issued by the state superintendent  
1022 of public instruction under Subsection 53A-20-104(3) or a school district official with authority  
1023 to issue the certificate shall be considered to satisfy any county requirement for an inspection or  
1024 a certificate of occupancy.

1025 (9) (a) A specified public agency intending to develop its land shall submit to the land  
1026 use authority a development plan and schedule:

1027 (i) as early as practicable in the development process, but no later than the  
1028 commencement of construction; and

1029 (ii) with sufficient detail to enable the land use authority to assess:

1030 (A) the specified public agency's compliance with applicable land use ordinances;

1031 (B) the demand for public facilities listed in Subsections 11-36-102(14)(a), (b), (c), (d),  
1032 (e), and (g) caused by the development;

1033 (C) the amount of any applicable fee [~~listed in Subsection 17-27a-509(5)~~] described in  
1034 Section 17-27a-509;

1035 (D) any credit against an impact fee; and

1036 (E) the potential for waiving an impact fee.

1037 (b) The land use authority shall respond to a specified public agency's submission  
1038 under Subsection (9)(a) with reasonable promptness in order to allow the specified public  
1039 agency to consider information the municipality provides under Subsection (9)(a)(ii) in the  
1040 process of preparing the budget for the development.

1041 (10) Nothing in this section may be construed to modify or supersede Section  
1042 17-27a-304.

1043 Section 7. Section **17-27a-509** is amended to read:

1044 **17-27a-509. Limit on fees -- Requirement to itemize fees -- Appeal of fee --**  
1045 **Provider of culinary or secondary water.**

1046 (1) A county may not impose or collect a fee for reviewing or approving the plans for a  
1047 commercial or residential building that exceeds the lesser of:

1048 (a) the actual cost of performing the plan review; and

1049 (b) 65% of the amount the county charges for a building permit fee for that building.

1050 (2) Subject to Subsection (1), a county may impose and collect only a nominal fee for

1051 reviewing and approving identical floor plans.

1052 (3) A county may not impose or collect a hookup fee that exceeds the reasonable cost  
1053 of installing and inspecting the pipe, line, meter, or appurtenance to connect to the county  
1054 water, sewer, storm water, power, or other utility system.

1055 (4) A county may not impose or collect:

1056 (a) a land use application fee that exceeds the reasonable cost of processing the  
1057 application or issuing the permit; or

1058 (b) an inspection, regulation, or review fee that exceeds the reasonable cost of  
1059 performing the inspection, regulation, or review.

1060 (5) ~~(a) [Upon the request of]~~ If requested by an applicant who is charged a fee or an  
1061 owner of residential property upon which a fee is imposed, the county shall [itemize each fee  
1062 that the county imposes on the applicant or on the residential property, respectively, showing  
1063 the basis of each calculation for each fee imposed] provide an itemized fee statement that  
1064 shows the calculation method for each fee.

1065 (b) If an applicant who is charged a fee or an owner of residential property upon which  
1066 a fee is imposed submits a request for an itemized fee statement no later than 30 days after the  
1067 day on which the applicant or owner pays the fee, the county shall no later than 10 days after  
1068 the day on which the request is received provide or commit to provide within a specific time:

1069 (i) for each fee, any studies, reports, or methods relied upon by the county to create the  
1070 calculation method described in Subsection (5)(a);

1071 (ii) an accounting of each fee paid;

1072 (iii) how each fee will be distributed; and

1073 (iv) information on filing a fee appeal through the process described in Subsection  
1074 (5)(c).

1075 (c) A county shall establish a fee appeal process subject to an appeal authority  
1076 described in Part 7, Appeal Authority and Variances, and district court review in accordance  
1077 with Part 8, District Court Review, to determine whether a fee reflects only the reasonable  
1078 estimated cost of:

1079 (i) regulation;

1080 (ii) processing an application;

1081 (iii) issuing a permit; or

1082 (iv) delivering the service for which the applicant or owner paid the fee.

1083 (6) A county may not impose on or collect from a public agency any fee associated  
1084 with the public agency's development of its land other than:

1085 (a) subject to Subsection (4), a fee for a development service that the public agency  
1086 does not itself provide;

1087 (b) subject to Subsection (3), a hookup fee; and

1088 (c) an impact fee for a public facility listed in Subsection 11-36-102(14)(a), (b), (c),  
1089 (d), (e), or (g), subject to any applicable credit under Subsection 11-36-202(2)(b).

1090 (7) A provider of culinary or secondary water that commits to provide a water service  
1091 required by a ~~§~~ → [public] ← ~~§~~ land use application process is subject to the following as if it were a  
1092 county:

1093 (a) Subsections (5) and (6);

1094 (b) Section 17-27a-507; and

1095 (c) Section 17-27a-509.5.

1096 Section 8. Section **17-27a-701** is amended to read:

1097 **17-27a-701. Appeal authority required -- Condition precedent to judicial review**  
1098 **-- Appeal authority duties.**

1099 (1) Each county adopting a land use ordinance shall, by ordinance, establish one or  
1100 more appeal authorities to hear and decide:

1101 (a) requests for variances from the terms of the land use ordinances; [~~and~~]

1102 (b) appeals from decisions applying the land use ordinances[-]; and

1103 (c) appeals from a fee charged in accordance with Section 17-27a-509.

1104 (2) As a condition precedent to judicial review, each adversely affected person shall  
1105 timely and specifically challenge a land use authority's decision, in accordance with local  
1106 ordinance.

1107 (3) An appeal authority:

1108 (a) shall:

1109 (i) act in a quasi-judicial manner; and

1110 (ii) serve as the final arbiter of issues involving the interpretation or application of land  
1111 use ordinances; and

1112 (b) may not entertain an appeal of a matter in which the appeal authority, or any

- 1113 participating member, had first acted as the land use authority.
- 1114 (4) By ordinance, a county may:
- 1115 (a) designate a separate appeal authority to hear requests for variances than the appeal
- 1116 authority it designates to hear appeals;
- 1117 (b) designate one or more separate appeal authorities to hear distinct types of appeals
- 1118 of land use authority decisions;
- 1119 (c) require an adversely affected party to present to an appeal authority every theory of
- 1120 relief that it can raise in district court;
- 1121 (d) not require an adversely affected party to pursue duplicate or successive appeals
- 1122 before the same or separate appeal authorities as a condition of the adversely affected party's
- 1123 duty to exhaust administrative remedies; and
- 1124 (e) provide that specified types of land use decisions may be appealed directly to the
- 1125 district court.
- 1126 (5) If the county establishes or, prior to the effective date of this chapter, has
- 1127 established a multiperson board, body, or panel to act as an appeal authority, at a minimum the
- 1128 board, body, or panel shall:
- 1129 (a) notify each of its members of any meeting or hearing of the board, body, or panel;
- 1130 (b) provide each of its members with the same information and access to municipal
- 1131 resources as any other member;
- 1132 (c) convene only if a quorum of its members is present; and
- 1133 (d) act only upon the vote of a majority of its convened members.

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**Legislative Review Note**  
as of 1-25-11 3:09 PM

**Office of Legislative Research and General Counsel**

# FISCAL NOTE

H.B. 78

SHORT TITLE: **Developer Fees**

SPONSOR: **Morley, M.**

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.