

SCHOOL PLANNING AND ZONING COMPLIANCE

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Rich Cunningham

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends municipal and county land use provisions related to a school.

Highlighted Provisions:

This bill:

- ▶ amends certain municipal and county land use exceptions for a school district or charter school;
- ▶ requires a school district or charter school to coordinate the siting of a new school with a municipality or county to implement the municipal or county general plan;
- ▶ amends provisions related to the inspection of construction of a school;
- ▶ amends provisions related to a certificate authorizing occupancy of a charter school or school district building; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-9a-305, as last amended by Laws of Utah 2013, Chapter 200

10-9a-509, as last amended by Laws of Utah 2012, Chapter 216



28 **11-36a-302**, as last amended by Laws of Utah 2013, Chapter 200
 29 **17-27a-305**, as last amended by Laws of Utah 2013, Chapter 200
 30 **17-27a-508**, as last amended by Laws of Utah 2012, Chapter 216
 31 **53A-20-104**, as last amended by Laws of Utah 2008, Chapter 290

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

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

35 **10-9a-305. Other entities required to conform to municipality's land use**
 36 **ordinances -- Exceptions -- Submission of development plan and schedule.**

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

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

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

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

48 [~~(A) subject a charter school to standards within each zone pertaining to setback,~~
 49 ~~height, bulk and massing regulations, off-site parking, curb cut, traffic circulation, and~~
 50 ~~construction staging; and]~~

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

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

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

58 [~~(iv) Nothing in Subsection (2)(b)(iii) may be construed to relieve a charter school of~~

59 an obligation to comply with a requirement of an applicable building or safety code to which it
60 is otherwise obligated to comply.]

61 [~~(3) A municipality may not:~~]

62 [~~(a) impose requirements for landscaping, fencing, aesthetic considerations,
63 construction methods or materials, additional building inspections, municipal building codes,
64 building use for educational purposes, or the placement or use of temporary classroom facilities
65 on school property;~~]

66 [~~(b) except as otherwise provided in this section, require a school district or charter
67 school to participate in the cost of any roadway or sidewalk, or a study on the impact of a
68 school on a roadway or sidewalk, that is not reasonably necessary for the safety of school
69 children and not located on or contiguous to school property, unless the roadway or sidewalk is
70 required to connect an otherwise isolated school site to an existing roadway;~~]

71 [~~(c) require a district or charter school to pay fees not authorized by this section;~~]

72 [~~(d) provide for inspection of school construction or assess a fee or other charges for
73 inspection, unless the school district or charter school is unable to provide for inspection by an
74 inspector, other than the project architect or contractor, who is qualified under criteria
75 established by the state superintendent;~~]

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

79 [~~(f) impose regulations upon the location of an educational facility except as necessary
80 to avoid unreasonable risks to health or safety; or]~~

81 [~~(g) for a land use or a structure owned or operated by a school district or charter
82 school that is not an educational facility but is used in support of providing instruction to
83 pupils, impose a regulation that:]~~

84 [~~(i) is not imposed on a similar land use or structure in the zone in which the land use
85 or structure is approved; or]~~

86 [~~(ii) uses the tax exempt status of the school district or charter school as criteria for
87 prohibiting or regulating the land use or location of the structure.]~~

88 [~~(4)~~] (2) Subject to Section [53A-20-108](#), a school district or charter school shall
89 coordinate the siting of a new school with the municipality in which the school is to be located,

90 to:

91 (a) avoid or mitigate existing and potential traffic hazards, including consideration of
92 the impacts between the new school and future highways; ~~[and]~~

93 (b) implement the municipal general plan; and

94 ~~[(b)]~~ (c) maximize school, student, and site safety.

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

96 ~~[(a) provide a walk-through of school construction at no cost and at a time convenient
97 to the district or charter school; and]~~

98 ~~[(b) provide recommendations based upon the walk-through.]~~

99 ~~[(6) (a) Notwithstanding Subsection (3)(d), a school district or charter school shall
100 use:]~~

101 ~~[(i) a municipal building inspector;]~~

102 ~~[(ii) (A) for a school district, a school district building inspector from that school
103 district; or]~~

104 ~~[(B) for a charter school, a school district building inspector from the school district in
105 which the charter school is located; or]~~

106 ~~[(iii) an independent, certified building inspector who is:]~~

107 ~~[(A) not an employee of the contractor;]~~

108 ~~[(B) approved by:]~~

109 ~~[(f) a municipal building inspector; or]~~

110 ~~[(H) (Aa) for a school district, a school district building inspector from that school
111 district; or]~~

112 ~~[(Bb) for a charter school, a school district building inspector from the school district
113 in which the charter school is located; and]~~

114 ~~[(C) licensed to perform the inspection that the inspector is requested to perform.]~~

115 ~~[(b) The approval under Subsection (6)(a)(iii)(B) may not be unreasonably withheld.]~~

116 ~~[(c) If a school district or charter school uses a school district or independent building
117 inspector under Subsection (6)(a)(ii) or (iii), the school district or charter school shall submit to
118 the state superintendent of public instruction and municipal building official, on a monthly
119 basis during construction of the school building, a copy of each inspection certificate regarding
120 the school building.]~~

121 ~~[(7)]~~ (3) (a) A charter school shall be considered a permitted use in all residential
122 zoning districts within a municipality.

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

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

127 (d) If a municipality has designated zones for a sexually oriented business, or a
128 business ~~[which]~~ that sells alcohol, a charter school may be prohibited from a location ~~[which]~~
129 that would otherwise defeat the purpose for the zone unless the charter school provides a
130 waiver.

131 ~~[(e) (i) A school district or a charter school may seek a certificate authorizing
132 permanent occupancy of a school building from:]~~

133 ~~[(A) the state superintendent of public instruction, as provided in Subsection
134 53A-20-104(3), if the school district or charter school used an independent building inspector
135 for inspection of the school building; or]~~

136 ~~[(B) a municipal official with authority to issue the certificate, if the school district or
137 charter school used a municipal building inspector for inspection of the school building.]~~

138 ~~[(ii) A school district may issue its own certificate authorizing permanent occupancy of
139 a school building if it used its own building inspector for inspection of the school building;
140 subject to the notification requirement of Subsection 53A-20-104(3)(a)(ii).]~~

141 ~~[(iii) A charter school may seek a certificate authorizing permanent occupancy of a
142 school building from a school district official with authority to issue the certificate, if the
143 charter school used a school district building inspector for inspection of the school building.]~~

144 ~~[(iv) A certificate authorizing permanent occupancy issued by the state superintendent
145 of public instruction under Subsection 53A-20-104(3) or a school district official with authority
146 to issue the certificate shall be considered to satisfy any municipal requirement for an
147 inspection or a certificate of occupancy.]~~

148 ~~[(8)]~~ (4) (a) A specified public agency intending to develop its land shall submit to the
149 land use authority a development plan and schedule:

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

- 152 (ii) with sufficient detail to enable the land use authority to assess:
- 153 (A) the specified public agency's compliance with applicable land use ordinances;
- 154 (B) the demand for public facilities listed in Subsections 11-36a-102(16)(a), (b), (c),
- 155 (d), (e), and (g) caused by the development;
- 156 (C) the amount of any applicable fee described in Section 10-9a-510;
- 157 (D) any credit against an impact fee; and
- 158 (E) the potential for waiving an impact fee.
- 159 (b) The land use authority shall respond to a specified public agency's submission
- 160 under Subsection ~~[(8)]~~ (4)(a) with reasonable promptness in order to allow the specified public
- 161 agency to consider information the municipality provides under Subsection ~~[(8)]~~ (4)(a)(ii) in
- 162 the process of preparing the budget for the development.
- 163 ~~[(9)]~~ (5) Nothing in this section may be construed to:
- 164 (a) modify or supersede Section 10-9a-304; or
- 165 (b) authorize a municipality to enforce an ordinance in a way, or enact an ordinance,
- 166 that fails to comply with Title 57, Chapter 21, Utah Fair Housing Act, the federal Fair Housing
- 167 Amendments Act of 1988, 42 U.S.C. Sec. 3601 et seq., the Americans with Disabilities Act of
- 168 1990, 42 U.S.C. 12102, or any other provision of federal law.
- 169 Section 2. Section 10-9a-509 is amended to read:
- 170 **10-9a-509. Applicant's entitlement to land use application approval -- Exceptions**
- 171 **-- Application relating to land in a high priority transportation corridor -- Municipality's**
- 172 **requirements and limitations -- Vesting upon submission of development plan and**
- 173 **schedule.**
- 174 (1) (a) Except as provided in Subsection (1)(b), an applicant is entitled to approval of a
- 175 land use application if the application conforms to the requirements of the municipality's land
- 176 use maps, zoning map, a municipal specification for public improvements applicable to a
- 177 subdivision or development, and an applicable land use ordinance in effect when a complete
- 178 application is submitted and all application fees have been paid, unless:
- 179 (i) the land use authority, on the record, finds that a compelling, countervailing public
- 180 interest would be jeopardized by approving the application; or
- 181 (ii) in the manner provided by local ordinance and before the application is submitted,
- 182 the municipality has formally initiated proceedings to amend its ordinances in a manner that

183 would prohibit approval of the application as submitted.

184 (b) (i) Except as provided in Subsection (1)(c), an applicant is not entitled to approval
185 of a land use application until the requirements of this Subsection (1)(b) have been met if the
186 land use application relates to land located within the boundaries of a high priority
187 transportation corridor designated in accordance with Section 72-5-403.

188 (ii) (A) A municipality shall notify the executive director of the Department of
189 Transportation of any land use applications that relate to land located within the boundaries of
190 a high priority transportation corridor.

191 (B) The notification under Subsection (1)(b)(ii)(A) shall be in writing and mailed by
192 certified or registered mail to the executive director of the Department of Transportation.

193 (iii) Except as provided in Subsection (1)(c), a municipality may not approve a land
194 use application that relates to land located within the boundaries of a high priority
195 transportation corridor until:

196 (A) 30 days after the notification under Subsection (1)(b)(ii)(A) is received by the
197 Department of Transportation if the land use application is for a building permit; or

198 (B) 45 days after the notification under Subsection (1)(b)(ii)(A) is received by the
199 Department of Transportation if the land use application is for any land use other than a
200 building permit.

201 (iv) (A) If an application is an application for a subdivision approval, including any
202 land, subject to Subsection (1)(b)(iv)(C), located within 100 feet of the center line of a canal,
203 the land use authority shall:

204 (I) within 30 days after the day on which the application is filed, notify the canal
205 company or canal operator responsible for the canal, if the canal company or canal operator has
206 provided information under Section 10-9a-211; and

207 (II) wait at least 10 days after the day on which the land use authority notifies a canal
208 company or canal operator under Subsection (1)(b)(iv)(A)(I) to approve or reject the
209 subdivision application described in Subsection (1)(b)(iv)(A).

210 (B) The notification under Subsection (1)(b)(iv)(A) shall be in writing and mailed by
211 certified or registered mail to the canal company or canal operator contact described in Section
212 10-9a-211.

213 (C) The location of land described in Subsection (1)(b)(iv)(A) shall be:

214 (I) provided by a canal company or canal operator to the land use authority; and
215 (II) (Aa) determined by use of mapping-grade global positioning satellite units; or
216 (Bb) digitized from the most recent aerial photo available to the canal company or
217 canal operator.

218 (c) (i) A land use application is exempt from the requirements of Subsections (1)(b)(i)
219 and (ii) if:

220 (A) the land use application relates to land that was the subject of a previous land use
221 application; and

222 (B) the previous land use application described under Subsection (1)(c)(i)(A) complied
223 with the requirements of Subsections (1)(b)(i) and (ii).

224 (ii) A municipality may approve a land use application without making the required
225 notifications under Subsection (1)(b)(ii)(A) if:

226 (A) the land use application relates to land that was the subject of a previous land use
227 application; and

228 (B) the previous land use application described under Subsection (1)(c)(ii)(A)
229 complied with the requirements of Subsections (1)(b)(i) and (ii).

230 (d) After a municipality has complied with the requirements of Subsection (1)(b) for a
231 land use application, the municipality may not withhold approval of the land use application for
232 which the applicant is otherwise entitled under Subsection (1)(a).

233 (e) The municipality shall process an application without regard to proceedings
234 initiated to amend the municipality's ordinances as provided in Subsection (1)(a)(ii) if:

235 (i) 180 days have passed since the proceedings were initiated; and

236 (ii) the proceedings have not resulted in an enactment that prohibits approval of the
237 application as submitted.

238 (f) An application for a land use approval is considered submitted and complete when
239 the application is provided in a form that complies with the requirements of applicable
240 ordinances and all applicable fees have been paid.

241 (g) The continuing validity of an approval of a land use application is conditioned upon
242 the applicant proceeding after approval to implement the approval with reasonable diligence.

243 (h) A municipality may not impose on an applicant who has submitted a complete
244 application for preliminary subdivision approval a requirement that is not expressed in:

245 (i) this chapter;
 246 (ii) a municipal ordinance; or
 247 (iii) a municipal specification for public improvements applicable to a subdivision or
 248 development that is in effect on the date that the applicant submits an application.

249 (i) A municipality may not impose on a holder of an issued land use permit or a final,
 250 unexpired subdivision plat a requirement that is not expressed:

- 251 (i) in a land use permit;
- 252 (ii) on the subdivision plat;
- 253 (iii) in a document on which the land use permit or subdivision plat is based;
- 254 (iv) in the written record evidencing approval of the land use permit or subdivision
 255 plat;

- 256 (v) in this chapter; or
- 257 (vi) in a municipal ordinance.

258 (j) A municipality may not withhold issuance of a certificate of occupancy or
 259 acceptance of subdivision improvements because of an applicant's failure to comply with a
 260 requirement that is not expressed:

- 261 (i) in the building permit or subdivision plat, documents on which the building permit
 262 or subdivision plat is based, or the written record evidencing approval of the land use permit or
 263 subdivision plat; or
- 264 (ii) in this chapter or the municipality's ordinances.

265 (2) A municipality is bound by the terms and standards of applicable land use
 266 ordinances and shall comply with mandatory provisions of those ordinances.

267 (3) A municipality may not, as a condition of land use application approval, require a
 268 person filing a land use application to obtain documentation regarding a school district's
 269 willingness, capacity, or ability to serve the development proposed in the land use application.

270 (4) Upon a specified public agency's submission of a development plan and schedule as
 271 required in Subsection 10-9a-305~~(8)~~(4) that complies with the requirements of that
 272 subsection, the specified public agency vests in the municipality's applicable land use maps,
 273 zoning map, hookup fees, impact fees, other applicable development fees, and land use
 274 ordinances in effect on the date of submission.

275 Section 3. Section 11-36a-302 is amended to read:

276 **11-36a-302. Impact fee facilities plan requirements -- Limitations -- School**
277 **district or charter school.**

278 (1) (a) An impact fee facilities plan shall:
279 (i) identify the existing level of service;
280 (ii) subject to Subsection (1)(c), establish a proposed level of service;
281 (iii) identify any excess capacity to accommodate future growth at the proposed level
282 of service;

283 (iv) identify demands placed upon existing public facilities by new development
284 activity at the proposed level of service; and

285 (v) identify the means by which the political subdivision or private entity will meet
286 those growth demands.

287 (b) A proposed level of service may diminish or equal the existing level of service.

288 (c) A proposed level of service may:

289 (i) exceed the existing level of service if, independent of the use of impact fees, the
290 political subdivision or private entity provides, implements, and maintains the means to
291 increase the existing level of service for existing demand within six years of the date on which
292 new growth is charged for the proposed level of service; or

293 (ii) establish a new public facility if, independent of the use of impact fees, the political
294 subdivision or private entity provides, implements, and maintains the means to increase the
295 existing level of service for existing demand within six years of the date on which new growth
296 is charged for the proposed level of service.

297 (2) In preparing an impact fee facilities plan, each local political subdivision shall
298 generally consider all revenue sources to finance the impacts on system improvements,
299 including:

300 (a) grants;

301 (b) bonds;

302 (c) interfund loans;

303 (d) impact fees; and

304 (e) anticipated or accepted dedications of system improvements.

305 (3) A local political subdivision or private entity may only impose impact fees on
306 development activities when the local political subdivision's or private entity's plan for

307 financing system improvements establishes that impact fees are necessary to maintain a
 308 proposed level of service that complies with Subsection (1)(b) or (c).

309 (4) (a) [~~Subject to Subsection (4)(c), the~~] The impact fee facilities plan shall include a
 310 public facility for which an impact fee may be charged or required for a school district or
 311 charter school if the local political subdivision is aware of the planned location of the school
 312 district facility or charter school:

313 (i) through the planning process; or

314 (ii) after receiving a written request from a school district or charter school that the
 315 public facility be included in the impact fee facilities plan.

316 (b) If necessary, a local political subdivision or private entity shall amend the impact
 317 fee facilities plan to reflect a public facility described in Subsection (4)(a).

318 [~~(c) (i) In accordance with Subsections 10-9a-305(3) and 17-27a-305(3), a local~~
 319 ~~political subdivision may not require a school district or charter school to participate in the cost~~
 320 ~~of any roadway or sidewalk.]~~

321 [~~(ii) Notwithstanding Subsection (4)(c)(i), if a school district or charter school agrees~~
 322 ~~to build a roadway or sidewalk, the roadway or sidewalk shall be included in the impact fee~~
 323 ~~facilities plan if the local jurisdiction has an impact fee facilities plan for roads and sidewalks.]~~

324 Section 4. Section 17-27a-305 is amended to read:

325 **17-27a-305. Other entities required to conform to county's land use ordinances --**
 326 **Exceptions -- Submission of development plan and schedule.**

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

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

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

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

338 ~~[(A) subject a charter school to standards within each zone pertaining to setback,~~
339 ~~height, bulk and massing regulations, off-site parking, curb cut, traffic circulation, and~~
340 ~~construction staging; and]~~

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

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

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

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

351 ~~[(3) A county may not:]~~

352 ~~[(a) impose requirements for landscaping, fencing, aesthetic considerations,~~
353 ~~construction methods or materials, additional building inspections, county building codes,~~
354 ~~building use for educational purposes, or the placement or use of temporary classroom facilities~~
355 ~~on school property;]~~

356 ~~[(b) except as otherwise provided in this section, require a school district or charter~~
357 ~~school to participate in the cost of any roadway or sidewalk, or a study on the impact of a~~
358 ~~school on a roadway or sidewalk, that is not reasonably necessary for the safety of school~~
359 ~~children and not located on or contiguous to school property, unless the roadway or sidewalk is~~
360 ~~required to connect an otherwise isolated school site to an existing roadway;]~~

361 ~~[(c) require a district or charter school to pay fees not authorized by this section;]~~

362 ~~[(d) provide for inspection of school construction or assess a fee or other charges for~~
363 ~~inspection, unless the school district or charter school is unable to provide for inspection by an~~
364 ~~inspector, other than the project architect or contractor, who is qualified under criteria~~
365 ~~established by the state superintendent;]~~

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

369 ~~[(f) impose regulations upon the location of an educational facility except as necessary~~
370 ~~to avoid unreasonable risks to health or safety; or]~~

371 ~~[(g) for a land use or a structure owned or operated by a school district or charter~~
372 ~~school that is not an educational facility but is used in support of providing instruction to~~
373 ~~pupils, impose a regulation that:]~~

374 ~~[(i) is not imposed on a similar land use or structure in the zone in which the land use~~
375 ~~or structure is approved; or]~~

376 ~~[(ii) uses the tax exempt status of the school district or charter school as criteria for~~
377 ~~prohibiting or regulating the land use or location of the structure:]~~

378 ~~[(4)]~~ (2) Subject to Section [53A-20-108](#), a school district or charter school shall
379 coordinate the siting of a new school with the county in which the school is to be located, to:

380 (a) avoid or mitigate existing and potential traffic hazards, including consideration of
381 the impacts between the new school and future highways; ~~[and]~~

382 (b) implement the county general plan; and

383 ~~[(b)]~~ (c) maximize school, student, and site safety.

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

385 ~~[(a) provide a walk-through of school construction at no cost and at a time convenient~~
386 ~~to the district or charter school; and]~~

387 ~~[(b) provide recommendations based upon the walk-through:]~~

388 ~~[(6) (a) Notwithstanding Subsection (3)(d), a school district or charter school shall~~
389 ~~use:]~~

390 ~~[(i) a county building inspector;]~~

391 ~~[(ii) (A) for a school district, a school district building inspector from that school~~
392 ~~district; or]~~

393 ~~[(B) for a charter school, a school district building inspector from the school district in~~
394 ~~which the charter school is located; or]~~

395 ~~[(iii) an independent, certified building inspector who is:]~~

396 ~~[(A) not an employee of the contractor;]~~

397 ~~[(B) approved by:]~~

398 ~~[(f) a county building inspector; or]~~

399 ~~[(H) (Aa) for a school district, a school district building inspector from that school~~

400 ~~district; or]~~

401 ~~[(Bb) for a charter school, a school district building inspector from the school district~~
402 ~~in which the charter school is located; and]~~

403 ~~[(C) licensed to perform the inspection that the inspector is requested to perform.]~~

404 ~~[(b) The approval under Subsection (6)(a)(iii)(B) may not be unreasonably withheld.]~~

405 ~~[(c) If a school district or charter school uses a school district or independent building~~
406 ~~inspector under Subsection (6)(a)(ii) or (iii), the school district or charter school shall submit to~~
407 ~~the state superintendent of public instruction and county building official, on a monthly basis~~
408 ~~during construction of the school building, a copy of each inspection certificate regarding the~~
409 ~~school building.]~~

410 ~~[(7)]~~ (3) (a) A charter school shall be considered a permitted use in all residential
411 zoning districts within a county.

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

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

416 (d) If a county has designated zones for a sexually oriented business, or a business
417 ~~[which]~~ that sells alcohol, a charter school may be prohibited from a location ~~[which]~~ that
418 would otherwise defeat the purpose for the zone unless the charter school provides a waiver.

419 ~~[(e) (i) A school district or a charter school may seek a certificate authorizing~~
420 ~~permanent occupancy of a school building from:]~~

421 ~~[(A) the state superintendent of public instruction, as provided in Subsection~~
422 ~~53A-20-104(3), if the school district or charter school used an independent building inspector~~
423 ~~for inspection of the school building; or]~~

424 ~~[(B) a county official with authority to issue the certificate, if the school district or~~
425 ~~charter school used a county building inspector for inspection of the school building:]~~

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

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

431 ~~charter school used a school district building inspector for inspection of the school building.]~~

432 ~~[(iv) A certificate authorizing permanent occupancy issued by the state superintendent~~
 433 ~~of public instruction under Subsection 53A-20-104(3) or a school district official with authority~~
 434 ~~to issue the certificate shall be considered to satisfy any county requirement for an inspection or~~
 435 ~~a certificate of occupancy.]~~

436 ~~[(8)] (4) (a) A specified public agency intending to develop its land shall submit to the~~
 437 ~~land use authority a development plan and schedule:~~

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

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

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

442 ~~(B) the demand for public facilities listed in Subsections 11-36a-102(16)(a), (b), (c),~~

443 ~~(d), (e), and (g) caused by the development;~~

444 ~~(C) the amount of any applicable fee described in Section 17-27a-509;~~

445 ~~(D) any credit against an impact fee; and~~

446 ~~(E) the potential for waiving an impact fee.~~

447 ~~(b) The land use authority shall respond to a specified public agency's submission~~
 448 ~~under Subsection [(8)] (4)(a) with reasonable promptness in order to allow the specified public~~
 449 ~~agency to consider information the municipality provides under Subsection [(8)] (4)(a)(ii) in~~
 450 ~~the process of preparing the budget for the development.~~

451 ~~[(9)] (5) Nothing in this section may be construed to:~~

452 ~~(a) modify or supersede Section 17-27a-304; or~~

453 ~~(b) authorize a county to enforce an ordinance in a way, or enact an ordinance, that~~
 454 ~~fails to comply with Title 57, Chapter 21, Utah Fair Housing Act, the federal Fair Housing~~
 455 ~~Amendments Act of 1988, 42 U.S.C. Sec. 3601 et seq., the Americans with Disabilities Act of~~
 456 ~~1990, 42 U.S.C. 12102, or any other provision of federal law.~~

457 ~~Section 5. Section 17-27a-508 is amended to read:~~

458 ~~**17-27a-508. Applicant's entitlement to land use application approval --**~~

459 ~~**Exceptions -- Application relating to land in a high priority transportation corridor --**~~

460 ~~**County's requirements and limitations -- Vesting upon submission of development plan**~~
 461 ~~**and schedule.**~~

462 (1) (a) Except as provided in Subsection (1)(b), an applicant is entitled to approval of a
463 land use application if the application conforms to the requirements of the county's land use
464 maps, zoning map, and applicable land use ordinance in effect when a complete application is
465 submitted and all application fees have been paid, unless:

466 (i) the land use authority, on the record, finds that a compelling, countervailing public
467 interest would be jeopardized by approving the application; or

468 (ii) in the manner provided by local ordinance and before the application is submitted,
469 the county has formally initiated proceedings to amend its ordinances in a manner that would
470 prohibit approval of the application as submitted.

471 (b) (i) Except as provided in Subsection (1)(c), an applicant is not entitled to approval
472 of a land use application until the requirements of this Subsection (1)(b)(i) and Subsection
473 (1)(b)(ii) have been met if the land use application relates to land located within the boundaries
474 of a high priority transportation corridor designated in accordance with Section 72-5-403.

475 (ii) (A) A county shall notify the executive director of the Department of
476 Transportation of any land use applications that relate to land located within the boundaries of
477 a high priority transportation corridor.

478 (B) The notification under Subsection (1)(b)(ii)(A) shall be in writing and mailed by
479 certified or registered mail to the executive director of the Department of Transportation.

480 (iii) Except as provided in Subsection (1)(c), a county may not approve a land use
481 application that relates to land located within the boundaries of a high priority transportation
482 corridor until:

483 (A) 30 days after the notification under Subsection (1)(b)(ii)(A) is received by the
484 Department of Transportation if the land use application is for a building permit; or

485 (B) 45 days after the notification under Subsection (1)(b)(ii)(A) is received by the
486 Department of Transportation if the land use application is for any land use other than a
487 building permit.

488 (iv) (A) If an application is an application for a subdivision approval, including any
489 land, subject to Subsection (1)(b)(iv)(C), located within 100 feet of the center line of a canal,
490 the land use authority shall:

491 (I) within 30 days after the day on which the application is filed, notify the canal
492 company or canal operator responsible for the canal, if the canal company or canal owner has

493 provided information under Section 17-27a-211; and

494 (II) wait at least 10 days after the day on which the land use authority notifies a canal
495 company or canal operator under Subsection (1)(b)(iv)(A)(I) to approve or reject the
496 subdivision application described in Subsection (1)(b)(iv)(A).

497 (B) The notification under Subsection (1)(b)(iv)(A) shall be in writing and mailed by
498 certified or registered mail to the canal company or canal operator contact described in Section
499 17-27a-211.

500 (C) The location of land described in Subsection (1)(b)(iv)(A) shall be:

501 (I) provided by a canal company or canal operator to the land use authority; and

502 (II) (Aa) determined by use of mapping-grade global positioning satellite units; or

503 (Bb) digitized from the most recent aerial photo available to the canal company or
504 canal operator.

505 (c) (i) A land use application is exempt from the requirements of Subsection (1)(b)(i)
506 if:

507 (A) the land use application relates to land that was the subject of a previous land use
508 application; and

509 (B) the previous land use application described under Subsection (1)(c)(i)(A) complied
510 with the requirements of Subsections (1)(b)(i) and (ii).

511 (ii) A county may approve a land use application without making the required
512 notifications under Subsections (1)(b)(i) and (ii) if:

513 (A) the land use application relates to land that was the subject of a previous land use
514 application; and

515 (B) the previous land use application described under Subsection (1)(c)(ii)(A)
516 complied with the requirements of Subsections (1)(b)(i) and (ii).

517 (d) After a county has complied with the requirements of Subsection (1)(b) for a land
518 use application, the county may not withhold approval of the land use application for which the
519 applicant is otherwise entitled under Subsection (1)(a).

520 (e) The county shall process an application without regard to proceedings initiated to
521 amend the county's ordinances as provided in Subsection (1)(a)(ii) if:

522 (i) 180 days have passed since the proceedings were initiated; and

523 (ii) the proceedings have not resulted in an enactment that prohibits approval of the

524 application as submitted.

525 (f) An application for a land use approval is considered submitted and complete when
526 the application is provided in a form that complies with the requirements of applicable
527 ordinances and all applicable fees have been paid.

528 (g) The continuing validity of an approval of a land use application is conditioned upon
529 the applicant proceeding after approval to implement the approval with reasonable diligence.

530 (h) A county may not impose on an applicant who has submitted a complete
531 application for preliminary subdivision approval a requirement that is not expressed:

532 (i) in this chapter;

533 (ii) in a county ordinance; or

534 (iii) in a county specification for public improvements applicable to a subdivision or
535 development that is in effect on the date that the applicant submits an application.

536 (i) A county may not impose on a holder of an issued land use permit or a final,
537 unexpired subdivision plat a requirement that is not expressed:

538 (i) in a land use permit;

539 (ii) on the subdivision plat;

540 (iii) in a document on which the land use permit or subdivision plat is based;

541 (iv) in the written record evidencing approval of the land use permit or subdivision
542 plat;

543 (v) in this chapter; or

544 (vi) in a county ordinance.

545 (j) A county may not withhold issuance of a certificate of occupancy or acceptance of
546 subdivision improvements because of an applicant's failure to comply with a requirement that
547 is not expressed:

548 (i) in the building permit or subdivision plat, documents on which the building permit
549 or subdivision plat is based, or the written record evidencing approval of the building permit or
550 subdivision plat; or

551 (ii) in this chapter or the county's ordinances.

552 (2) A county is bound by the terms and standards of applicable land use ordinances and
553 shall comply with mandatory provisions of those ordinances.

554 (3) A county may not, as a condition of land use application approval, require a person

555 filing a land use application to obtain documentation regarding a school district's willingness,
556 capacity, or ability to serve the development proposed in the land use application.

557 (4) Upon a specified public agency's submission of a development plan and schedule as
558 required in Subsection 17-27a-305~~(8)~~(4) that complies with the requirements of that
559 subsection, the specified public agency vests in the county's applicable land use maps, zoning
560 map, hookup fees, impact fees, other applicable development fees, and land use ordinances in
561 effect on the date of submission.

562 Section 6. Section 53A-20-104 is amended to read:

563 **53A-20-104. Enforcement of chapter by state superintendent -- Employment of**
564 **personnel -- Certificate of inspection verification.**

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

566 (2) The superintendent may employ architects or other qualified personnel, or contract
567 with the State Building Board, the state fire marshal, ~~H~~→ **a school district building inspector**, ←~~H~~
567a or a local governmental entity to:

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

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

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

572 ~~[(3)(a)(i) If a local school board uses the school district's building inspector under~~
573 ~~Subsection 10-9a-305(6)(a)(ii) or 17-27a-305(6)(a)(ii) and issues its own certificate authorizing~~
574 ~~permanent occupancy of the school building, the local school board shall file a certificate of~~
575 ~~inspection verification with the local governmental entity's building official and the State~~
576 ~~Office of Education, advising those entities that the school district has complied with the~~
577 ~~inspection provisions of this chapter.]~~

578 ~~[(ii) If a charter school uses a school district building inspector under Subsection~~
579 ~~10-9a-305(6)(a)(ii) or 17-27a-305(6)(a)(ii) and the school district issues to the charter school a~~
580 ~~certificate authorizing permanent occupancy of the school building, the charter school shall file~~
581 ~~with the State Office of Education a certificate of inspection verification.]~~

582 ~~[(iii) If a local school board or charter school uses a local governmental entity's~~
583 ~~building inspector under Subsection 10-9a-305(6)(a)(i) or 17-27a-305(6)(a)(i) and the local~~
584 ~~governmental entity issues the local school board or charter school a certificate authorizing~~
585 ~~permanent occupancy of the school building, the local school board or charter school shall file~~

586 with the State Office of Education a certificate of inspection verification.]

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

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

598 ~~[(C) Within 30 days after the local school board or charter school files a request under~~
599 ~~Subsection (3)(a)(iv)(A) for a certificate authorizing permanent occupancy of the school~~
600 ~~building, the state superintendent of public instruction shall:]~~

601 ~~[(f)(Aa) issue to the local school board or charter school a certificate authorizing~~
602 ~~permanent occupancy of the school building; or]~~

603 ~~[(Bb) deliver to the local school board or charter school a written notice indicating~~
604 ~~deficiencies in the school district's or charter school's compliance with the inspection~~
605 ~~provisions of this chapter; and]~~

606 ~~[(H) mail a copy of the certificate authorizing permanent occupancy or the notice of~~
607 ~~deficiency to the building official of the local governmental entity in which the school building~~
608 ~~is located.]~~

609 ~~[(D) Upon the local school board or charter school remedying the deficiencies~~
610 ~~indicated in the notice under Subsection (3)(a)(iv)(C)(f)(Bb) and notifying the state~~
611 ~~superintendent of public instruction that the deficiencies have been remedied, the state~~
612 ~~superintendent of public instruction shall issue a certificate authorizing permanent occupancy~~
613 ~~of the school building and mail a copy of the certificate to the building official of the local~~
614 ~~governmental entity in which the school building is located.]~~

615 ~~[(E)(f)]~~ (3)(a) The state superintendent of public instruction may charge the school
616 district or charter school a fee for an inspection that the superintendent considers necessary to

617 enable the superintendent to issue a certificate authorizing permanent occupancy of the school
618 building.

619 ~~[(H)]~~ (b) A fee under Subsection (3)(a)~~[(iv)(E)(F)]~~ may not exceed the actual cost of
620 performing the inspection.

621 ~~[(b) For purposes of this Subsection (3):]~~

622 ~~[(i) "local governmental entity" means either a municipality, for a school building~~
623 ~~located within a municipality, or a county, for a school building located within an~~
624 ~~unincorporated area in the county; and]~~

625 ~~[(ii) "certificate of inspection verification" means a standard inspection form developed~~
626 ~~by the state superintendent in consultation with local school boards and charter schools to~~
627 ~~verify that inspections by qualified inspectors have occurred.]~~

Legislative Review Note
as of 1-22-14 2:09 PM

Office of Legislative Research and General Counsel