

LOCAL INCENTIVES FOR ENERGY EFFICIENT BUILDINGS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Rebecca P. Edwards

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to zoning districts and land use application review for energy efficient buildings.

Highlighted Provisions:

This bill:

- ▶ allows municipalities and counties to establish exemptions to certain zoning district regulations for buildings that meet certain energy efficiency standards;
- ▶ allows municipalities and counties to establish expedited land use review processes for buildings that meet certain energy efficiency standards; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-9a-505, as last amended by Laws of Utah 2015, Chapter 327

10-9a-509.5, as last amended by Laws of Utah 2010, Chapter 378

17-27a-505, as last amended by Laws of Utah 2015, Chapters 327 and 352



28 **17-27a-509.5**, as last amended by Laws of Utah 2008, Chapter 112



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

31 Section 1. Section **10-9a-505** is amended to read:

32 **10-9a-505. Zoning districts.**

33 (1) (a) The legislative body may divide the territory over which it has jurisdiction into
34 zoning districts of a number, shape, and area that it considers appropriate to carry out the
35 purposes of this chapter.

36 (b) Within those zoning districts, the legislative body may regulate and restrict the
37 erection, construction, reconstruction, alteration, repair, or use of buildings and structures, and
38 the use of land.

39 (c) A municipality may enact an ordinance regulating land use and development in a
40 flood plain or potential geologic hazard area to:

- 41 (i) protect life; and
- 42 (ii) prevent:
 - 43 (A) the substantial loss of real property; or
 - 44 (B) substantial damage to real property.

45 (2) (a) The legislative body shall ensure that the regulations are uniform for each class
46 or kind of buildings throughout each zoning district~~[, but the]~~ except as provided in
47 Subsections (4) and (5).

48 (b) The regulations in one zone may differ from those in other zones.

49 (3) (a) There is no minimum area or diversity of ownership requirement for a zone
50 designation.

51 (b) Neither the size of a zoning district nor the number of landowners within the
52 district may be used as evidence of the illegality of a zoning district or of the invalidity of a
53 municipal decision.

54 (4) A municipality may by ordinance exempt from specific zoning district standards a
55 subdivision of land to accommodate the siting of a public utility infrastructure.

56 (5) A municipality may by ordinance establish exemptions to zoning district standards
57 to allow for greater density, increased height allowances, or reduced setback requirements for
58 subdivisions of land where the primary structure located on the subdivision of land is:

59 (a) a commercial building that meets the design criteria for a Leadership in Energy and
60 Environmental Design designation of silver, gold, or platinum as established by the United
61 States Green Building Council; or

62 (b) a residential building that meets an Energy Star home energy rating of 85 or higher.

63 Section 2. Section **10-9a-509.5** is amended to read:

64 **10-9a-509.5. Review for application completeness -- Substantive application**
65 **review -- Reasonable diligence required for determination of whether improvements or**
66 **warranty work meets standards -- Money damages claim prohibited.**

67 (1) (a) (i) Each municipality shall, in a timely manner, determine whether an
68 application is complete for the purposes of subsequent, substantive land use authority review.

69 (ii) A municipality may establish expedited procedures for determining whether an
70 application is complete for the purposes of subsequent, substantive land use authority review if
71 the application is for land use that includes the construction or renovation of a building that
72 meets increased energy efficiency standards as established by the municipality.

73 (b) After a reasonable period of time to allow the municipality diligently to evaluate
74 whether all objective ordinance-based application criteria have been met, if application fees
75 have been paid, the applicant may in writing request that the municipality provide a written
76 determination either that the application is:

77 (i) complete for the purposes of allowing subsequent, substantive land use authority
78 review; or

79 (ii) deficient with respect to a specific, objective, ordinance-based application
80 requirement.

81 (c) Within 30 days of receipt of an applicant's request under this section, the
82 municipality shall either:

83 (i) mail a written notice to the applicant advising that the application is deficient with
84 respect to a specified, objective, ordinance-based criterion, and stating that the application shall
85 be supplemented by specific additional information identified in the notice; or

86 (ii) accept the application as complete for the purposes of further substantive
87 processing by the land use authority.

88 (d) If the notice required by Subsection (1)(c)(i) is not timely mailed, the application
89 shall be considered complete, for purposes of further substantive land use authority review.

90 (e) (i) The applicant may raise and resolve in a single appeal any determination made
91 under this Subsection (1) to the appeal authority, including an allegation that a reasonable
92 period of time has elapsed under Subsection (1)(a).

93 (ii) The appeal authority shall issue a written decision for any appeal requested under
94 this Subsection (1)(e).

95 (f) (i) The applicant may appeal to district court the decision of the appeal authority
96 made under Subsection (1)(e).

97 (ii) Each appeal under Subsection (1)(f)(i) shall be made within 30 days of the date of
98 the written decision.

99 (2) (a) (i) Each land use authority shall substantively review a complete application and
100 an application considered complete under Subsection (1)(d), and shall approve or deny each
101 application with reasonable diligence.

102 (ii) A land use authority may establish expedited procedures to review an application
103 under Subsection (2)(a)(i) if the application is for land use that includes the construction or
104 renovation of a building that meets increased energy efficiency standards as established by the
105 municipality.

106 (b) After a reasonable period of time to allow the land use authority to consider an
107 application, the applicant may in writing request that the land use authority take final action
108 within 45 days from date of service of the written request.

109 (c) The land use authority shall take final action, approving or denying the application
110 within 45 days of the written request.

111 (d) If the land use authority denies an application processed under the mandates of
112 Subsection (2)(b), or if the applicant has requested a written decision in the application, the
113 land use authority shall include its reasons for denial in writing, on the record, which may
114 include the official minutes of the meeting in which the decision was rendered.

115 (e) If the land use authority fails to comply with Subsection (2)(c), the applicant may
116 appeal this failure to district court within 30 days of the date on which the land use authority is
117 required to take final action under Subsection (2)(c).

118 (3) (a) With reasonable diligence, each land use authority shall determine whether the
119 installation of required subdivision improvements or the performance of warranty work meets
120 the municipality's adopted standards.

121 (b) (i) An applicant may in writing request the land use authority to accept or reject the
122 applicant's installation of required subdivision improvements or performance of warranty work.

123 (ii) The land use authority shall accept or reject subdivision improvements within 15
124 days after receiving an applicant's written request under Subsection (3)(b)(i), or as soon as
125 practicable after that 15-day period if inspection of the subdivision improvements is impeded
126 by winter weather conditions.

127 (iii) The land use authority shall accept or reject the performance of warranty work
128 within 45 days after receiving an applicant's written request under Subsection (3)(b)(i), or as
129 soon as practicable after that 45-day period if inspection of the warranty work is impeded by
130 winter weather conditions.

131 (c) If a land use authority determines that the installation of required subdivision
132 improvements or the performance of warranty work does not meet the municipality's adopted
133 standards, the land use authority shall comprehensively and with specificity list the reasons for
134 its determination.

135 (4) Subject to Section 10-9a-509, nothing in this section and no action or inaction of
136 the land use authority relieves an applicant's duty to comply with all applicable substantive
137 ordinances and regulations.

138 (5) There shall be no money damages remedy arising from a claim under this section.

139 Section 3. Section 17-27a-505 is amended to read:

140 **17-27a-505. Zoning districts.**

141 (1) (a) The legislative body may divide the territory over which it has jurisdiction into
142 zoning districts of a number, shape, and area that it considers appropriate to carry out the
143 purposes of this chapter.

144 (b) Within those zoning districts, the legislative body may regulate and restrict the
145 erection, construction, reconstruction, alteration, repair, or use of buildings and structures, and
146 the use of land.

147 (c) A county may enact an ordinance regulating land use and development in a flood
148 plain or potential geologic hazard area to:

149 (i) protect life; and

150 (ii) prevent:

151 (A) the substantial loss of real property; or

152 (B) substantial damage to real property.

153 (d) A county of the second, third, fourth, fifth, or sixth class may not adopt a land use
154 ordinance requiring a property owner to revegetate or landscape a single family dwelling
155 disturbance area unless the property is located in a flood zone or geologic hazard except as
156 required in Title 19, Chapter 5, Water Quality Act, to comply with federal law related to water
157 pollution.

158 (2) The legislative body shall ensure that the regulations are uniform for each class or
159 kind of buildings throughout each zone except as provided in Subsections (4) and (5), but the
160 regulations in one zone may differ from those in other zones.

161 (3) (a) There is no minimum area or diversity of ownership requirement for a zone
162 designation.

163 (b) Neither the size of a zoning district nor the number of landowners within the
164 district may be used as evidence of the illegality of a zoning district or of the invalidity of a
165 county decision.

166 (4) A county may by ordinance exempt from specific zoning district standards a
167 subdivision of land to accommodate the siting of a public utility infrastructure.

168 (5) A county may by ordinance establish exemptions to zoning district standards to
169 allow for greater density, increased height allowances, or reduced setback requirements for
170 subdivisions of land where the primary structure located on the subdivision of land is:

171 (a) a commercial building that meets the design criteria for a Leadership in Energy and
172 Environmental Design designation of silver, gold, or platinum as established by the United
173 States Green Building Council; or

174 (b) a residential building that meets an Energy Star home energy rating of 85 or higher.

175 Section 4. Section **17-27a-509.5** is amended to read:

176 **17-27a-509.5. Review for application completeness -- Substantive application**
177 **review -- Reasonable diligence required for determination of whether improvements or**
178 **warranty work meets standards -- Money damages claim prohibited.**

179 (1) (a) (i) Each county shall, in a timely manner, determine whether an application is
180 complete for the purposes of subsequent, substantive land use authority review.

181 (ii) A county may establish expedited procedures for determining whether an
182 application is complete for the purposes of subsequent, substantive land use authority review if

183 the application is for land use that includes the construction or renovation of a building that
184 meets increased energy efficiency standards as established by the county.

185 (b) After a reasonable period of time to allow the county diligently to evaluate whether
186 all objective ordinance-based application criteria have been met, if application fees have been
187 paid, the applicant may in writing request that the county provide a written determination either
188 that the application is:

189 (i) complete for the purposes of allowing subsequent, substantive land use authority
190 review; or

191 (ii) deficient with respect to a specific, objective, ordinance-based application
192 requirement.

193 (c) Within 30 days of receipt of an applicant's request under this section, the county
194 shall either:

195 (i) mail a written notice to the applicant advising that the application is deficient with
196 respect to a specified, objective, ordinance-based criterion, and stating that the application must
197 be supplemented by specific additional information identified in the notice; or

198 (ii) accept the application as complete for the purposes of further substantive
199 processing by the land use authority.

200 (d) If the notice required by Subsection (1)(c)(i) is not timely mailed, the application
201 shall be considered complete, for purposes of further substantive land use authority review.

202 (e) (i) The applicant may raise and resolve in a single appeal any determination made
203 under this Subsection (1) to the appeal authority, including an allegation that a reasonable
204 period of time has elapsed under Subsection (1)(a).

205 (ii) The appeal authority shall issue a written decision for any appeal requested under
206 this Subsection (1)(e).

207 (f) (i) The applicant may appeal to district court the decision of the appeal authority
208 made under Subsection (1)(e).

209 (ii) Each appeal under Subsection (1)(f)(i) shall be made within 30 days of the date of
210 the written decision.

211 (2) (a) (i) Each land use authority shall substantively review a complete application and
212 an application considered complete under Subsection (1)(d), and shall approve or deny each
213 application with reasonable diligence.

214 (ii) A land use authority may establish expedited procedures to review an application
215 under Subsection (2)(a)(i) if the application is for land use that includes the construction or
216 renovation of a building that meets increased energy efficiency standards as established by the
217 county.

218 (b) After a reasonable period of time to allow the land use authority to consider an
219 application, the applicant may in writing request that the land use authority take final action
220 within 45 days from date of service of the written request.

221 (c) The land use authority shall take final action, approving or denying the application
222 within 45 days of the written request.

223 (d) If the land use authority denies an application processed under the mandates of
224 Subsection (2)(b), or if the applicant has requested a written decision in the application, the
225 land use authority shall include its reasons for denial in writing, on the record, which may
226 include the official minutes of the meeting in which the decision was rendered.

227 (e) If the land use authority fails to comply with Subsection (2)(c), the applicant may
228 appeal this failure to district court within 30 days of the date on which the land use authority
229 should have taken final action under Subsection (2)(c).

230 (3) (a) With reasonable diligence, each land use authority shall determine whether the
231 installation of required subdivision improvements or the performance of warranty work meets
232 the county's adopted standards.

233 (b) (i) An applicant may in writing request the land use authority to accept or reject the
234 applicant's installation of required subdivision improvements or performance of warranty work.

235 (ii) The land use authority shall accept or reject subdivision improvements within 15
236 days after receiving an applicant's written request under Subsection (3)(b)(i), or as soon as
237 practicable after that 15-day period if inspection of the subdivision improvements is impeded
238 by winter weather conditions.

239 (iii) The land use authority shall accept or reject the performance of warranty work
240 within 45 days after receiving an applicant's written request under Subsection (3)(b)(i), or as
241 soon as practicable after that 45-day period if inspection of the warranty work is impeded by
242 winter weather conditions.

243 (c) If a land use authority determines that the installation of required subdivision
244 improvements or the performance of warranty work does not meet the county's adopted

245 standards, the land use authority shall comprehensively and with specificity list the reasons for
246 its determination.

247 (4) Subject to Section [17-27a-508](#), nothing in this section and no action or inaction of
248 the land use authority relieves an applicant's duty to comply with all applicable substantive
249 ordinances and regulations.

250 (5) There shall be no money damages remedy arising from a claim under this section.

Legislative Review Note
Office of Legislative Research and General Counsel