{deleted text} shows text that was in HB0030 but was deleted in HB0030S01.

Inserted text shows text that was not in HB0030 but was inserted into HB0030S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Senator Daniel W. Thatcher proposes the following substitute bill:

HISTORIC PRESERVATION AMENDMENTS

2017 GENERAL SESSION STATE OF UTAH

Chief Sponsor: R. Curt Webb Senate Sponsor:

LONG TITLE

Committee Note:

The Political Subdivisions Interim Committee recommended this bill.

General Description:

This bill {enacts provisions of the Municipal Land Use, Development, and Management Act related to} addresses administrative decisions and appeals related to land use applications in historic preservation districts or areas.

Highlighted Provisions:

This bill:

- defines {"historic preservation commission"}terms;
- authorizes a legislative body to designate a historic preservation
 (commission) authority to make administrative decisions on land use applications
 related to historically significant real property;

- {addresses} requires the establishment of an appeal {from a} authority to review decision of a historic preservation {commission} authority; and
- makes technical and conforming changes.

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 2015, Chapter 327

10-9a-503, as last amended by Laws of Utah 2016, Chapter 404

10-9a-701, as last amended by Laws of Utah 2011, Chapter 92

10-9a-703, as last amended by Laws of Utah 2008, Chapter 326

10-9a-704, as last amended by Laws of Utah 2006, Chapter 240

10-9a-707, as enacted by Laws of Utah 2005, Chapter 254

ENACTS:

10-9a-527. Utah Code Annotated 1953

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

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

10-9a-103. Definitions.

As used in this chapter:

- (1) "Affected entity" means a county, municipality, local district, special service district under Title 17D, Chapter 1, Special Service District Act, school district, interlocal cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, specified public utility, property owner, property owners association, or the Utah Department of Transportation, if:
- (a) the entity's services or facilities are likely to require expansion or significant modification because of an intended use of land;
- (b) the entity has filed with the municipality a copy of the entity's general or long-range plan; or

- (c) the entity has filed with the municipality a request for notice during the same calendar year and before the municipality provides notice to an affected entity in compliance with a requirement imposed under this chapter.
- (2) "Appeal authority" means the person, board, commission, agency, or other body designated by ordinance to decide an appeal of a decision of a land use application or a variance.
- (3) "Billboard" means a freestanding ground sign located on industrial, commercial, or residential property if the sign is designed or intended to direct attention to a business, product, or service that is not sold, offered, or existing on the property where the sign is located.
 - (4) (a) "Charter school" means:
 - (i) an operating charter school;
- (ii) a charter school applicant that has its application approved by a charter school authorizer in accordance with Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act; or
- (iii) an entity that is working on behalf of a charter school or approved charter applicant to develop or construct a charter school building.
 - (b) "Charter school" does not include a therapeutic school.
- (5) "Conditional use" means a land use that, because of its unique characteristics or potential impact on the municipality, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.
- (6) "Constitutional taking" means a governmental action that results in a taking of private property so that compensation to the owner of the property is required by the:
 - (a) Fifth or Fourteenth Amendment of the Constitution of the United States; or
 - (b) Utah Constitution, Article I, Section 22.
- (7) "Culinary water authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of the culinary water system and sources for the subject property.
 - (8) "Development activity" means:
- (a) any construction or expansion of a building, structure, or use that creates additional demand and need for public facilities;
 - (b) any change in use of a building or structure that creates additional demand and need

for public facilities; or

- (c) any change in the use of land that creates additional demand and need for public facilities.
- (9) (a) "Disability" means a physical or mental impairment that substantially limits one or more of a person's major life activities, including a person having a record of such an impairment or being regarded as having such an impairment.
- (b) "Disability" does not include current illegal use of, or addiction to, any federally controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. 802.
 - (10) "Educational facility":
 - (a) means:
- (i) a school district's building at which pupils assemble to receive instruction in a program for any combination of grades from preschool through grade 12, including kindergarten and a program for children with disabilities;
 - (ii) a structure or facility:
 - (A) located on the same property as a building described in Subsection (10)(a)(i); and
 - (B) used in support of the use of that building; and
- (iii) a building to provide office and related space to a school district's administrative personnel; and
 - (b) does not include:
- (i) land or a structure, including land or a structure for inventory storage, equipment storage, food processing or preparing, vehicle storage or maintenance, or similar use that is:
- (A) not located on the same property as a building described in Subsection (10)(a)(i); and
 - (B) used in support of the purposes of a building described in Subsection (10)(a)(i); or
 - (ii) a therapeutic school.
- (11) "Fire authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of fire protection and suppression services for the subject property.
 - (12) "Flood plain" means land that:
 - (a) is within the 100-year flood plain designated by the Federal Emergency

Management Agency; or

- (b) has not been studied or designated by the Federal Emergency Management Agency but presents a likelihood of experiencing chronic flooding or a catastrophic flood event because the land has characteristics that are similar to those of a 100-year flood plain designated by the Federal Emergency Management Agency.
- (13) "General plan" means a document that a municipality adopts that sets forth general guidelines for proposed future development of the land within the municipality.
 - (14) "Geologic hazard" means:
 - (a) a surface fault rupture;
 - (b) shallow groundwater;
 - (c) liquefaction;
 - (d) a landslide;
 - (e) a debris flow;
 - (f) unstable soil;
 - (g) a rock fall; or
 - (h) any other geologic condition that presents a risk:
 - (i) to life;
 - (ii) of substantial loss of real property; or
 - (iii) of substantial damage to real property.
- (15) "Historic preservation {commission} authority" means a person, board, commission, or other body designated by a legislative body to { make administrative decisions on land use applications that affect:
 - (a) historically significant real property; or
 - (b) real property located):
 - (a) recommend land use regulations to preserve local historic districts or areas; and
- (b) administer local historic preservation land use regulations within a local historic district or area {, as defined in Subsection 10-9a-503(4)}.
- [(15)] (16) "Hookup fee" means a fee for the installation and inspection of any pipe, line, meter, or appurtenance that connects to a municipal water, sewer, storm water, power, or other utility system.
 - [(16)] (17) "Identical plans" means building plans submitted to a municipality that:

- (a) are clearly marked as "identical plans";
- (b) are substantially identical to building plans that were previously submitted to and reviewed and approved by the municipality; and
 - (c) describe a building that:
- (i) is located on land zoned the same as the land on which the building described in the previously approved plans is located;
- (ii) is subject to the same geological and meteorological conditions and the same law as the building described in the previously approved plans;
- (iii) has a floor plan identical to the building plan previously submitted to and reviewed and approved by the municipality; and
 - (iv) does not require any additional engineering or analysis.
- [(17)] (18) "Impact fee" means a payment of money imposed under Title 11, Chapter 36a, Impact Fees Act.
- [(18)] (19) "Improvement completion assurance" means a surety bond, letter of credit, financial institution bond, cash, assignment of rights, lien, or other equivalent security required by a municipality to guaranty the proper completion of landscaping or an infrastructure improvement required as a condition precedent to:
 - (a) recording a subdivision plat; or
 - (b) development of a commercial, industrial, mixed use, or multifamily project.
- [(19)] (20) "Improvement warranty" means an applicant's unconditional warranty that the applicant's installed and accepted landscaping or infrastructure improvement:
- (a) complies with the municipality's written standards for design, materials, and workmanship; and
- (b) will not fail in any material respect, as a result of poor workmanship or materials, within the improvement warranty period.
 - [(20)] (21) "Improvement warranty period" means a period:
 - (a) no later than one year after a municipality's acceptance of required landscaping; or
- (b) no later than one year after a municipality's acceptance of required infrastructure, unless the municipality:
- (i) determines for good cause that a one-year period would be inadequate to protect the public health, safety, and welfare; and

- (ii) has substantial evidence, on record:
- (A) of prior poor performance by the applicant; or
- (B) that the area upon which the infrastructure will be constructed contains suspect soil and the municipality has not otherwise required the applicant to mitigate the suspect soil.
- [(21)] (22) "Infrastructure improvement" means permanent infrastructure that an applicant must install:
- (a) pursuant to published installation and inspection specifications for public improvements; and
 - (b) as a condition of:
 - (i) recording a subdivision plat; or
- (ii) development of a commercial, industrial, mixed use, condominium, or multifamily project.
- [(22)] (23) "Internal lot restriction" means a platted note, platted demarcation, or platted designation that:
 - (a) runs with the land; and
- (b) (i) creates a restriction that is enclosed within the perimeter of a lot described on the plat; or
- (ii) designates a development condition that is enclosed within the perimeter of a lot described on the plat.
- [(23)] (24) "Land use application" means an application required by a municipality's land use ordinance.
 - [(24)] (25) "Land use authority" means:
- (a) a person, board, commission, agency, or body, including the local legislative body, designated by the local legislative body to act upon a land use application; or
- (b) if the local legislative body has not designated a person, board, commission, agency, or body, the local legislative body.
- [(25)] (26) "Land use ordinance" means a planning, zoning, development, or subdivision ordinance of the municipality, but does not include the general plan.
 - $[\frac{(26)}{2}]$ "Land use permit" means a permit issued by a land use authority.
 - [(27)] (28) "Legislative body" means the municipal council.
 - [(28)] (29) "Local district" means an entity under Title 17B, Limited Purpose Local

Government Entities - Local Districts, and any other governmental or quasi-governmental entity that is not a county, municipality, school district, or the state.

- (30) "Local historic district or area" means a geographically definable area that:
- (a) contains any combination of buildings, structures, sites, objects, landscape features, archeological sites, or works of art that contribute to the historic preservation goals of a legislative body; and
- (b) is subject to land use regulations to preserve the historic significance of the local historic district or area.
- [(29)] ((30)31) "Lot line adjustment" means the relocation of the property boundary line in a subdivision between two adjoining lots with the consent of the owners of record.
- [(30)] ((31)32) "Moderate income housing" means housing occupied or reserved for occupancy by households with a gross household income equal to or less than 80% of the median gross income for households of the same size in the county in which the city is located.
- [(31)] ((32)33) "Nominal fee" means a fee that reasonably reimburses a municipality only for time spent and expenses incurred in:
 - (a) verifying that building plans are identical plans; and
- (b) reviewing and approving those minor aspects of identical plans that differ from the previously reviewed and approved building plans.
 - $[\frac{(32)}{(33)}]$ "Noncomplying structure" means a structure that:
 - (a) legally existed before its current land use designation; and
- (b) because of one or more subsequent land use ordinance changes, does not conform to the setback, height restrictions, or other regulations, excluding those regulations, which govern the use of land.
 - [(33)] ((34)35) "Nonconforming use" means a use of land that:
 - (a) legally existed before its current land use designation;
- (b) has been maintained continuously since the time the land use ordinance governing the land changed; and
- (c) because of one or more subsequent land use ordinance changes, does not conform to the regulations that now govern the use of the land.
- [(34)] ((35)36) "Official map" means a map drawn by municipal authorities and recorded in a county recorder's office that:

- (a) shows actual and proposed rights-of-way, centerline alignments, and setbacks for highways and other transportation facilities;
- (b) provides a basis for restricting development in designated rights-of-way or between designated setbacks to allow the government authorities time to purchase or otherwise reserve the land; and
 - (c) has been adopted as an element of the municipality's general plan.
- [(35)] ((36)37) "Parcel boundary adjustment" means a recorded agreement between owners of adjoining properties adjusting their mutual boundary if:
 - (a) no additional parcel is created; and
- (b) each property identified in the agreement is unsubdivided land, including a remainder of subdivided land.
- [(36)] ((37)38) "Person" means an individual, corporation, partnership, organization, association, trust, governmental agency, or any other legal entity.
- [(37)] ((38)39) "Plan for moderate income housing" means a written document adopted by a city legislative body that includes:
- (a) an estimate of the existing supply of moderate income housing located within the city;
- (b) an estimate of the need for moderate income housing in the city for the next five years as revised biennially;
 - (c) a survey of total residential land use;
- (d) an evaluation of how existing land uses and zones affect opportunities for moderate income housing; and
- (e) a description of the city's program to encourage an adequate supply of moderate income housing.
- $[\frac{(38)}{(\frac{439}{40})}]$ "Plat" means a map or other graphical representation of lands being laid out and prepared in accordance with Section 10-9a-603, 17-23-17, or 57-8-13.
 - [(39)] ((40)41) "Potential geologic hazard area" means an area that:
- (a) is designated by a Utah Geological Survey map, county geologist map, or other relevant map or report as needing further study to determine the area's potential for geologic hazard; or
 - (b) has not been studied by the Utah Geological Survey or a county geologist but

presents the potential of geologic hazard because the area has characteristics similar to those of a designated geologic hazard area.

 $\left[\frac{(40)}{(41)}\right]$ "Public agency" means:

- (a) the federal government;
- (b) the state;
- (c) a county, municipality, school district, local district, special service district, or other political subdivision of the state; or
 - (d) a charter school.
- $[\frac{(41)}]$ ($\frac{(42)}{43}$) "Public hearing" means a hearing at which members of the public are provided a reasonable opportunity to comment on the subject of the hearing.
- [(42)] ((443)44) "Public meeting" means a meeting that is required to be open to the public under Title 52, Chapter 4, Open and Public Meetings Act.
- [(43)] (44)45) "Receiving zone" means an area of a municipality that the municipality designates, by ordinance, as an area in which an owner of land may receive a transferable development right.
- $[\frac{(44)}{(45)}]$ "Record of survey map" means a map of a survey of land prepared in accordance with Section 17-23-17.
 - $[\frac{(45)}{(46)}]$ "Residential facility for persons with a disability" means a residence:
 - (a) in which more than one person with a disability resides; and
- (b) (i) which is licensed or certified by the Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities; or
- (ii) which is licensed or certified by the Department of Health under Title 26, Chapter21, Health Care Facility Licensing and Inspection Act.
- [46] (47) "Rules of order and procedure" means a set of rules that govern and prescribe in a public meeting:
 - (a) parliamentary order and procedure;
 - (b) ethical behavior; and
 - (c) civil discourse.
- [(47)] ((48)49) "Sanitary sewer authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of sanitary sewer services or onsite wastewater systems.

[(48)] (49)50) "Sending zone" means an area of a municipality that the municipality designates, by ordinance, as an area from which an owner of land may transfer a transferable development right.

[(49)] ((50)51) "Specified public agency" means:

- (a) the state;
- (b) a school district; or
- (c) a charter school.

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

 $[\frac{(51)}{(52)}]$ "State" includes any department, division, or agency of the state.

[(52)] ((53) 54) "Street" means a public right-of-way, including a highway, avenue, boulevard, parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement, or other way.

[(53)] ((54)55) (a) "Subdivision" means any land that is divided, resubdivided or proposed to be divided into two or more lots, parcels, sites, units, plots, or other division of land for the purpose, whether immediate or future, for offer, sale, lease, or development either on the installment plan or upon any and all other plans, terms, and conditions.

- (b) "Subdivision" includes:
- (i) the division or development of land whether by deed, metes and bounds description, devise and testacy, map, plat, or other recorded instrument; and
- (ii) except as provided in Subsection [(53)] ((54)55)(c), divisions of land for residential and nonresidential uses, including land used or to be used for commercial, agricultural, and industrial purposes.
 - (c) "Subdivision" does not include:
- (i) a bona fide division or partition of agricultural land for the purpose of joining one of the resulting separate parcels to a contiguous parcel of unsubdivided agricultural land, if neither the resulting combined parcel nor the parcel remaining from the division or partition violates an applicable land use ordinance;
- (ii) a recorded agreement between owners of adjoining unsubdivided properties adjusting their mutual boundary if:
 - (A) no new lot is created; and

- (B) the adjustment does not violate applicable land use ordinances;
- (iii) a recorded document, executed by the owner of record:
- (A) revising the legal description of more than one contiguous unsubdivided parcel of property into one legal description encompassing all such parcels of property; or
- (B) joining a subdivided parcel of property to another parcel of property that has not been subdivided, if the joinder does not violate applicable land use ordinances;
- (iv) a recorded agreement between owners of adjoining subdivided properties adjusting their mutual boundary if:
 - (A) no new dwelling lot or housing unit will result from the adjustment; and
 - (B) the adjustment will not violate any applicable land use ordinance;
- (v) a bona fide division or partition of land by deed or other instrument where the land use authority expressly approves in writing the division in anticipation of further land use approvals on the parcel or parcels; or
 - (vi) a parcel boundary adjustment.
- (d) The joining of a subdivided parcel of property to another parcel of property that has not been subdivided does not constitute a subdivision under this Subsection [(53)] (54) as to the unsubdivided parcel of property or subject the unsubdivided parcel to the municipality's subdivision ordinance.

[(54)] ((55)) "Suspect soil" means soil that has:

- (a) a high susceptibility for volumetric change, typically clay rich, having more than a 3% swell potential;
 - (b) bedrock units with high shrink or swell susceptibility; or
- (c) gypsiferous silt and clay, gypsum, or bedrock units containing abundant gypsum commonly associated with dissolution and collapse features.

 $[\frac{(55)}{(55)}]$ "Therapeutic school" means a residential group living facility:

- (a) for four or more individuals who are not related to:
- (i) the owner of the facility; or
- (ii) the primary service provider of the facility;
- (b) that serves students who have a history of failing to function:
- (i) at home;
- (ii) in a public school; or

- (iii) in a nonresidential private school; and
- (c) that offers:
- (i) room and board; and
- (ii) an academic education integrated with:
- (A) specialized structure and supervision; or
- (B) services or treatment related to a disability, an emotional development, a behavioral development, a familial development, or a social development.

[(56)] ((57)) "Transferable development right" means a right to develop and use land that originates by an ordinance that authorizes a land owner in a designated sending zone to transfer land use rights from a designated sending zone to a designated receiving zone.

[(57)] ((58) 59) "Unincorporated" means the area outside of the incorporated area of a city or town.

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

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

[(59)] ((60)61) "Zoning map" means a map, adopted as part of a land use ordinance, that depicts land use zones, overlays, or districts.

Section 2. Section 10-9a-503 is amended to read:

10-9a-503. Land use ordinance or zoning map amendments -- Historic district or area.

- (1) The legislative body may amend:
- (a) the number, shape, boundaries, or area of any zoning district;
- (b) any regulation of or within the zoning district; or
- (c) any other provision of a land use ordinance.
- (2) The legislative body may not make any amendment authorized by this section unless the amendment was proposed by the planning commission or was first submitted to the planning commission for its recommendation.
 - (3) The legislative body shall comply with the procedure specified in Section

- 10-9a-502 in preparing and adopting an amendment to a land use ordinance or a zoning map.
 - (4) (a) As used in this Subsection (4):
 - (i) "Condominium project" means the same as that term is defined in Section 57-8-3.
- [(ii) "Local historic district or area" means a geographically or thematically definable area that contains any combination of buildings, structures, sites, objects, landscape features, archeological sites, or works of art that contribute to the historic preservation goals of a legislative body.]
 - [(iii)] (ii) "Unit" means the same as that term is defined in Section 57-8-3.
- (b) If a municipality provides a process by which one or more residents of the municipality may initiate the creation of a local historic district or area, the process shall require that:
- (i) more than 33% of the property owners within the boundaries of the proposed local historic district or area agree in writing to the creation of the proposed local historic district or area;
- (ii) before any property owner agrees to the creation of a proposed local historic district or area under Subsection (4)(b)(i), the municipality prepare and distribute, to each property owner within the boundaries of the proposed local historic district or area, a neutral information pamphlet that:
 - (A) describes the process to create a local historic district or area; and
 - (B) lists the pros and cons of a local historic district or area;
- (iii) after the property owners satisfy the requirement described in Subsection (4)(b)(i), for each parcel or, if the parcel contains a condominium project, each unit, within the boundaries of the proposed local historic district or area, the municipality provide:
- (A) a second copy of the neutral information pamphlet described in Subsection (4)(b)(ii); and
- (B) one public support ballot that, subject to Subsection (4)(c), allows the owner or owners of record to vote in favor of or against the creation of the proposed local historic district or area;
- (iv) in a vote described in Subsection (4)(b)(iii)(B), the returned public support ballots that reflect a vote in favor of the creation of the proposed local historic district or area:
 - (A) equal at least two-thirds of the returned public support ballots; and

- (B) represent more than 50% of the parcels and units within the proposed local historic district or area;
- (v) if a local historic district or area proposal fails in a vote described in Subsection (4)(b)(iii)(B), the legislative body may override the vote and create the proposed local historic district or area with an affirmative vote of two-thirds of the members of the legislative body; and
- (vi) if a local historic district or area proposal fails in a vote described in Subsection (4)(b)(iii)(B) and the legislative body does not override the vote under Subsection (4)(b)(v), a resident may not initiate the creation of a local historic district or area that includes more than 50% of the same property as the failed local historic district or area proposal for four years after the day on which the public support ballots for the vote are due.
 - (c) In a vote described in Subsection (4)(b)(iii)(B):
- (i) a property owner is eligible to vote regardless of whether the property owner is an individual, a private entity, or a public entity;
 - (ii) the municipality shall count no more than one public support ballot for:
 - (A) each parcel within the boundaries of the proposed local historic district or area; or
- (B) if the parcel contains a condominium project, each unit within the boundaries of the proposed local historic district or area; and
- (iii) if a parcel or unit has more than one owner of record, the municipality shall count a public support ballot for the parcel or unit only if the public support ballot reflects the vote of the property owners who own at least a 50% interest in the parcel or unit.
- (d) The requirements described in Subsection (4)(b)(iv) apply to the creation of a local historic district or area that is:
 - (i) initiated in accordance with a municipal process described in Subsection (4)(b); and
 - (ii) not complete on or before January 1, 2016.
- (e) A vote described in Subsection (4)(b)(iii)(B) is not subject to Title 20A, Election Code.

Section $\{2\}$ 3. Section 10-9a-527 is enacted to read:

10-9a-527. Historic preservation.

(1) (a) A legislative body may designate a historic preservation (commission.)

Section 3 authority.

- (b) A legislative body may not designate the legislative body or the municipality's governing body as a historic preservation authority.
- (2) In making administrative decisions on land use applications, a historic preservation authority shall apply the plain language of the land use regulations to a land use application.
- (3) If a land use regulation does not plainly restrict a land use application, the historic preservation authority shall interpret and apply the land use regulation to favor the land use application.

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

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

- (1) Each municipality adopting a land use ordinance shall, by ordinance, establish one or more appeal authorities to hear and decide:
 - (a) requests for variances from the terms of the land use ordinances;
 - (b) appeals from decisions applying the land use ordinances; and
 - (c) appeals from a fee charged in accordance with Section 10-9a-510.
- (2) Each municipality that designates a historic preservation commission shall, by ordinance, establish an appeal authority that is comprised of one or more elected officials to hear and decide appeals from decisions of the historic preservation commission.
- } {[](2){](3)}} As a condition precedent to judicial review, each adversely affected person shall timely and specifically challenge a land use authority's decision, in accordance with local ordinance.

 $\{(3), (3), (4)\}$ An appeal authority:

- (a) shall:
- (i) act in a quasi-judicial manner; and
- (ii) serve as the final arbiter of issues involving the interpretation or application of land use ordinances; and
- (b) may not entertain an appeal of a matter in which the appeal authority, or any participating member, had first acted as the land use authority.

 $\{(4), (4), (5)\}$ By ordinance, a municipality may:

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

- (b) designate one or more separate appeal authorities to hear distinct types of appeals of land use authority decisions;
- (c) require an adversely affected party to present to an appeal authority every theory of relief that it can raise in district court;
- (d) not require an adversely affected party to pursue duplicate or successive appeals before the same or separate appeal authorities as a condition of the adversely affected party's duty to exhaust administrative remedies; and
- (e) provide that specified types of land use decisions may be appealed directly to the district court.
- {[}(5){](6)} If the municipality establishes or, prior to the effective date of this chapter, has established a multiperson board, body, or panel to act as an appeal authority, at a minimum the board, body, or panel shall:
 - (a) notify each of its members of any meeting or hearing of the board, body, or panel;
- (b) provide each of its members with the same information and access to municipal resources as any other member;
 - (c) convene only if a quorum of its members is present; and
 - (d) act only upon the vote of a majority of its convened members.
- (6) (a) Each municipality that designates a historic preservation district or area shall, by ordinance, establish or designate a historic preservation appeal authority.
 - (b) A historic preservation appeal authority shall:
 - (i) be comprised of the members of the governing body;
 - (ii) exercise only administrative authority and act in a quasi-judicial manner; and
- (iii) hear and decide appeals from administrative decisions of the historic preservation authority.
- (c) An applicant appealing an administrative decision of the historic preservation authority may appeal to either:
 - (i) the historic preservation appeal authority; or
 - (ii) the land use appeal authority established under Subsection (1).

Section $\{4\}$ 5. Section 10-9a-703 is amended to read:

10-9a-703. Appealing a land use authority's decision -- Panel of experts for appeals of geologic hazard decisions -- Automatic appeal for certain decisions.

- (1) The applicant, a board or officer of the municipality, or any person adversely affected by the land use authority's decision administering or interpreting a land use ordinance may, within the <u>applicable</u> time period [provided by ordinance], appeal that decision to the appeal authority by alleging that there is error in any order, requirement, decision, or determination made by the land use authority in the administration or interpretation of the land use ordinance.
- (2) (a) An applicant who has appealed a decision of the land use authority administering or interpreting the municipality's geologic hazard ordinance may request the municipality to assemble a panel of qualified experts to serve as the appeal authority for purposes of determining the technical aspects of the appeal.
- (b) If an applicant makes a request under Subsection (2)(a), the municipality shall assemble the panel described in Subsection (2)(a) consisting of, unless otherwise agreed by the applicant and municipality:
 - (i) one expert designated by the municipality;
 - (ii) one expert designated by the applicant; and
- (iii) one expert chosen jointly by the municipality's designated expert and the applicant's designated expert.
- (c) A member of the panel assembled by the municipality under Subsection (2)(b) may not be associated with the application that is the subject of the appeal.
 - (d) The applicant shall pay:
 - (i) 1/2 of the cost of the panel; and
 - (ii) the municipality's published appeal fee.

Section $\frac{5}{6}$. Section 10-9a-704 is amended to read:

10-9a-704. Time to appeal.

- (1) The municipality shall enact an ordinance establishing a reasonable time of not less than 10 days to appeal to an appeal authority a written decision issued by a land use authority.
- (2) In the absence of an ordinance establishing a reasonable time to appeal, an adversely affected party shall have 10 calendar days to appeal to an appeal authority a written decision issued by a land use authority.
- (3) Notwithstanding Subsections (1) and (2), for an appeal from a decision of a historic preservation {commission}authority regarding a land use application, {an adversely affected}

