

**APPLICABILITY OF LAND USE
PROVISIONS TO FEDERAL GOVERNMENT**

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Keith Grover

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies county and municipal land use provisions relating to their applicability to the federal government.

Highlighted Provisions:

This bill:

▸ modifies county and municipal land use provisions to provide that they apply to land owned by the federal government to the fullest extent allowed by federal law;

and

▸ requires the federal government to comply, to the extent allowed under federal law, with county and municipal land use ordinances.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-9a-304, as renumbered and amended by Laws of Utah 2005, Chapter 254

10-9a-305, as last amended by Laws of Utah 2009, Chapters 181 and 286

17-27a-304, as renumbered and amended by Laws of Utah 2005, Chapter 254



28 17-27a-305, as last amended by Laws of Utah 2009, Chapters 181 and 286



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

31 Section 1. Section 10-9a-304 is amended to read:

32 **10-9a-304. State and federal property.**

33 (1) Unless otherwise provided by law, nothing contained in this chapter may be
34 construed as giving a municipality jurisdiction over property owned by the state [~~or the United~~
35 ~~States~~].

36 (2) This chapter shall be construed to give a municipality jurisdiction over property
37 owned by the United States to the fullest extent allowed by federal law.

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

39 **10-9a-305. Other entities required to conform to municipality's land use**
40 **ordinances -- Exceptions -- School districts and charter schools -- Submission of**
41 **development plan and schedule.**

42 (1) (a) Each county, municipality, school district, charter school, local district, special
43 service district, [~~and~~] political subdivision of the state, and, to the extent allowed under federal
44 law, each agency of the federal government shall conform to any applicable land use ordinance
45 of any municipality when installing, constructing, operating, or otherwise using any area, land,
46 or building situated within that municipality.

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

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

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

56 or

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

- 59 (A) platforms;
- 60 (B) passenger terminals or stations;
- 61 (C) park and ride facilities;
- 62 (D) maintenance facilities;
- 63 (E) all related utility lines, roadways, and other facilities serving the public transit
- 64 facility; or
- 65 (F) other auxiliary facilities.

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

69 (c) A municipality located within the boundaries of a county of the first class may not,
70 through an agreement under Title 11, Chapter [3] 13, Interlocal Cooperation Act, require a
71 public transit district under Title 17B, Chapter 2a, Part 8, Public Transit District Act, to obtain
72 approval from the municipality prior to constructing a:

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

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

- 77 (A) platforms;
- 78 (B) passenger terminals or stations;
- 79 (C) park and ride facilities;
- 80 (D) maintenance facilities;
- 81 (E) all related utility lines, roadways, and other facilities serving the public transit
- 82 facility; or
- 83 (F) other auxiliary facilities.

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

86 (b) (i) Notwithstanding Subsection (4), a municipality may:

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

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

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

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

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

100 (4) A municipality may not:

101 (a) impose requirements for landscaping, fencing, aesthetic considerations,
102 construction methods or materials, additional building inspections, municipal building codes,
103 building use for educational purposes, or the placement or use of temporary classroom facilities
104 on school property;

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

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

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

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

118 (f) impose regulations upon the location of an educational facility except as necessary
119 to avoid unreasonable risks to health or safety.

120 (5) Subject to Section 53A-20-108, a school district or charter school shall coordinate

121 the siting of a new school with the municipality in which the school is to be located, to:

122 (a) avoid or mitigate existing and potential traffic hazards, including consideration of

123 the impacts between the new school and future highways; and

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

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

126 (a) provide a walk-through of school construction at no cost and at a time convenient to

127 the district or charter school; and

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

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

130 (i) a municipal building inspector;

131 (ii) (A) for a school district, a school district building inspector from that school

132 district; or

133 (B) for a charter school, a school district building inspector from the school district in

134 which the charter school is located; or

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

136 (A) not an employee of the contractor;

137 (B) approved by:

138 (I) a municipal building inspector; or

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

140 district; or

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

142 which the charter school is located; and

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

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

145 (c) If a school district or charter school uses a school district or independent building

146 inspector under Subsection (7)(a)(ii) or (iii), the school district or charter school shall submit to

147 the state superintendent of public instruction and municipal building official, on a monthly

148 basis during construction of the school building, a copy of each inspection certificate regarding

149 the school building.

150 (8) (a) A charter school shall be considered a permitted use in all zoning districts

151 within a municipality.

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

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

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

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

161 (A) the state superintendent of public instruction, as provided in Subsection
162 53A-20-104(3), if the school district or charter school used an independent building inspector
163 for inspection of the school building; or

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

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

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

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

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

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

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

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

182 (B) the demand for public facilities listed in Subsections 11-36-102(13)(a), (b), (c), (d),

183 (e), and (g) caused by the development;

184 (C) the amount of any applicable fee listed in Subsection 10-9a-510(5);

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

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

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

191 (10) Nothing in this section may be construed to modify or supersede Section
192 10-9a-304.

193 Section 3. Section **17-27a-304** is amended to read:

194 **17-27a-304. State and federal property.**

195 (1) Unless otherwise provided by law, nothing contained in this chapter may be
196 construed as giving a county jurisdiction over property owned by the state [~~or the United~~
197 ~~States~~].

198 (2) This chapter shall be construed to give a county jurisdiction over property owned
199 by the United States to the fullest extent allowed by federal law.

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

201 **17-27a-305. Other entities required to conform to county's land use ordinances --**
202 **Exceptions -- School districts and charter schools -- Submission of development plan and**
203 **schedule.**

204 (1) (a) Each county, municipality, school district, charter school, local district, special
205 service district, [~~and~~] political subdivision of the state, and, to the extent allowed under federal
206 law, each agency of the federal government shall conform to any applicable land use ordinance
207 of any county when installing, constructing, operating, or otherwise using any area, land, or
208 building situated within the unincorporated portion of the county.

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

213 (2) (a) Notwithstanding Subsection (1), a public transit district under Title 17B,

214 Chapter 2a, Part 8, Public Transit District Act, is not required to conform to any applicable
215 land use ordinance of a county of the first class when constructing a:

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

217 or

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

220 (A) platforms;

221 (B) passenger terminals or stations;

222 (C) park and ride facilities;

223 (D) maintenance facilities;

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

226 (F) other auxiliary facilities.

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

230 (c) A county of the first class may not, through an agreement under Title 11, Chapter
231 [3] 13, Interlocal Cooperation Act, require a public transit district under Title 17B, Chapter 2a,
232 Part 8, Public Transit District Act, to obtain approval from the county prior to constructing a:

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

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

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243 (F) other auxiliary facilities.

244 (3) (a) Except as provided in Subsection (4), a school district or charter school is

245 subject to a county's land use ordinances.

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

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

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

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

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

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

260 (4) A county may not:

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

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

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

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

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276 project unless the impact fee is imposed as provided in Title 11, Chapter 36, Impact Fees Act;
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278 (f) impose regulations upon the location of an educational facility except as necessary
279 to avoid unreasonable risks to health or safety.

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281 the siting of a new school with the county in which the school is to be located, to:

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

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287 the district or charter school; and

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292 district; or

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

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

296 (A) not an employee of the contractor;

297 (B) approved by:

298 (I) a county building inspector; or

299 (II) (Aa) for a school district, a school district building inspector from that school
300 district; or

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

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

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

305 (c) If a school district or charter school uses a school district or independent building
306 inspector under Subsection (7)(a)(ii) or (iii), the school district or charter school shall submit to

307 the state superintendent of public instruction and county building official, on a monthly basis
308 during construction of the school building, a copy of each inspection certificate regarding the
309 school building.

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

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313 an application for a building permit, shall be processed on a first priority basis.

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

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317 which sells alcohol, a charter school may be prohibited from a location which would otherwise
318 defeat the purpose for the zone unless the charter school provides a waiver.

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

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322 53A-20-104(3), if the school district or charter school used an independent building inspector
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325 charter school used a county building inspector for inspection of the school building.

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327 a school building if it used its own building inspector for inspection of the school building,
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330 school building from a school district official with authority to issue the certificate, if the
331 charter school used a school district building inspector for inspection of the school building.

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

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

338 (i) as early as practicable in the development process, but no later than the
339 commencement of construction; and
340 (ii) with sufficient detail to enable the land use authority to assess:
341 (A) the specified public agency's compliance with applicable land use ordinances;
342 (B) the demand for public facilities listed in Subsections 11-36-102(12)(a), (b), (c), (d),
343 (e), and (g) caused by the development;
344 (C) the amount of any applicable fee listed in Subsection 17-27a-509(5);
345 (D) any credit against an impact fee; and
346 (E) the potential for waiving an impact fee.
347 (b) The land use authority shall respond to a specified public agency's submission
348 under Subsection (9)(a) with reasonable promptness in order to allow the specified public
349 agency to consider information the municipality provides under Subsection (9)(a)(ii) in the
350 process of preparing the budget for the development.
351 (10) Nothing in this section may be construed to modify or supersede Section
352 17-27a-304.

Legislative Review Note
as of **8-31-09 10:25 AM**

Office of Legislative Research and General Counsel

H.B. 291 - Applicability of Land Use Provisions to Federal Government

Fiscal Note

2010 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

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