

1                                   **MUNICIPAL GOVERNMENT AND**  
2                                   **INCORPORATION AMENDMENTS**

3   1998 GENERAL SESSION

4   STATE OF UTAH

5   **Sponsor: David L. Zolman**

6 AN ACT RELATING TO CITIES AND TOWNS; MODIFYING PROVISIONS RELATING TO  
7 THE STATUS OF MUNICIPAL OFFICERS WHEN A MUNICIPALITY CHANGES  
8 CLASSES; AUTHORIZING CITY OR TOWN GOVERNING BODIES TO CHANGE  
9 NUMBER OF COMMISSION OR COUNCIL MEMBERS; MODIFYING THE PROVISION  
10 REGARDING A POLICE DEPARTMENT IN A FIRST OR SECOND CLASS CITY;  
11 REPEALING RESTRICTION AGAINST VOTING FOR OR ADOPTING AN OPTIONAL  
12 FORM OF MUNICIPAL GOVERNMENT FOLLOWING APPROVAL OF OR FAILURE TO  
13 APPROVE AN OPTIONAL FORM; AND MAKING TECHNICAL CORRECTIONS.

14 This act affects sections of Utah Code Annotated 1953 as follows:

15 AMENDS:

16           **10-2-305**, as enacted by Chapter 48, Laws of Utah 1977

17           **10-3-103**, as enacted by Chapter 48, Laws of Utah 1977

18           **10-3-104**, as enacted by Chapter 48, Laws of Utah 1977

19           **10-3-105**, as last amended by Chapter 278, Laws of Utah 1997

20           **10-3-106**, as enacted by Chapter 48, Laws of Utah 1977

21           **10-3-909**, as last amended by Chapter 32, Laws of Utah 1979

22 ENACTS:

23           **10-3-107**, Utah Code Annotated 1953

24           **10-3-1205.5**, Utah Code Annotated 1953

25 REPEALS:

26           **10-3-1206**, as last amended by Chapter 222, Laws of Utah 1985

27           **10-3-1207**, as enacted by Chapter 48, Laws of Utah 1977

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

2 Section 1. Section **10-2-305** is amended to read:

3 **10-2-305. Change of classes -- Officers.**

4 [When] (1) (a) If, by proclamation of the governor under Subsection 10-2-302(1), [any]  
5 the class of a municipality [shall become a municipality of another class, the officers then in office  
6 shall continue to be the officers of the municipality until their respective terms of office expire,  
7 and until their successors shall be duly elected and qualified.] whose governing body is organized  
8 under Chapter 3, Part 1, Governing Body, is changed to a class in which the governing body  
9 consists of a lesser number of members than the number of members of the municipality's  
10 governing body before the class change, the decrease takes effect when there are vacancies,  
11 whether by expiration of term, resignation, death, removal from office, or disqualification, in the  
12 office of commissioner or council member equal in number to the number of the decrease.

13 (b) No decrease in the number of members of the governing body due to a change in class  
14 under Section 10-2-302 may serve to shorten the term of any member of the governing body.

15 (c) If application of Subsection (1)(a) causes a disproportionate number of terms of  
16 remaining commissioners or council members to expire at the same time, the governing body shall  
17 adjust a number of terms of commissioners or council members so that the terms of commissioners  
18 and council members coincide with the schedule established in Subsections 10-3-203(1) and (2)  
19 for a first class city, Subsections 10-3-204(1) and (2) for a second class city, and Subsections  
20 10-3-205(1) and (2) for a third class city.

21 (2) If, by proclamation of the governor under Subsection 10-2-302(1), the class of a  
22 municipality whose governing body is organized under Chapter 3, Part 1, Governing Body, is  
23 changed to a class in which the governing body consists of a greater number of members than the  
24 number of members of the municipality's governing body before the class change:

25 (a) commission or council members to fill the new positions shall be elected at the next  
26 special or municipal election that is more than 45 days after adoption of the ordinance; and

27 (b) the governing body shall adjust the initial terms of those new members as necessary  
28 to ensure that:

29 (i) approximately half of the new members are elected to serve an initial term, of no less  
30 than one year, that allows their successors to serve a full four-year term that coincides with the  
31 schedule established in Subsection 10-3-203(1) for a first class city, Subsection 10-3-204(1) for

1 a second class city, and Subsection 10-3-205(1) for a third class city; and

2 (ii) the remaining new members are elected to serve an initial term, of no less than one  
3 year, that allows their successors to serve a full four-year term that coincides with the schedule  
4 established in Subsection 10-3-203(2) for a first class city, Subsection 10-3-204(2) for a second  
5 class city, and Subsection 10-3-205(2) for a third class city.

6 Section 2. Section **10-3-103** is amended to read:

7 **10-3-103. Governing body in cities of the first class.**

8 (1) The governing body of [cities] each city of the first class shall be a commission.

9 (2) (a) Except as provided in Section 10-3-107, each commission under Subsection (1)  
10 shall consist of five members [of which one].

11 (b) One of the members of the commission shall be the mayor, and the remaining [four]  
12 members shall be commissioners.

13 Section 3. Section **10-3-104** is amended to read:

14 **10-3-104. Governing body in cities of the second class.**

15 (1) The governing body of [cities] each city of the second class shall be a commission.

16 (2) (a) Except as provided in Section 10-3-107, each commission under Subsection (1)  
17 shall consist of three members [of which one].

18 (b) One of the members of the commission shall be the mayor, and the remaining [two]  
19 members shall be commissioners.

20 Section 4. Section **10-3-105** is amended to read:

21 **10-3-105. Governing body in cities of the third class.**

22 (1) The governing body of [cities] each city of the third class shall be a council  
23 [composed].

24 (2) (a) Except as provided in Section 10-3-107, each council under Subsection (1) shall  
25 consist of six members[- one of whom].

26 (b) One of the members of the council shall be the mayor, and the remaining [five]  
27 members shall be council members.

28 Section 5. Section **10-3-106** is amended to read:

29 **10-3-106. Governing body in towns.**

30 (1) The governing body of a town shall be a council.

31 (2) (a) Except as provided in Section 10-3-107, each council under Subsection (1) shall

1 consist of five persons [~~one of whom~~].

2 (b) One of the members of the council shall be the mayor, and the remaining [~~four~~]  
3 members shall be [~~councilmen~~] council members.

4 Section 6. Section **10-3-107** is enacted to read:

5 **10-3-107. Increasing or decreasing the number of governing body members.**

6 (1) Notwithstanding any other provision of this part and subject to Subsections (2) and (3),  
7 the governing body of a city or town may by ordinance increase to no more than nine or decrease  
8 to no less than three the number of members of the governing body.

9 (2) (a) No decrease in the number of members of the governing body by an ordinance  
10 adopted under Subsection (1) may serve to shorten the term of any member of the governing body.

11 (b) (i) If an ordinance adopted under Subsection (1) decreases the number of governing  
12 body members, the decrease takes effect when there are vacancies, whether by expiration of term,  
13 resignation, death, removal from office, or disqualification, in the office of commissioner or  
14 council member equal in number to the number of the decrease.

15 (ii) If application of Subsection (2)(b)(i) causes a disproportionate number of terms of  
16 remaining commissioners or council members to expire at the same time, the governing body shall  
17 adjust a number of terms of commissioners or council members so that the terms of commissioners  
18 and council members coincide with the schedule established in Subsections 10-3-203(1) and (2)  
19 for a first class city, Subsections 10-3-204(1) and (2) for a second class city, and Subsections  
20 10-3-205(1) and (2) for a third class city.

21 (c) If an ordinance adopted under Subsection (1) increases the number of governing body  
22 members:

23 (i) commission or council members to fill the new positions shall be elected at the next  
24 special or municipal election that is more than 45 days after adoption of the ordinance; and

25 (ii) the initial terms of those new members shall be adjusted as necessary to ensure that:

26 (A) approximately half of the new members are elected to serve an initial term, of no less  
27 than one year, that allows their successors to serve a full four-year term that coincides with the  
28 schedule established in Subsection 10-3-203(1) for a first class city, Subsection 10-3-204(1) for  
29 a second class city, and Subsection 10-3-205(1) for a third class city; and

30 (B) the remaining new members are elected to serve an initial term, of no less than one  
31 year, that allows their successors to serve a full four-year term that coincides with the schedule

1 established in Subsection 10-3-203(2) for a first class city, Subsection 10-3-204(2) for a second  
2 class city, and Subsection 10-3-205(2) for a third class city.

3 (3) Before enacting an ordinance under Subsection (1), each governing body shall:

4 (a) hold a public hearing on the question of whether to increase or decrease the number  
5 of governing body members; and

6 (b) provide reasonable notice of the public hearing at least 14 days in advance.

7 Section 7. Section **10-3-909** is amended to read:

8 **10-3-909. Police and fire departments in cities of the first and second class.**

9 The [~~board of city commissioners or other governing~~] legislative body of [each] a city of  
10 the first or the second class [~~shall~~] may create, support, maintain, and control a police department  
11 and may create, support, maintain, and control a fire department in [~~their respective cities~~] the city.

12 Section 8. Section **10-3-1205.5** is enacted to read:

13 **10-3-1205.5. Change in class does not affect form of government.**

14 A change in class under Section 10-2-302 of a city that has been reorganized under a form  
15 of municipal government provided in this part does not affect the form of that city's government  
16 or the number of members of that city's governing body.

17 Section 9. **Repealer.**

18 This act repeals:

19 Section **10-3-1206, Limitation on changing form of government.**

20 Section **10-3-1207, Disapproval of optional form by voters -- Limitation on**  
21 **resubmission.**

**Legislative Review Note**  
**as of 12-15-97 2:54 PM**

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**