

**INCORPORATION FEASIBILITY STUDY FOR
MUNICIPALITIES**

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: A. Lamont Tyler

AN ACT RELATING TO CITIES AND TOWNS; MODIFYING PROVISIONS RELATING TO THE INCORPORATION PROCESS; MODIFYING THE ASSUMPTIONS MADE BY THE FEASIBILITY CONSULTANT; RESTRICTING THE AMOUNT OF COSTS CONSIDERED BY THE FEASIBILITY CONSULTANT; APPLYING THESE AMENDMENTS TO PENDING ~~h [ANNEXATION]~~ **INCORPORATION** h PROCEEDINGS; MAKING TECHNICAL CHANGES; AND PROVIDING AN EFFECTIVE DATE.

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

AMENDS:

10-2-106, as last amended by Chapter 3, Laws of Utah 1997, Second Special Session

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

Section 1. Section **10-2-106** is amended to read:

10-2-106. Feasibility study -- Feasibility study consultant.

(1) Within 60 days of receipt of a certified request under Subsection 10-2-105(1)(b)(i), the county legislative body shall engage the feasibility consultant chosen under Subsection (2) to conduct a feasibility study.

(2) The feasibility consultant shall be chosen by a majority vote of a selection committee consisting of:

- (a) a person designated by the county legislative body;
- (b) a person designated by the sponsors of the request for a feasibility study; and
- (c) a person designated by the governor.

(3) The county legislative body shall require the feasibility consultant to:

- (a) complete the feasibility study and submit the written results to the county legislative

28 body and the contact sponsor no later than 90 days after the feasibility consultant is engaged to
29 conduct the study;

30 (b) submit with the full written results of the feasibility study a summary of the results no
31 longer than one page in length; and

32 (c) attend the public hearings under Subsection 10-2-108(1) and present the feasibility
33 study results and respond to questions from the public at those hearings.

34 (4) (a) The feasibility study shall consider:

35 (i) the population and population density within the area proposed for incorporation and
36 the surrounding area;

37 (ii) the history, geography, geology, and topography of and natural boundaries within the
38 area proposed to be incorporated and the surrounding area;

39 (iii) whether the proposed boundaries eliminate or create an unincorporated island or
40 peninsula;

41 (iv) whether the proposed incorporation will hinder or prevent a future and more logical
42 and beneficial incorporation or a future logical and beneficial annexation;

43 (v) the fiscal impact on unincorporated areas, other municipalities, special districts, and
44 other governmental entities in the county;

45 (vi) current and five-year projections of demographics and economic base in the proposed
46 city and surrounding area, including household size and income, commercial and industrial
47 development, and public facilities;

48 (vii) projected growth in the proposed city and in adjacent areas during the next five years;

49 (viii) subject to Subsection (4)(c), the present and five-year projections of the cost,
50 including overhead, of governmental services in the proposed city;

51 (ix) the present and five-year projected revenue for the proposed city;

52 (x) the projected impact the incorporation will have over the following five years on the
53 amount of taxes that property owners within the proposed city and in the remaining unincorporated
54 county will pay;

55 (xi) past expansion in terms of population and construction in the proposed city and the
56 surrounding area;

57 (xii) the extension of the boundaries of other nearby municipalities during the past ten
58 years, the willingness of those municipalities to annex the area proposed for incorporation, and the

59 probability that those municipalities would annex territory within the area proposed for
60 incorporation within the next five years except for the incorporation; and

61 (xiii) whether the legislative body of the county in which the area proposed to be
62 incorporated favors the incorporation proposal.

63 (b) For purposes of Subsection (4)(a)(ix), the feasibility consultant shall assume ad
64 valorem property tax rates on residential property within the proposed city at the same level at
65 which they would have been without the incorporation.

66 (c) For purposes of Subsection (4)(a)(viii)[;]:

67 (i) the feasibility consultant shall assume[;(i)] a level and quality of governmental services
68 to be provided to the proposed city in the future that fairly and reasonably approximate the level
69 and quality of governmental services being provided to the proposed city at the time of the
70 feasibility study; [and]

71 [~~(ii) that the proposed city will itself provide all governmental services.~~]

72 (ii) h IN DETERMINING h the present cost of a governmental service h , THE FEASIBILITY

72a CONSULTANT h shall h [be the lesser of] CONSIDER h :

73 (A) the amount it would cost the proposed city itself to provide the service after
74 incorporation; h [and] h

75 (B) h [the amount it presently costs the entity providing the service to provide the service;] IF

75a THE COUNTY IS CURRENTLY PROVIDING THE SERVICE TO THE PROPOSED CITY, THE COUNTY'S

75b COST OF PROVIDING THE SERVICE; AND

75c (C) IF THE COUNTY IS NOT CURRENTLY PROVIDING THE SERVICE TO THE PROPOSED
CITY,

75d THE AMOUNT THE PROPOSED CITY CAN REASONABLY EXPECT TO PAY FOR THE SERVICE
UNDER

75e A CONTRACT FOR THE SERVICE; h

76 and

77 (iii) the five-year projected cost of a governmental service shall be based on the amount
78 calculated under Subsection (4)(c)(ii), taking into account inflation and anticipated growth.

79 (5) If the results of the feasibility study or revised feasibility study do not meet the
80 requirements of Subsection 10-2-109(3), the feasibility consultant shall, as part of the feasibility
81 study or revised feasibility study and if requested by the sponsors of the request, make
82 recommendations as to how the boundaries of the proposed city may be altered so that the
83 requirements of Subsection 10-2-109(3) may be met.

84 (6) (a) For purposes of this Subsection (6), "pending" means that the process to incorporate
85 an unincorporated area has been initiated by the filing of a request for feasibility study under

86 Section 10-2-103 but that, as of the date this Subsection (6) becomes effective, ĥ [~~an election under~~
87 Section 10-2-111 has not yet been held for that proposed incorporation] A PETITION UNDER
87a SECTION 10-2-109 HAS NOT YET BEEN FILED ĥ .
88 (b) The amendments to Subsection (4) that become effective upon the effective date of this
89 Subsection (6) ĥ :
89a (i) ĥ apply to each pending proceeding proposing the incorporation of an unincorporated

90 area h ; AND

90a (ii) DO NOT APPLY TO A MUNICIPAL INCORPORATION PROCEEDING UNDER THIS PART IN
90b WHICH A PETITION UNDER SECTION 10-2-109 HAS BEEN FILED h .

91 (c) (i) If, in a pending incorporation proceeding, the feasibility consultant has, as of the
92 effective date of this Subsection (6), already completed the feasibility study, the county legislative
93 body shall, within 20 days after the effective date of this Subsection (6) and except as provided in
94 Subsection (6)(c)(iii), engage the feasibility consultant to revise the feasibility study to take into
95 account the amendments to Subsection (4) that became effective on the effective date of this
96 Subsection (6).

97 (ii) Except as provided in Subsection (6)(c)(iii), the county legislative body shall require
98 the feasibility consultant to complete the revised feasibility study under Subsection (6)(c)(i) within
99 20 days after being engaged to do so.

100 (iii) Notwithstanding Subsections (6)(c)(i) and (ii), a county legislative body is not
101 required to engage the feasibility consultant to revise the feasibility study if, within 15 days after
102 the effective date of this Subsection (6), the request sponsors file with the county clerk a written
103 withdrawal of the request signed by all the request sponsors.

104 (d) All provisions of this part that set forth the incorporation process following the
105 completion of a feasibility study shall apply with equal force following the completion of a revised
106 feasibility study under this Subsection (6), except that, if a petition under Section 10-2-109 has
107 already been filed based on the feasibility study that is revised under this Subsection (6):

108 (i) the notice required by Section 10-2-108 for the revised feasibility study shall include
109 a statement informing signers of the petition of their right to withdraw their signatures from the
110 petition and of the process and deadline for withdrawing a signature from the petition;

111 (ii) a signer of the petition may withdraw the signer's signature by filing with the county
112 clerk a written withdrawal within 30 days after the final notice under Subsection 10-2-108(2) has
113 been given with respect to the revised feasibility study; and

114 (iii) unless withdrawn, a signature on the petition may be used toward fulfilling the
115 signature requirements under Subsection 10-2-109(2)(a) for a petition based on the revised
116 feasibility study.

117 **Section 2. Effective date.**

118 If approved by two-thirds of all the members elected to each house, this act takes effect
119 upon approval by the governor, or the day following the constitutional time limit of Utah
120 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the

121 date of veto override.

Legislative Review Note
as of 1-18-99 12:58 PM

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

Office of Legislative Research and General Counsel