

ANNEXATION LAW AMENDMENTS

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: John E. Swallow

This act modifies provisions of the Utah Municipal Code to provide an exception to certain required annexations for cities of the first class. The act modifies the criteria that govern when a municipality may initiate an annexation without a property owner petition. The act prohibits protests to annexations that meet certain requirements. The act also makes technical changes.

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

AMENDS:

10-2-405, as last amended by Chapter 193, Laws of Utah 2000

10-2-406, as repealed and reenacted by Chapter 389, Laws of Utah 1997

10-2-407, as last amended by Chapter 193, Laws of Utah 2000

10-2-408, as last amended by Chapter 193, Laws of Utah 2000

10-2-418, as last amended by Chapter 361, Laws of Utah 1999

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

Section 1. Section **10-2-405** is amended to read:

10-2-405. Acceptance or rejection of an annexation petition -- Modified petition.

(1) (a) (i) A municipal legislative body may:

(A) except as provided in Subsection (1)(b), deny a petition filed under Section 10-2-403;

or

(B) accept the petition for further consideration under this part.

(ii) If a municipal legislative body denies a petition under Subsection (1)(a)(i)(A), it shall, within five days of the denial, mail written notice of the denial to the contact sponsor, the clerk of the county in which the area proposed for annexation is located, and the chair of the planning commission of each township in which any part of the area proposed for annexation is located.

28 (b) (i) [~~A~~] Except as provided in Subsection (1)(b)(ii), a municipal legislative body may
29 not deny a petition filed under Section 10-2-403 if:

30 [(~~i~~)] (A) the petition contains the signatures of the owners of private real property that:

31 [~~A~~] (I) is located within the area proposed for annexation;

32 [~~B~~] (II) covers a majority of the private land area within the area proposed for
33 annexation; and

34 [~~C~~] (III) is equal in value to at least 1/2 of the value of all private real property within the
35 area proposed for annexation;

36 [(~~ii~~)] (B) the population in the area proposed for annexation does not exceed 10% of the
37 population of the proposed annexing municipality; and

38 [(~~iii~~)] (C) the property tax rate for municipal services in the area proposed to be annexed
39 is higher than the property tax rate of the proposed annexing municipality.

40 (ii) Notwithstanding Subsection (1)(b)(i), the legislative body of a city of the first class
41 may deny an annexation petition if the legislative body determines that the city does not have the
42 current capacity to provide basic public safety services in the area proposed to be annexed.

43 (2) If the municipal legislative body accepts a petition under Subsection (1)(a)(i)(B), the
44 city recorder or town clerk, as the case may be, shall, within 30 days of that acceptance:

45 (a) with the assistance of the municipal attorney and of the clerk, surveyor, and recorder
46 of the county in which the area proposed for annexation is located, determine whether the petition
47 meets the requirements of Subsections 10-2-403(2), (3), and (4); and

48 (b) (i) if the city recorder or town clerk determines that the petition meets those
49 requirements, certify the petition and mail or deliver written notification of the certification to the
50 municipal legislative body, the contact sponsor, the county legislative body, and the chair of the
51 planning commission of each township in which any part of the area proposed for annexation is
52 located; or

53 (ii) if the city recorder or town clerk determines that the petition fails to meet any of those
54 requirements, reject the petition and mail or deliver written notification of the rejection and the
55 reasons for the rejection to the municipal legislative body, the contact sponsor, the county
56 legislative body, and the chair of the planning commission of each township in which any part of
57 the area proposed for annexation is located.

58 (3) (a) (i) If the city recorder or town clerk rejects a petition under Subsection (2)(b)(ii),

59 the petition may be modified to correct the deficiencies for which it was rejected and then refiled
60 with the city recorder or town clerk, as the case may be.

61 (ii) A signature on an annexation petition filed under Section 10-2-403 may be used
62 toward fulfilling the signature requirement of Subsection 10-2-403(2)(b) for the petition as
63 modified under Subsection (3)(a)(i).

64 (b) If a petition is refiled under Subsection (3)(a) after having been rejected by the city
65 recorder or town clerk under Subsection (2)(b)(ii), the refiled petition shall be treated as a newly
66 filed petition under Subsection 10-2-403(1).

67 (4) Each county clerk, surveyor, and recorder shall cooperate with and assist a city recorder
68 or town clerk in the determination under Subsection (2)(a).

69 Section 2. Section **10-2-406** is amended to read:

70 **10-2-406. Notice of certification -- Publishing and providing notice of petition.**

71 (1) After receipt of the notice of certification from the city recorder or town clerk under
72 Subsection 10-2-405(2)(b)(i) and except as provided in Subsection (3), the municipal legislative
73 body shall:

74 (a) (i) publish a notice at least once a week for three successive weeks, beginning no later
75 than ten days after receipt of the notice of certification, in a newspaper of general circulation
76 within:

77 (A) the area proposed for annexation; and

78 (B) the unincorporated area within 1/2 mile of the area proposed for annexation; or

79 (ii) if there is no newspaper of general circulation within those areas, post written notices
80 in conspicuous places within those areas that are most likely to give notice to residents within
81 those areas; and

82 (b) within 20 days of receipt of the notice of certification under Subsection
83 10-2-405(2)(b)(i), mail written notice to:

84 (i) the legislative body of the county in which the area proposed for annexation is located;

85 (ii) the board of each special district under Title 17A, Chapter 2, Independent Special
86 Districts, whose boundaries include part or all of the area proposed for annexation;

87 (iii) the legislative body of each municipality whose boundaries are within 1/2 mile of the
88 area proposed for annexation; and

89 (iv) each school district whose boundaries include part or all of the area proposed for

90 annexation.

91 (2) (a) The notice under Subsections (1)(a) and (b) shall:

92 (i) state that a petition has been filed with the municipality proposing the annexation of
93 an area to the municipality;

94 (ii) state the date of the municipal legislative body's receipt of the notice of certification
95 under Subsection 10-2-405(2)(b)(i);

96 (iii) describe the area proposed for annexation in the annexation petition;

97 (iv) state that the complete annexation petition is available for inspection and copying at
98 the office of the city recorder or town clerk;

99 (v) state in conspicuous and plain terms that the municipality may grant the petition and
100 annex the area described in the petition unless, within the time required under Subsection
101 10-2-407(2)(a)(i)(A) or 10-2-407(2)(e), as the case may be, a written protest to the annexation
102 petition is filed with the commission and a copy of the protest delivered to the city recorder or
103 town clerk of the proposed annexing municipality; and

104 (vi) state the address of the commission or, if a commission has not yet been created in the
105 county, the county clerk, where a protest to the annexation petition may be filed.

106 (b) The statement required by Subsection (2)(a)(v) shall state the deadline for filing a
107 written protest in terms of the actual date rather than by reference to the statutory citation.

108 (c) In addition to the requirements under Subsection (2)(a), a notice under Subsection
109 (1)(a) shall include a statement that a protest to the annexation petition may be filed with the
110 commission by property owners if it contains the signatures of the owners of private real property
111 that:

112 (i) is located in the unincorporated area within 1/2 mile of the area proposed for
113 annexation;

114 (ii) covers at least 25% of the private land area located in the unincorporated area within
115 1/2 mile of the area proposed for annexation; and

116 (iii) is equal in value to at least 15% of all real property located in the unincorporated area
117 within 1/2 mile of the area proposed for annexation.

118 (3) (a) After receipt of the notice of certification from the city recorder or town clerk under
119 Subsection 10-2-405(2)(b)(i) for an annexation petition that meets the requirements of Subsection
120 10-2-407(4), the municipal legislative body shall:

121 (i) publish a notice at least once in a newspaper of general circulation within the area
 122 proposed for annexation; or

123 (ii) if there is no newspaper of general circulation within the area proposed for annexation,
 124 post written notices in conspicuous places within that area that are most likely to give notice to
 125 residents or property owners within that area.

126 (b) Subsections (2)(a)(v), (vi), (b), and (c) do not apply to an annexation petition that
 127 meets the requirements of Subsection 10-2-407(4).

128 Section 3. Section **10-2-407** is amended to read:

129 **10-2-407. Protest to annexation petition -- Requirements -- Disposition if no protest**
 130 **-- Township planning commission recommendation.**

131 (1) (a) [~~A~~] Except as provided in Subsection (4), a protest to an annexation petition under
 132 Section 10-2-403 may be filed by:

133 (i) the legislative body of the county in which the area proposed for annexation is located;

134 (ii) the board of a special district whose boundaries include part or all of the area proposed
 135 for annexation;

136 (iii) the legislative body of a municipality whose boundaries are within 1/2 mile of the area
 137 proposed for annexation; or

138 (iv) the owners of private real property that:

139 (A) is located in the unincorporated area within 1/2 mile of the area proposed for
 140 annexation;

141 (B) covers at least 25% of the private land area located in the unincorporated area within
 142 1/2 mile of the area proposed for annexation; and

143 (C) is equal in value to at least 15% of all real property located in the unincorporated area
 144 within 1/2 mile of the area proposed for annexation.

145 (b) (i) [~~(A) Except as provided in Subsection (1)(b)(i)(B), a~~] A township planning
 146 commission may recommend to the legislative body of the county in which the township is located
 147 that the county legislative body file a protest against a proposed annexation under this part of an
 148 area located within the township.

149 [~~(B) Subsection (1)(b)(i)(A) does not apply if the time for filing a protest under Subsection~~
 150 ~~(2)(a)(i)(A) or (2)(e) expires before July 17, 1997.~~]

151 (ii) (A) [~~Except as provided in Subsection (1)(b)(ii)(B), the~~] The township planning

152 commission shall communicate each recommendation under Subsection (1)(b)(i) in writing to the
153 county legislative body within 30 days of the city recorder or town clerk's certification of the
154 annexation petition under Subsection 10-2-405(2)(b)(i).

155 ~~[(B) Notwithstanding Subsection (1)(b)(ii)(A), if the city recorder or town clerk's~~
156 ~~certification under Subsection 10-2-405(2)(b)(i) occurs before July 17, 1997, the township~~
157 ~~planning commission shall communicate its recommendation under Subsection (1)(b)(i) in writing~~
158 ~~to the county legislative body on or before August 16, 1997, but no later than the deadline for filing~~
159 ~~a protest under Subsection (2)(a)(i)(A) or (2)(e), excluding an extension under Subsection (2)(f).]~~

160 [(C)] (B) At the time the recommendation is communicated to the county legislative body
161 under Subsection (1)(b)(ii)(A), the township planning commission shall mail or deliver a copy of
162 the recommendation to the legislative body of the proposed annexing municipality and to the
163 contact sponsor.

164 (2) (a) Each protest under Subsection (1)(a) shall:

165 (i) be filed:

166 (A) except as provided in Subsections (2)(e) and (f), no later than 60 days after the
167 municipal legislative body's receipt of the notice of certification under Subsection
168 10-2-405(2)(b)(i); and

169 (B) (I) in a county that has already created a commission under Section 10-2-409, with the
170 commission; or

171 (II) in a county that has not yet created a commission under Section 10-2-409, with the
172 clerk of the county in which the area proposed for annexation is located; and

173 (ii) state each reason for the protest of the annexation petition.

174 (b) The party filing a protest under this section shall on the same date deliver or mail a
175 copy of the protest to the city recorder or town clerk of the proposed annexing municipality.

176 (c) Each clerk who receives a protest under Subsection (2)(a)(i)(B)(II) shall immediately
177 notify the county legislative body of the protest and shall deliver the protest to the boundary
178 commission within five days of its creation under Subsection 10-2-409(1)(b).

179 (d) Each protest under Subsection (1)(a)(iv) shall, in addition to the requirements of
180 Subsections (2)(a) and (b):

181 (i) indicate the typed or printed name and current residence address of each owner signing
182 the protest; and

183 (ii) designate one of the signers of the protest as the contact person and state the mailing
184 address of the contact person.

185 (e) Notwithstanding Subsection (2)(a)(i)(A) and except as provided in Subsection (2)(f),
186 each protest under Subsection (1) shall be filed no later than 40 days after the municipal legislative
187 body's receipt of the notice of certification under Subsection 10-2-405(2)(b)(i) if the annexation
188 petition proposes the annexation of an area that:

189 (i) is undeveloped; and

190 (ii) covers an area that is equivalent to less than 5% of the total land mass of all private real
191 property within the municipality.

192 (f) The deadline under Subsection (2)(a)(i)(A) or (2)(e) for the county legislative body to
193 file a protest is extended by ten days if:

194 (i) the city recorder or town clerk's certification of the annexation petition under
195 Subsection 10-2-405(2)(b)(i) occurs before July 17, 1997; and

196 (ii) the time for filing a protest under Subsection (2)(a)(i)(A) or (2)(e) has not expired as
197 of July 17, 1997.

198 (3) (a) (i) If a protest is filed under this section:

199 (A) the municipal legislative body may, at its next regular meeting after expiration of the
200 deadline under Subsection (2)(a)(i)(A) or (e) and except as provided in Subsection (3)(a)(iii), deny
201 the annexation petition; or

202 (B) if the municipal legislative body does not deny the annexation petition under
203 Subsection (3)(a)(i)(A), the municipal legislative body may take no further action on the
204 annexation petition until after receipt of the commission's notice of its decision on the protest
205 under Section 10-2-416.

206 (ii) If a municipal legislative body denies an annexation petition under Subsection
207 (3)(a)(i)(A), the municipal legislative body shall, within five days of the denial, send notice of the
208 denial in writing to:

209 (A) the contact sponsor of the annexation petition;

210 (B) the commission;

211 (C) each entity that filed a protest; and

212 (D) if a protest was filed under Subsection (1)(a)(iv), the contact person.

213 (iii) ~~[A]~~ Except as provided in Subsection (3)(a)(iv), a municipal legislative body may not

214 deny an annexation petition if:

215 (A) the petition contains the signatures of the owners of private real property that:

216 (I) is located within the area proposed for annexation;

217 (II) covers a majority of the private land area within the area proposed for annexation; and

218 (III) is equal in value to at least 1/2 of the value of all private real property within the area
219 proposed for annexation;

220 (B) the population in the area proposed for annexation does not exceed 10% of the
221 population of the proposed annexing municipality; and

222 (C) the property tax rate for municipal services in the area proposed to be annexed is
223 higher than the property tax rate of the proposed annexing municipality.

224 (iv) Notwithstanding Subsection (3)(a)(iii), the legislative body of a city of the first class
225 may deny an annexation petition if the legislative body determines that the city does not have the
226 current capacity to provide basic public safety services in the area proposed to be annexed.

227 (b) (i) If no timely protest is filed under this section, the municipal legislative body may,
228 subject to Subsection (3)(b)(ii), grant the petition and, by ordinance, annex the area that is the
229 subject of the annexation petition.

230 (ii) Before granting an annexation petition under Subsection (3)(b)(i), the municipal
231 legislative body shall:

232 (A) hold a public hearing; and

233 (B) at least seven days before the public hearing under Subsection (3)(b)(ii)(A):

234 (I) publish notice of the hearing in a newspaper of general circulation within the
235 municipality and the area proposed for annexation; or

236 (II) if there is no newspaper of general circulation in those areas, post written notices of
237 the hearing in conspicuous places within those areas that are most likely to give notice to residents
238 within those areas.

239 (4) Notwithstanding Subsection (1), a protest to an annexation petition under Section
240 10-2-403 may not be filed if:

241 (a) the area proposed to be annexed is:

242 (i) residential or undeveloped; and

243 (ii) contiguous to the proposed annexing municipality;

244 (b) the annexation will not create an island of unincorporated territory within the

245 municipality; and

246 (c) the annexation petition contains the signatures of the owners of private real property

247 that:

248 (i) is located within the area proposed for annexation;

249 (ii) covers at least 80% of the private land area within the area proposed for annexation;

250 and

251 (iii) is equal in value to at least 80% of all private real property within the area proposed

252 for annexation.

253 Section 4. Section **10-2-408** is amended to read:

254 **10-2-408. Denial of or granting the annexation petition.**

255 (1) After receipt of the commission's decision on a protest under Subsection 10-2-416(2),
256 a municipal legislative body may:

257 (a) except as provided in Subsection (2), deny the annexation petition; or

258 (b) if the commission approves the annexation, grant the annexation petition and, by
259 ordinance and consistent with the commission's decision, annex the area that is the subject of the
260 annexation petition.

261 (2) (a) [~~A~~] Except as provided in Subsection (2)(b), a municipal legislative body may not
262 deny an annexation petition if:

263 [~~(a)~~] (i) the petition contains the signatures of the owners of private real property that:

264 [~~(i)~~] (A) is located within the area proposed for annexation;

265 [~~(ii)~~] (B) covers a majority of the private land area within the area proposed for
266 annexation; and

267 [~~(iii)~~] (C) is equal in value to at least 1/2 of the value of all private real property within the
268 area proposed for annexation;

269 [~~(b)~~] (ii) the population in the area proposed for annexation does not exceed 10% of the
270 population of the proposed annexing municipality; and

271 [~~(c)~~] (iii) the property tax rate for municipal services in the area proposed to be annexed
272 is higher than the property tax rate of the proposed annexing municipality.

273 (b) Notwithstanding Subsection (2)(a), the legislative body of a city of the first class may
274 deny an annexation petition if the legislative body determines that the city does not have the
275 current capacity to provide basic public safety services in the area proposed to be annexed.

276 Section 5. Section **10-2-418** is amended to read:

277 **10-2-418. Annexation of an island or peninsula without a petition -- Notice --**
278 **Hearing.**

279 (1) (a) Notwithstanding Subsection 10-2-402(2), a municipality may annex an
280 unincorporated area under this section without an annexation petition if:

281 (i) the area to be annexed consists of one or more islands within or peninsulas contiguous
282 to the municipality;

283 (ii) the majority of each island or peninsula consists of residential or commercial
284 development;

285 (iii) the area proposed for annexation requires the delivery of municipal-type services; and

286 (iv) the municipality has provided [~~most~~] one or [~~at~~] more of the municipal-type services
287 to the area for more than one year.

288 (b) Notwithstanding Subsection 10-2-402(1)(b)(iii), a municipality may annex a portion
289 of an island or peninsula under this section, leaving unincorporated the remainder of the
290 unincorporated island or peninsula, if, in adopting the resolution under Subsection (2)(a)(i), the
291 municipal legislative body determines that not annexing the entire unincorporated island or
292 peninsula is in the municipality's best interest.

293 (2) (a) The municipal legislative body of a municipality intending to annex an area under
294 this section shall:

295 (i) adopt a resolution indicating the municipal legislative body's intent to annex the area,
296 describing the area proposed to be annexed;

297 (ii) (A) publish notice at least once a week for three successive weeks in a newspaper of
298 general circulation within the municipality and the area proposed for annexation; or

299 (B) if there is no newspaper of general circulation in the areas described in Subsection
300 (2)(a)(ii)(A), post at least one notice per 1,000 population in places within those areas that are most
301 likely to give notice to the residents of those areas;

302 (iii) send written notice to the board of each special district whose boundaries contain
303 some or all of the area proposed for annexation and to the legislative body of the county in which
304 the area proposed for annexation is located; and

305 (iv) hold a public hearing on the proposed annexation no earlier than 60 days after the
306 adoption of the resolution under Subsection (2)(a)(i).

307 (b) The notice under Subsections (2)(a)(ii) and (iii) shall:
308 (i) state that the municipal legislative body has adopted a resolution indicating its intent
309 to annex the area proposed for annexation;
310 (ii) state the date, time, and place of the public hearing under Subsection (2)(a)(iv);
311 (iii) describe the area proposed for annexation; and
312 (iv) state in conspicuous and plain terms that the municipal legislative body will annex the
313 area unless, at or before the public hearing under Subsection (2)(a)(iv), written protests to the
314 annexation are filed by the owners of private real property that:
315 (A) is located within the area proposed for annexation;
316 (B) covers a majority of the total private land area within the entire area proposed for
317 annexation; and
318 (C) is equal in value to at least 1/2 the value of all private real property within the entire
319 area proposed for annexation.
320 (c) The first publication of the notice required under Subsection (2)(a)(ii)(A) shall be
321 within 14 days of the municipal legislative body's adoption of a resolution under Subsection
322 (2)(a)(i).
323 (3) Upon conclusion of the public hearing under Subsection (2)(a)(iv), the municipal
324 legislative body shall adopt an ordinance annexing the area proposed for annexation under this
325 section unless, at or before the hearing, written protests to the annexation have been filed with the
326 city recorder or town clerk, as the case may be, by the owners of private real property that:
327 (a) is located within the area proposed for annexation;
328 (b) covers a majority of the total private land area within the entire area proposed for
329 annexation; and
330 (c) is equal in value to at least 1/2 the value of all private real property within the entire
331 area proposed for annexation.
332 (4) If protests are timely filed that comply with Subsection (3), the municipal legislative
333 body may not adopt an ordinance annexing the area proposed for annexation, and the annexation
334 proceedings under this section shall be considered terminated.

Legislative Review Note
as of 1-24-01 2:06 PM

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

Office of Legislative Research and General Counsel