

Senator L. Steven Poulton proposes the following substitute bill:

**PROTECTION OF UNINCORPORATED AREAS**  
**IN COUNTIES OF THE FIRST CLASS**

2002 GENERAL SESSION

STATE OF UTAH

**Sponsor: A. Lamont Tyler**

**This act modifies the Utah Municipal Code by amending provisions relating to annexation. The act provides for the review and approval of municipal annexations in a county of the first class by the county legislative body. The act sets standards for the effective date of annexations. The act amends the definition of affected entity to include community councils. The act limits forced annexations to those areas within a municipality's expansion area and amends the definition of expansion area with respect to municipalities in first class counties. The act makes other technical changes.**

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

AMENDS:

- 10-2-401**, as last amended by Chapter 206, Laws of Utah 2001
- 10-2-405**, as last amended by Chapter 206, Laws of Utah 2001
- 10-2-407**, as last amended by Chapter 206, Laws of Utah 2001
- 10-2-408**, as last amended by Chapter 206, Laws of Utah 2001

ENACTS:

- 10-2-407.5**, Utah Code Annotated 1953
- 10-2-408.5**, Utah Code Annotated 1953

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

Section 1. Section **10-2-401** is amended to read:

**10-2-401. Definitions -- Property owner provisions.**

- (1) As used in this part:



- 26 (a) "Affected entity" means:
- 27 (i) a county in whose unincorporated area the area proposed for annexation is located;
- 28 (ii) an independent special district under Title 17A, Chapter 2, Independent Special
- 29 Districts, whose boundaries include any part of an area proposed for annexation;
- 30 (iii) a school district whose boundaries include any part of an area proposed for
- 31 annexation; ~~and~~
- 32 (iv) a municipality whose boundaries are within ½ mile of an area proposed for
- 33 annexation~~[-]; and~~
- 34 (v) a community council whose boundaries include any part of an area proposed for
- 35 annexation.
- 36 (b) "Annexation petition" means a petition under Section 10-2-403 proposing the
- 37 annexation to a municipality of a contiguous, unincorporated area that is contiguous to the
- 38 municipality.
- 39 (c) "Commission" means a boundary commission established under Section 10-2-409 for
- 40 the county in which the property that is proposed for annexation is located.
- 41 (d) (i) "Expansion area" means:
- 42 (A) for a municipality in a specified county, the unincorporated area that is identified in
- 43 an annexation policy plan under Section 10-2-401.5 as the area that the municipality anticipates
- 44 annexing in the future[-]; or
- 45 (B) for a municipality in a county of the first class, the unincorporated area that is
- 46 identified as that municipality's expansion area on the official map presented by each county of the
- 47 first class to the Legislative Management Committee in accordance with the provisions of HB 155
- 48 (2001 General Session) in an official meeting of the Legislative Management Committee on or
- 49 before March 31, 2002.
- 50 (ii) Expansion areas of municipalities within the same county of the first class may overlap
- 51 with each other.
- 52 (e) "Feasibility consultant" means a person or firm with expertise in the processes and
- 53 economics of local government.
- 54 (f) "Municipal selection committee" means a committee in each county composed of the
- 55 mayor of each municipality within that county.
- 56 (g) "Private," with respect to real property, means not owned by the United States or any

57 agency of the federal government, the state, a county, a municipality, a school district, a special  
58 district under Title 17A, Special Districts, or any other political subdivision or governmental entity  
59 of the state.

60 (h) "Specified county" means a county of the second, third, fourth, fifth, or sixth class.

61 (i) "Urban development" means:

62 (i) a housing development with more than 15 residential units and an average density  
63 greater than one residential unit per acre; or

64 (ii) a commercial or industrial development for which cost projections exceed \$750,000  
65 for all phases.

66 (2) For purposes of this part:

67 (a) the owner of real property shall be the record title owner according to the records of  
68 the county recorder on the date of the filing of the petition or protest; and

69 (b) the value of private real property shall be determined according to the last assessment  
70 roll for county taxes before the filing of the petition or protest.

71 (3) For purposes of each provision of this part that requires the owners of private real  
72 property covering a percentage or majority of the total private land area within an area to sign a  
73 petition or protest:

74 (a) a parcel of real property may not be included in the calculation of the required  
75 percentage or majority unless the petition or protest is signed by:

76 (i) except as provided in Subsection (3)(a)(ii), owners representing a majority ownership  
77 interest in that parcel; or

78 (ii) if the parcel is owned by joint tenants or tenants by the entirety, 50% of the number  
79 of owners of that parcel;

80 (b) the signature of a person signing a petition or protest in a representative capacity on  
81 behalf of an owner is invalid unless:

82 (i) the person's representative capacity and the name of the owner the person represents  
83 are indicated on the petition or protest with the person's signature; and

84 (ii) the person provides documentation accompanying the petition or protest that  
85 substantiates the person's representative capacity; and

86 (c) subject to Subsection (3)(b), a duly appointed personal representative may sign a  
87 petition or protest on behalf of a deceased owner.

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

89 **10-2-405. Acceptance or rejection of an annexation petition -- Modified petition.**

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

91 (I) except as provided in Subsection (1)(b) and subject to Subsection (1)(a)(i)(B), deny a  
92 petition filed under Section 10-2-403; or

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

94 (B) A municipal legislative body's failure to act to deny or accept a petition under  
95 Subsection (1)(a)(i)(A) within 14 days after the filing of the petition shall be considered to be an  
96 acceptance of the petition for further consideration under this part.

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

101 (b) A municipal legislative body may not deny a petition filed under Section 10-2-403  
102 proposing to annex an area located in a county of the first class if:

103 (i) the petition contains the signatures of the owners of private real property that:

104 (A) is located within the area proposed for annexation;

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

106 (C) is equal in value to at least ½ of the value of all private real property within the area  
107 proposed for annexation;

108 (ii) the population in the area proposed for annexation does not exceed 10% of the  
109 population of the proposed annexing municipality;

110 (iii) the property tax rate for municipal services in the area proposed to be annexed is  
111 higher than the property tax rate of the proposed annexing municipality; ~~and~~

112 (iv) all annexations by the proposed annexing municipality during the year that the petition  
113 was filed have not increased the municipality's population by more than 20%[-]; and

114 (v) h FOR PETITIONS FILED ON OR AFTER MAY 6, 2002, h the area proposed for annexation  
114a is within the municipality's expansion area.

115 (2) If the municipal legislative body accepts a petition under Subsection (1)(a)(i) (A) or  
116 is considered to have accepted the petition under Subsection (1)(a)(i)(B), the city recorder or town  
117 clerk, as the case may be, shall, within 30 days of that acceptance:

118 (a) with the assistance of the municipal attorney and of the clerk, surveyor, and recorder

119 of the county in which the area proposed for annexation is located, determine whether the petition  
 120 meets the requirements of Subsections 10-2-403(2), (3), and (4); and

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

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

131 (3) (a) (i) If the city recorder or town clerk rejects a petition under Subsection (2)(b)(ii),  
 132 the petition may be modified to correct the deficiencies for which it was rejected and then refiled  
 133 with the city recorder or town clerk, as the case may be.

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

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

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

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

143 **10-2-407. Protest to annexation petition -- Township planning commission**  
 144 **recommendation -- Petition requirements -- Disposition of petition if no protest filed.**

145 (1) (a) A protest to an annexation petition under Section 10-2-403 may be filed by:

146 (i) the legislative body or governing board of an affected entity; or

147 (ii) for a proposed annexation of an area within a county of the first class, the owners of  
 148 private real property that:

149 (A) is located in the unincorporated area within ½ mile of the area proposed for

150 annexation;

151 (B) covers at least 25% of the private land area located in the unincorporated area within  
152 ½ mile of the area proposed for annexation; and

153 (C) is equal in value to at least 15% of all real property located in the unincorporated area  
154 within ½ mile of the area proposed for annexation.

155 (b) (i) A planning commission of a township located in a county of the first class may  
156 recommend to the legislative body of the county in which the township is located that the county  
157 legislative body file a protest against a proposed annexation under this part of an area located  
158 within the township.

159 (ii) (A) The township planning commission shall communicate each recommendation  
160 under Subsection (1)(b)(i) in writing to the county legislative body within 30 days of the city  
161 recorder or town clerk's certification of the annexation petition under Subsection 10-2-405(2)(b)(i).

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

165a **h (c) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (1)(a), A PROTEST TO A**  
165b **PETITION FOR ANNEXATION MAY NOT BE FILED UNDER THIS SECTION IF THE PETITION FOR**  
165c **ANNEXATION MEETS THE REQUIREMENTS OF SUBSECTION 10-2-405(1)(b). h**

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

167 (i) be filed:

168 (A) no later than **h [30] 60 h** days after the municipal legislative body's receipt of the notice  
168a of

169 certification under Subsection 10-2-405(2)(b)(i); and

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

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

174 (ii) state each reason for the protest of the annexation petition and, if the area proposed to  
175 be annexed is located in a specified county, justification for the protest under the standards  
176 established in this chapter;

177 (iii) if the area proposed to be annexed is located in a specified county, contain other  
178 information that the commission by rule requires or that the party filing the protest considers  
179 pertinent; and

180 (iv) the name and address of a contact person who is to receive notices sent by the

181 commission with respect to the protest proceedings.

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

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

187 (d) Each protest of a proposed annexation of an area located in a county of the first class  
188 under Subsection (1)(a)(ii) shall, in addition to the requirements of Subsections (2)(a) and (b):

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

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

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

194 (A) the municipal legislative body may, at its next regular meeting after expiration of the  
195 deadline under Subsection (2)(a)(i)(A) and, for a proposed annexation of an area located in a  
196 county of the first class, except as provided in Subsection (3)(a)(iii), deny the annexation petition;  
197 or

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

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

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

206 (B) the commission;

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

208 (D) if a protest was filed under Subsection (1)(a)(ii) for a proposed annexation of an area  
209 located in a county of the first class, the contact person.

210 (iii) A municipal legislative body may not deny an annexation petition proposing to annex  
211 an area located in a county of the first class if:

212 (A) the petition contains the signatures of the owners of private real property that:  
 213 (I) is located within the area proposed for annexation;  
 214 (II) covers a majority of the private land area within the area proposed for annexation; and  
 215 (III) is equal in value to at least 1/2 of the value of all private real property within the area

216 proposed for annexation;  
 217 (B) the population in the area proposed for annexation does not exceed 10% of the  
 218 population of the proposed annexing municipality;

219 (C) the property tax rate for municipal services in the area proposed to be annexed is  
 220 higher than the property tax rate of the proposed annexing municipality; [~~and~~]

221 (D) all annexations by the proposed annexing municipality during the year that the petition  
 222 was filed have not increased the municipality's population by more than 20% [-]; and

223 (E) h FOR PETITIONS FILED ON OR AFTER MAY 6, 2002, h the area proposed for annexation  
 223a is within the municipality's expansion area.

224 (b) (i) If no timely protest is filed under this section, the municipal legislative body may,  
 225 subject to Subsection (3)(b)(ii), and unless the annexation petition has been denied under  
 226 Subsection 10-2-407.5(3)(b), grant the petition and, by ordinance, annex the area that is the subject  
 227 of the annexation petition.

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

230 (A) hold a public hearing; and

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

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

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

237 Section 4. Section **10-2-407.5** is enacted to read:

238 **10-2-407.5. County review and approval of annexation.**

239 (1) Upon receipt of an annexation petition within a county of the first class, the county  
 240 clerk shall forward the petition to the county legislative body for its review and approval.

241 (2) Except with respect to an annexation under Section 10-2-418, the county legislative  
 242 body in a county of the first class shall review the proposed annexation and shall include in its

243 review:

244 (a) the impact of the proposed annexation on the municipal services in the remaining  
245 unincorporated areas of the county and the impact on the municipal services fund;

246 (b) the interests of the citizens in the remaining nearby unincorporated areas of the county  
247 who are not included in the area proposed to be annexed;

248 (c) the present and five-year projections of the cost of governmental services in the area  
249 proposed for annexation; and

250 (d) the present and five-year projected revenue to the proposed annexing municipality from  
251 the area proposed for annexation.

252 (3) After a review under Subsection (2), the county legislative body in a county of the first  
253 class may:

254 (a) approve the petition for further action, review, and consideration by the municipality  
255 under the provisions of this part;

256 (b) if the county legislative body determines that there are legal defects in the petition or  
257 that the average annual amount under Subsection (2)(d) exceeds that average annual amount under  
258 Subsection (2)(c) by more than 5%, deny the proposed annexation, in which case no further action  
259 shall be taken on the petition; or

260 (c) file a protest to the annexation petition in accordance with the provisions of Section  
261 10-2-407.

262 (4) In making the calculation required by Subsection (3)(b), the county legislative body  
263 may group together more than one proposed annexation to the same municipality which are  
264 simultaneously under consideration by the municipality.

265 (5) If the county legislative body in a county of the first class denies the proposed  
266 annexation under Subsection (3)(b), it shall make written findings outlining the reasons for its  
267 denial.

268 (6) Any party in interest may seek judicial review of a decision by a county to deny an  
269 annexation petition under Subsection (3)(b) by filing an action in an appropriate district court  
270 within 30 days of the date of the written decision of the county. A court in which an action is filed  
271 under this Subsection (6) may not overturn the decision of the county unless the court finds that:

272 (a) the county legislative body acted arbitrarily or capriciously; or

273 (b) the county legislative body materially failed to follow the procedures set forth in this

274 section.

275 Section 5. Section **10-2-408** is amended to read:

276 **10-2-408. Denial of or granting the annexation petition.**

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

279 (a) except as provided in Subsection (2) for a proposed annexation of an area located in  
280 a county of the first class, deny the annexation petition; or

281 (b) if the commission approves the annexation, and unless the annexation petition has been  
282 denied under Subsection 10-2-407.5(3)(b), grant the annexation petition and, by ordinance and  
283 consistent with the commission's decision, annex the area that is the subject of the annexation  
284 petition.

285 (2) A municipal legislative body may not deny an annexation petition proposing to annex  
286 an area located in a county of the first class if:

287 (a) the petition contains the signatures of the owners of private real property that:

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

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

290 (iii) is equal in value to at least ½ of the value of all private real property within the area  
291 proposed for annexation;

292 (b) the population in the area proposed for annexation does not exceed 10% of the  
293 population of the proposed annexing municipality;

294 (c) the property tax rate for municipal services in the area proposed to be annexed is higher  
295 than the property tax rate of the proposed annexing municipality; [~~and~~]

296 (d) all annexations by the proposed annexing municipality during the year that the petition  
297 was filed have not increased the municipality's population by more than 20% [~~]; and~~

298 (e) the area proposed for annexation is within the municipality's expansion area.

299 Section 6. Section **10-2-408.5** is enacted to read:

300 **10-2-408.5. Effective date of annexation.**

301 In <sup>h</sup> COUNTIES OF THE FIRST CLASS, IN <sup>h</sup> order to permit counties and municipalities to  
301a adequately fund and budget for the  
302 providing of municipal services, a municipal annexation shall be considered effective on the next  
303 December 31st or June 30th which is at least 60 days from the date on which final approval of the  
304 annexation petition is granted.