

1                                   **INCORPORATION OF A TOWN AMENDMENTS**

2   2007 GENERAL SESSION

3   STATE OF UTAH

4   **Chief Sponsor: Melvin R. Brown**

5   Senate Sponsor: Sheldon L. Killpack

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7 **LONG TITLE**

8 **General Description:**

9           This bill modifies a provision relating to the incorporation of a town.

10 **Highlighted Provisions:**

11           This bill:

- 12           ▶ modifies the requirements applicable to a petition for incorporation as a town;
- 13           ▶ requires each county that receives a petition representing 1/2 or less of the property  
14 value in the area proposed to be incorporated as a town to commission and pay for a  
15 feasibility study;
- 16           ▶ with respect to a petition representing 1/2 or less of the property value in the area  
17 proposed to be incorporated, authorizes a county to grant the petition, deny the  
18 petition, or, with the consent of the petition sponsors, grant the petition with  
19 conditions or alterations;
- 20           ▶ requires counties of the second, third, fourth, fifth, or sixth class to grant a petition  
21 that represents over 1/2 of the property value in the area proposed to be incorporated  
22 as a town;
- 23           ▶ modifies the process of appointing the mayor and council members in a newly  
24 incorporated town to require the officials to be selected from a list provided by  
25 petition sponsors; and
- 26           ▶ requires a newly incorporated town to operate under a six-member council form of  
27 government.

28 **Monies Appropriated in this Bill:**

29           None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **10-2-125**, as last amended by Chapter 233, Laws of Utah 2005

35 **67-1a-6.5**, as last amended by Chapter 359, Laws of Utah 2006



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

38 Section 1. Section **10-2-125** is amended to read:

39 **10-2-125. Incorporation of a town.**

40 (1) As used in this section:

41 (a) "Base petition" means a petition under this section proposing the incorporation of a  
42 town and signed by the owners of private real property that:

43 (i) is located within the area proposed to be incorporated;

44 (ii) covers at least a majority of the total private land area within the area proposed to  
45 be incorporated; and

46 (iii) is equal in value to at least 1/3 but not more than 1/2 of the value of all private real  
47 property within the area proposed to be incorporated.

48 (b) "Qualifying petition" means a petition under this section proposing the  
49 incorporation of a town and signed by the owners of private real property that:

50 (i) is located within the area proposed to be incorporated;

51 (ii) covers at least a majority of the total private land area within the area proposed to  
52 be incorporated; and

53 (iii) is equal in value to more than 1/2 of the value of all private real property within  
54 the area proposed to be incorporated.

55 ~~[(1)]~~ (2) (a) A contiguous area of a county not within a municipality, with a population  
56 of at least 100 but less than 1,000, may incorporate as a town as provided in this section.

57 (b) (i) The population figure under Subsection ~~[(1)]~~ (2)(a) shall be derived from the

58 most recent official census or census estimate of the United States Bureau of the Census.

59 (ii) If the population figure is not available from the United States Bureau of the  
60 Census, the population figure shall be derived from the estimate from the Utah Population  
61 Estimates Committee.

62 [~~(2)~~] (3) (a) The process to incorporate an area as a town is initiated by filing a petition  
63 with the clerk of the county in which the area is located.

64 (b) Each petition under Subsection [~~(2)~~] (3)(a) shall:

65 (i) be signed by the owners of private real property that:

66 (A) is located within the area proposed to be incorporated;

67 (B) covers a majority of the total private land area within the area; and

68 (C) is equal in value to at least 1/3 of the value of all private real property within the  
69 area;

70 (ii) state the legal description of the boundaries of the area proposed to be incorporated  
71 as a town; [~~and~~]

72 (iii) designate up to five signers of the petition as sponsors, one of whom shall be  
73 designated as the contact sponsor, with the mailing address of each owner signing as a sponsor;

74 (iv) be accompanied by and circulated with an accurate map or plat, prepared by a  
75 licensed surveyor, showing the boundaries of the proposed town; and

76 [~~(iii)~~] (v) substantially comply with and be circulated in the following form:

77 PETITION FOR INCORPORATION OF (insert the proposed name of the proposed  
78 town)

79 To the Honorable County Legislative Body of (insert the name of the county in which  
80 the proposed town is located) County, Utah:

81 We, the undersigned owners of real property within the area described in this petition,  
82 respectfully petition the county legislative body [~~to examine the question of whether the area~~  
83 ~~should incorporate~~] for the area described in this petition to be incorporated as a town. Each of  
84 the undersigned affirms that each has personally signed this petition and is an owner of real  
85 property within the described area, and that the current residence address of each is correctly

86 written after the signer's name. The area proposed to be incorporated as a town is described as  
87 follows: (insert an accurate description of the area proposed to be incorporated).

88 (c) A petition under this section may not describe an area that includes some or all of  
89 an area proposed for annexation in an annexation petition under Section 10-2-403 that:

- 90 (i) was filed before the filing of the petition; and
- 91 (ii) is still pending on the date the petition is filed.

92 ~~[(3)]~~ (4) Section 10-2-104 applies to a petition for incorporation as a town in any  
93 county, except that the notice under Subsection 10-2-104(1) shall be sent within seven calendar  
94 days ~~[of]~~ after the filing of a petition under Subsection ~~[(2)]~~ (3).

95 ~~[(4)(a) A county]~~ (5) (a) (i) The legislative body [may treat a petition filed under  
96 Subsection (2) as a request for] of each county with which a base petition is filed under this  
97 section shall commission and pay for a feasibility study [under] as provided in Section  
98 10-2-103 [and process it as a request under that section would be processed under this part to  
99 determine whether the feasibility study results meet the requirements of Subsection  
100 10-2-109(3)].

101 (ii) If the results of the feasibility study under Subsection (5)(a)(i) meet the  
102 requirements of Subsection 10-2-109(3), the county legislative body shall grant the petition.

103 ~~[(b)]~~ (iii) If the results of [a] the feasibility study under Subsection ~~[(4)(a)] (5)(a)(i)~~ do  
104 not meet the requirements of Subsection 10-2-109(3), the county legislative body may [not  
105 approve the incorporation petition.]:

106 ~~[(c) If the results of the feasibility study under Subsection (4)(a) meet the requirements~~  
107 ~~of Subsection 10-2-109(3), the county legislative body may approve the incorporation petition;~~  
108 ~~if the county legislative body determines that the incorporation is in the best interests of the~~  
109 ~~citizens of the county and the proposed town.]:~~

110 (A) deny the petition;

111 (B) grant the petition; or

112 (C) with the consent of the petition sponsors, grant the petition, after:

113 (I) imposing conditions to mitigate the fiscal inequities identified in the feasibility

114 study; or

115 (II) altering the boundaries of the area proposed to be incorporated as a town to  
116 approximate the boundaries necessary to meet the requirements of Subsection 10-2-109(3).

117 (iv) Each town that incorporates pursuant to a petition granted after the county  
118 legislative body imposes conditions under Subsection (5)(a)(iii)(C)(I) shall comply with those  
119 conditions.

120 (b) The legislative body of each county of the second, third, fourth, fifth, or sixth class  
121 with which a qualifying petition is filed shall grant the petition.

122 ~~[(5)]~~ (6) (a) Upon [approval] the granting of a petition filed under [Subsection (2)] this  
123 section, the legislative body of the county in which the proposed town is located shall appoint a  
124 mayor and members of the town council [who] from a list of qualified individuals approved by  
125 the petition sponsors.

126 (b) The officers appointed under Subsection (6)(a) shall hold office until the next  
127 regular municipal election and until their successors are elected and qualified.

128 (7) Each newly incorporated town shall operate under the six-member council form of  
129 government as described in Section 10-3-101.

130 ~~[(6)]~~ (8) (a) Each mayor appointed under Subsection [~~(5)] (6) shall, within seven days~~  
131 of appointment, file articles of incorporation of the new town with the lieutenant governor.

132 (b) The articles of incorporation shall meet the requirements of Subsection  
133 10-2-119(2).

134 ~~[(7)]~~ (9) A town is incorporated upon the lieutenant governor's issuance of a certificate  
135 of entity creation under Section 67-1a-6.5.

136 ~~[(8)]~~ (10) The legislative body of the new town shall comply with the notice  
137 requirements of Section 10-1-116.

138 Section 2. Section **67-1a-6.5** is amended to read:

139 **67-1a-6.5. Lieutenant governor certification of governmental entity creation,**  
140 **consolidation, division, dissolution, or boundary change.**

141 (1) As used in this section:

142 (a) "AGRC" means the Automated Geographic Reference Center created under Section  
143 63F-1-506.

144 (b) "Boundary change" means the adjustment of an entity's boundary either through  
145 gaining territory (annexation), losing territory (withdrawal), adjusting the common boundary  
146 with an adjacent entity (may gain territory, lose territory, or a combination of both gaining and  
147 losing territory), or any other adjustment of the entity's boundary.

148 (c) "Consolidation" means the combining of two or more entities into a single entity  
149 such that the consolidated entity's boundary contains all of the territory of the original entities,  
150 but no additional territory.

151 (d) "County attorney" means the county attorney of each county which contains any  
152 part of the area affected by the entity creation, consolidation, division, dissolution, or boundary  
153 change.

154 (e) (i) "County auditor" means the county auditor of each county which contains any  
155 part of the area affected by the entity creation, consolidation, division, dissolution, or boundary  
156 change.

157 (ii) If the county does not have a county auditor, "county auditor" means the county  
158 clerk or other government official acting as the county auditor.

159 (f) "County recorder" means the county recorder of each county which contains any  
160 part of the area affected by the entity creation, consolidation, division, dissolution, or boundary  
161 change.

162 (g) "County surveyor" means the county surveyor of each county which contains any  
163 part of the area affected by the entity creation, consolidation, division, dissolution, or boundary  
164 change.

165 (h) "Creation" means the forming of a new entity where that entity did not exist before  
166 its creation.

167 (i) "Dissolution" means the disbandment of an entity.

168 (j) "Division" means the dividing of one entity into two or more entities such that the  
169 original entity's boundary contains all of the territory of the resultant entities, but no additional

170 territory.

171 (k) "Entity" means the entity that is created, consolidated, divided, dissolved, or whose  
172 boundary is changed.

173 (l) "Initiating body" means the county legislative body, municipal legislative body,  
174 special district board, local district board, court, public official, or other authorized person that  
175 initiates the creation, dissolution, consolidation, or boundary change of an entity or entities.

176 (m) "Notice of entity boundary change" means the notice the lieutenant governor  
177 receives under Subsection 10-1-116(1), 10-2-419(4), 10-2-425(1), 10-2-507(1), 17-2-9(2),  
178 17-2-13(3), 17-50-104(3), 17-50-105(1)(b) or (2)(e), 17A-2-1327(4), 17B-2-514(2),  
179 17B-2-516(6), 17B-2-610(1), or 53A-2-101.5(1) of an entity's pending boundary change.

180 (n) "Notice of entity consolidation" means the notice the lieutenant governor receives  
181 under Section 10-2-610 or Subsection 10-1-116(1) or 17-2-4(2) of entities' pending  
182 consolidation.

183 (o) "Notice of entity creation" means the notice the lieutenant governor receives under  
184 Subsection 10-1-116(1), 10-2-119(1), 10-2-125[~~(6)~~](8), 11-13-204(4), 11-13-205(6),  
185 17A-2-1311(2), 17B-2-215(1), 17C-1-201(2), or 53A-2-101.5(1) of an entity's pending  
186 creation.

187 (p) "Notice of entity dissolution" means the notice the lieutenant governor receives  
188 under Subsection 10-1-116(1), 10-2-712(2), 17A-2-1329(3), 17B-2-708(4), or 17C-1-701(2)(a)  
189 of an entity's pending dissolution.

190 (q) "Notice of entity division" means the notice the lieutenant governor receives under  
191 Subsection 17-3-3(3) of an entity's pending division.

192 (r) "Notice of intention to file articles of incorporation" means the notice the lieutenant  
193 governor receives under Subsection 10-2-120(1).

194 (s) "Lieutenant governor" means the lieutenant governor created in Article VII, Section  
195 1 of the Utah Constitution.

196 (t) "State auditor" means the state auditor created in Article VII, Section 1 of the Utah  
197 Constitution.

198 (u) "State Tax Commission" means the State Tax Commission created in Article XIII,  
199 Section 6 of the Utah Constitution.

200 (2) Within ten days after receiving a notice of entity creation, the lieutenant governor  
201 shall:

202 (a) issue a certificate of entity creation;

203 (b) (i) send a copy of the certificate issued under Subsection (2)(a) and a copy of the  
204 notice of entity creation, including the accompanying map or legal description, to the State Tax  
205 Commission, AGRC, county recorder, county surveyor, county auditor, and county attorney;  
206 and

207 (ii) send a copy of the certificate issued under Subsection (2)(a) to the state auditor;  
208 and

209 (c) send to the initiating body a copy of the certificate issued under Subsection (2)(a)  
210 and a statement indicating completion of Subsection (2)(b).

211 (3) Within ten days after receiving a notice of intention to file articles of incorporation,  
212 the lieutenant governor shall:

213 (a) issue a certificate indicating receipt of a notice of intention to file articles of  
214 incorporation;

215 (b) (i) send a copy of the certificate issued under Subsection (3)(a) and a copy of the  
216 notice of intention to file articles of incorporation, including the accompanying map or legal  
217 description, to the State Tax Commission, AGRC, county recorder, county surveyor, county  
218 auditor, and county attorney; and

219 (ii) send a copy of the certificate issued under Subsection (3)(a) to the state auditor;  
220 and

221 (c) send to the initiating body a copy of the certificate issued under Subsection (3)(a)  
222 and a statement indicating completion of Subsection (3)(b).

223 (4) Within ten days after receiving a notice of entity consolidation, the lieutenant  
224 governor shall:

225 (a) issue a certificate of entity consolidation;

226 (b) (i) send a copy of the certificate issued under Subsection (4)(a) and a copy of the  
227 notice of entity consolidation to the State Tax Commission, AGRC, county recorder, county  
228 surveyor, county auditor, and county attorney; and

229 (ii) send a copy of the certificate issued under Subsection (4)(a) to the state auditor;  
230 and

231 (c) send to the initiating body and the entities being consolidated, if different from the  
232 initiating body, a copy of the certificate issued under Subsection (4)(a) and a statement  
233 indicating completion of Subsection (4)(b).

234 (5) Within ten days after receiving a notice of entity division, the lieutenant governor  
235 shall:

236 (a) issue a certificate of entity division;

237 (b) (i) send a copy of the certificate issued under Subsection (5)(a) and a copy of the  
238 notice of entity consolidation, including the accompanying map or legal description, to the  
239 State Tax Commission, AGRC, county recorder, county surveyor, county auditor, and county  
240 attorney; and

241 (ii) send a copy of the certificate issued under Subsection (5)(a) to the state auditor;  
242 and

243 (c) send to the initiating body a copy of the certificate issued under Subsection (5)(a)  
244 and a statement indicating completion of Subsection (5)(b).

245 (6) Within ten days after receiving a notice of entity dissolution, the lieutenant  
246 governor shall:

247 (a) issue a certificate of entity dissolution;

248 (b) (i) send a copy of the certificate issued under Subsection (6)(a) and a copy of the  
249 notice of entity dissolution to the State Tax Commission, AGRC, county recorder, county  
250 surveyor, county auditor, and county attorney; and

251 (ii) send a copy of the certificate issued under Subsection (6)(a) to the state auditor;  
252 and

253 (c) send to the initiating body and the entity being dissolved, if different than the

254 initiating body, a copy of the certificate issued under Subsection (6)(a) and a statement  
255 indicating completion of Subsection (6)(b).

256 (7) Within ten days after receiving a notice of entity boundary change, the lieutenant  
257 governor shall:

258 (a) issue a certificate of entity boundary change;

259 (b) send a copy of the certificate issued under Subsection (7)(a) and a copy of the  
260 notice of entity boundary change, including the accompanying map or legal description, to the  
261 State Tax Commission, AGRC, county recorder, county surveyor, county auditor, and county  
262 attorney; and

263 (c) send to the initiating body or bodies, and each entity whose boundary is changed, if  
264 different than the initiating body, a copy of the certificate issued under Subsection (7)(a) and a  
265 statement indicating completion of Subsection (7)(b).

266 (8) (a) The lieutenant governor shall keep, index, maintain, and make available to the  
267 public certificates, notices, maps, and other documents necessary in performing the duties of  
268 Subsections (2) through (7).

269 (b) The lieutenant governor shall furnish a certified copy of documents to any person  
270 who requests a certified copy.

271 (c) The lieutenant governor may charge a reasonable fee for copies of documents or  
272 certified copies of documents.