

Representative Melvin R. Brown proposes the following substitute bill:

TOWN INCORPORATION PROCESS

AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Melvin R. Brown

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions relating to the incorporation of a town.

Highlighted Provisions:

This bill:

- ▶ requires at least five sponsors to be designated on a petition to incorporate an area as a town;
- ▶ prohibits the filing of a petition to incorporate an area as a town if the petition sponsors own more than 40% of the total area proposed to be incorporated;
- ▶ eliminates definitions of "base petition" and "qualifying petition";
- ▶ eliminates a requirement that a county legislative body grant a petition for the incorporation of a town if the petition meets a certain signature threshold;
- ▶ clarifies that the value of property for purposes of determining incorporation petition requirements is assessed value;
- ▶ requires a majority of voters to sign a petition to incorporate as a town;
- ▶ allows a county legislative body the option whether to commission a financial feasibility study with respect to a proposed incorporation of a town and provides a process for commissioning a financial feasibility study;



- 26 ▶ establishes financial feasibility study criteria;
- 27 ▶ requires the initial officers of a newly incorporated town under a petition pending at
- 28 the effective date of this bill to be elected rather than appointed by the county
- 29 legislative body if not already appointed;
- 30 ▶ modifies election provisions to allow the election of officers of a newly
- 31 incorporated town to be conducted within 60 days after the county legislative body
- 32 adopts a resolution approving the incorporation;
- 33 ▶ provides for when newly elected town officers in a new town take office;
- 34 ▶ modifies the date upon which a town is incorporated; and
- 35 ▶ applies amendments made by this bill to future town incorporation petitions and
- 36 pending petitions that have not been granted.

37 **Monies Appropriated in this Bill:**

38 None

39 **Other Special Clauses:**

40 This bill provides an immediate effective date.

41 This bill provides revisor instructions.

42 **Utah Code Sections Affected:**

43 AMENDS:

44 **10-2-109**, as last amended by Laws of Utah 1997, Second Special Session, Chapter 3

45 **10-2-125**, as last amended by Laws of Utah 2007, Chapter 212

46 **20A-1-203**, as last amended by Laws of Utah 2007, Chapter 215

47 **20A-1-204**, as last amended by Laws of Utah 2004, Chapter 371



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

50 Section 1. Section **10-2-109** is amended to read:

51 **10-2-109. Incorporation petition -- Requirements and form.**

52 (1) At any time within 18 months of the completion of the public hearings required
53 under Subsection 10-2-108(1), a petition for incorporation of the area proposed to be
54 incorporated as a city may be filed in the office of the clerk of the county in which the area is
55 located.

56 (2) Each petition under Subsection (1) shall:

- 57 (a) be signed by the owners of private real property that:
58 (i) is located within the area proposed to be incorporated;
59 (ii) covers at least 1/3 of the total private land area within the area; and
60 (iii) is equal in value to at least 1/3 of the value of all private real property within the
61 area;
- 62 (b) indicate the typed or printed name and current residence address of each owner
63 signing the petition;
- 64 (c) describe the area proposed to be incorporated as a city, as described in the
65 feasibility study request or modified request that meets the requirements of Subsection (3);
- 66 (d) state the proposed name for the proposed city;
- 67 (e) designate five signers of the petition as petition sponsors, one of whom shall be
68 designated as the contact sponsor, with the mailing address and telephone number of each;
- 69 (f) state that the signers of the petition appoint the sponsors, if the incorporation
70 measure passes, to represent the signers in the process of:
- 71 (i) selecting the number of commission or council members the new city should have;
72 and
- 73 (ii) drawing district boundaries for the election of commission or council members, if
74 the voters decide to elect commission or council members by district;
- 75 (g) be accompanied by and circulated with an accurate plat or map, prepared by a
76 licensed surveyor, showing the boundaries of the proposed city; and
- 77 (h) substantially comply with and be circulated in the following form:
- 78 PETITION FOR INCORPORATION OF (insert the proposed name of the proposed
79 city)
- 80 To the Honorable County Legislative Body of (insert the name of the county in which
81 the proposed city is located) County, Utah:
- 82 We, the undersigned owners of real property within the area described in this petition,
83 respectfully petition the county legislative body to submit to the registered voters residing
84 within the area described in this petition, at a special election held for that purpose, the
85 question of whether the area should incorporate as a city. Each of the undersigned affirms that
86 each has personally signed this petition and is an owner of real property within the described
87 area, and that the current residence address of each is correctly written after the signer's name.

88 The area proposed to be incorporated as a city is described as follows: (insert an accurate
89 description of the area proposed to be incorporated).

90 (3) A petition for incorporation of a city under Subsection (1) may not be filed unless
91 the results of the feasibility study or supplemental feasibility study show that the average
92 annual amount of revenue under Subsection 10-2-106(4)(a)(ix) does not exceed the average
93 annual amount of cost under Subsection 10-2-106(4)(a)(viii) by more than 5%.

94 (4) A signature on a request under Section 10-2-103 or a modified request under
95 Section 10-2-107 may be used toward fulfilling the signature requirement of Subsection (2)(a):

96 (a) if the request under Section 10-2-103 or modified request under Section 10-2-107
97 notified the signer in conspicuous language that the signature, unless withdrawn, would also be
98 used for purposes of a petition for incorporation under this section; and

99 (b) unless the signer files with the county clerk a written withdrawal of the signature
100 before the petition under this section is filed with the clerk.

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

102 **10-2-125. Incorporation of a town.**

103 [~~(1) As used in this section:~~]

104 [~~(a) "Base petition" means a petition under this section proposing the incorporation of a
105 town and signed by the owners of private real property that:]~~

106 [~~(i) is located within the area proposed to be incorporated;]~~

107 [~~(ii) covers at least a majority of the total private land area within the area proposed to
108 be incorporated; and]~~

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

111 [~~(b) "Qualifying petition" means a petition under this section proposing the
112 incorporation of a town and signed by the owners of private real property that:]~~

113 [~~(i) is located within the area proposed to be incorporated;]~~

114 [~~(ii) covers at least a majority of the total private land area within the area proposed to
115 be incorporated; and]~~

116 [~~(iii) is equal in value to more than 1/2 of the value of all private real property within
117 the area proposed to be incorporated.]~~

118 [~~(2)~~] (1) (a) A contiguous area of a county not within a municipality, with a population

119 of at least 100 but less than 1,000, may incorporate as a town as provided in this section.

120 (b) (i) The population figure under Subsection [~~(2)~~] (1)(a) shall be derived from the
121 most recent official census or census estimate of the United States Bureau of the Census.

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

125 [~~(3)~~] (2) (a) The process to incorporate an area as a town is initiated by filing a petition
126 with the clerk of the county in which the area is located.

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

128 (i) be signed by:

129 (A) the owners of private real property that:

130 [~~(A)~~] (I) is located within the area proposed to be incorporated;

131 [~~(B)~~] (II) covers a majority of the total private land area within the area; and

132 [~~(C)~~] (III) is equal in assessed value to [~~at least 1/3~~] more than 1/2 of the assessed value
133 of all private real property within the area; and

134 (B) registered voters within the area proposed to be incorporated equal in number to at
135 least a majority of all voters within that area who voted in the last gubernatorial election;

136 (ii) state the legal description of the boundaries of the area proposed to be incorporated
137 as a town;

138 (iii) designate [~~up to~~] at least five signers of the petition as sponsors, one of whom
139 shall be designated as the contact sponsor, with the mailing address of each owner signing as a
140 sponsor;

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

143 (v) substantially comply with and be circulated in the following form:

144 PETITION FOR INCORPORATION OF (insert the proposed name of the proposed
145 town)

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

148 We, the undersigned owners of real property and registered voters within the area
149 described in this petition, respectfully petition the county legislative body for the area described

150 in this petition to be incorporated as a town. Each of the undersigned affirms that each has
151 personally signed this petition and is either an owner of real property within the described area
152 or a registered voter residing within the described area, and that the current residence address
153 of each is correctly written after the signer's name. The area proposed to be incorporated as a
154 town is described as follows: (insert an accurate description of the area proposed to be
155 incorporated).

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

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

160 (d) A petition may not be filed under this section if the private real property owned by
161 the petition sponsors, designated under Subsection (2)(b)(iii), cumulatively exceeds 40% of the
162 total private land area within the area proposed to be incorporated as a town.

163 [~~4~~] (3) Section 10-2-104 applies to a petition for incorporation as a town in any
164 county, except that the notice under Subsection 10-2-104(1) shall be sent within seven calendar
165 days after the filing of a petition under Subsection [~~3~~] (2).

166 (4) Within 20 days after the filing of a petition under Subsection (2)(a), the county
167 clerk shall:

168 (a) with the assistance of other county officers from whom the clerk requests
169 assistance, determine whether the petition complies with the requirements of Subsection (2);

170 and

171 (b) (i) if the clerk determines that the petition complies with those requirements:

172 (A) certify the petition and deliver the certified petition to the county legislative body;

173 and

174 (B) mail or deliver written notification of the certification to:

175 (I) the contact sponsor; and

176 (II) if applicable, the chair of the planning commission of each township in which any
177 part of the area proposed for incorporation is located; or

178 (ii) if the clerk determines that the petition fails to comply with any of those
179 requirements, reject the petition and notify the contact sponsor in writing of the rejection and
180 the reasons for the objection.

181 (5) (a) (i) A petition that is rejected under Subsection (4)(b)(ii) may be amended to
182 correct a deficiency for which it was rejected and then refiled with the county clerk.

183 (ii) A valid signature on a petition filed under Subsection (2)(a) may be used toward
184 fulfilling the signature requirement of Subsection (2)(b) for the same petition that is amended
185 under Subsection (5)(a)(i) and then refiled with the county clerk.

186 (b) If a petition is amended and refiled under Subsection (5)(a)(i) after having been
187 rejected by the county clerk under Subsection (4)(b)(ii):

188 (i) the amended petition shall be considered as a newly filed petition; and

189 (ii) the amended petition's processing priority is determined by the date on which it is
190 refiled.

191 (6) (a) (i) As used in this Subsection (6), "financial feasibility study" means a study to
192 determine:

193 (A) the projected revenues for the proposed town during the first three years after
194 incorporation; and

195 (B) the projected costs, including overhead, that the proposed town will incur in
196 providing governmental services during the first three years after incorporation.

197 ~~[(5) (a) (i)]~~ (ii) The legislative body of [each] a county with which a [base] petition is
198 filed under this section [shall] may, at its option and upon the petition being certified under
199 Subsection (4), commission and pay for a financial feasibility study [as provided in Section
200 10-2-103].

201 (iii) If the county legislative body chooses to commission a financial feasibility study,
202 the county legislative body shall:

203 (A) within 20 days after the incorporation petition is certified, select and engage a
204 feasibility consultant; and

205 (B) require the feasibility consultant to complete the financial feasibility study and
206 submit written results of the study to the county legislative body no later than 30 days after the
207 feasibility consultant is engaged to conduct the financial feasibility study.

208 ~~[(i)]~~ (b) If the county legislative body commissions a financial feasibility study and the
209 results of the financial feasibility study [under Subsection (5)(a)(i) meet the requirements of
210 Subsection 10-2-109(3)] show that the average annual amount of revenue under Subsection
211 (6)(a)(i)(A) does not exceed the average annual amount of cost under Subsection (6)(a)(i)(B)

212 by more than 10%, the county legislative body shall ~~[grant the petition]~~, within 20 days after
213 the feasibility consultant submits the written results of the financial feasibility study, adopt a
214 resolution approving the creation of the new town.

215 ~~[(iii)]~~ (c) (i) If the results of the feasibility study under Subsection ~~[(5)]~~ (4)(a)~~[(i)]~~ do not
216 meet the requirements of Subsection 10-2-109(3)] show that the average annual amount of
217 revenue under Subsection (6)(a)(i)(A) exceeds the average annual amount of cost under
218 Subsection (6)(a)(i)(B) by more than 10%, the county legislative body may, subject to
219 Subsection (6)(c)(ii):

- 220 (A) deny the petition;
- 221 (B) ~~[grant the petition]~~ adopt a resolution approving the creation of the new town; or
- 222 (C) with the consent of the petition sponsors, ~~[grant the petition]~~ adopt a resolution
223 approving the creation of the new town, after:

224 (I) imposing conditions to mitigate the fiscal inequities identified in the financial
225 feasibility study; or

226 (II) altering the boundaries of the area proposed to be incorporated as a town to
227 approximate the boundaries necessary to ~~[meet the requirements of Subsection 10-2-109(3)]~~
228 prevent the average annual amount of revenue under Subsection (6)(a)(i)(A) from exceeding
229 the average annual amount of cost under Subsection (6)(a)(i)(B).

230 (ii) (A) A county legislative body intending to deny a petition under Subsection
231 (6)(c)(i)(A) or to adopt a resolution under Subsection (6)(c)(i)(B) shall deny the petition or
232 adopt the resolution within 20 days after the feasibility consultant submits the written results of
233 the financial feasibility study.

234 (B) A county legislative body intending to adopt a resolution under Subsection
235 (6)(c)(i)(C) shall adopt the resolution within 30 days after the feasibility consultant submits the
236 written results of the financial feasibility study.

237 ~~[(iv)]~~ (d) Each town that incorporates pursuant to a petition ~~[granted]~~ approved after
238 the county legislative body imposes conditions under Subsection ~~[(5)(a)(iii)(C)(I)]~~
239 (6)(c)(i)(C)(I) shall comply with those conditions.

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

242 (7) If the county legislative body chooses not to commission a financial feasibility

243 study under Subsection (6)(a), the county legislative body shall, within 20 days after the
244 petition is certified, adopt a resolution approving the creation of the new town.

245 ~~[(6)] (8) (a) [Upon the granting of a petition filed under this section] Unless the county~~
246 legislative body has already appointed the initial mayor and council members of a proposed
247 new town as provided in the law then in effect, the legislative body of the county in which the
248 proposed new town is located shall [appoint a mayor and members of the town council from a
249 list of qualified individuals approved by the petition sponsors] hold an election for town
250 officers.

251 (b) The officers elected at an election under Subsection (8)(a) shall take office:

252 (i) at noon on the first Monday in January next following the election, if the election is
253 held on a regular general or municipal general election date; or

254 (ii) at noon on the first day of the month next following the effective date of the
255 incorporation under Subsection (9), if the election of officers is held on any other date.

256 ~~[(b) The officers appointed under Subsection (6)(a) shall hold office until the next~~
257 ~~regular municipal election and until their successors are elected and qualified.]~~

258 ~~[(7)] (9) Each newly incorporated town shall operate under the [six-member]~~
259 five-member council form of government as described in Section 10-3-101.

260 ~~[(8)] (10) (a) [Each mayor appointed under Subsection (6) shall, within] Within seven~~
261 days [of appointment, file] after the canvass of the final election of town officers under
262 Subsection (8), the mayor-elect of the new town shall file at least three copies of the articles of
263 incorporation of the new town with the lieutenant governor.

264 (b) The articles of incorporation shall meet the requirements of Subsection
265 10-2-119(2).

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

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

270 (11) A town is incorporated:

271 (a) on December 31 of the year in which the lieutenant governor issues a certificate of
272 entity creation for the town under Section 67-1a-6.5, if the election of town officers under
273 Subsection (8) is held on a regular general or municipal general election date; or

274 (b) on the last day of the month during which the lieutenant governor issues a
275 certificate of entity creation for the town under Section 67-1a-6.5, if the election of town
276 officers under Subsection (8) is held on any other date.

277 (12) This section applies to:

278 (a) each petition to incorporate a town filed on or after the effective date of this section;
279 and

280 (b) each petition to incorporate a town pending on the effective date of this section, if
281 the county legislative body has not granted the petition.

282 Section 3. Section **20A-1-203** is amended to read:

283 **20A-1-203. Calling and purpose of special elections.**

284 (1) Statewide and local special elections may be held for any purpose authorized by
285 law.

286 (2) (a) Statewide special elections shall be conducted using the procedure for regular
287 general elections.

288 (b) Except as otherwise provided in this title, local special elections shall be conducted
289 using the procedures for regular municipal elections.

290 (3) The governor may call a statewide special election by issuing an executive order
291 that designates:

292 (a) the date for the statewide special election; and

293 (b) the purpose for the statewide special election.

294 (4) The Legislature may call a statewide special election by passing a joint or
295 concurrent resolution that designates:

296 (a) the date for the statewide special election; and

297 (b) the purpose for the statewide special election.

298 (5) (a) The legislative body of a local political subdivision may call a local special
299 election only for:

300 (i) a vote on a bond or debt issue;

301 (ii) a vote on a voted leeway program authorized by Section 53A-17a-133 or
302 53A-17a-134;

303 (iii) an initiative authorized by Chapter 7, Part 5, Local Initiatives - Procedure;

304 (iv) a referendum authorized by Chapter 7, Part 6, Local Referenda - Procedures;

305 (v) if required or authorized by federal law, a vote to determine whether or not Utah's
306 legal boundaries should be changed;

307 (vi) a vote authorized or required by Title 59, Chapter 12, Sales and Use Tax Act; ~~or~~

308 (vii) a vote to elect members to school district boards for a new school district and a
309 remaining school district, as defined in Section 53A-2-117, following the creation of a new
310 school district under Section 53A-2-118.1~~[-]; or~~

311 (viii) an election of town officers of a newly incorporated town under Subsection
312 10-2-125(6).

313 (b) The legislative body of a local political subdivision may call a local special election
314 by adopting an ordinance or resolution that designates:

315 (i) the date for the local special election; and

316 (ii) the purpose for the local special election.

317 Section 4. Section **20A-1-204** is amended to read:

318 **20A-1-204. Date of special election -- Legal effect.**

319 (1) (a) The governor, Legislature, or the legislative body of a local political subdivision
320 calling a statewide special election or local special election under Section 20A-1-203 shall
321 schedule the special election to be held on:

322 (i) the fourth Tuesday in June; ~~or~~

323 (ii) the first Tuesday after the first Monday in November~~[-]; or~~

324 (iii) for an election of town officers of a newly incorporated town under Subsection
325 10-2-125(6), on any date that complies with the requirements of that subsection.

326 (b) Except as provided in Subsection (1)(c), the governor, Legislature, or the legislative
327 body of a local political subdivision calling a statewide special election or local special election
328 under Section 20A-1-203 may not schedule a special election to be held on any other date.

329 (c) (i) Notwithstanding the requirements of Subsection (1)(b), the legislative body of a
330 local political subdivision may call a local special election on a date other than those specified
331 in this section if the legislative body:

332 (A) determines and declares that there is a disaster, as defined in Section 63-5-2,
333 requiring that a special election be held on a date other than the ones authorized in statute;

334 (B) identifies specifically the nature of the disaster, as defined in Section 63-5-2, and
335 the reasons for holding the special election on that other date; and

- 336 (C) votes unanimously to hold the special election on that other date.
- 337 (ii) The legislative body of a local political subdivision may not call a local special
338 election for the date established in Title 20A, Chapter 9, Part 8, Western States Presidential
339 Primary, for Utah's Western States Presidential Primary.
- 340 (d) Nothing in this section prohibits:
- 341 (i) the governor or Legislature from submitting a matter to the voters at the regular
342 general election if authorized by law; or
- 343 (ii) a local government from submitting a matter to the voters at the regular municipal
344 election if authorized by law.
- 345 (2) (a) Two or more entities shall comply with Subsection (2)(b) if those entities hold a
346 special election within a county on the same day as:
- 347 (i) another special election;
- 348 (ii) a regular general election; or
- 349 (iii) a municipal general election.
- 350 (b) Entities described in Subsection (2)(a) shall, to the extent practicable, coordinate:
- 351 (i) polling places;
- 352 (ii) ballots;
- 353 (iii) election officials; and
- 354 (iv) other administrative and procedural matters connected with the election.

355 **Section 5. Effective date.**

356 If approved by two-thirds of all the members elected to each house, this bill takes effect
357 upon approval by the governor, or the day following the constitutional time limit of Utah
358 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
359 the date of veto override.

360 **Section 6. Revisor instructions.**

361 It is the intent of the Legislature that the Office of Legislative Research and General
362 Counsel, in preparing the Utah Code database for publication, replace the phrase "the effective
363 date of this section" in Subsections 10-2-125(12)(a) and (b) of this bill with the actual effective
364 date of this bill.

365