

TOWN INCORPORATION PROCESS

REVISIONS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gage Froerer

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;
- ▶ requires a majority of voters to sign a petition to incorporate as a town;
- ▶ changes a feasibility study income-to-cost requirement from 5% to 10% for town incorporations;
- ▶ allows a county legislative body the option whether to commission a feasibility study with respect to a proposed incorporation of a town;
- ▶ requires the initial officers of a newly incorporated town to be elected rather than appointed by the county legislative body;
- ▶ modifies the date upon which a town is incorporated; and



28 ▶ applies amendments made by this bill to currently pending and future town
29 incorporation petitions.

30 **Monies Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 This bill provides an immediate effective date.

34 This bill provides revisor instructions.

35 **Utah Code Sections Affected:**

36 AMENDS:

37 **10-2-109**, as last amended by Laws of Utah 1997, Second Special Session, Chapter 3

38 **10-2-125**, as last amended by Laws of Utah 2007, Chapter 212



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

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

42 **10-2-109. Incorporation petition -- Requirements and form.**

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

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

48 (a) be signed by the owners of private real property that:

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

50 (ii) covers at least 1/3 of the total private land area within the area; and

51 (iii) is equal in value to at least 1/3 of the value of all private real property within the
52 area;

53 (b) indicate the typed or printed name and current residence address of each owner
54 signing the petition;

55 (c) describe the area proposed to be incorporated as a city, as described in the
56 feasibility study request or modified request that meets the requirements of Subsection (3);

57 (d) state the proposed name for the proposed city;

58 (e) designate five signers of the petition as petition sponsors, one of whom shall be

59 designated as the contact sponsor, with the mailing address and telephone number of each;

60 (f) state that the signers of the petition appoint the sponsors, if the incorporation
61 measure passes, to represent the signers in the process of:

62 (i) selecting the number of commission or council members the new city should have;
63 and

64 (ii) drawing district boundaries for the election of commission or council members, if
65 the voters decide to elect commission or council members by district;

66 (g) be accompanied by and circulated with an accurate plat or map, prepared by a
67 licensed surveyor, showing the boundaries of the proposed city; and

68 (h) substantially comply with and be circulated in the following form:

69 PETITION FOR INCORPORATION OF (insert the proposed name of the proposed
70 city)

71 To the Honorable County Legislative Body of (insert the name of the county in which
72 the proposed city is located) County, Utah:

73 We, the undersigned owners of real property within the area described in this petition,
74 respectfully petition the county legislative body to submit to the registered voters residing
75 within the area described in this petition, at a special election held for that purpose, the
76 question of whether the area should incorporate as a city. Each of the undersigned affirms that
77 each has personally signed this petition and is an owner of real property within the described
78 area, and that the current residence address of each is correctly written after the signer's name.
79 The area proposed to be incorporated as a city is described as follows: (insert an accurate
80 description of the area proposed to be incorporated).

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

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

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

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

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

93 **10-2-125. Incorporation of a town.**

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

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

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

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

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

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

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

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

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

109 [~~(2)~~] (1) (a) A contiguous area of a county not within a municipality, with a population
110 of at least 100 but less than 1,000, may incorporate as a town as provided in this section.

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

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

116 [~~(3)~~] (2) (a) The process to incorporate an area as a town is initiated by filing a petition
117 with the clerk of the county in which the area is located.

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

119 (i) be signed by:

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

121 [~~(A)~~] (I) is located within the area proposed to be incorporated;
 122 [~~(B)~~] (II) covers a majority of the total private land area within the area; and
 123 [~~(C)~~] (III) is equal in value to [~~at least 1/3~~] more than 1/2 of the value of all private real
 124 property within the area; and

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

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

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

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

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

135 PETITION FOR INCORPORATION OF (insert the proposed name of the proposed
 136 town)

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

139 We, the undersigned owners of real property and registered voters within the area
 140 described in this petition, respectfully petition the county legislative body for the area described
 141 in this petition to be incorporated as a town. Each of the undersigned affirms that each has
 142 personally signed this petition and is either an owner of real property within the described area
 143 or a registered voter residing within the described area, and that the current residence address
 144 of each is correctly written after the signer's name. The area proposed to be incorporated as a
 145 town is described as follows: (insert an accurate description of the area proposed to be
 146 incorporated).

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

149 (i) was filed before the filing of the petition; and

150 (ii) is still pending on the date the petition is filed.

151 (d) A petition may not be filed under this section if the private real property owned by

152 the petition sponsors, designated under Subsection (2)(b)(iii), cumulatively exceeds 40% of the
153 total private land area within the area proposed to be incorporated as a town.

154 ~~[(4)]~~ (3) Section 10-2-104 applies to a petition for incorporation as a town in any
155 county, except that the notice under Subsection 10-2-104(1) shall be sent within seven calendar
156 days after the filing of a petition under Subsection ~~[(3)]~~ (2).

157 ~~[(5)]~~ (4) (a) ~~[(i)]~~ The legislative body of ~~[each]~~ a county with which a ~~[base]~~ petition is
158 filed under this section ~~[shall]~~ may, at its option and upon verifying that the petition meets all
159 applicable requirements, commission and pay for a feasibility study as provided in Section
160 10-2-103.

161 ~~[(ii)]~~ (b) If the county legislative body commissions a feasibility study and the results
162 of the feasibility study under Subsection ~~[(5)]~~ (4)(a)~~[(i)]~~ meet the requirements of Subsection
163 ~~10-2-109(3)]~~ show that the average annual amount of revenue under Subsection
164 10-2-106(4)(a)(ix) does not exceed the average annual amount of cost under Subsection
165 10-2-106(4)(a)(viii) by more than 10%, the county legislative body shall ~~[grant the petition]~~
166 adopt a resolution approving the creation of the new town.

167 ~~[(iii)]~~ (c) If the results of the feasibility study under Subsection ~~[(5)]~~ (4)(a)~~[(i)]~~ do not
168 meet the requirements of Subsection ~~10-2-109(3)]~~ show that the average annual amount of
169 revenue under Subsection 10-2-106(4)(a)(ix) exceeds the average annual amount of cost under
170 Subsection 10-2-106(4)(a)(viii) by more than 10%, the county legislative body may:

171 ~~[(A)]~~ (i) deny the petition;

172 ~~[(B) grant the petition]~~ (ii) adopt a resolution approving the creation of the new town;

173 or

174 ~~[(C)]~~ (iii) with the consent of the petition sponsors, ~~[grant the petition]~~ adopt a
175 resolution approving the creation of the new town, after:

176 ~~[(F)]~~ (A) imposing conditions to mitigate the fiscal inequities identified in the
177 feasibility study; or

178 ~~[(H)]~~ (B) altering the boundaries of the area proposed to be incorporated as a town to
179 approximate the boundaries necessary to meet the requirements of Subsection ~~[10-2-109(3)]~~
180 (4)(c).

181 ~~[(iv)]~~ (d) Each town that incorporates pursuant to a petition ~~[granted]~~ approved after
182 the county legislative body imposes conditions under Subsection ~~[(5)(a)(iii)(C)(F)]~~ (4)(c)(iii)(A)

183 shall comply with those conditions.

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

186 (5) If the county legislative body chooses not to commission a feasibility study under
187 Subsection (4)(a), the county legislative body shall, after verifying that the petition meets all
188 applicable requirements, adopt a resolution approving the creation of the new town.

189 (6) (a) (i) Upon the [granting] adoption of a [petition filed under this section]
190 resolution approving the creation of a new town, the legislative body of the county in which the
191 proposed town is located shall [appoint a mayor and members of the town council from a list of
192 qualified individuals approved by the petition sponsors], subject to Subsection (6)(a)(ii), hold
193 an election for town officers at the earliest of the next:

194 (A) regular general election date under Section 20A-1-201;

195 (B) municipal primary election date under Section 20A-9-404;

196 (C) municipal general election date under Section 20A-1-202; or

197 (D) June special election date under Subsection 20A-1-204(1)(a)(i).

198 (ii) An election under Subsection (6)(a)(i) may not be held within 45 days after the
199 county legislative body's adoption of a resolution approving the creation of a new town.

200 (b) The officers elected at an election under Subsection (6)(a) shall take office:

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

203 (ii) at noon on the first day of the month next following the effective date of the
204 incorporation under Subsection (9), if the election of officers is held on:

205 (A) a municipal primary election date; or

206 (B) a June special election date under Subsection 20A-1-204(1)(a)(i).

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

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

211 (8) (a) ~~[Each mayor appointed under Subsection (6) shall, within]~~ Within seven days
212 ~~[of appointment, file]~~ after the canvass of the final election of town officers under Subsection
213 (6), the mayor-elect of the new town shall file at least three copies of the articles of

214 incorporation of the new town with the lieutenant governor.

215 (b) The articles of incorporation shall meet the requirements of Subsection
216 10-2-119(2).

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

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

221 (9) A town is incorporated:

222 (a) on December 31 of the year in which the lieutenant governor issues a certificate of
223 entity creation for the town under Section 67-1a-6.5, if the election of town officers under
224 Subsection (6) is held on a regular general or municipal general election date; or

225 (b) on the last day of the month during which the lieutenant governor issues a
226 certificate of entity creation for the town under Section 67-1a-6.5, if the election of town
227 officers under Subsection (6) is held on:

228 (i) a municipal primary election date; or

229 (ii) a June special election date under Subsection 20A-1-204(1)(a)(i).

230 (10) This section applies to each petition to incorporate a town:

231 (a) filed on or after the effective date of this section; or

232 (b) pending on the effective date of this section.

233 **Section 3. Effective date.**

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

238 **Section 4. Revisor instructions.**

239 It is the intent of the Legislature that the Office of Legislative Research and General
240 Counsel, in preparing the Utah Code database for publication, replace the phrase "the effective
241 date of this section" in Subsection 10-2-125(10)(b) of this bill with the actual effective date of
242 this bill.

Legislative Review Note
as of 1-31-08 6:02 PM

Office of Legislative Research and General Counsel

H.B. 413 - Town Incorporation Process Revisions

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
