

Senator Dennis E. Stowell proposes the following substitute bill:

MUNICIPAL INCORPORATION AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Dennis E. Stowell

House Sponsor: Melvin R. Brown

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";
- ▶ clarifies that the value of property for petition purposes is assessed value;
- ▶ provides a petition certification process;
- ▶ 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;
- ▶ 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;
- ▶ establishes financial feasibility study criteria;



- 26 ▶ requires the initial officers of a newly incorporated town to be elected rather than
- 27 appointed by the county legislative body;
- 28 ▶ modifies the form of government under which a newly incorporated town is
- 29 required to operate;
- 30 ▶ modifies the criteria for when a county legislative body is required to approve a
- 31 petition to incorporate a town;
- 32 ▶ modifies election provisions to require the election of officers of a newly
- 33 incorporated town to be conducted within 60 days after the county legislative body
- 34 adopts a resolution approving the incorporation;
- 35 ▶ provides for when newly elected town officers in a new town take office;
- 36 ▶ modifies the date upon which a town is incorporated;
- 37 ▶ provides that town incorporation petitions filed before the effective date of this bill
- 38 are governed by the law in effect at the time of filing; and
- 39 ▶ allows petition sponsors under certain petitions filed before the effective date of this
- 40 bill to choose whether to have the initial town officers appointed or elected.

41 **Monies Appropriated in this Bill:**

42 None

43 **Other Special Clauses:**

44 This bill provides an immediate effective date.

45 This bill provides revisor instructions.

46 **Utah Code Sections Affected:**

47 AMENDS:

48 **10-2-109**, as last amended by Laws of Utah 1997, Second Special Session, Chapter 3

49 **10-2-125**, as last amended by Laws of Utah 2007, Chapter 212

50 **20A-1-203**, as last amended by Laws of Utah 2007, Chapter 215

51 **20A-1-204**, as last amended by Laws of Utah 2004, Chapter 371



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

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

55 **10-2-109. Incorporation petition -- Requirements and form.**

56 (1) At any time within 18 months of the completion of the public hearings required

57 under Subsection 10-2-108(1), a petition for incorporation of the area proposed to be
58 incorporated as a city may be filed in the office of the clerk of the county in which the area is
59 located.

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

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

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

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

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

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

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

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

71 (e) designate five signers of the petition as petition sponsors, one of whom shall be
72 designated as the contact sponsor, with the mailing address and telephone number of each;

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

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

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

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

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

82 PETITION FOR INCORPORATION OF (insert the proposed name of the proposed
83 city)

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

86 We, the undersigned owners of real property within the area described in this petition,
87 respectfully petition the county legislative body to submit to the registered voters residing

88 within the area described in this petition, at a special election held for that purpose, the
89 question of whether the area should incorporate as a city. Each of the undersigned affirms that
90 each has personally signed this petition and is an owner of real property within the described
91 area, and that the current residence address of each is correctly written after the signer's name.
92 The area proposed to be incorporated as a city is described as follows: (insert an accurate
93 description of the area proposed to be incorporated).

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

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

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

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

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

106 **10-2-125. Incorporation of a town.**

107 (1) As used in this section:

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

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

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

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

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

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

118 [~~(ii) covers at least a majority of the total private land area within the area proposed to~~

119 be incorporated; and]

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

122 (a) "Assessed value." with respect to agricultural land, means the value at which the
123 land would be assessed without regard to a valuation for agricultural use under Section
124 59-2-503.

125 (b) "Financial feasibility study" means a study to determine:

126 (i) the projected revenues for the proposed town during the first three years after
127 incorporation; and

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

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

132 (b) (i) The population figure under Subsection (2)(a) shall be derived from the most
133 recent official census or census estimate of the United States Bureau of the Census.

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

137 (3) (a) The process to incorporate an area as a town is initiated by filing a petition with
138 the clerk of the county in which the area is located.

139 (b) Each petition under Subsection (3)(a) shall:

140 (i) be signed by:

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

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

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

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

146 (B) registered voters within the area proposed to be incorporated, according to the
147 official voter registration list maintained by the county on the date the petition is filed, equal in
148 number to at least a majority of all voters within that area who voted in the last gubernatorial
149 election;

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

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

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

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

158 PETITION FOR INCORPORATION OF (insert the proposed name of the proposed
159 town)

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

162 We, the undersigned owners of real property and registered voters within the area
163 described in this petition, respectfully petition the county legislative body for the area described
164 in this petition to be incorporated as a town. Each of the undersigned affirms that each has
165 personally signed this petition and is either an owner of real property within the described area
166 or a registered voter residing within the described area, and that the current residence address
167 of each is correctly written after the signer's name. The area proposed to be incorporated as a
168 town is described as follows: (insert an accurate description of the area proposed to be
169 incorporated).

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

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

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

174 (d) A petition may not be filed under this section if the private real property owned by
175 the petition sponsors, designated under Subsection (3)(b)(iii), cumulatively exceeds 40% of the
176 total private land area within the area proposed to be incorporated as a town.

177 (4) Section 10-2-104 applies to a petition for incorporation as a town in any county,
178 notwithstanding Subsection 10-2-104(3), except that the notice under Subsection 10-2-104(1)
179 shall be sent within seven calendar days after the filing of a petition under Subsection (3).

180 (5) Within 20 days after the filing of a petition under Subsection (2)(a), the county

181 clerk shall:

182 (a) with the assistance of other county officers from whom the clerk requests
183 assistance, determine whether the petition complies with the requirements of Subsection (3);

184 and

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

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

187 and

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

189 (I) the contact sponsor; and

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

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

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

197 (ii) A valid signature on a petition filed under Subsection (3)(a) may be used toward
198 fulfilling the signature requirement of Subsection (3)(b) for the same petition that is amended
199 under Subsection (6)(a)(i) and then refiled with the county clerk.

200 (b) If a petition is amended and refiled under Subsection (6)(a)(i) after having been
201 rejected by the county clerk under Subsection (5)(b)(ii):

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

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

205 ~~[(5)]~~ (7) (a) (i) The legislative body of [each] a county with which a [base] petition is
206 filed under this section [shall] may, at its option, commission and pay for a financial feasibility
207 study [as provided in Section 10-2-103] after:

208 (A) the petition is certified under Subsection (4): and

209 (B) holding a public hearing on the proposed incorporation and the need for a financial
210 feasibility study.

211 (ii) If the county legislative body chooses to commission a financial feasibility study,

212 the county legislative body shall:

213 (A) within 20 days after the public hearing under Subsection (7)(a)(i)(B) but no more
214 than 40 days after the incorporation petition is certified, select and engage a feasibility
215 consultant; and

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

219 ~~[(ii)]~~ (b) If the county legislative body commissions a financial feasibility study and the
220 results of the financial feasibility study [under Subsection (5)(a)(i) meet the requirements of
221 Subsection 10-2-109(3)] show that the average annual amount of revenues described in
222 Subsection (1)(b)(i) does not exceed the average annual amount of costs described in
223 Subsection (1)(b)(ii) by more than 10%, the county legislative body shall [grant the petition],
224 within 30 days after the feasibility consultant submits the written results of the financial
225 feasibility study:

226 (i) hold a public hearing on the results of the financial feasibility study; and

227 (ii) adopt a resolution approving the creation of the new town.

228 ~~[(iii)]~~ (c) (i) If the results of the feasibility study under this Subsection [~~(5)(a)(i)~~] (7)
229 [do not meet the requirements of Subsection 10-2-109(3)] show that the average annual amount
230 of revenues described in Subsection (1)(b)(i) exceeds the average annual amount of costs
231 described in Subsection (1)(b)(ii) by more than 10%, the county legislative body may, subject
232 to Subsection (7)(c)(ii):

233 (A) deny the petition;

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

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

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

239 (II) altering the boundaries of the area proposed to be incorporated as a town to
240 approximate the boundaries necessary to [meet the requirements of Subsection 10-2-109(3)]
241 prevent the average annual amount of revenue under Subsection (7)(a)(i)(A) from exceeding
242 the average annual amount of cost under Subsection (7)(a)(i)(B).

243 (ii) (A) A county legislative body intending to deny a petition under Subsection
244 (7)(c)(i)(A) or to adopt a resolution under Subsection (7)(c)(i)(B) shall deny the petition or
245 adopt the resolution within 20 days after the feasibility consultant submits the written results of
246 the financial feasibility study.

247 (B) A county legislative body intending to adopt a resolution under Subsection
248 (7)(c)(i)(C) shall adopt the resolution within 60 days after the feasibility consultant submits the
249 written results of the financial feasibility study.

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

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

255 (8) If the county legislative body chooses not to commission a financial feasibility
256 study under Subsection (7)(a), the county legislative body shall, within 20 days after the
257 petition is certified, adopt a resolution approving the creation of the new town.

258 ~~[(6)]~~ (9) (a) ~~[Upon the granting of a petition filed under this section,]~~ If the legislative
259 body of [the] a county in which [the] a proposed new town is located [shall appoint a mayor
260 and members of the town council from a list of qualified individuals approved by the petition
261 sponsors] adopts a resolution under Subsection (7) or (8) approving the incorporation of the
262 new town, the county legislative body shall, within 60 days after adopting the resolution, hold
263 an election for town officers.

264 (b) The officers elected at an election under Subsection (9)(a) shall take office:

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

267 (ii) at noon on the first day of the month next following the effective date of the
268 incorporation under Subsection (12), if the election of officers is held on any other date.

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

271 ~~[(7)]~~ (10) Each newly incorporated town shall operate under the ~~[six-member]~~
272 five-member council form of government as described in Section 10-3-101.

273 ~~[(8)]~~ (11) (a) ~~[Each mayor appointed under Subsection (6) shall, within]~~ Within seven

274 days ~~[of appointment, file]~~ after the canvass of the final election of town officers under
275 Subsection (9), the mayor-elect of the new town shall file at least three copies of the articles of
276 incorporation of the new town with the lieutenant governor.

277 (b) The articles of incorporation shall meet the requirements of Subsection
278 10-2-119(2).

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

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

283 (12) A town is incorporated:

284 (a) on December 31 of the year in which the lieutenant governor issues a certificate of
285 entity creation for the town under Section 67-1a-6.5, if the election of town officers under
286 Subsection (9) is held on a regular general or municipal general election date; or

287 (b) on the last day of the month during which the lieutenant governor issues a
288 certificate of entity creation for the town under Section 67-1a-6.5, if the election of town
289 officers under Subsection (9) is held on any other date.

290 (13) (a) For each petition filed before the effective date of this section:

291 (i) the petition is subject to and governed by the law in effect at the time the petition
292 was filed; and

293 (ii) the law in effect at the time the petition was filed governs in all administrative and
294 judicial proceedings relating to the petition.

295 (b) (i) As used in this Subsection (13)(b), "specified petition" means a petition
296 proposing the incorporation of a town filed before the effective date of this section that is a
297 qualifying petition under the law in effect at the time the petition was filed.

298 (ii) (A) If a specified petition is granted, the petition sponsors may choose whether to
299 have the initial town officers:

300 (I) appointed by the county legislative body, as provided under the law in effect at the
301 time the petition was filed; or

302 (II) elected, as provided in this section.

303 (B) (I) The petition sponsors shall make a choice under Subsection (3)(b)(ii)(A) by
304 submitting a written statement to the county legislative body, within ten days after the petition

305 to incorporate is granted, indicating the choice to have initial town officers appointed or
306 elected.

307 (II) If petition sponsors choose to have the initial town officers elected, the county
308 legislative body shall, notwithstanding Subsection (9)(a), hold an election for town officers
309 within 60 days after the petition sponsors submit their written statement under Subsection
310 (13)(b)(ii)(B)(I).

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

312 **20A-1-203. Calling and purpose of special elections.**

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

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

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

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

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

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

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

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

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

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

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

330 (ii) a vote on a voted leeway program authorized by Section 53A-17a-133 or
331 53A-17a-134;

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

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

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

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

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

340 (viii) an election of town officers of a newly incorporated town under Section
341 10-2-125.

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

- 344 (i) the date for the local special election; and
- 345 (ii) the purpose for the local special election.

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

347 **20A-1-204. Date of special election -- Legal effect.**

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

- 351 (i) the fourth Tuesday in June; ~~[or]~~
- 352 (ii) the first Tuesday after the first Monday in November~~[-]; or~~
- 353 (iii) for an election of town officers of a newly incorporated town under Section
354 10-2-125, on any date that complies with the requirements of that subsection.

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

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

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

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

365 (C) votes unanimously to hold the special election on that other date.

366 (ii) The legislative body of a local political subdivision may not call a local special

367 election for the date established in Title 20A, Chapter 9, Part 8, Western States Presidential
368 Primary, for Utah's Western States Presidential Primary.

369 (d) Nothing in this section prohibits:

370 (i) the governor or Legislature from submitting a matter to the voters at the regular
371 general election if authorized by law; or

372 (ii) a local government from submitting a matter to the voters at the regular municipal
373 election if authorized by law.

374 (2) (a) Two or more entities shall comply with Subsection (2)(b) if those entities hold a
375 special election within a county on the same day as:

376 (i) another special election;

377 (ii) a regular general election; or

378 (iii) a municipal general election.

379 (b) Entities described in Subsection (2)(a) shall, to the extent practicable, coordinate:

380 (i) polling places;

381 (ii) ballots;

382 (iii) election officials; and

383 (iv) other administrative and procedural matters connected with the election.

384 Section 5. **Effective date.**

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

389 Section 6. **Revisor instructions.**

390 It is the intent of the Legislature that the Office of Legislative Research and General
391 Counsel, in preparing the Utah Code database for publication, replace the phrase "the effective
392 date of this section" in Subsection 10-2-125(13) of this bill with the actual effective date of this
393 bill.