

**INCORPORATION OF A TOWN AMENDMENTS**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Gage Froerer**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

▶ requires that a county legislative body commission a financial feasibility study after a petition to incorporate is certified;

▶ requires that the legislative body of a county, based on certain results of the financial feasibility study:

- deny a petition to incorporate;
- impose conditions on the area proposed to be incorporated; or
- alter the boundaries of the area proposed to be incorporated; and

▶ makes technical corrections.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**10-2-125**, as last amended by Laws of Utah 2009, Chapters 350 and 388

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

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

30 **10-2-125. Incorporation of a town.**

31 (1) As used in this section:

32 (a) "Assessed value," with respect to agricultural land, means the value at which the  
33 land would be assessed without regard to a valuation for agricultural use under Section  
34 59-2-503.

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

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

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

40 (c) "Municipal service" means a publicly provided service that is not provided on a  
41 countywide basis.

42 (d) "Nonurban" means having a residential density of less than one unit per acre.

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

45 (ii) An area within a county of the first class is not contiguous for purposes of  
46 Subsection (2)(a)(i) if:

47 (A) the area includes a strip of land that connects geographically separate areas; and

48 (B) the distance between the geographically separate areas is greater than the average  
49 width of the strip of land connecting the geographically separate areas.

50 (b) The population figure under Subsection (2)(a) shall be determined:

51 (i) as of the date the incorporation petition is filed; and

52 (ii) by the Utah Population Estimates Committee within 20 days after the county clerk's  
53 certification under Subsection (6) of a petition filed under Subsection (4).

54 (3) (a) The process to incorporate an area as a town is initiated by filing a request for a  
55 public hearing with the clerk of the county in which the area is located.

56 (b) Each request for a public hearing under Subsection (3)(a) shall:

57 (i) be signed by the owners of at least five separate parcels of private real property,  
58 each owned by a different owner, located within the area proposed to be incorporated; and

59 (ii) be accompanied by an accurate map or plat depicting the boundary of the proposed  
60 town.

61 (c) Within 10 days after a request for a public hearing is filed under Subsection (3)(a),  
62 the county clerk shall, with the assistance of other county officers from whom the clerk  
63 requests assistance, determine whether the petition complies with the requirements of  
64 Subsection (3)(b).

65 (d) If the clerk determines that a request under Subsection (3)(a) fails to comply with  
66 the requirements of Subsection (3)(b), the clerk shall reject the request and deliver written  
67 notice of the rejection to the signers of the request.

68 (e) (i) If the clerk determines that a request under Subsection (3)(a) complies with the  
69 requirements of Subsection (3)(b), the clerk shall:

70 (A) schedule and arrange for a public hearing to be held:

71 (I) (Aa) at a public facility located within the boundary of the proposed town; or

72 (Bb) if there is no public facility within the boundary of the proposed town, at another  
73 nearby public facility or at the county seat; and

74 (II) within 20 days after the clerk provides the last notice required under Subsection  
75 (3)(e)(i)(B); and

76 (B) subject to Subsection (3)(e)(ii), give notice of the public hearing on the proposed  
77 incorporation by:

78 (I) posting notice of the public hearing on the county's Internet website, if the county  
79 has an Internet website; ~~[and]~~

80 (II) (Aa) ~~[(fi)]~~ publishing notice of the public hearing at least once a week for two  
81 consecutive weeks in a newspaper of general circulation within the proposed town; ~~[and] or~~

82 ~~[(Hii) publishing notice of the public hearing in accordance with Section 45-1-101 for~~  
83 ~~two weeks; or]~~

84 (Bb) ~~[in accordance with Subsection (3)(e)(i)(B)(H)(Aa)(fi);]~~ if there is no newspaper  
85 of general circulation within the proposed town, posting notice of the public hearing in at least  
86 five conspicuous public places within the proposed town~~[-]; and~~

87 (III) publishing notice of the public hearing in accordance with Section 45-1-101.

88 (ii) The posting of notice required under ~~[Subsection (3)(e)(i)(B)(I) and, if applicable,~~  
89 ~~Subsection (3)(e)(i)(B)(H)(Bb) and the first publishing of notice required under Subsection~~

90 ~~(3)(e)(i)(B)(II)(Aa), if applicable]~~ Subsections (3)(e)(i)(B)(II)(Aa) and (3)(e)(i)(B)(III), and if  
91 applicable, Subsections (3)(e)(i)(B)(I) and (3)(e)(i)(B)(II)(Bb), shall occur no later than 10 days  
92 after the day on which the clerk determines that a request complies with the requirements of  
93 Subsection (3)(b).

94 (iii) Each public hearing under Subsection (3)(e)(i)(A) shall be conducted by the chair  
95 of the county commission or council, or the chair's designee, to:

- 96 (A) introduce the concept of the proposed incorporation to the public;
- 97 (B) allow the public to review the map or plat of the boundary of the proposed town;
- 98 (C) allow the public to ask questions and become informed about the proposed  
99 incorporation; and

100 (D) allow the public to express their views about the proposed incorporation, including  
101 their views about the boundary of the area proposed to be incorporated.

102 (4) (a) At any time within three months after the public hearing under Subsection  
103 (3)(e), a petition to incorporate the area as a town may be filed with the clerk of the county in  
104 which the area is located.

105 (b) Each petition under Subsection (4)(a) shall:

106 (i) be signed by:

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

108 (I) is located within the area proposed to be incorporated;

109 (II) covers a majority of the total private land area within the area;

110 (III) is equal in assessed value to more than 1/2 of the assessed value of all private real  
111 property within the area; and

112 (IV) consists, in number of parcels, of at least 1/3 of the number of all parcels of  
113 private real property within the area proposed to be incorporated; and

114 (B) a majority of all registered voters within the area proposed to be incorporated as a  
115 town, according to the official voter registration list maintained by the county on the date the  
116 petition is filed;

117 (ii) designate as sponsors at least five of the property owners who have signed the  
118 petition, one of whom shall be designated as the contact sponsor, with the mailing address of  
119 each owner signing as a sponsor;

120 (iii) be accompanied by and circulated with an accurate map or plat, prepared by a

121 licensed surveyor, showing a legal description of the boundary of the proposed town; and

122 (iv) substantially comply with and be circulated in the following form:

123 PETITION FOR INCORPORATION OF (insert the proposed name of the proposed  
124 town)

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

127 We, the undersigned owners of real property and registered voters within the area  
128 described in this petition, respectfully petition the county legislative body for the area described  
129 in this petition to be incorporated as a town. Each of the undersigned affirms that each has  
130 personally signed this petition and is an owner of real property or a registered voter residing  
131 within the described area, and that the current residence address of each is correctly written  
132 after the signer's name. The area proposed to be incorporated as a town is described as follows:  
133 (insert an accurate description of the area proposed to be incorporated).

134 (c) A petition under this Subsection (4) may not describe an area that includes some or  
135 all of an area proposed for annexation in an annexation petition under Section 10-2-403 that:

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

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

138 (d) A petition may not be filed under this section if the private real property owned by  
139 the petition sponsors, designated under Subsection (4)(b)(ii), cumulatively exceeds 40% of the  
140 total private land area within the area proposed to be incorporated as a town.

141 (e) A signer of a petition under this Subsection (4) may withdraw or, after withdrawn,  
142 reinstate the signer's signature on the petition:

143 (i) at any time until the county clerk certifies the petition under Subsection (6); and

144 (ii) by filing a signed, written withdrawal or reinstatement with the county clerk.

145 (5) (a) If a petition is filed under Subsection (4)(a) proposing to incorporate as a town  
146 an area located within a county of the first class, the county clerk shall deliver written notice of  
147 the proposed incorporation:

148 (i) to each owner of private real property owning more than 1% of the assessed value  
149 of all private real property within the area proposed to be incorporated as a town; and

150 (ii) within seven calendar days after the date on which the petition is filed.

151 (b) A private real property owner described in Subsection (5)(a)(i) may exclude all or

152 part of the owner's property from the area proposed to be incorporated as a town by filing a  
153 notice of exclusion:

- 154 (i) with the county clerk; and
- 155 (ii) within 10 calendar days after receiving the clerk's notice under Subsection (5)(a).

156 (c) The county legislative body shall exclude from the area proposed to be incorporated  
157 as a town the property identified in the notice of exclusion under Subsection (5)(b) if:

- 158 (i) the property:
  - 159 (A) is nonurban; and
  - 160 (B) does not and will not require a municipal service; and
- 161 (ii) exclusion will not leave an unincorporated island within the proposed town.

162 (d) If the county legislative body excludes property from the area proposed to be  
163 incorporated as a town, the county legislative body shall send written notice of the exclusion to  
164 the contact sponsor within five days after the exclusion.

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

167 (a) with the assistance of other county officers from whom the clerk requests  
168 assistance, determine whether the petition complies with the requirements of Subsection (4);  
169 and

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

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

172 and

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

174 (I) the contact sponsor;

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

177 (III) the Utah Population Estimates Committee; 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 rejection.

181 (7) (a) (i) A petition that is rejected under Subsection (6)(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 (4)(a) may be used toward  
 184 fulfilling the signature requirement of Subsection (4)(b) for the same petition that is amended  
 185 under Subsection (7)(a)(i) and then refiled with the county clerk.

186 (b) If a petition is amended and refiled under Subsection (7)(a)(i) after having been  
 187 rejected by the county clerk under Subsection (6)(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 (8) (a) (i) The legislative body of a county with which a petition is filed under  
 192 Subsection (4) [~~may, at its option and~~] shall, upon the petition being certified under Subsection  
 193 (6), commission and pay for a financial feasibility study.

194 (ii) [~~If the~~] A county legislative body [chooses to commission] that commissions a  
 195 financial feasibility study[; the county legislative body] described in Subsection (8)(a)(i) shall:

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

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

201 (b) The county legislative body shall approve a petition proposing the incorporation of  
 202 a town and hold an election for town officers, as provided in Subsection (9), if:

203 (i) the county clerk has certified the petition under Subsection (6); and

204 [(ii) (A) (i) ~~the county legislative body has commissioned a financial feasibility study~~  
 205 ~~under Subsection (8)(a); and]~~

206 [~~(H)~~] (ii) the results of the financial feasibility study described in Subsection (8)(a)(i)  
 207 show that the average annual amount of revenues described in Subsection (1)(b)(i) does not  
 208 exceed the average annual amount of costs described in Subsection (1)(b)(ii) by more than  
 209 10%[; or].

210 [~~(B) the county legislative body chooses not to commission a financial feasibility~~  
 211 ~~study.]~~

212 (c) (i) If [~~the county legislative body commissions a financial feasibility study under~~  
 213 ~~Subsection (8)(a) and]~~ the results of the financial feasibility study described in Subsection

214 ~~(8)(a)(i)~~ show that the average annual amount of revenues described in Subsection (1)(b)(i)  
215 exceeds the average annual amount of costs described in Subsection (1)(b)(ii) by more than  
216 10%, the county legislative body ~~[may]~~ shall:

217 (A) deny the petition, ~~[subject to]~~ in accordance with Subsection (8)(c)(ii)~~[-, if the~~  
218 ~~results of the financial feasibility study show that the average annual amount of revenues~~  
219 ~~described in Subsection (1)(b)(i) exceeds the average annual amount of costs described in~~  
220 ~~Subsection (1)(b)(ii) by 25% or more]; or~~

221 ~~[(B) approve the petition and hold an election for town officers, as provided in~~  
222 ~~Subsection (9); or]~~

223 ~~[(C)]~~ (B) (I) with the consent of the petition sponsors:

224 (Aa) impose conditions to ~~[mitigate the fiscal inequities identified in the financial~~  
225 ~~feasibility study]~~ prevent the average annual amount of revenues described in Subsection  
226 (1)(b)(i) from exceeding the average annual amount of costs described in Subsection (1)(b)(ii);  
227 or

228 (Bb) alter the boundaries of the area proposed to be incorporated as a town to  
229 approximate the boundaries necessary to prevent the average annual amount of revenues  
230 described in Subsection (1)(b)(i) from exceeding the average annual amount of costs described  
231 in Subsection (1)(b)(ii); and

232 (II) approve the incorporation petition and hold an election for town officers, as  
233 provided in Subsection (9).

234 (ii) A county legislative body intending to deny a petition under Subsection (8)(c)(i)(A)  
235 shall deny the petition within 20 days after the feasibility consultant submits the written results  
236 of the financial feasibility study.

237 (d) Each town that incorporates pursuant to a petition approved after the county  
238 legislative body imposes conditions under Subsection (8)(c)(i)~~[(C)(I)]~~(B)(I)(Aa) shall comply  
239 with those conditions.

240 (9) (a) The legislative body of the county in which the proposed new town is located  
241 shall hold the election for town officers provided for in Subsection (8) within:

242 ~~[(i) 45 days after the petition is certified, for an election under Subsection~~  
243 ~~(8)(b)(ii)(B);]~~

244 ~~[(ii)]~~ (i) 45 days after the day on which the feasibility consultant submits the written



245 results of the financial feasibility study, for an election under Subsection (8)(b)[~~(ii)(A)~~ or  
246 ~~(8)(c)(i)(B)~~]; or

247 [~~(iii)~~] (ii) 60 days after the day on which the feasibility consultant submits the written  
248 results of the financial feasibility study, for an election under Subsection (8)(c)(i)[~~(C)~~](B)(II).

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

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

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

254 (10) Each newly incorporated town shall operate under the five-member council form  
255 of government as defined in Section 10-3b-102.

256 (11) The mayor-elect of the future town shall:

257 (a) within 30 days after the canvass of the election of town officers under Subsection  
258 (9), file with the lieutenant governor:

259 (i) a copy of a notice of an impending boundary action, as defined in Section 67-1a-6.5,  
260 that meets the requirements of Subsection 67-1a-6.5(3); and

261 (ii) a copy of an approved final local entity plat, as defined in Section 67-1a-6.5; and

262 (b) upon the lieutenant governor's issuance of a certificate of incorporation under  
263 Section 67-1a-6.5:

264 (i) if the town is located within the boundary of a single county, submit to the recorder  
265 of that county the original:

266 (A) notice of an impending boundary action;

267 (B) certificate of incorporation; and

268 (C) approved final local entity plat; or

269 (ii) if the town is located within the boundaries of more than a single county, submit  
270 the original of the documents listed in Subsections (11)(b)(i)(A), (B), and (C) to one of those  
271 counties and a certified copy of those documents to each other county.

272 (12) (a) A new town is incorporated:

273 (i) on December 31 of the year in which the lieutenant governor issues a certificate of  
274 incorporation under Section 67-1a-6.5, if the election of town officers under Subsection (9) is  
275 held on a regular general or municipal general election date; or

276 (ii) on the last day of the month during which the lieutenant governor issues a  
277 certificate of incorporation under Section 67-1a-6.5, if the election of town officers under  
278 Subsection (9) is held on any other date.

279 (b) (i) The effective date of an incorporation for purposes of assessing property within  
280 the new town is governed by Section 59-2-305.5.

281 (ii) Until the documents listed in Subsection (11)(b) are recorded in the office of the  
282 recorder of each county in which the property is located, a newly incorporated town may not:

- 283 (A) levy or collect a property tax on property within the town;
- 284 (B) levy or collect an assessment on property within the town; or
- 285 (C) charge or collect a fee for service provided to property within the town.

286 (13) For each petition filed before March 5, 2008:

287 (a) the petition is subject to and governed by the law in effect at the time the petition  
288 was filed; and

289 (b) the law in effect at the time the petition was filed governs in all administrative and  
290 judicial proceedings relating to the petition.

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**Legislative Review Note**  
**as of 10-26-09 1:08 PM**

**Office of Legislative Research and General Counsel**

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**H.B. 216 - Incorporation of a Town Amendments**

**Fiscal Note**

2010 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses. There will likely be some increased costs for local entities currently not filing financial feasibility studies.

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