

Representative Fred C. Cox proposes the following substitute bill:

INCORPORATION AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Melvin R. Brown

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to the incorporation of a city or town.

Highlighted Provisions:

This bill:

- ▶ amends signature requirements for a petition to incorporate a city;
- ▶ amends signature requirements for a petition to incorporate a town; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-2-109, as last amended by Laws of Utah 2010, Chapter 378

10-2-125, as last amended by Laws of Utah 2010, Chapters 90, 122 and last amended by Coordination Clause, Laws of Utah 2010, Chapter 90

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



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

27 **10-2-109. Incorporation petition -- Requirements and form.**

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

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

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

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

35 (ii) covers at least [~~1/3~~] 1/6 of the total private land area within the area; and

36 (iii) is equal in value to at least [~~1/3~~] 1/6 of the value of all private real property within
37 the area;

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

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

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

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

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

47 (i) selecting the number of commission or council members the new city will have; and

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

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

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

53 PETITION FOR INCORPORATION OF (insert the proposed name of the proposed
54 city)

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

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

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

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

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

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

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

77 **10-2-125. Incorporation of a town.**

78 (1) As used in this section:

79 (a) "Assessed value," with respect to agricultural land, means the value at which the
80 land would be assessed without regard to a valuation for agricultural use under Section
81 59-2-503.

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

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

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

87 (c) "Municipal service" means a publicly provided service that is not provided on a

88 countywide basis.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

123 (B) no later than 10 days after the clerk determines that a request complies with the
124 requirements of Subsection (3)(b), give notice of the public hearing on the proposed
125 incorporation by:

126 (I) posting notice of the public hearing on the county's Internet website, if the county
127 has an Internet website;

128 (II) (Aa) publishing notice of the public hearing at least once a week for two
129 consecutive weeks in a newspaper of general circulation within the proposed town; or

130 (Bb) if there is no newspaper of general circulation within the proposed town, posting
131 notice of the public hearing in at least five conspicuous public places within the proposed
132 town; and

133 (III) publishing notice of the public hearing on the Utah Public Notice Website created
134 in Section 63F-1-701.

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

137 (A) introduce the concept of the proposed incorporation to the public;

138 (B) allow the public to review the map or plat of the boundary of the proposed town;

139 (C) allow the public to ask questions and become informed about the proposed
140 incorporation; and

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

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

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

147 (i) be signed by:

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

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

- 150 (II) covers a majority of the total private land area within the area;
- 151 (III) is equal in assessed value to more than [~~1/2~~] 1/4 of the assessed value of all private
152 real property within the area; and
- 153 (IV) consists, in number of parcels, of at least [~~1/3~~] 1/6 of the number of all parcels of
154 private real property within the area proposed to be incorporated; and
- 155 (B) a majority of all registered voters within the area proposed to be incorporated as a
156 town, according to the official voter registration list maintained by the county on the date the
157 petition is filed;
 - 158 (ii) designate as sponsors at least five of the property owners who have signed the
159 petition, one of whom shall be designated as the contact sponsor, with the mailing address of
160 each owner signing as a sponsor;
 - 161 (iii) be accompanied by and circulated with an accurate map or plat, prepared by a
162 licensed surveyor, showing a legal description of the boundary of the proposed town; and
 - 163 (iv) substantially comply with and be circulated in the following form:
164 PETITION FOR INCORPORATION OF (insert the proposed name of the proposed
165 town)
166 To the Honorable County Legislative Body of (insert the name of the county in which
167 the proposed town is located) County, Utah:
168 We, the undersigned owners of real property and registered voters within the area
169 described in this petition, respectfully petition the county legislative body for the area described
170 in this petition to be incorporated as a town. Each of the undersigned affirms that each has
171 personally signed this petition and is an owner of real property or a registered voter residing
172 within the described area, and that the current residence address of each is correctly written
173 after the signer's name. The area proposed to be incorporated as a town is described as follows:
174 (insert an accurate description of the area proposed to be incorporated).
 - 175 (c) A petition under this Subsection (4) may not describe an area that includes some or
176 all of an area proposed for annexation in an annexation petition under Section 10-2-403 that:
 - 177 (i) was filed before the filing of the petition; and
 - 178 (ii) is still pending on the date the petition is filed.
 - 179 (d) A petition may not be filed under this section if the private real property owned by
180 the petition sponsors, designated under Subsection (4)(b)(ii), cumulatively exceeds 40% of the

181 total private land area within the area proposed to be incorporated as a town.

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

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

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

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

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

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

192 (b) A private real property owner described in Subsection (5)(a)(i) may exclude all or
193 part of the owner's property from the area proposed to be incorporated as a town by filing a
194 notice of exclusion:

195 (i) with the county clerk; and

196 (ii) within 10 calendar days after receiving the clerk's notice under Subsection (5)(a).

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

199 (i) the property:

200 (A) is nonurban; and

201 (B) does not and will not require a municipal service; and

202 (ii) exclusion will not leave an unincorporated island within the proposed town.

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

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

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

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

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

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

215 (I) the contact sponsor;

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

218 (III) the Utah Population Estimates Committee; or

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

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

224 (ii) A valid signature on a petition filed under Subsection (4)(a) may be used toward
225 fulfilling the signature requirement of Subsection (4)(b) for the same petition that is amended
226 under Subsection (7)(a)(i) and then refiled with the county clerk.

227 (b) If a petition is amended and refiled under Subsection (7)(a)(i) after having been
228 rejected by the county clerk under Subsection (6)(b)(ii):

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

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

232 (8) (a) (i) The legislative body of a county with which a petition is filed under
233 Subsection (4) may, at its option and upon the petition being certified under Subsection (6),
234 commission and pay for a financial feasibility study.

235 (ii) If the county legislative body chooses to commission a financial feasibility study,
236 the county legislative body shall:

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

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

242 (b) If the county legislative body has commissioned a financial feasibility study under

243 Subsection (8)(a)(i), the county legislative body shall approve a petition proposing the
244 incorporation of a town and hold an election for town officers, as provided in Subsection (9),
245 if:

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

247 (ii) (A) the results of the financial feasibility study described in Subsection (8)(a)(i)
248 show that the average annual amount of revenues described in Subsection (1)(b)(i) does not
249 exceed the average annual amount of costs described in Subsection (1)(b)(ii) by more than
250 15%; or

251 (B) the results of the financial feasibility study described in Subsection (8)(a)(i) show
252 that the average annual amount of costs described in Subsection (1)(b)(ii) does not exceed the
253 average annual amount of revenues described in Subsection (1)(b)(i) by more than 15%.

254 (c) (i) If the results of the financial feasibility study described in Subsection (8)(a)(i)
255 show that the average annual amount of revenues described in Subsection (1)(b)(i) exceeds the
256 average annual amount of costs described in Subsection (1)(b)(ii) by more than 15%, the
257 county legislative body may:

258 (A) deny the petition, in accordance with Subsection (8)(c)(iii), if the results of the
259 financial feasibility study show that the average annual amount of revenues described in
260 Subsection (1)(b)(i) exceeds the average annual amount of costs described in Subsection
261 (1)(b)(ii) by more than 15%; or

262 (B) (I) with the consent of the petition sponsors:

263 (Aa) impose conditions to prevent the average annual amount of revenues described in
264 Subsection (1)(b)(i) from exceeding the average annual amount of costs described in
265 Subsection (1)(b)(ii) by more than 15%; or

266 (Bb) alter the boundaries of the area proposed to be incorporated as a town to
267 approximate the boundaries necessary to prevent the average annual amount of revenues
268 described in Subsection (1)(b)(i) from exceeding the average annual amount of costs described
269 in Subsection (1)(b)(ii) by more than 15%; and

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

272 (ii) If the results of the financial feasibility study described in Subsection (8)(a)(i) show
273 that the average annual amount of costs described in Subsection (1)(b)(ii) exceeds the average

274 annual amount of revenues described in Subsection (1)(b)(i) by more than 15%, the county
275 legislative body shall:

276 (A) approve the petition;

277 (B) deny the petition in accordance with Subsection (8)(c)(iii); or

278 (C) (I) with the consent of the petition sponsors:

279 (Aa) impose conditions to prevent the average annual amount of costs described in
280 Subsection (1)(b)(ii) from exceeding the average annual amount of revenues described in
281 Subsection (1)(b)(i) by more than 15%; or

282 (Bb) alter the boundaries of the area proposed to be incorporated as a town to
283 approximate the boundaries necessary to prevent the average annual amount of costs described
284 in Subsection (1)(b)(ii) from exceeding the average annual amount of revenues described in
285 Subsection (1)(b)(i) by more than 15%; and

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

288 (iii) A county legislative body intending to deny a petition under Subsection
289 (8)(c)(i)(A) or (8)(c)(ii)(B) shall deny the petition within 20 days after the feasibility consultant
290 submits the written results of the financial feasibility study.

291 (d) Each town that incorporates pursuant to a petition approved after the county
292 legislative body imposes conditions under Subsection (8)(c)(i)(B)(I)(Aa) or (8)(c)(ii)(C)(I)(Aa)
293 shall comply with those conditions.

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

296 (i) 45 days after the day on which the feasibility consultant submits the written results
297 of the financial feasibility study, for an election under Subsection (8)(b); or

298 (ii) 60 days after the day on which the feasibility consultant submits the written results
299 of the financial feasibility study, for an election under Subsection (8)(c)(i)(B)(II) or
300 (8)(c)(ii)(B)(II).

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

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

304 (ii) at noon on the first day of the month next following the effective date of the

305 incorporation under Subsection (12), if the election of officers is held on any other date.

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

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

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

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

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

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

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

318 (A) notice of an impending boundary action;

319 (B) certificate of incorporation; and

320 (C) approved final local entity plat; or

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

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

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

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

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

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

335 (A) levy or collect a property tax on property within the town;

- 336 (B) levy or collect an assessment on property within the town; or
337 (C) charge or collect a fee for service provided to property within the town.
338 (13) For each petition filed before March 5, 2008:
339 (a) the petition is subject to and governed by the law in effect at the time the petition
340 was filed; and
341 (b) the law in effect at the time the petition was filed governs in all administrative and
342 judicial proceedings relating to the petition.