

1 **PROTECTION OF UNINCORPORATED AREAS**
2 **IN COUNTIES OF THE FIRST CLASS**

3 2002 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: A. Lamont Tyler**

6 **This act modifies the Utah Municipal Code by amending provisions relating to annexation.**
7 **The act provides for the review and approval of municipal annexations in a county of the**
8 **first class by the county legislative body. The act sets standards for the effective date of**
9 **annexations. The act repeals certain provisions relating to mandatory annexations. The act**
10 **makes other technical changes.**

11 This act affects sections of Utah Code Annotated 1953 as follows:

12 AMENDS:

13 **10-2-402**, as last amended by Chapter 206, Laws of Utah 2001

14 **10-2-405**, as last amended by Chapter 206, Laws of Utah 2001

15 **10-2-407**, as last amended by Chapter 206, Laws of Utah 2001

16 **10-2-408**, as last amended by Chapter 206, Laws of Utah 2001

17 **10-2-418**, as last amended by Chapter 361, Laws of Utah 1999

18 ENACTS:

19 **10-2-407.5**, Utah Code Annotated 1953

20 **10-2-408.5**, Utah Code Annotated 1953

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

22 Section 1. Section **10-2-402** is amended to read:

23 **10-2-402. Annexation -- Limitations.**

24 (1) (a) A contiguous, unincorporated area that is contiguous to a municipality may be
25 annexed to the municipality as provided in this part.

26 (b) An unincorporated area may not be annexed to a municipality unless:

27 (i) it is a contiguous area;



- 28 (ii) it is contiguous to the municipality;
- 29 (iii) except as provided in Subsection 10-2-418(1)(b), annexation will not leave or create
- 30 an unincorporated island or peninsula; and
- 31 (iv) for an area located in a specified county with respect to an annexation that occurs after
- 32 December 31, 2002, the area is within the proposed annexing municipality's expansion area.
- 33 (2) Except as provided in Section 10-2-418, a municipality may not annex an
- 34 unincorporated area unless a petition under Section 10-2-403 is filed requesting annexation.
- 35 (3) An annexation under this part may not include part of a parcel of real property and
- 36 exclude part of that same parcel unless the owner of that parcel has signed the annexation petition
- 37 under Section 10-2-403.
- 38 (4) A municipality may not annex an unincorporated area in a specified county for the sole
- 39 purpose of acquiring municipal revenue or to retard the capacity of another municipality to annex
- 40 the same or a related area unless the municipality has the ability and intent to benefit the annexed
- 41 area by providing municipal services to the annexed area.
- 42 (5) The legislative body of a specified county may not approve urban development within
- 43 a municipality's expansion area unless:
- 44 (a) the county notifies the municipality of the proposed development; and
- 45 (b) (i) the municipality consents in writing to the development; or
- 46 (ii) (A) within 90 days after the county's notification of the proposed development, the
- 47 municipality submits to the county a written objection to the county's approval of the proposed
- 48 development; and
- 49 (B) the county responds in writing to the municipality's objections.
- 50 [~~(6) (a) Except as provided in Subsection (6)(b), no annexation petition under this part may~~
- 51 ~~be filed with a municipality located within a county of the first class on or after April 30, 2001~~
- 52 ~~until after November 15, 2001, and no municipality located in a county of the first class may accept~~
- 53 ~~an annexation petition under this part during that time.]~~
- 54 [~~(b) Notwithstanding Subsection (6)(a), an annexation petition may be filed with a~~
- 55 ~~municipality located within a county of the first class and a municipality located in a county of the~~
- 56 ~~first class may accept an annexation petition from April 30, 2001 to November 15, 2001 if the~~
- 57 ~~requirements of Subsection 10-2-405(1)(b) are met.]~~
- 58 [~~(c) Nothing in this Subsection (6) may be construed to affect an annexation proceeding~~

59 initiated by a petition filed before April 30, 2001.]

60 Section 2. Section **10-2-405** is amended to read:

61 **10-2-405. Acceptance or rejection of an annexation petition -- Modified petition.**

62 (1) (a) (i) [~~(A)~~] A municipal legislative body may:

63 [~~(F)~~] (A) [~~except as provided in Subsection (1)(b) and~~] subject to Subsection (1)(a)[~~(i)(B)~~]
64 (ii), deny a petition filed under Section 10-2-403; or

65 [~~(H)~~] (B) accept the petition for further consideration under this part.

66 [~~(B)~~] (ii) A municipal legislative body's failure to act to deny or accept a petition under
67 Subsection (1)(a)(i)[~~(A)~~] within 14 days after the filing of the petition shall be considered to be an
68 acceptance of the petition for further consideration under this part.

69 [~~(i)~~] (b) If a municipal legislative body denies a petition under Subsection (1)(a)(i)(A),
70 it shall, within five days of the denial, mail written notice of the denial to the contact sponsor, the
71 clerk of the county in which the area proposed for annexation is located, and the chair of the
72 planning commission of each township in which any part of the area proposed for annexation is
73 located.

74 [~~(b) A municipal legislative body may not deny a petition filed under Section 10-2-403~~
75 ~~proposing to annex an area located in a county of the first class if:]~~

76 [~~(i) the petition contains the signatures of the owners of private real property that:]~~

77 [~~(A) is located within the area proposed for annexation;~~]

78 [~~(B) covers a majority of the private land area within the area proposed for annexation;~~
79 ~~and]~~

80 [~~(C) is equal in value to at least 1/2 of the value of all private real property within the area~~
81 ~~proposed for annexation;]~~

82 [~~(ii) the population in the area proposed for annexation does not exceed 10% of the~~
83 ~~population of the proposed annexing municipality;]~~

84 [~~(iii) the property tax rate for municipal services in the area proposed to be annexed is~~
85 ~~higher than the property tax rate of the proposed annexing municipality; and]~~

86 [~~(iv) all annexations by the proposed annexing municipality during the year that the~~
87 ~~petition was filed have not increased the municipality's population by more than 20%.]~~

88 (2) If the municipal legislative body accepts a petition under Subsection (1)(a)(i)[~~(A)~~] or
89 is considered to have accepted the petition under Subsection (1)(a)[~~(i)(B)~~] (ii), the city recorder

90 or town clerk, as the case may be, shall, within 30 days of that acceptance:

91 (a) with the assistance of the municipal attorney and of the clerk, surveyor, and recorder
92 of the county in which the area proposed for annexation is located, determine whether the petition
93 meets the requirements of Subsections 10-2-403(2), (3), and (4); and

94 (b) (i) if the city recorder or town clerk determines that the petition meets those
95 requirements, certify the petition and mail or deliver written notification of the certification to the
96 municipal legislative body, the contact sponsor, the county legislative body, and the chair of the
97 planning commission of each township in which any part of the area proposed for annexation is
98 located; or

99 (ii) if the city recorder or town clerk determines that the petition fails to meet any of those
100 requirements, reject the petition and mail or deliver written notification of the rejection and the
101 reasons for the rejection to the municipal legislative body, the contact sponsor, the county
102 legislative body, and the chair of the planning commission of each township in which any part of
103 the area proposed for annexation is located.

104 (3) (a) (i) If the city recorder or town clerk rejects a petition under Subsection (2)(b)(ii),
105 the petition may be modified to correct the deficiencies for which it was rejected and then refiled
106 with the city recorder or town clerk, as the case may be.

107 (ii) A signature on an annexation petition filed under Section 10-2-403 may be used
108 toward fulfilling the signature requirement of Subsection 10-2-403(2)(b) for the petition as
109 modified under Subsection (3)(a)(i).

110 (b) If a petition is refiled under Subsection (3)(a) after having been rejected by the city
111 recorder or town clerk under Subsection (2)(b)(ii), the refiled petition shall be treated as a newly
112 filed petition under Subsection 10-2-403(1).

113 (4) Each county clerk, surveyor, and recorder shall cooperate with and assist a city recorder
114 or town clerk in the determination under Subsection (2)(a).

115 Section 3. Section **10-2-407** is amended to read:

116 **10-2-407. Protest to annexation petition -- Township planning commission**
117 **recommendation -- Petition requirements -- Disposition of petition if no protest filed.**

118 (1) (a) A protest to an annexation petition under Section 10-2-403 may be filed by:

119 (i) the legislative body or governing board of an affected entity; or

120 (ii) for a proposed annexation of an area within a county of the first class, the owners of

121 private real property that:

122 (A) is located in the unincorporated area within 1/2 mile of the area proposed for
123 annexation;

124 (B) covers at least 25% of the private land area located in the unincorporated area within
125 1/2 mile of the area proposed for annexation; and

126 (C) is equal in value to at least 15% of all real property located in the unincorporated area
127 within 1/2 mile of the area proposed for annexation.

128 (b) (i) A planning commission of a township located in a county of the first class may
129 recommend to the legislative body of the county in which the township is located that the county
130 legislative body file a protest against a proposed annexation under this part of an area located
131 within the township.

132 (ii) (A) The township planning commission shall communicate each recommendation
133 under Subsection (1)(b)(i) in writing to the county legislative body within 30 days of the city
134 recorder or town clerk's certification of the annexation petition under Subsection 10-2-405(2)(b)(i).

135 (B) At the time the recommendation is communicated to the county legislative body under
136 Subsection (1)(b)(ii)(A), the township planning commission shall mail or deliver a copy of the
137 recommendation to the legislative body of the proposed annexing municipality and to the contact
138 sponsor.

139 (2) (a) Each protest under Subsection (1)(a) shall:

140 (i) be filed:

141 (A) no later than 30 days after the municipal legislative body's receipt of the notice of
142 certification under Subsection 10-2-405(2)(b)(i); and

143 (B) (I) in a county that has already created a commission under Section 10-2-409, with the
144 commission; or

145 (II) in a county that has not yet created a commission under Section 10-2-409, with the
146 clerk of the county in which the area proposed for annexation is located; and

147 (ii) state each reason for the protest of the annexation petition and, if the area proposed to
148 be annexed is located in a specified county, justification for the protest under the standards
149 established in this chapter;

150 (iii) if the area proposed to be annexed is located in a specified county, contain other
151 information that the commission by rule requires or that the party filing the protest considers

152 pertinent; and

153 (iv) the name and address of a contact person who is to receive notices sent by the
154 commission with respect to the protest proceedings.

155 (b) The party filing a protest under this section shall on the same date deliver or mail a
156 copy of the protest to the city recorder or town clerk of the proposed annexing municipality.

157 (c) Each clerk who receives a protest under Subsection (2)(a)(i)(B)(II) shall immediately
158 notify the county legislative body of the protest and shall deliver the protest to the boundary
159 commission within five days of its creation under Subsection 10-2-409(1)(b).

160 (d) Each protest of a proposed annexation of an area located in a county of the first class
161 under Subsection (1)(a)(ii) shall, in addition to the requirements of Subsections (2)(a) and (b):

162 (i) indicate the typed or printed name and current residence address of each owner signing
163 the protest; and

164 (ii) designate one of the signers of the protest as the contact person and state the mailing
165 address of the contact person.

166 (3) (a) (i) If a protest is filed under this section:

167 (A) the municipal legislative body may, at its next regular meeting after expiration of the
168 deadline under Subsection (2)(a)(i)(A) [~~and, for a proposed annexation of an area located in a~~
169 ~~county of the first class, except as provided in Subsection (3)(a)(iii),]~~ deny the annexation petition;
170 or

171 (B) if the municipal legislative body does not deny the annexation petition under
172 Subsection (3)(a)(i)(A), the municipal legislative body may take no further action on the
173 annexation petition until after receipt of the commission's notice of its decision on the protest
174 under Section 10-2-416.

175 (ii) If a municipal legislative body denies an annexation petition under Subsection
176 (3)(a)(i)(A), the municipal legislative body shall, within five days of the denial, send notice of the
177 denial in writing to:

178 (A) the contact sponsor of the annexation petition;

179 (B) the commission;

180 (C) each entity that filed a protest; and

181 (D) if a protest was filed under Subsection (1)(a)(ii) for a proposed annexation of an area
182 located in a county of the first class, the contact person.

183 ~~[(iii) A municipal legislative body may not deny an annexation petition proposing to annex~~
 184 ~~an area located in a county of the first class if:]~~

185 ~~[(A) the petition contains the signatures of the owners of private real property that:]~~

186 ~~[(F) is located within the area proposed for annexation;]~~

187 ~~[(H) covers a majority of the private land area within the area proposed for annexation;~~

188 ~~and]~~

189 ~~[(HH) is equal in value to at least 1/2 of the value of all private real property within the area~~
 190 ~~proposed for annexation;]~~

191 ~~[(B) the population in the area proposed for annexation does not exceed 10% of the~~
 192 ~~population of the proposed annexing municipality;]~~

193 ~~[(C) the property tax rate for municipal services in the area proposed to be annexed is~~
 194 ~~higher than the property tax rate of the proposed annexing municipality; and]~~

195 ~~[(D) all annexations by the proposed annexing municipality during the year that the~~
 196 ~~petition was filed have not increased the municipality's population by more than 20%.]~~

197 (b) (i) If no timely protest is filed under this section, the municipal legislative body may,
 198 subject to Subsection (3)(b)(ii), and unless the annexation petition has been denied under
 199 Subsection 10-2-407.5(3)(b), grant the petition and, by ordinance, annex the area that is the subject
 200 of the annexation petition.

201 (ii) Before granting an annexation petition under Subsection (3)(b)(i), the municipal
 202 legislative body shall:

203 (A) hold a public hearing; and

204 (B) at least seven days before the public hearing under Subsection (3)(b)(ii)(A):

205 (I) publish notice of the hearing in a newspaper of general circulation within the
 206 municipality and the area proposed for annexation; or

207 (II) if there is no newspaper of general circulation in those areas, post written notices of
 208 the hearing in conspicuous places within those areas that are most likely to give notice to residents
 209 within those areas.

210 Section 4. Section **10-2-407.5** is enacted to read:

211 **10-2-407.5. County review and approval of annexation.**

212 (1) Upon receipt of an annexation petition within a county of the first class, the county
 213 clerk shall forward the petition to the county legislative body for its review and approval.

214 (2) Except with respect to an annexation under Section 10-2-418, the county legislative
215 body in a county of the first class shall review the proposed annexation and shall include in its
216 review:

217 (a) the impact of the proposed annexation on the municipal services in the remaining
218 unincorporated areas of the county and the impact on the municipal services fund; and

219 (b) the interests of the citizens in the remaining nearby unincorporated areas of the county
220 who are not included in the area proposed to be annexed.

221 (3) After a review under Subsection (2), the county legislative body in a county of the first
222 class may:

223 (a) approve the petition for further action, review, and consideration by the municipality
224 under the provisions of this part; or

225 (b) deny the proposed annexation, in which case no further action shall be taken on the
226 petition.

227 (4) If the county legislative body in a county of the first class denies the proposed
228 annexation under Subsection (3)(b), it shall make written findings outlining:

229 (a) the reasons for its denial; and

230 (b) (i) the legal defects in the petition for annexation that led to the denial; or

231 (ii) the manner in which the petition for annexation would unfairly impact the citizens in
232 the remaining unincorporated areas of the county that are not included within the area proposed
233 to be annexed.

234 Section 5. Section **10-2-408** is amended to read:

235 **10-2-408. Denial of or granting the annexation petition.**

236 ~~[(+)]~~ After receipt of the commission's decision on a protest under Subsection 10-2-416(2),
237 a municipal legislative body may:

238 ~~[(a) except as provided in Subsection (2) for a proposed annexation of an area located in~~
239 ~~a county of the first class;]~~

240 ~~(1)~~ deny the annexation petition; or

241 ~~[(b)]~~ (2) if the commission approves the annexation, and unless the annexation petition
242 has been denied under Subsection 10-2-407.5(3)(b), grant the annexation petition and, by
243 ordinance and consistent with the commission's decision, annex the area that is the subject of the
244 annexation petition.

245 ~~[(2) A municipal legislative body may not deny an annexation petition proposing to annex~~
 246 ~~an area located in a county of the first class if:]~~

247 ~~[(a) the petition contains the signatures of the owners of private real property that:]~~

248 ~~[(i) is located within the area proposed for annexation;]~~

249 ~~[(ii) covers a majority of the private land area within the area proposed for annexation;~~
 250 ~~and]~~

251 ~~[(iii) is equal in value to at least 1/2 of the value of all private real property within the area~~
 252 ~~proposed for annexation;]~~

253 ~~[(b) the population in the area proposed for annexation does not exceed 10% of the~~
 254 ~~population of the proposed annexing municipality;]~~

255 ~~[(c) the property tax rate for municipal services in the area proposed to be annexed is~~
 256 ~~higher than the property tax rate of the proposed annexing municipality; and]~~

257 ~~[(d) all annexations by the proposed annexing municipality during the year that the petition~~
 258 ~~was filed have not increased the municipality's population by more than 20%.]~~

259 Section 6. Section **10-2-408.5** is enacted to read:

260 **10-2-408.5. Effective date of annexation.**

261 (1) In order to permit counties to adequately fund and budget for the providing of
 262 municipal services, a municipal annexation shall be considered effective on December 31st of the
 263 year in which all annexation proceedings have been concluded, including resolving any boundary
 264 commission proceedings and the adoption and recording of the annexation resolution.

265 (2) No municipal annexations may be processed or completed during the months of
 266 November and December of each year, and annexation proceedings, as set out in Subsection (1),
 267 shall be completed on or before October 31st of each year.

268 Section 7. Section **10-2-418** is amended to read:

269 **10-2-418. Annexation of an island or peninsula without a petition -- Notice --**
 270 **Hearing.**

271 (1) (a) Notwithstanding Subsection 10-2-402(2), a municipality may annex an
 272 unincorporated area under this section without an annexation petition if:

273 (i) the area to be annexed consists of one or more islands within or peninsulas contiguous
 274 to the municipality;

275 (ii) the majority of each island or peninsula consists of residential or commercial

276 development;

277 (iii) the area proposed for annexation requires the delivery of municipal-type services; and

278 (iv) the municipality has provided [~~most or all of the~~] any municipal-type services to the
279 area for more than one year.

280 (b) Notwithstanding Subsection 10-2-402(1)(b)(iii), a municipality may annex a portion
281 of an island or peninsula under this section, leaving unincorporated the remainder of the
282 unincorporated island or peninsula, if, in adopting the resolution under Subsection (2)(a)(i), the
283 municipal legislative body determines that not annexing the entire unincorporated island or
284 peninsula is in the municipality's best interest.

285 (2) (a) The municipal legislative body of a municipality intending to annex an area under
286 this section shall:

287 (i) adopt a resolution indicating the municipal legislative body's intent to annex the area,
288 describing the area proposed to be annexed;

289 (ii) (A) publish notice at least once a week for three successive weeks in a newspaper of
290 general circulation within the municipality and the area proposed for annexation; or

291 (B) if there is no newspaper of general circulation in the areas described in Subsection
292 (2)(a)(ii)(A), post at least one notice per 1,000 population in places within those areas that are most
293 likely to give notice to the residents of those areas;

294 (iii) send written notice to the board of each special district whose boundaries contain
295 some or all of the area proposed for annexation and to the legislative body of the county in which
296 the area proposed for annexation is located; and

297 (iv) hold a public hearing on the proposed annexation no earlier than 60 days after the
298 adoption of the resolution under Subsection (2)(a)(i).

299 (b) The notice under Subsections (2)(a)(ii) and (iii) shall:

300 (i) state that the municipal legislative body has adopted a resolution indicating its intent
301 to annex the area proposed for annexation;

302 (ii) state the date, time, and place of the public hearing under Subsection (2)(a)(iv);

303 (iii) describe the area proposed for annexation; and

304 (iv) state in conspicuous and plain terms that the municipal legislative body will annex the
305 area unless, at or before the public hearing under Subsection (2)(a)(iv), written protests to the
306 annexation are filed by the owners of private real property that:

307 (A) is located within the area proposed for annexation;
308 (B) covers a majority of the total private land area within the entire area proposed for
309 annexation; and
310 (C) is equal in value to at least 1/2 the value of all private real property within the entire
311 area proposed for annexation.
312 (c) The first publication of the notice required under Subsection (2)(a)(ii)(A) shall be
313 within 14 days of the municipal legislative body's adoption of a resolution under Subsection
314 (2)(a)(i).
315 (3) Upon conclusion of the public hearing under Subsection (2)(a)(iv), the municipal
316 legislative body shall adopt an ordinance annexing the area proposed for annexation under this
317 section unless, at or before the hearing, written protests to the annexation have been filed with the
318 city recorder or town clerk, as the case may be, by the owners of private real property that:
319 (a) is located within the area proposed for annexation;
320 (b) covers a majority of the total private land area within the entire area proposed for
321 annexation; and
322 (c) is equal in value to at least 1/2 the value of all private real property within the entire
323 area proposed for annexation.
324 (4) If protests are timely filed that comply with Subsection (3), the municipal legislative
325 body may not adopt an ordinance annexing the area proposed for annexation, and the annexation
326 proceedings under this section shall be considered terminated.

Legislative Review Note
as of 2-6-02 9:23 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel