

Representative Chad E. Bennion proposes the following substitute bill:

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

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: A. Lamont Tyler

This act modifies the Utah Municipal Code by amending provisions relating to annexation. The act sets standards for the effective date of annexations. The act amends the definition of affected entity to include community councils. The act limits forced annexations to those areas within a municipality's expansion area and amends the definition of expansion area with respect to municipalities in first class counties. The act amends the criteria for approval of a proposed annexation by a boundary commission. The act makes other technical changes.

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

AMENDS:

10-2-401, as last amended by Chapter 206, Laws of Utah 2001

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

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

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

10-2-416, as last amended by Chapter 206, Laws of Utah 2001

ENACTS:

10-2-408.5, Utah Code Annotated 1953

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

Section 1. Section **10-2-401** is amended to read:

10-2-401. Definitions -- Property owner provisions.

(1) As used in this part:



- 26 (a) "Affected entity" means:
- 27 (i) a county in whose unincorporated area the area proposed for annexation is located;
- 28 (ii) an independent special district under Title 17A, Chapter 2, Independent Special
- 29 Districts, whose boundaries include any part of an area proposed for annexation;
- 30 (iii) a school district whose boundaries include any part of an area proposed for
- 31 annexation; ~~and~~
- 32 (iv) a municipality whose boundaries are within ½ mile of an area proposed for
- 33 annexation~~[-]; and~~
- 34 (v) a community council whose boundaries include any part of an area proposed for
- 35 annexation.
- 36 (b) "Annexation petition" means a petition under Section 10-2-403 proposing the
- 37 annexation to a municipality of a contiguous, unincorporated area that is contiguous to the
- 38 municipality.
- 39 (c) "Commission" means a boundary commission established under Section 10-2-409 for
- 40 the county in which the property that is proposed for annexation is located.
- 41 (d) (i) "Expansion area" means:
- 42 (A) for a municipality in a specified county, the unincorporated area that is identified in
- 43 an annexation policy plan under Section 10-2-401.5 as the area that the municipality anticipates
- 44 annexing in the future[-]; or
- 45 (B) for a municipality in a county of the first class, the unincorporated area that is
- 46 identified as that municipality's expansion area on the official map presented by each county of the
- 47 first class to the Legislative Management Committee in accordance with the provisions of HB 155
- 48 (2001 General Session) in an official meeting of the Legislative Management Committee on or
- 49 before March 31, 2002.
- 50 (ii) Expansion areas of municipalities within the same county of the first class may overlap
- 51 with each other.
- 52 (e) "Feasibility consultant" means a person or firm with expertise in the processes and
- 53 economics of local government.
- 54 (f) "Municipal selection committee" means a committee in each county composed of the
- 55 mayor of each municipality within that county.
- 56 (g) "Private," with respect to real property, means not owned by the United States or any

57 agency of the federal government, the state, a county, a municipality, a school district, a special
58 district under Title 17A, Special Districts, or any other political subdivision or governmental entity
59 of the state.

60 (h) "Specified county" means a county of the second, third, fourth, fifth, or sixth class.

61 (i) "Urban development" means:

62 (i) a housing development with more than 15 residential units and an average density
63 greater than one residential unit per acre; or

64 (ii) a commercial or industrial development for which cost projections exceed \$750,000
65 for all phases.

66 (2) For purposes of this part:

67 (a) the owner of real property shall be the record title owner according to the records of
68 the county recorder on the date of the filing of the petition or protest; and

69 (b) the value of private real property shall be determined according to the last assessment
70 roll for county taxes before the filing of the petition or protest.

71 (3) For purposes of each provision of this part that requires the owners of private real
72 property covering a percentage or majority of the total private land area within an area to sign a
73 petition or protest:

74 (a) a parcel of real property may not be included in the calculation of the required
75 percentage or majority unless the petition or protest is signed by:

76 (i) except as provided in Subsection (3)(a)(ii), owners representing a majority ownership
77 interest in that parcel; or

78 (ii) if the parcel is owned by joint tenants or tenants by the entirety, 50% of the number
79 of owners of that parcel;

80 (b) the signature of a person signing a petition or protest in a representative capacity on
81 behalf of an owner is invalid unless:

82 (i) the person's representative capacity and the name of the owner the person represents
83 are indicated on the petition or protest with the person's signature; and

84 (ii) the person provides documentation accompanying the petition or protest that
85 substantiates the person's representative capacity; and

86 (c) subject to Subsection (3)(b), a duly appointed personal representative may sign a
87 petition or protest on behalf of a deceased owner.

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

89 **10-2-405. Acceptance or rejection of an annexation petition -- Modified petition.**

90 (1) (a) (i) (A) A municipal legislative body may:

91 (I) except as provided in Subsection (1)(b) and subject to Subsection (1)(a)(i)(B), deny a
92 petition filed under Section 10-2-403; or

93 (II) accept the petition for further consideration under this part.

94 (B) A municipal legislative body's failure to act to deny or accept a petition under
95 Subsection (1)(a)(i)(A) within 14 calendar days after the filing of the petition shall be considered
96 to be an acceptance of the petition for further consideration under this part.

97 (ii) If a municipal legislative body denies a petition under Subsection (1)(a)(i)(A), it shall,
98 within five days of the denial, mail written notice of the denial to the contact sponsor, the clerk of
99 the county in which the area proposed for annexation is located, and the chair of the planning
100 commission of each township in which any part of the area proposed for annexation is located.

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

103 (i) the petition contains the signatures of the owners of private real property that:

104 (A) is located within the area proposed for annexation;

105 (B) covers a majority of the private land area within the area proposed for annexation; and

106 (C) is equal in value to at least ½ of the value of all private real property within the area
107 proposed for annexation;

108 (ii) the population in the area proposed for annexation does not exceed 10% of the
109 population of the proposed annexing municipality;

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

112 (iv) all annexations by the proposed annexing municipality during the calendar year that
113 the petition was filed have not increased the municipality's population by more than 20%[-]; and

114 (v) for petitions filed on or after May 6, 2002, the area proposed for annexation is within
115 the municipality's expansion area.

116 (2) If the municipal legislative body accepts a petition under Subsection (1)(a)(i) (A) or
117 is considered to have accepted the petition under Subsection (1)(a)(i)(B), the city recorder or town
118 clerk, as the case may be, shall, within 30 days of that acceptance:

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

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

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

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

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

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

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

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

144 **10-2-407. Protest to annexation petition -- Township planning commission**
145 **recommendation -- Petition requirements -- Disposition of petition if no protest filed.**

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

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

148 (ii) for a proposed annexation of an area within a county of the first class, the owners of
149 private real property that:

150 (A) is located in the unincorporated area within ½ mile of the area proposed for
151 annexation;

152 (B) covers at least 25% of the private land area located in the unincorporated area within
153 ½ mile of the area proposed for annexation; and

154 (C) is equal in value to at least 15% of all real property located in the unincorporated area
155 within ½ mile of the area proposed for annexation.

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

160 (ii) (A) The township planning commission shall communicate each recommendation
161 under Subsection (1)(b)(i) in writing to the county legislative body within 30 calendar days of the
162 city recorder or town clerk's certification of the annexation petition under Subsection
163 10-2-405(2)(b)(i).

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

168 (c) Notwithstanding the provisions of Subsection (1)(a), a protest to a petition for
169 annexation may not be filed under this section if the petition for annexation meets the requirements
170 of Subsection 10-2-405(1)(b).

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

172 (i) be filed:

173 (A) no later than [~~30~~] 60 calendar days after the municipal legislative body's receipt of the
174 notice of certification under Subsection 10-2-405(2)(b)(i); and

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

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

179 (ii) state each reason for the protest of the annexation petition and, if the area proposed to
180 be annexed is located in a specified county, justification for the protest under the standards

181 established in this chapter;

182 (iii) if the area proposed to be annexed is located in a specified county, contain other
183 information that the commission by rule requires or that the party filing the protest considers
184 pertinent; and

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

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

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

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

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

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

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

199 (A) the municipal legislative body may, at its next regular meeting after expiration of the
200 deadline under Subsection (2)(a)(i)(A) and, for a proposed annexation of an area located in a
201 county of the first class, except as provided in Subsection (3)(a)(iii), deny the annexation petition;
202 or

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

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

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

211 (B) the commission;

212 (C) each entity that filed a protest; and
213 (D) if a protest was filed under Subsection (1)(a)(ii) for a proposed annexation of an area
214 located in a county of the first class, the contact person.

215 (iii) A municipal legislative body may not deny an annexation petition proposing to annex
216 an area located in a county of the first class if:

217 (A) the petition contains the signatures of the owners of private real property that:
218 (I) is located within the area proposed for annexation;
219 (II) covers a majority of the private land area within the area proposed for annexation; and
220 (III) is equal in value to at least ½ of the value of all private real property within the area
221 proposed for annexation;

222 (B) the population in the area proposed for annexation does not exceed 10% of the
223 population of the proposed annexing municipality;

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

226 (D) all annexations by the proposed annexing municipality during the year that the petition
227 was filed have not increased the municipality's population by more than 20%[-]; and
228 (E) for petitions filed on or after May 6, 2002, the area proposed for annexation is within
229 the municipality's expansion area.

230 (b) (i) If no timely protest is filed under this section, the municipal legislative body may,
231 subject to Subsection (3)(b)(ii), grant the petition and, by ordinance, annex the area that is the
232 subject of the annexation petition.

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

235 (A) hold a public hearing; and
236 (B) at least seven days before the public hearing under Subsection (3)(b)(ii)(A):
237 (I) publish notice of the hearing in a newspaper of general circulation within the
238 municipality and the area proposed for annexation; or
239 (II) if there is no newspaper of general circulation in those areas, post written notices of
240 the hearing in conspicuous places within those areas that are most likely to give notice to residents
241 within those areas.

242 Section 4. Section **10-2-408** is amended to read:

243 **10-2-408. Denial of or granting the annexation petition.**

244 (1) After receipt of the commission's decision on a protest under Subsection 10-2-416(2),
245 a municipal legislative body may:

246 (a) except as provided in Subsection (2) for a proposed annexation of an area located in
247 a county of the first class, deny the annexation petition; or

248 (b) if the commission approves the annexation, grant the annexation petition and, by
249 ordinance and consistent with the commission's decision, annex the area that is the subject of the
250 annexation petition.

251 (2) A municipal legislative body may not deny an annexation petition proposing to annex
252 an area located in a county of the first class if:

253 (a) the petition contains the signatures of the owners of private real property that:

254 (i) is located within the area proposed for annexation;

255 (ii) covers a majority of the private land area within the area proposed for annexation; and

256 (iii) is equal in value to at least 1/2 of the value of all private real property within the area
257 proposed for annexation;

258 (b) the population in the area proposed for annexation does not exceed 10% of the
259 population of the proposed annexing municipality;

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

262 (d) all annexations by the proposed annexing municipality during the year that the petition
263 was filed have not increased the municipality's population by more than 20%[-]; and

264 (e) for petitions filed on or after May 6, 2002, the area proposed for annexation is within
265 the municipality's expansion area.

266 Section 5. Section **10-2-408.5** is enacted to read:

267 **10-2-408.5. Effective date of annexation.**

268 In counties of the first class, in order to permit counties and municipalities to adequately
269 fund and budget for the providing of municipal services, a municipal annexation shall be

270 considered effective on the next December 31st or June 30th which is at least 60 calendar days
271 from the date on which final approval of the annexation petition is granted.

272 Section 6. Section **10-2-416** is amended to read:

273 **10-2-416. Commission decision -- Time limit -- Limitation on approval of annexation.**

274 (1) Subject to Subsection (3), after the public hearing under Subsection 10-2-415(1) the
275 boundary commission may:

- 276 (a) approve the proposed annexation, either with or without conditions;
- 277 (b) make minor modifications to the proposed annexation and approve it, either with or
278 without conditions; or
- 279 (c) disapprove the proposed annexation.

280 (2) The commission shall issue a written decision on the proposed annexation within 30
281 days after the conclusion of the hearing under Section 10-2-415 and shall send a copy of the
282 decision to:

- 283 (a) the legislative body of the county in which the area proposed for annexation is located;
- 284 (b) the legislative body of the proposed annexing municipality;
- 285 (c) the contact person on the annexation petition;
- 286 (d) the contact person of each entity that filed a protest; and
- 287 (e) if a protest was filed under Subsection 10-2-407(1)(a)(ii) with respect to a proposed
288 annexation of an area located in a county of the first class, the contact person designated in the
289 protest.

290 (3) (a) Except for an annexation for which a feasibility study may not be required under
291 Subsection 10-2-413(1)(b), and except as provided in Subsection (3)(b), the commission may not
292 approve a proposed annexation of an area located within a county of the first class unless the
293 results of the feasibility study under Section 10-2-413 show that the average annual amount under
294 Subsection 10-2-413(3)(a)(ix) does not exceed the average annual amount under Subsection
295 10-2-413(3)(a)(viii) by more than 5%.

296 (b) Notwithstanding the provisions of Subsection (3)(a), the commission may approve a
297 proposed annexation filed on or after May 6, 2002, where the results of the feasibility study under
298 Section 10-2-413 show that the average annual amount under Subsection 10-2-413(3)(a)(ix)
299 exceeds the average annual amount under Subsection 10-2-413(3)(a)(viii) by more than 5%, if all
300 completed annexations to the municipality which were initiated on or after May 6, 2002, taken
301 together with the proposed annexation, would cumulatively satisfy the requirement that the average
302 annual amount under Subsection 10-2-413(3)(a)(ix) for all annexations initiated on or after May
303 6, 2002 would not exceed the average annual amount under Subsection 10-2-413(3)(a)(viii) for
304 all annexations initiated on or after May 6, 2002 by more than 5%.

