

Senator Scott K. Jenkins proposes the following substitute bill:

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 sets standards for the effective date of annexations. The act amends the definition**
8 **of affected entity to include community councils. The act limits forced annexations to those**
9 **areas within a municipality's expansion area and amends the definition of expansion area**
10 **with respect to municipalities in first class counties. The act makes other technical changes.**

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

12 AMENDS:

13 **10-2-401**, 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 ENACTS:

18 **10-2-408.5**, Utah Code Annotated 1953

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

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

21 **10-2-401. Definitions -- Property owner provisions.**

22 (1) As used in this part:

23 (a) "Affected entity" means:

24 (i) a county in whose unincorporated area the area proposed for annexation is located;

25 (ii) an independent special district under Title 17A, Chapter 2, Independent Special



26 Districts, whose boundaries include any part of an area proposed for annexation;

27 (iii) a school district whose boundaries include any part of an area proposed for
28 annexation; ~~and~~

29 (iv) a municipality whose boundaries are within 1/2 mile of an area proposed for
30 annexation~~[-]; and~~

31 (v) a community council whose boundaries include any part of an area proposed for
32 annexation.

33 (b) "Annexation petition" means a petition under Section 10-2-403 proposing the
34 annexation to a municipality of a contiguous, unincorporated area that is contiguous to the
35 municipality.

36 (c) "Commission" means a boundary commission established under Section 10-2-409 for
37 the county in which the property that is proposed for annexation is located.

38 (d) (i) "Expansion area" means:

39 (A) for a municipality in a specified county, the unincorporated area that is identified in
40 an annexation policy plan under Section 10-2-401.5 as the area that the municipality anticipates
41 annexing in the future[-]; or

42 (B) for a municipality in a county of the first class, the unincorporated area that is
43 identified as that municipality's expansion area on the official map presented by each county of the
44 first class to the Legislative Management Committee in accordance with the provisions of HB 155
45 (2001 General Session) in an official meeting of the Legislative Management Committee on or
46 before March 31, 2002.

47 (ii) Expansion areas of municipalities within the same county of the first class may overlap
48 with each other.

49 (e) "Feasibility consultant" means a person or firm with expertise in the processes and
50 economics of local government.

51 (f) "Municipal selection committee" means a committee in each county composed of the
52 mayor of each municipality within that county.

53 (g) "Private," with respect to real property, means not owned by the United States or any
54 agency of the federal government, the state, a county, a municipality, a school district, a special
55 district under Title 17A, Special Districts, or any other political subdivision or governmental entity
56 of the state.

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

58 (i) "Urban development" means:

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

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

63 (2) For purposes of this part:

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

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

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

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

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

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

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

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

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

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

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

86 **10-2-405. Acceptance or rejection of an annexation petition -- Modified petition.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

141 **10-2-407. Protest to annexation petition -- Township planning commission**
142 **recommendation -- Petition requirements -- Disposition of petition if no protest filed.**

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

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

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

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

149 (B) covers at least 25% of the private land area located in the unincorporated area within

150 1/2 mile of the area proposed for annexation; and

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

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

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

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

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

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

168 (i) be filed:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

207 (B) the commission;

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

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

211 (iii) A municipal legislative body may not deny an annexation petition proposing to annex

212 an area located in a county of the first class if:

213 (A) the petition contains the signatures of the owners of private real property that:

214 (I) is located within the area proposed for annexation;

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

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

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

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

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

224 (E) for petitions filed on or after May 6, 2002, the area proposed for annexation is within
225 the municipality's expansion area.

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

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

231 (A) hold a public hearing; and

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

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

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

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

239 **10-2-408. Denial of or granting the annexation petition.**

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

242 (a) except as provided in Subsection (2) for a proposed annexation of an area located in

243 a county of the first class, deny the annexation petition; or

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

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

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

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

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

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

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

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

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

260 (e) the area proposed for annexation is within the municipality's expansion area.

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

262 **10-2-408.5. Effective date of annexation.**

263 In counties of the first class, in order to permit counties and municipalities to adequately
264 fund and budget for the providing of municipal services, a municipal annexation shall be
265 considered effective on the next December 31st or June 30th which is at least 60 days from the
266 date on which final approval of the annexation petition is granted.