

**Representative A. Lamont Tyler** proposes the following substitute bill:

**ANNEXATIONS IN COUNTIES OF THE  
FIRST CLASS**

2002 GENERAL SESSION

STATE OF UTAH

**Sponsor: L. Steven Poulton**

**This act modifies the Utah Municipal Code by amending provisions relating to annexation. The act provides for the review of municipal annexations in a county of the first class by the county legislative body. 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 formula for approving annexations based upon projected costs and revenues. 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:

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

**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:



26 **10-2-401. Definitions -- Property owner provisions.**

27 (1) As used in this part:

28 (a) "Affected entity" means:

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

30 (ii) an independent special district under Title 17A, Chapter 2, Independent Special  
31 Districts, whose boundaries include any part of an area proposed for annexation;

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

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

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

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

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

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

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

47 (B) for a municipality in a county of the first class, the unincorporated area that is  
48 identified as that municipality's expansion area on the official map presented by each county of the  
49 first class to the Legislative Management Committee in accordance with the provisions of HB 155  
50 (2001 General Session) in an official meeting of the Legislative Management Committee on or  
51 before April 30, 2002.

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

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

56 (f) "Municipal selection committee" means a committee in each county composed of the

57 mayor of each municipality within that county.

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

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

63 (i) "Urban development" means:

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

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

68 (2) For purposes of this part:

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

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

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

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

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

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

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

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

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

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

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

91 **10-2-405. Acceptance or rejection of an annexation petition -- Modified petition.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

118 (2) If the municipal legislative body accepts a petition under Subsection (1)(a)(i) (A) or

119 is considered to have accepted the petition under Subsection (1)(a)(i)(B), the city recorder or town  
120 clerk, as the case may be, shall, within 30 days of that acceptance:

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

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

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

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

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

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

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

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

146 **10-2-407. Protest to annexation petition -- Township planning commission**  
147 **recommendation -- Petition requirements -- Disposition of petition if no protest filed.**

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

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

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

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

154 (B) covers at least 25% of the private land area located in the unincorporated area within  
155 1/2 mile of the area proposed for annexation; and

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

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

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

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

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

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

173 (i) be filed:

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

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

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

180 (ii) state each reason for the protest of the annexation petition and, if the area proposed to

181 be annexed is located in a specified county, justification for the protest under the standards  
182 established in this chapter;

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

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

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

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

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

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

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

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

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

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

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

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

- 212 (B) the commission;
- 213 (C) each entity that filed a protest; and
- 214 (D) if a protest was filed under Subsection (1)(a)(ii) for a proposed annexation of an area  
215 located in a county of the first class, the contact person.
- 216 (iii) A municipal legislative body may not deny an annexation petition proposing to annex  
217 an area located in a county of the first class if:
  - 218 (A) the petition contains the signatures of the owners of private real property that:
    - 219 (I) is located within the area proposed for annexation;
    - 220 (II) covers a majority of the private land area within the area proposed for annexation; and
    - 221 (III) is equal in value to at least 1/2 of the value of all private real property within the area  
222 proposed for annexation;
  - 223 (B) the population in the area proposed for annexation does not exceed 10% of the  
224 population of the proposed annexing municipality;
  - 225 (C) the property tax rate for municipal services in the area proposed to be annexed is  
226 higher than the property tax rate of the proposed annexing municipality; ~~and~~
  - 227 (D) all annexations by the proposed annexing municipality during the year that the petition  
228 was filed have not increased the municipality's population by more than 20%[-]; and
  - 229 (E) for petitions filed on or after May 6, 2002, the area proposed for annexation is within  
230 the municipality's expansion area.
- 231 (b) (i) If no timely protest is filed under this section, the municipal legislative body may,  
232 subject to Subsection (3)(b)(ii), and unless the annexation petition has been denied under  
233 Subsection 10-2-407.5(3)(b), grant the petition and, by ordinance, annex the area that is the subject  
234 of the annexation petition.
- 235 (ii) Before granting an annexation petition under Subsection (3)(b)(i), the municipal  
236 legislative body shall:
  - 237 (A) hold a public hearing; and
  - 238 (B) at least seven days before the public hearing under Subsection (3)(b)(ii)(A):
    - 239 (I) publish notice of the hearing in a newspaper of general circulation within the  
240 municipality and the area proposed for annexation; or
    - 241 (II) if there is no newspaper of general circulation in those areas, post written notices of  
242 the hearing in conspicuous places within those areas that are most likely to give notice to residents



243 within those areas.

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

245 **10-2-407.5. County review and approval of annexation.**

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

248 (2) The county legislative body in a county of the first class shall review the proposed  
249 annexation and shall include in its review:

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

252 (b) the interests of the citizens in the remaining nearby unincorporated areas of the county  
253 who are not included in the area proposed to be annexed;

254 (c) the present and five-year projections of the cost of governmental services in the area  
255 proposed for annexation; and

256 (d) the present and five-year projected revenue to the proposed annexing municipality from  
257 the area proposed for annexation.

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

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

262 (b) if the county legislative body determines that there are legal defects in the petition or  
263 that the average annual amount under Subsection (2)(d) exceeds that average annual amount under  
264 Subsection (2)(c), deny the proposed annexation, in which case no further action shall be taken on  
265 the petition; or

266 (c) file a protest to the annexation petition in accordance with the provisions of Section  
267 10-2-407.

268 (4) If the county legislative body fails to act on the annexation petition under Subsection  
269 (3) within 60 days after receiving the petition from the county clerk, the petition shall be  
270 considered to have been approved by the county for further action, review, and consideration by  
271 the municipality under the provisions of this part.

272 (5) In making the calculation required by Subsection (3)(b):

273 (a) for annexation petitions filed or refiled on or after January 1, 2002 and on or before

274 May 6, 2002, the county legislative body shall aggregate the area of the proposed annexation and  
275 the area included in all other annexation petitions filed or refiled on or after January 1, 2002 and  
276 on or before May 6, 2002 with the same municipality; and

277 (b) for annexation petitions filed after May 6, 2002, the county legislative body may  
278 aggregate the area of the proposed annexation and the area included in any other annexation  
279 petition which is simultaneously under consideration by the same municipality.

280 (6) If the county legislative body in a county of the first class denies the proposed  
281 annexation under Subsection (3)(b), it shall make written findings outlining the reasons for its  
282 denial.

283 (7) Any party in interest may seek judicial review of a decision by a county to deny an  
284 annexation petition under Subsection (3)(b) by filing an action in an appropriate district court  
285 within 30 days of the date of the written decision of the county. A court in which an action is filed  
286 under this Subsection (7) may not overturn the decision of the county unless the court finds that:

287 (a) the county legislative body acted arbitrarily or capriciously; or

288 (b) the county legislative body materially failed to follow the procedures set forth in this  
289 section.

290 (8) If a court, under the provisions of Subsection (7), overturns the decision of the county  
291 legislative body, the court may award costs and reasonable attorney's fees to the prevailing party.

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

293 **10-2-408. Denial of or granting the annexation petition.**

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

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

298 (b) if the commission approves the annexation, and unless the annexation petition has been  
299 denied under Subsection 10-2-407.5(3)(b), grant the annexation petition and, by ordinance and  
300 consistent with the commission's decision, annex the area that is the subject of the annexation  
301 petition.

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

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

305 (i) is located within the area proposed for annexation;  
306 (ii) covers a majority of the private land area within the area proposed for annexation; and  
307 (iii) is equal in value to at least 1/2 of the value of all private real property within the area  
308 proposed for annexation;

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

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

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

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

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

318 **10-2-408.5. Effective date of annexation.**

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

323 Section 7. Section **10-2-416** is amended to read:

324 **10-2-416. Commission decision -- Time limit -- Limitation on approval of annexation.**

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

327 (a) approve the proposed annexation, either with or without conditions;

328 (b) make minor modifications to the proposed annexation and approve it, either with or  
329 without conditions; or

330 (c) disapprove the proposed annexation.

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

334 (a) the legislative body of the county in which the area proposed for annexation is located;

335 (b) the legislative body of the proposed annexing municipality;

- 336 (c) the contact person on the annexation petition;
- 337 (d) the contact person of each entity that filed a protest; and
- 338 (e) if a protest was filed under Subsection 10-2-407(1)(a)(ii) with respect to a proposed  
339 annexation of an area located in a county of the first class, the contact person designated in the  
340 protest.
- 341 (3) Except for an annexation for which a feasibility study may not be required under  
342 Subsection 10-2-413(1)(b), the commission may not approve a proposed annexation of an area  
343 located within a county of the first class unless the results of the feasibility study under Section  
344 10-2-413 show that the average annual amount under Subsection 10-2-413(3)(a)(ix) does not  
345 exceed the average annual amount under Subsection 10-2-413(3)(a)(viii) [~~by more than 5%~~].