

MUNICIPAL DISCONNECTION AMENDMENTS

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Ann W. Hardy

This act modifies the Utah Municipal Code and the procedure for disconnecting territory from a municipality. The act repeals provisions relating to the appointment of commissioners to make findings regarding the viability of disconnection. The act modifies the criteria for disconnection and modifies the procedure for disconnection. The act also makes technical changes.

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

AMENDS:

10-2-501, as last amended by Chapter 132, Laws of Utah 1996

10-2-507, as last amended by Chapter 318, Laws of Utah 2000

10-2-508, as last amended by Chapter 132, Laws of Utah 1996

RENUMBERS AND AMENDS:

10-2-502.5, (Renumbered from 10-2-504, as last amended by Chapter 132, Laws of Utah 1996)

10-2-502.7, (Renumbered from 10-2-505, as last amended by Chapter 132, Laws of Utah 1996)

REPEALS:

10-2-502, as last amended by Chapter 132, Laws of Utah 1996

10-2-503, as last amended by Chapter 132, Laws of Utah 1996

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

Section 1. Section **10-2-501** is amended to read:

10-2-501. Municipal disconnection -- Definitions -- Request to municipality -- Petition to district court.

(1) As used in this part[:-(a) "County" means the county containing the municipality



28 from which territory is proposed to be disconnected. (b) "Municipality" means the
 29 municipality containing the territory proposed for disconnection. (c) "Petitioners"
 30 "petitioners" means persons ~~[owning]~~ who:

31 (a) own title to real property within the [territory within a municipality who propose]
 32 area proposed for disconnection; and

33 (b) have signed a request for disconnection proposing to disconnect that [territory] area
 34 from [a] the municipality.

35 ~~[(d) "Territory" means that property within a municipality that is proposed for~~
 36 ~~disconnection.]~~

37 (2) (a) Petitioners proposing to disconnect [any territory] an area within and lying on
 38 the borders of [any incorporated] a municipality shall file with that municipality's legislative
 39 body a ["Request for Disconnection." The Request for Disconnection] request for
 40 disconnection.

41 (b) Each request for disconnection shall:

42 ~~[(a)]~~ (i) contain the names, addresses, and signatures of the owners of more than 50%
 43 of the real property [owners] in the [territory] area proposed for disconnection;

44 ~~[(b)]~~ (ii) give the reasons for the proposed disconnection;

45 ~~[(c)]~~ (iii) include a map or plat of the territory proposed for disconnection; and

46 ~~[(d)]~~ (iv) designate between one and five persons with authority to act on the
 47 petitioners' behalf in the proceedings.

48 (3) Upon filing the request for disconnection, petitioners shall:

49 (a) cause notice of the [petition] request to be published once a week for three
 50 consecutive weeks in a newspaper of general circulation within the municipality[-]; § [and] §

51 ~~[(4) The municipal legislative body may respond to petitioners within 20 calendar days~~
 52 ~~after the expiration of the notice period under Subsection (3).]~~

53 ~~[(5) (a) After the 20-day response period, petitioners may file a petition against the~~
 54 ~~municipality in district court.]~~

55 ~~[(b) The petition shall include a copy of the Request for Disconnection.]~~

55a **§ (b) CAUSE NOTICE OF THE REQUEST TO BE MAILED TO EACH OWNER OF REAL PROPERTY**
 55b **LOCATED WITHIN THE AREA PROPOSED TO BE DISCONNECTED; AND**

56 ~~[(b)]~~ (c) § deliver a copy of the request to the legislative body of the county in which the area
 57 proposed for disconnection is located.

58 Section 2. Section **10-2-502.5**, which is renumbered from Section 10-2-504 is

59 renumbered and amended to read:

60 ~~[10-2-504].~~ **10-2-502.5. Hearing on request for disconnection -- Determination**
61 **by municipal legislative body -- Petition in district court.**

62 (1) Within 30 calendar days ~~[of their appointment]~~ after the last publication of notice
63 required under Subsection 10-2-501(3)(a), the [commissioners] legislative body of the
64 municipality in which the area proposed for disconnection is located shall hold a public
65 hearing.

66 (2) At least seven calendar days before the hearing date, the ~~[commissioners]~~
67 municipal legislative body shall [notify the parties and the public] provide notice of the public
68 hearing:

69 (a) in writing to the petitioners and to the legislative body of the county in which the
70 area proposed for disconnection is located; and

71 (b) by publishing a notice in a newspaper of general circulation within the municipality
72 or, if there is none, then by posting notice of the hearing in at least three public places within
73 the municipality.

74 (3) In the public hearing, any person may speak and submit documents regarding the
75 disconnection proposal.

76 (4) Within 45 calendar days of the hearing, the ~~[commissioners]~~ municipal legislative
77 body shall [report to the court their findings and reasons regarding]:

78 ~~[(a) the criteria and factors provided in Section 10-2-503;]~~

79 ~~[(b) the liabilities of the municipality and territory to be disconnected that have accrued~~
80 ~~during the time in which the territory was part of the municipality; and]~~

81 ~~[(c) the mutual property rights of the municipality and the territory to be disconnected.]~~

82 (a) determine whether to grant the request for disconnection; and

83 (b) if the municipality determines to grant the request, adopt an ordinance approving
84 disconnection of the area from the municipality.

85 (5) (a) A petition against the municipality challenging the municipal legislative body's
86 determination under Subsection (4) may be filed in district court by:

87 (i) petitioners; or

88 (ii) the county in which the area proposed for disconnection is located.

89 (b) Each petition under Subsection (5)(a) shall include a copy of the request for

90 disconnection.

91 Section 3. Section **10-2-502.7**, which is renumbered from Section 10-2-505 is
92 renumbered and amended to read:

93 ~~[10-2-505].~~ **10-2-502.7. Court action.**

94 (1) ~~[Upon receiving the commissioners' report]~~ After the filing of a petition under
95 Section 10-2-502.5 and a response to the petition, the court ~~[may]~~ shall, upon request of a party
96 or upon its own motion, conduct a court hearing.

97 (2) At the hearing, the court shall hear evidence ~~[presented by petitioners and the~~
98 ~~municipality]~~ regarding the viability of the disconnection proposal.

99 (3) The burden of proof is on petitioners who must prove, by a preponderance of the
100 evidence:

101 (a) the viability of the disconnection ~~[and];~~

102 (b) that justice and equity require that the territory be disconnected from the
103 municipality ~~[by a preponderance of the evidence.];~~

104 ~~[(4) Considering all the evidence and the commissioners' report, the court shall order~~
105 ~~disconnection if]~~

106 (c) that the proposed disconnection [satisfies the criteria in Section 10-2-503:] will not:

107 (i) leave the municipality with an area within its boundaries for which the cost,
108 requirements, or other burdens of providing municipal services would materially increase over
109 previous years;

110 (ii) make it economically or practically unfeasible for the municipality to continue to
111 function as a municipality; or

112 (iii) leave or create one or more islands or peninsulas of unincorporated territory; and

113 (d) that the county in which the area proposed for disconnection is located is capable ^h, IN A

113a **COST-EFFECTIVE MANNER AND WITHOUT MATERIALLY INCREASING THE COUNTY'S COSTS OF**

113b **PROVIDING MUNICIPAL SERVICES, ^h of**

114 providing to the area ^h [~~; in a cost-effective manner;~~] ^h the services that the municipality will no
115 longer provide to the area due to the disconnection.

116 (4) In determining whether petitioners have met their burden of proof with respect to
117 Subsections (3)(c)(i) and (ii), the court shall consider all relevant factors, including the effect of
118 the proposed disconnection on:

119 (a) the municipality or community as a whole;

120 (b) adjoining property owners;

121 (c) existing or projected streets or public ways;

122 (d) water mains and water services;

123 (e) sewer mains and sewer services;

124 (f) law enforcement;

125 (g) zoning; and

126 (h) other municipal services.

127 (5) The court's order either ordering or rejecting disconnection shall be in writing with
128 findings and reasons.

129 Section 4. Section **10-2-507** is amended to read:

130 **10-2-507. Decree -- Filing of documents -- Notice requirements.**

131 (1) Upon entering a disconnection order, the court shall file a certified copy of the
132 order and a transparent reproducible copy of the map or plat in the county recorder's office.

133 (2) [~~Within 30 calendar days of the court's disconnection order, the~~] The municipality
134 shall file amended articles of incorporation in the lieutenant governor's office, as provided in
135 Section 10-1-117, and the county recorder's office[-] within 30 days after, as the case may be:

136 (a) adoption of an ordinance approving disconnection under Subsection

137 10-2-502.5(4)(b); or

138 (b) entry of a court order under Section 10-2-502.7 ordering disconnection.

139 (3) The amended articles of incorporation shall:

140 (a) describe the postdisconnection geography of the municipality; and

141 (b) specify the postdisconnection population of the municipality.

142 (4) The lieutenant governor shall comply with the requirements of Subsection

143 10-1-117(3).

144 [~~(4)~~] (5) Any cost incurred by the municipality in complying with this section may be
145 charged against the disconnected territory.

146 [~~(5)~~] (6) The legislative body of each municipality that has had territory disconnected
147 shall comply with the notice requirements of Section 10-1-116.

148 Section 5. Section **10-2-508** is amended to read:

149 **10-2-508. Disconnection completed.**

150 Disconnection is complete when the [~~municipality files an amendment to its articles of~~
151 ~~incorporation~~] lieutenant governor certifies the amended articles of incorporation as required

152 by Section [~~10-2-507~~] 10-1-117.

153 Section 6. **Repealer.**

154 This act repeals:

155 Section **10-2-502, Court appointment of commissioners.**

156 Section **10-2-503, Criteria for disconnection.**

Legislative Review Note
as of 1-16-03 4:40 PM

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

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0098

Municipal Disconnection Amendments

28-Jan-03

8:00 AM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst