

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 for disconnection -- Requirements upon filing request.

(1) As used in this part[:(a) "County" means the county containing the municipality from which territory is proposed to be disconnected. (b) "Municipality" means the municipality containing the territory proposed for disconnection. (c) "Petitioners"]

"petitioners" means persons ~~[owning]~~ who:

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

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

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

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

(b) Each request for disconnection shall:

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

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

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

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

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

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

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

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

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

(b) cause notice of the request to be mailed to each owner of real property located within the area proposed to be disconnected; and

(c) deliver a copy of the request to the legislative body of the county in which the area

proposed for disconnection is located.

Section 2. Section **10-2-502.5**, which is renumbered from Section 10-2-504 is renumbered and amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) petitioners; or

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

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

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

[10-2-505]. 10-2-502.7. Court action.

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

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

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

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

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

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

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

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

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

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

(d) that the county in which the area proposed for disconnection is located is capable, in a cost-effective manner and without materially increasing the county's costs of providing

municipal services, of providing to the area the services that the municipality will no longer provide to the area due to the disconnection.

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

- (a) the municipality or community as a whole;
- (b) adjoining property owners;
- (c) existing or projected streets or public ways;
- (d) water mains and water services;
- (e) sewer mains and sewer services;
- (f) law enforcement;
- (g) zoning; and
- (h) other municipal services.

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

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

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

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

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

- (a) adoption of an ordinance approving disconnection under Subsection 10-2-502.5(4)(b); or
 - (b) entry of a court order under Section 10-2-502.7 ordering disconnection.
- (3) The amended articles of incorporation shall:
- (a) describe the postdisconnection geography of the municipality; and
 - (b) specify the postdisconnection population of the municipality.

(4) The lieutenant governor shall comply with the requirements of Subsection 10-1-117(3).

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

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

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

10-2-508. Disconnection completed.

Disconnection is complete when the [~~municipality files an amendment to its articles of incorporation~~] lieutenant governor certifies the amended articles of incorporation as required by Section [~~10-2-507~~] 10-1-117.

Section 6. **Repealer.**

This act repeals:

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

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