

1 **DISCONNECTING TERRITORY FROM A**
2 **MUNICIPALITY**

3 2005 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Craig A. Frank**

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions related to the disconnection of territory from a
10 municipality.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ makes an exception to the requirement that a petitioner seeking to disconnect
14 territory from a municipality prove that the disconnection will not result in islands
15 or peninsulas of unincorporated territory if the petitioner demonstrates that the
16 territory is intended to be annexed to an adjoining municipality;
- 17 ▶ provides that an order of disconnection based on the showing that the territory will
18 be annexed is a temporary order that does not become final until the territory is
19 annexed; and
- 20 ▶ modifies annexation definitions to allow the annexation of territory that is the
21 subject of a temporary disconnection order.

22 **Monies Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 None

26 **Utah Code Sections Affected:**

27 AMENDS:



28 **10-2-401**, as last amended by Chapter 206, Laws of Utah 2001
29 **10-2-502.7**, as renumbered and amended by Chapter 279, Laws of Utah 2003
30 **10-2-507**, as last amended by Chapter 279, Laws of Utah 2003



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

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

34 **10-2-401. Definitions -- Property owner provisions.**

35 (1) As used in this part:

36 (a) "Affected entity" means:

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

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

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

40 (iii) a school district whose boundaries include any part of an area proposed for

41 annexation; and

42 (iv) a municipality whose boundaries are within 1/2 mile of an area proposed for

43 annexation.

44 (b) "Annexation petition" means a petition under Section 10-2-403 proposing the

45 annexation to a municipality of a contiguous, unincorporated area that is contiguous to the

46 municipality.

47 (c) "Commission" means a boundary commission established under Section 10-2-409

48 for the county in which the property that is proposed for annexation is located.

49 (d) "Expansion area" means the unincorporated area that is identified in an annexation

50 policy plan under Section 10-2-401.5 as the area that the municipality anticipates annexing in

51 the future.

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

55 the mayor of each municipality within that county.

56 (g) "Private," with respect to real property, means not owned by the United States or

57 any agency of the federal government, the state, a county, a municipality, a school district, a

58 special district under Title 17A, Special Districts, or any other political subdivision or

59 governmental entity of the state.

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

61 (i) "Unincorporated" includes, for purposes of identifying an area that may be the
62 subject of an annexation petition and an annexation under this part, territory that is the subject
63 of a temporary order of disconnection from a municipality under Subsection 10-2-502.7(6).

64 [(†)] (j) "Urban development" means:

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

67 (ii) a commercial or industrial development for which cost projections exceed
68 \$750,000 for all phases.

69 (2) For purposes of this part:

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

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

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

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

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

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

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

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

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

89 (c) subject to Subsection (3)(b), a duly appointed personal representative may sign a

90 petition or protest on behalf of a deceased owner.

91 Section 2. Section **10-2-502.7** is amended to read:

92 **10-2-502.7. Court action.**

93 (1) After the filing of a petition under Section 10-2-502.5 and a response to the
94 petition, the court shall, upon request of a party or upon its own motion, conduct a court
95 hearing.

96 (2) At the hearing, the court shall hear evidence regarding the viability of the
97 disconnection proposal.

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

100 [~~(a)~~] (i) the viability of the disconnection;

101 [~~(b)~~] (ii) that justice and equity require that the territory be disconnected from the
102 municipality;

103 [~~(c)~~] (iii) that the proposed disconnection will not:

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

107 [~~(ii)~~] (B) make it economically or practically unfeasible for the municipality to
108 continue to function as a municipality; or

109 [~~(iii)~~] (C) except as provided in Subsection (3)(b), leave or create one or more islands
110 or peninsulas of unincorporated territory; and

111 [~~(d)~~] (iv) that the county in which the area proposed for disconnection is located is
112 capable, in a cost-effective manner and without materially increasing the county's costs of
113 providing municipal services, of providing to the area the services that the municipality will no
114 longer provide to the area due to the disconnection.

115 (b) The burden of proving that the disconnection will not leave or create one or more
116 islands or peninsulas of unincorporated territory does not apply if the petitioner demonstrates:

117 (i) a present intent on the part of property owners within the territory proposed to be
118 disconnected to annex all of the territory to an adjacent municipality; and

119 (ii) that the annexation is allowed under Part 4, Annexation.

120 (4) In determining whether petitioners have met their burden of proof with respect to

121 Subsections (3)~~(e)(i) and (ii)~~ (a)(iii)(A) and (B), the court shall consider all relevant factors,
 122 including the effect of the proposed disconnection on:

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

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

133 (6) (a) An order granting a petition to disconnect territory from a municipality is a
 134 temporary order if:

135 (i) the disconnection leaves or creates one or more islands or peninsulas of
 136 unincorporated territory; and

137 (ii) the petitioner has met the requirements of Subsection (3)(b).

138 (b) The court shall make a temporary order under Subsection (6)(a) a final order if,
 139 within one year from the date of the temporary order:

140 (i) all the disconnected territory is annexed to a municipality; and

141 (ii) the petitioner submits to the court evidence of the annexation.

142 (c) Unless a temporary order under Subsection (6)(a) is made final as provided in
 143 Subsection (6)(b), the court shall vacate the order after one year from the date it is issued.

144 Section 3. Section **10-2-507** is amended to read:

145 **10-2-507. Decree -- Filing of documents -- Notice requirements.**

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

148 (2) The municipality shall file amended articles of incorporation in the lieutenant
 149 governor's office, as provided in Section 10-1-117, and the county recorder's office within 30
 150 days after, as the case may be:

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

- 152 10-2-502.5(4)(b); or
- 153 (b) entry of a final court order under Section 10-2-502.7 ordering disconnection.
- 154 (3) The amended articles of incorporation shall:
- 155 (a) describe the postdisconnection geography of the municipality; and
- 156 (b) specify the postdisconnection population of the municipality.
- 157 (4) The lieutenant governor shall comply with the requirements of Subsection
- 158 10-1-117(3).
- 159 (5) Any cost incurred by the municipality in complying with this section may be
- 160 charged against the disconnected territory.
- 161 (6) The legislative body of each municipality that has had territory disconnected shall
- 162 comply with the notice requirements of Section 10-1-116.

Legislative Review Note
as of 2-7-05 10:19 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0335

Disconnecting Territory from a Municipality

14-Feb-05

1:54 PM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst