

**DISCONNECTING TERRITORY FROM A  
MUNICIPALITY**

2005 FIRST SPECIAL SESSION

STATE OF UTAH

**Sponsor: Craig A. Frank**

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**LONG TITLE**

**General Description:**

This bill modifies provisions related to disconnecting territory from one municipality and connecting it to another.

**Highlighted Provisions:**

This bill:

- ▶ amends a provision relating to the adjustment of a common boundary between municipalities to add a provision that:
  - authorizes a municipality seeking to adjust a common boundary with another municipality in the same county to request the other municipality to adjust the common boundary;
  - requires the municipalities to negotiate in good faith;
  - authorizes the requesting municipality to file a petition with the boundary commission requesting the boundary adjustment; and
  - authorizes the boundary commission to allow the boundary adjustment under certain circumstances.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides an effective date.

**Utah Code Sections Affected:**



AMENDS:

**10-2-409**, as last amended by Chapter 206, Laws of Utah 2001

**10-2-412**, as last amended by Chapter 206, Laws of Utah 2001

**10-2-419 (Effective 05/02/05)**, as last amended by Chapter 233, Laws of Utah 2005

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

Section 1. Section **10-2-409** is amended to read:

**10-2-409. Boundary commission -- Creation -- Members.**

(1) The legislative body of each county:

(a) may create a boundary commission on its own initiative at any time; and

(b) shall create a boundary commission within 30 days ~~[of]~~ after:

(i) the filing of a protest under Section 10-2-407[-]; or

(ii) the filing of a petition for a boundary adjustment under Subsection 10-2-419(6).

(2) Each commission shall be composed of:

(a) in a county with two or more municipalities:

(i) two members who are elected county officers, appointed by:

(A) (I) in a county of the first class operating under a form of government in which the executive and legislative functions are separated, the county executive with the advice and consent of the county legislative body; or

(II) in a county of the first class operating under a form of government in which the executive and legislative functions of the governing body are not separated, the county legislative body; or

(B) in a specified county, the county legislative body;

(ii) two members who are elected municipal officers from separate municipalities within the county, appointed by the municipal selection committee; and

(iii) three members who are residents of the county, none of whom is a county or municipal officer, appointed by the four other members of the boundary commission; and

(b) in a county with only one municipality:

(i) two members who are county elected officers, appointed by the county legislative body;

(ii) one member who is a municipal officer, appointed by the governing body of the

59 municipality; and

60 (iii) two members who are residents of the county, neither of whom is a county or  
61 municipal officer, appointed by the other three members of the boundary commission.

62 (3) At the expiration of the term of each member appointed under this section, the  
63 member's successor shall be appointed by the same body that appointed the member whose  
64 term is expiring, as provided in this section.

65 Section 2. Section **10-2-412** is amended to read:

66 **10-2-412. Boundary commission authority -- Expenses -- Records.**

67 (1) The boundary commission for each county shall hear and decide, according to the  
68 provisions of this part[;]:

69 (a) each protest filed under Section 10-2-407, with respect to an area that is located  
70 within that county[;]; and

71 (b) each petition for a boundary adjustment under Subsection 10-2-419(6), with respect  
72 to an area that is located within that county.

73 (2) A boundary commission may:

74 (a) adopt and enforce rules of procedure for the orderly and fair conduct of its  
75 proceedings;

76 (b) authorize a member of the commission to administer oaths if necessary in the  
77 performance of the commission's duties;

78 (c) employ staff personnel and professional or consulting services reasonably necessary  
79 to enable the commission to carry out its duties; and

80 (d) incur reasonable and necessary expenses to enable the commission to carry out its  
81 duties.

82 (3) The legislative body of each county shall, with respect to the boundary commission  
83 in that county:

84 (a) furnish the commission necessary quarters, equipment, and supplies;

85 (b) pay necessary operating expenses incurred by the commission; and

86 (c) reimburse the reasonable and necessary expenses incurred by each member  
87 appointed under Subsection 10-2-409(2)(a)(iii) or (b)(iii), unless otherwise provided by  
88 interlocal agreement.

89 (4) Each county or municipal legislative body shall reimburse the reasonable and

necessary expenses incurred by a commission member who is an elected county or municipal officer, respectively.

(5) Records, information, and other relevant materials necessary to enable the commission to carry out its duties shall, upon request by the commission, be furnished to the boundary commission by the personnel, employees, and officers of:

(a) for a proposed annexation of an area located in a county of the first class:

(i) each county and special district whose boundaries include an area that is the subject of a protest under the commission's consideration; and

(ii) each municipality whose boundaries may be affected by action of the boundary commission; or

(b) for a proposed annexation of an area located in a specified county, each affected entity:

(i) whose boundaries include any part of the area proposed for annexation; or

(ii) that may be affected by action of the boundary commission.

Section 3. Section **10-2-419 (Effective 05/02/05)** is amended to read:

**10-2-419 (Effective 05/02/05). Boundary adjustment -- Notice and hearing -- Protest.**

(1) The legislative bodies of two or more municipalities having common boundaries may adjust their common boundaries only as provided in this section.

(2) (a) The legislative body of each municipality intending to adjust a boundary that is common with another municipality shall:

(i) adopt a resolution indicating the intent of the municipal legislative body to adjust a common boundary;

(ii) hold a public hearing on the proposed adjustment no less than 60 days after the adoption of the resolution under Subsection (2)(a)(i); and

(iii) (A) publish notice at least once a week for three successive weeks in a newspaper of general circulation within the municipality; or

(B) if there is no newspaper of general circulation within the municipality, post at least one notice per 1,000 population in places within the municipality that are most likely to give notice to residents of the municipality.

(b) The notice required under Subsection (2)(a)(iii) shall:

(i) state that the municipal legislative body has adopted a resolution indicating the municipal legislative body's intent to adjust a boundary that the municipality has in common with another municipality;

(ii) describe the area proposed to be adjusted;

(iii) state the date, time, and place of the public hearing required under Subsection (2)(a)(ii);

(iv) state in conspicuous and plain terms that the municipal legislative body will adjust the boundaries unless, at or before the public hearing under Subsection (2)(a)(ii), written protests to the adjustment are filed by the owners of private real property that:

(A) is located within the area proposed for adjustment;

(B) covers at least 25% of the total private land area within the area proposed for adjustment; and

(C) is equal in value to at least 15% of the value of all private real property within the area proposed for adjustment; and

(v) state that the area that is the subject of the boundary adjustment will, because of the boundary adjustment, be automatically annexed to a local district providing fire protection, paramedic, and emergency services, as provided in Section 17B-2-515.5, if:

(A) the municipality to which the area is being added because of the boundary adjustment is entirely within the boundaries of a local district:

(I) that provides fire protection, paramedic, and emergency services; and

(II) in the creation of which an election was not required because of Subsection 17B-2-214(3)(c); and

(B) the municipality from which the area is being taken because of the boundary adjustment is not within the boundaries of the local district; and

(vi) state that the area proposed for annexation to the municipality will be automatically withdrawn from a local district providing fire protection, paramedic, and emergency services, as provided in Subsection 17B-2-601(2), if:

(A) the municipality to which the area is being added because of the boundary adjustment is not within the boundaries of a local district:

(I) that provides fire protection, paramedic, and emergency services; and

(II) in the creation of which an election was not required because of Subsection

17B-2-214(3)(c); and

(B) the municipality from which the area is being taken because of the boundary adjustment is entirely within the boundaries of the local district.

(c) The first publication of the notice required under Subsection (2)(a)(iii)(A) shall be within 14 days of the municipal legislative body's adoption of a resolution under Subsection (2)(a)(i).

(3) Upon conclusion of the public hearing under Subsection (2)(a)(ii), the municipal legislative body may adopt an ordinance adjusting the common boundary unless, at or before the hearing under Subsection (2)(a)(ii), written protests to the adjustment have been filed with the city recorder or town clerk, as the case may be, by the owners of private real property that:

(a) is located within the area proposed for adjustment;

(b) covers at least 25% of the total private land area within the area proposed for adjustment; and

(c) is equal in value to at least 15% of the value of all private real property within the area proposed for adjustment.

(4) The municipal legislative body shall comply with the requirements of Section 10-2-425 as if the boundary change were an annexation.

(5) An ordinance adopted under Subsection (3) becomes effective when each municipality involved in the boundary adjustment has adopted an ordinance under Subsection (3) and as determined under Subsection 10-2-425(5) if the boundary change were an annexation.

(6) (a) The legislative body of a municipality that has a common boundary with another municipality located within the same county may request the legislative body of the other municipality to adjust the municipalities' common boundary.

(b) Each municipality that receives a request under Subsection (6)(a) and each municipality that makes a request shall negotiate together in good faith to reach a consensus on acceptable terms and conditions of a mutually beneficial boundary adjustment.

(c) If, after the good faith negotiations, the municipalities do not reach a consensus on the boundary adjustment, the legislative body of the requesting municipality may submit to the legislative body of the other municipality a written request for a decision approving or denying the requested boundary adjustment.

(d) (i) No sooner than 45 days after submitting a written request under Subsection (6)(c), a requesting municipality may file a petition requesting the boundary commission of the county in which the requesting municipality and the other municipality are located to adjust the common boundary.

(ii) Each petition under Subsection (6)(d)(i) shall be filed with:

(A) in a county that has created a commission under Section 10-2-409, the commission; or

(B) in a county that has not created a commission, the clerk of the county in which the area that is the subject of the proposed boundary adjustment is located.

(iii) Each county clerk who receives a petition filed under Subsection (6)(d)(ii)(B) shall:

(A) immediately notify the county legislative body of the petition; and

(B) deliver a copy of the petition to the city recorder of the other municipality.

(e) The commission may grant a petition and adjust the common boundary as requested if:

(i) the purposes of the boundary adjustment are consistent with the annexation policy plan of the requesting municipality;

(ii) the land subject to the proposed boundary adjustment is entirely owned by the requesting municipality; and

(iii) deed restrictions applicable to the land provide that, without the prior written consent of the legislative body of the other municipality:

(A) the land will not be developed in a manner that is inconsistent with the valid land use ordinances in effect on the date the requesting municipality adopts a resolution of intent or takes other similar official action to adjust the common boundary; and

(B) if sold, the land will not be converted to a private use that is inconsistent with the use of the land that exists at the time of the boundary adjustment.

**Section 4. Effective date.**

If approved by two-thirds of all the members elected to each house, this bill takes effect:

(1) May 2, 2005, if the governor signs the bill before May 2, 2005; or

(2) if the governor does not sign the bill before May 2, upon approval by the governor,

214 or the day following the constitutional time limit of Utah Constitution Article VII, Section 8,  
215 without the governor's signature, or in the case of veto, the date of veto override.

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**Legislative Review Note**  
**as of 4-8-05 7:27 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**