

ANNEXATION AMENDMENTS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gregory H. Hughes

Senate Sponsor: Wayne L. Niederhauser

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LONG TITLE

General Description:

This bill modifies provisions relating to municipal annexations.

Highlighted Provisions:

This bill:

- ▶ changes a time period before which a public hearing on a proposed annexation may not be held from 60 to 30 days after adoption of a resolution proposing the annexation;

- ▶ authorizes a municipality to adopt an annexation ordinance without allowing or considering protests if the owners of 75% of the land with 75% of the value have consented to the annexation;

- ▶ modifies the protest threshold for a certain type of annexation;

- ▶ eliminates the requirement of county legislative body approval for a certain type of annexation;

- ▶ modifies the criteria for a municipality to annex an unincorporated island or peninsula without an annexation petition;

- ▶ prohibits a municipality from annexing an area that is within the conical surface area of an airport operated or to be operated by another municipality without that other municipality's consent;

- ▶ prohibits a municipality that does not consent to an annexation by another municipality of an area that is within the conical surface area of the municipality's airport from denying an annexation petition proposing the annexation of that same area to that municipality;

30           ▶ exempts certain annexations from provisions relating to the effective date of  
31 annexations; and

32           ▶ establishes an immediate conclusive presumption in favor of annexations that have  
33 been finalized without allowing or considering protests.

34 **Monies Appropriated in this Bill:**

35           None

36 **Other Special Clauses:**

37           This bill provides an effective date.

38 **Utah Code Sections Affected:**

39 AMENDS:

40           **10-2-402**, as last amended by Chapter 294, Laws of Utah 2003

41           **10-2-418**, as last amended by Chapter 227, Laws of Utah 2003

42           **10-2-425**, as last amended by Chapter 233, Laws of Utah 2005



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

45           Section 1. Section **10-2-402** is amended to read:

46           **10-2-402. Annexation -- Limitations.**

47           (1) (a) A contiguous, unincorporated area that is contiguous to a municipality may be  
48 annexed to the municipality as provided in this part.

49           (b) An unincorporated area may not be annexed to a municipality unless:

50           (i) it is a contiguous area;

51           (ii) it is contiguous to the municipality;

52           (iii) except as provided in Subsection 10-2-418(1)(b), annexation will not leave or  
53 create an unincorporated island or peninsula; and

54           (iv) for an area located in a specified county with respect to an annexation that occurs  
55 after December 31, 2002, the area is within the proposed annexing municipality's expansion  
56 area.

57           (2) Except as provided in Section 10-2-418, a municipality may not annex an

58 unincorporated area unless a petition under Section 10-2-403 is filed requesting annexation.

59 (3) An annexation under this part may not include part of a parcel of real property and  
60 exclude part of that same parcel unless the owner of that parcel has signed the annexation  
61 petition under Section 10-2-403.

62 (4) A municipality may not annex an unincorporated area in a specified county for the  
63 sole purpose of acquiring municipal revenue or to retard the capacity of another municipality to  
64 annex the same or a related area unless the municipality has the ability and intent to benefit the  
65 annexed area by providing municipal services to the annexed area.

66 (5) The legislative body of a specified county may not approve urban development  
67 within a municipality's expansion area unless:

68 (a) the county notifies the municipality of the proposed development; and

69 (b) (i) the municipality consents in writing to the development; or

70 (ii) (A) within 90 days after the county's notification of the proposed development, the  
71 municipality submits to the county a written objection to the county's approval of the proposed  
72 development; and

73 (B) the county responds in writing to the municipality's objections.

74 (6) (a) An annexation petition may not be filed under this part proposing the  
75 annexation of an area located in a county that is not the county in which the proposed annexing  
76 municipality is located unless the legislative body of the county in which the area is located has  
77 adopted a resolution approving the proposed annexation.

78 (b) Each county legislative body that declines to adopt a resolution approving a  
79 proposed annexation described in Subsection (6)(a) shall provide a written explanation of its  
80 reasons for declining to approve the proposed annexation.

81 (7) (a) As used in this Subsection (7):

82 (i) "Airport" means an area that the Federal Aviation Administration has, by a record of  
83 decision, approved for the construction of a Class I, II, or III commercial service airport, as  
84 designated by the Federal Aviation Administration in 14 C.F.R. Part 139.

85 (ii) "Conical surface area" has the same meaning as defined in 14 C.F.R. 77, Objects

86 Affecting Navigable Airspace.

87 (b) A municipality may not annex an unincorporated area within the conical surface  
88 area of an airport operated or to be constructed and operated by another municipality unless the  
89 legislative body of the other municipality adopts a resolution consenting to the annexation.

90 (c) A municipality that operates or intends to construct and operate an airport and does  
91 not adopt a resolution consenting to the annexation of an area described in Subsection (7)(b)  
92 may not deny an annexation petition proposing the annexation of that same area to that  
93 municipality.

94 Section 2. Section **10-2-418** is amended to read:

95 **10-2-418. Annexation of an island or peninsula without a petition -- Notice --**  
96 **Hearing.**

97 (1) (a) Notwithstanding Subsection 10-2-402(2), a municipality may annex an  
98 unincorporated area under this section without an annexation petition if:

99 (i) (A) the area to be annexed consists of one or more unincorporated islands within or  
100 unincorporated peninsulas contiguous to the municipality;

101 (B) the majority of each island or peninsula consists of residential or commercial  
102 development;

103 (C) the area proposed for annexation requires the delivery of municipal-type services;  
104 and

105 (D) the municipality has provided most or all of the municipal-type services to the area  
106 for more than one year; or

107 (ii) (A) the area to be annexed consists of one or more unincorporated islands within or  
108 unincorporated peninsulas contiguous to the municipality, each of which has fewer than [500]  
109 800 residents; and

110 (B) the municipality has provided one or more municipal-type services to the area for  
111 at least one year.

112 (b) Notwithstanding Subsection 10-2-402(1)(b)(iii), a municipality may annex a  
113 portion of an island or peninsula under this section, leaving unincorporated the remainder of

114 the unincorporated island or peninsula, if:

115 (i) in adopting the resolution under Subsection (2)(a)(i), the municipal legislative body  
116 determines that not annexing the entire unincorporated island or peninsula is in the  
117 municipality's best interest; and

118 (ii) for an annexation of one or more unincorporated islands under Subsection  
119 (1)(a)(ii), the entire island of unincorporated area, of which a portion is being annexed,  
120 complies with the requirement of Subsection (1)(a)(ii)(A) relating to the number of residents.

121 (2) (a) The legislative body of each municipality intending to annex an area under this  
122 section shall:

123 (i) adopt a resolution indicating the municipal legislative body's intent to annex the  
124 area, describing the area proposed to be annexed;

125 (ii) (A) publish notice at least once a week for three successive weeks in a newspaper  
126 of general circulation within the municipality and the area proposed for annexation; or

127 (B) if there is no newspaper of general circulation in the areas described in Subsection  
128 (2)(a)(ii)(A), post at least one notice per 1,000 population in places within those areas that are  
129 most likely to give notice to the residents of those areas;

130 (iii) send written notice to the board of each special district whose boundaries contain  
131 some or all of the area proposed for annexation and to the legislative body of the county in  
132 which the area proposed for annexation is located; and

133 (iv) hold a public hearing on the proposed annexation no earlier than [~~60~~] 30 days after  
134 the adoption of the resolution under Subsection (2)(a)(i).

135 (b) Each notice under Subsections (2)(a)(ii) and (iii) shall:

136 (i) state that the municipal legislative body has adopted a resolution indicating its intent  
137 to annex the area proposed for annexation;

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

139 (iii) describe the area proposed for annexation; and

140 (iv) except for an annexation that meets the property owner consent requirements of  
141 Subsection (3)(b), state in conspicuous and plain terms that the municipal legislative body will

142 annex the area unless, at or before the public hearing under Subsection (2)(a)(iv), written  
143 protests to the annexation are filed by the owners of private real property that:

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

145 (B) covers a majority of the total private land area within the entire area proposed for  
146 annexation; and

147 (C) is equal in value to at least 1/2 the value of all private real property within the  
148 entire area proposed for annexation.

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

152 (3) (a) Upon conclusion of the public hearing under Subsection (2)(a)(iv) [~~and subject~~  
153 ~~to Subsection (3)(b)~~], the municipal legislative body may adopt an ordinance annexing the area  
154 proposed for annexation under this section unless, at or before the hearing, written protests to  
155 the annexation have been filed with the city recorder or town clerk, as the case may be, by the  
156 owners of private real property that:

157 (i) is located within the area proposed for annexation;

158 (ii) covers[~~:(A) for a proposed annexation under Subsection (1)(a)(i);~~] a majority of  
159 the total private land area within the entire area proposed for annexation; [~~or~~] and

160 [~~(B) for a proposed annexation under Subsection (1)(a)(ii), 10% of the total private~~  
161 ~~land area within the island of unincorporated area that is proposed for annexation; and]~~

162 (iii) is equal in value to at least[~~:(A) for a proposed annexation under Subsection~~  
163 ~~(1)(a)(i);~~] 1/2 the value of all private real property within the entire area proposed for  
164 annexation[~~;~~ ~~or~~].

165 [~~(B) for a proposed annexation under Subsection (1)(a)(ii), 10% of the value of all~~  
166 ~~private real property within the island of unincorporated area that is proposed for annexation.]~~

167 [~~(b) A municipal legislative body may not adopt an ordinance annexing an area~~  
168 ~~proposed for annexation under Subsection (1)(a)(ii) unless the legislative body of the county in~~  
169 ~~which the area proposed for annexation has previously adopted a resolution approving the~~

170 annexation.]

171 (b) (i) Upon conclusion of the public hearing under Subsection (2)(a)(iv), a  
172 municipality may adopt an ordinance annexing the area proposed for annexation under this  
173 section without allowing or considering protests under Subsection (3)(a) if the owners of at  
174 least 75% of the total private land area within the entire area proposed for annexation,  
175 representing at least 75% of the value of the private real property within the entire area  
176 proposed for annexation, have consented in writing to the annexation.

177 (ii) Upon adoption of an annexation ordinance under Subsection (3)(b)(i), the area  
178 annexed shall be conclusively presumed to be validly annexed.

179 (4) (a) If protests are timely filed that comply with Subsection (3), the municipal  
180 legislative body may not adopt an ordinance annexing the area proposed for annexation, and  
181 the annexation proceedings under this section shall be considered terminated.

182 (b) Subsection (4)(a) may not be construed to prohibit the municipal legislative body  
183 from excluding from a proposed annexation under Subsection (1)(a)(ii) the property within an  
184 unincorporated island regarding which protests have been filed and proceeding under  
185 Subsection (1)(b) to annex some or all of the remaining portion of the unincorporated island.

186 Section 3. Section **10-2-425** is amended to read:

187 **10-2-425. Filing of plat or map and amended articles -- Notice requirements.**

188 (1) Within 30 days after enacting an ordinance annexing an unincorporated area or  
189 adjusting a boundary under this part, the municipal legislative body shall:

190 (a) send notice of the enactment to each affected entity;

191 (b) file with the lieutenant governor:

192 (i) a certified copy of the ordinance approving the annexation or boundary adjustment,  
193 together with a plat or map prepared by a licensed surveyor, approved by the municipal  
194 legislative body, and filed with the county surveyor in accordance with Section 17-23-17,  
195 showing the new boundaries of the affected area; and

196 (ii) (A) if the municipality has articles of incorporation, amended articles of  
197 incorporation reflecting the annexation or boundary adjustment, as provided in Section

198 10-1-117; or

199 (B) if the municipality does not have articles of incorporation, written notice of the  
200 adoption of an annexation ordinance, accompanied by a copy of the ordinance; and

201 (c) in accordance with Section 26-8a-414, file the documents described in Subsection  
202 (1)(b)(i) with the Department of Health.

203 (2) If an annexation or boundary adjustment under this part also causes an automatic  
204 annexation to a local district under Section 17B-2-515.5 or an automatic withdrawal from a  
205 local district under Subsection 17B-2-601(2), the municipal legislative body shall, as soon as  
206 practicable after enacting an ordinance annexing an unincorporated area or adjusting a  
207 boundary, send notice of the annexation or boundary adjustment to the local district to which  
208 the annexed area is automatically annexed or from which the annexed area is automatically  
209 withdrawn.

210 (3) The municipal legislative body shall comply with the notice requirements of  
211 Section 10-1-116.

212 (4) Each notice required under Subsections (1) and (3) relating to an annexation shall  
213 state the effective date of the annexation, as determined under Subsection (5).

214 (5) An annexation under this part is completed and takes effect:

215 (a) for the annexation of an area located in a county of the first class, except for an  
216 annexation under Section 10-2-418:

217 (i) July 1 following enactment of an ordinance annexing the unincorporated area if:

218 (A) the ordinance is adopted during the preceding November 1 through April 30; and

219 (B) the requirements of Subsection (1) are met before that July 1; or

220 (ii) January 1 following enactment of an ordinance annexing the unincorporated area if:

221 (A) the ordinance is adopted during the preceding May 1 through October 31; and

222 (B) the requirements of Subsection (1) are met before that January 1; and

223 (b) for all other annexations, the date of the lieutenant governor's issuance of:

224 (i) a certification of amended articles under Subsection 10-1-117(3), for an annexation  
225 by a municipality that has articles of incorporation and filed with the lieutenant governor



226 amended articles of incorporation under Subsection (1)(a)(iii)(A); or  
227 (ii) a certificate of annexation under Subsection (1)(b), for an annexation by a  
228 municipality that does not have articles of incorporation and filed with the lieutenant governor  
229 a notice of adoption of an annexation ordinance under Subsection (1)(a)(iii)(B).

230 Section 4. **Effective date.**

231 (1) If this bill is approved by two-thirds of all the members elected to each house, the  
232 amendments to Section 10-2-402 take effect upon approval by the governor, or the day  
233 following the constitutional time limit of Utah Constitution Article VII, Section 8, without the  
234 governor's signature, or in the case of a veto, the date of veto override.

235 (2) The amendments to Sections 10-2-418 and 10-2-425 take effect on January 1, 2008.