

1 **INCORPORATION OF A TOWN AMENDMENTS**

2 2007 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Melvin R. Brown**

5 Senate Sponsor: Sheldon L. Killpack

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies a provision relating to the incorporation of a town.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ modifies the requirements applicable to a petition for incorporation as a town;
- 13 ▶ requires each county that receives a petition representing 1/2 or less of the property
14 value in the area proposed to be incorporated as a town to commission and pay for a
15 feasibility study;
- 16 ▶ with respect to a petition representing 1/2 or less of the property value in the area
17 proposed to be incorporated, authorizes a county to grant the petition, deny the
18 petition, or, with the consent of the petition sponsors, grant the petition with
19 conditions or alterations;
- 20 ▶ requires counties of the second, third, fourth, fifth, and sixth class to grant a petition
21 that represents over 1/2 of the property value in the area proposed to be incorporated
22 as a town;
- 23 ▶ modifies the process of appointing the mayor and council members in a newly
24 incorporated town to require the officials to be selected from a list provided by
25 petition sponsors; and
- 26 ▶ requires a newly incorporated town to operate under a six-member council form of
27 government.



28 **Monies Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **10-2-125**, as last amended by Chapter 233, Laws of Utah 2005

35 **67-1a-6.5**, as last amended by Chapter 359, Laws of Utah 2006



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

38 Section 1. Section **10-2-125** is amended to read:

39 **10-2-125. Incorporation of a town.**

40 (1) As used in this section:

41 (a) "Base petition" means a petition under this section proposing the incorporation of a
42 town and signed by the owners of private real property that:

43 (i) is located within the area proposed to be incorporated;

44 (ii) covers at least a majority of the total private land area within the area proposed to
45 be incorporated; and

46 (iii) is equal in value to at least 1/3 but not more than 1/2 of the value of all private real
47 property within the area proposed to be incorporated.

48 (b) "Qualifying petition" means a petition under this section proposing the
49 incorporation of a town and signed by the owners of private real property that:

50 (i) is located within the area proposed to be incorporated;

51 (ii) covers at least a majority of the total private land area within the area proposed to
52 be incorporated; and

53 (iii) is equal in value to more than 1/2 of the value of all private real property within
54 the area proposed to be incorporated.

55 ~~[(1)]~~ (2) (a) A contiguous area of a county not within a municipality, with a population
56 of at least 100 but less than 1,000, may incorporate as a town as provided in this section.

57 (b) (i) The population figure under Subsection ~~[(1)]~~ (2)(a) shall be derived from the
58 most recent official census or census estimate of the United States Bureau of the Census.

59 (ii) If the population figure is not available from the United States Bureau of the
60 Census, the population figure shall be derived from the estimate from the Utah Population
61 Estimates Committee.

62 ~~[(2)]~~ (3) (a) The process to incorporate an area as a town is initiated by filing a petition
63 with the clerk of the county in which the area is located.

64 (b) Each petition under Subsection ~~[(2)]~~ (3)(a) shall:

65 (i) be signed by the owners of private real property that:

66 (A) is located within the area proposed to be incorporated;

67 (B) covers a majority of the total private land area within the area; and

68 (C) is equal in value to at least 1/3 of the value of all private real property within the
69 area;

70 (ii) state the legal description of the boundaries of the area proposed to be incorporated
71 as a town; ~~[and]~~

72 (iii) designate up to five signers of the petition as sponsors, one of whom shall be
73 designated as the contact sponsor, with the mailing address of each owner signing as a sponsor;

74 (iv) be accompanied by and circulated with an accurate map or plat, prepared by a
75 licensed surveyor, showing the boundaries of the proposed town; and

76 ~~[(iii)]~~ (v) substantially comply with and be circulated in the following form:

77 PETITION FOR INCORPORATION OF (insert the proposed name of the proposed
78 town)

79 To the Honorable County Legislative Body of (insert the name of the county in which
80 the proposed town is located) County, Utah:

81 We, the undersigned owners of real property within the area described in this petition,
82 respectfully petition the county legislative body ~~[to examine the question of whether the area~~
83 ~~should incorporate]~~ for the area described in this petition to be incorporated as a town. Each of
84 the undersigned affirms that each has personally signed this petition and is an owner of real
85 property within the described area, and that the current residence address of each is correctly
86 written after the signer's name. The area proposed to be incorporated as a town is described as
87 follows: (insert an accurate description of the area proposed to be incorporated).

88 (c) A petition under this section may not describe an area that includes some or all of
89 an area proposed for annexation in an annexation petition under Section 10-2-403 that:

- 90 (i) was filed before the filing of the petition; and
- 91 (ii) is still pending on the date the petition is filed.

92 ~~[(3)]~~ (4) Section 10-2-104 applies to a petition for incorporation as a town in any
 93 county, except that the notice under Subsection 10-2-104(1) shall be sent within seven calendar
 94 days ~~[of]~~ after the filing of a petition under Subsection ~~[(2)]~~ (3).

95 ~~[(4)(a) A county]~~ (5) (a) (i) The legislative body [may treat a petition filed under
 96 Subsection (2) as a request for] of each county with which a base petition is filed under this
 97 section shall commission and pay for a feasibility study [under] as provided in Section
 98 10-2-103 [and process it as a request under that section would be processed under this part to
 99 determine whether the feasibility study results meet the requirements of Subsection
 100 10-2-109(3)].

101 (ii) If the results of the feasibility study under Subsection (5)(a)(i) meet the
 102 requirements of Subsection 10-2-109(3), the county legislative body shall grant the petition.

103 ~~[(b)]~~ (iii) If the results of ~~[a]~~ the feasibility study under Subsection ~~[(4)(a)]~~ (5)(a)(i) do
 104 not meet the requirements of Subsection 10-2-109(3), the county legislative body may ~~[not~~
 105 approve the incorporation petition.]:

106 ~~[(c) If the results of the feasibility study under Subsection (4)(a) meet the requirements~~
 107 ~~of Subsection 10-2-109(3), the county legislative body may approve the incorporation petition,~~
 108 ~~if the county legislative body determines that the incorporation is in the best interests of the~~
 109 ~~citizens of the county and the proposed town.]~~

110 (A) deny the petition;

111 (B) grant the petition; or

112 (C) with the consent of the petition sponsors, grant the petition, after:

113 (I) imposing conditions to mitigate the fiscal inequities identified in the feasibility
 114 study; or

115 (II) altering the boundaries of the area proposed to be incorporated as a town to
 116 approximate the boundaries necessary to meet the requirements of Subsection 10-2-109(3).

117 (iv) Each town that incorporates pursuant to a petition granted after the county
 118 legislative body imposes conditions under Subsection (5)(a)(iii)(C)(I) shall comply with those
 119 conditions.

120 (b) The legislative body of each county of the second, third, fourth, fifth, or sixth class

121 with which a qualifying petition is filed shall grant the petition.

122 [~~(5)~~] (6) (a) Upon [approval] the granting of a petition filed under [~~Subsection (2)~~] this
 123 section, the legislative body of the county in which the proposed town is located shall appoint a
 124 mayor and members of the town council [~~who~~] from a list of qualified individuals approved by
 125 the petition sponsors.

126 (b) The officers appointed under Subsection (6)(a) shall hold office until the next
 127 regular municipal election and until their successors are elected and qualified.

128 (7) Each newly incorporated town shall operate under the six-member council form of
 129 government as described in Section 10-3-101.

130 [~~(6)~~] (8) (a) Each mayor appointed under Subsection [~~(5)~~] (6) shall, within seven days
 131 of appointment, file articles of incorporation of the new town with the lieutenant governor.

132 (b) The articles of incorporation shall meet the requirements of Subsection
 133 10-2-119(2).

134 [~~(7)~~] (9) A town is incorporated upon the lieutenant governor's issuance of a certificate
 135 of entity creation under Section 67-1a-6.5.

136 [~~(8)~~] (10) The legislative body of the new town shall comply with the notice
 137 requirements of Section 10-1-116.

138 Section 2. Section **67-1a-6.5** is amended to read:

139 **67-1a-6.5. Lieutenant governor certification of governmental entity creation,**
 140 **consolidation, division, dissolution, or boundary change.**

141 (1) As used in this section:

142 (a) "AGRC" means the Automated Geographic Reference Center created under Section
 143 63F-1-506.

144 (b) "Boundary change" means the adjustment of an entity's boundary either through
 145 gaining territory (annexation), losing territory (withdrawal), adjusting the common boundary
 146 with an adjacent entity (may gain territory, lose territory, or a combination of both gaining and
 147 losing territory), or any other adjustment of the entity's boundary.

148 (c) "Consolidation" means the combining of two or more entities into a single entity
 149 such that the consolidated entity's boundary contains all of the territory of the original entities,
 150 but no additional territory.

151 (d) "County attorney" means the county attorney of each county which contains any

152 part of the area affected by the entity creation, consolidation, division, dissolution, or boundary
153 change.

154 (e) (i) "County auditor" means the county auditor of each county which contains any
155 part of the area affected by the entity creation, consolidation, division, dissolution, or boundary
156 change.

157 (ii) If the county does not have a county auditor, "county auditor" means the county
158 clerk or other government official acting as the county auditor.

159 (f) "County recorder" means the county recorder of each county which contains any
160 part of the area affected by the entity creation, consolidation, division, dissolution, or boundary
161 change.

162 (g) "County surveyor" means the county surveyor of each county which contains any
163 part of the area affected by the entity creation, consolidation, division, dissolution, or boundary
164 change.

165 (h) "Creation" means the forming of a new entity where that entity did not exist before
166 its creation.

167 (i) "Dissolution" means the disbandment of an entity.

168 (j) "Division" means the dividing of one entity into two or more entities such that the
169 original entity's boundary contains all of the territory of the resultant entities, but no additional
170 territory.

171 (k) "Entity" means the entity that is created, consolidated, divided, dissolved, or whose
172 boundary is changed.

173 (l) "Initiating body" means the county legislative body, municipal legislative body,
174 special district board, local district board, court, public official, or other authorized person that
175 initiates the creation, dissolution, consolidation, or boundary change of an entity or entities.

176 (m) "Notice of entity boundary change" means the notice the lieutenant governor
177 receives under Subsection 10-1-116(1), 10-2-419(4), 10-2-425(1), 10-2-507(1), 17-2-9(2),
178 17-2-13(3), 17-50-104(3), 17-50-105(1)(b) or (2)(e), 17A-2-1327(4), 17B-2-514(2),
179 17B-2-516(6), 17B-2-610(1), or 53A-2-101.5(1) of an entity's pending boundary change.

180 (n) "Notice of entity consolidation" means the notice the lieutenant governor receives
181 under Section 10-2-610 or Subsection 10-1-116(1) or 17-2-4(2) of entities' pending
182 consolidation.

183 (o) "Notice of entity creation" means the notice the lieutenant governor receives under
184 Subsection 10-1-116(1), 10-2-119(1), 10-2-125[(6)](8), 11-13-204(4), 11-13-205(6),
185 17A-2-1311(2), 17B-2-215(1), 17C-1-201(2), or 53A-2-101.5(1) of an entity's pending
186 creation.

187 (p) "Notice of entity dissolution" means the notice the lieutenant governor receives
188 under Subsection 10-1-116(1), 10-2-712(2), 17A-2-1329(3), 17B-2-708(4), or 17C-1-701(2)(a)
189 of an entity's pending dissolution.

190 (q) "Notice of entity division" means the notice the lieutenant governor receives under
191 Subsection 17-3-3(3) of an entity's pending division.

192 (r) "Notice of intention to file articles of incorporation" means the notice the lieutenant
193 governor receives under Subsection 10-2-120(1).

194 (s) "Lieutenant governor" means the lieutenant governor created in Article VII, Section
195 1 of the Utah Constitution.

196 (t) "State auditor" means the state auditor created in Article VII, Section 1 of the Utah
197 Constitution.

198 (u) "State Tax Commission" means the State Tax Commission created in Article XIII,
199 Section 6 of the Utah Constitution.

200 (2) Within ten days after receiving a notice of entity creation, the lieutenant governor
201 shall:

202 (a) issue a certificate of entity creation;

203 (b) (i) send a copy of the certificate issued under Subsection (2)(a) and a copy of the
204 notice of entity creation, including the accompanying map or legal description, to the State Tax
205 Commission, AGRC, county recorder, county surveyor, county auditor, and county attorney;
206 and

207 (ii) send a copy of the certificate issued under Subsection (2)(a) to the state auditor;
208 and

209 (c) send to the initiating body a copy of the certificate issued under Subsection (2)(a)
210 and a statement indicating completion of Subsection (2)(b).

211 (3) Within ten days after receiving a notice of intention to file articles of incorporation,
212 the lieutenant governor shall:

213 (a) issue a certificate indicating receipt of a notice of intention to file articles of

214 incorporation;

215 (b) (i) send a copy of the certificate issued under Subsection (3)(a) and a copy of the
216 notice of intention to file articles of incorporation, including the accompanying map or legal
217 description, to the State Tax Commission, AGRC, county recorder, county surveyor, county
218 auditor, and county attorney; and

219 (ii) send a copy of the certificate issued under Subsection (3)(a) to the state auditor;
220 and

221 (c) send to the initiating body a copy of the certificate issued under Subsection (3)(a)
222 and a statement indicating completion of Subsection (3)(b).

223 (4) Within ten days after receiving a notice of entity consolidation, the lieutenant
224 governor shall:

225 (a) issue a certificate of entity consolidation;

226 (b) (i) send a copy of the certificate issued under Subsection (4)(a) and a copy of the
227 notice of entity consolidation to the State Tax Commission, AGRC, county recorder, county
228 surveyor, county auditor, and county attorney; and

229 (ii) send a copy of the certificate issued under Subsection (4)(a) to the state auditor;
230 and

231 (c) send to the initiating body and the entities being consolidated, if different from the
232 initiating body, a copy of the certificate issued under Subsection (4)(a) and a statement
233 indicating completion of Subsection (4)(b).

234 (5) Within ten days after receiving a notice of entity division, the lieutenant governor
235 shall:

236 (a) issue a certificate of entity division;

237 (b) (i) send a copy of the certificate issued under Subsection (5)(a) and a copy of the
238 notice of entity consolidation, including the accompanying map or legal description, to the
239 State Tax Commission, AGRC, county recorder, county surveyor, county auditor, and county
240 attorney; and

241 (ii) send a copy of the certificate issued under Subsection (5)(a) to the state auditor;
242 and

243 (c) send to the initiating body a copy of the certificate issued under Subsection (5)(a)
244 and a statement indicating completion of Subsection (5)(b).

245 (6) Within ten days after receiving a notice of entity dissolution, the lieutenant
246 governor shall:

247 (a) issue a certificate of entity dissolution;

248 (b) (i) send a copy of the certificate issued under Subsection (6)(a) and a copy of the
249 notice of entity dissolution to the State Tax Commission, AGRC, county recorder, county
250 surveyor, county auditor, and county attorney; and

251 (ii) send a copy of the certificate issued under Subsection (6)(a) to the state auditor;

252 and

253 (c) send to the initiating body and the entity being dissolved, if different than the
254 initiating body, a copy of the certificate issued under Subsection (6)(a) and a statement
255 indicating completion of Subsection (6)(b).

256 (7) Within ten days after receiving a notice of entity boundary change, the lieutenant
257 governor shall:

258 (a) issue a certificate of entity boundary change;

259 (b) send a copy of the certificate issued under Subsection (7)(a) and a copy of the
260 notice of entity boundary change, including the accompanying map or legal description, to the
261 State Tax Commission, AGRC, county recorder, county surveyor, county auditor, and county
262 attorney; and

263 (c) send to the initiating body or bodies, and each entity whose boundary is changed, if
264 different than the initiating body, a copy of the certificate issued under Subsection (7)(a) and a
265 statement indicating completion of Subsection (7)(b).

266 (8) (a) The lieutenant governor shall keep, index, maintain, and make available to the
267 public certificates, notices, maps, and other documents necessary in performing the duties of
268 Subsections (2) through (7).

269 (b) The lieutenant governor shall furnish a certified copy of documents to any person
270 who requests a certified copy.

271 (c) The lieutenant governor may charge a reasonable fee for copies of documents or
272 certified copies of documents.

Legislative Review Note
as of 2-16-07 11:22 AM

Office of Legislative Research and General Counsel

H.B. 466 - Incorporation of a Town Amendments

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
