

MUNICIPAL CODE AMENDMENTS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Dan R. Eastman

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies Utah Municipal Code provisions relating to municipal annexation and disconnection.

Highlighted Provisions:

This bill:

- ▶ authorizes a municipality to annex an unincorporated area without an annexation petition if the area is owned by and contiguous to the municipality;
- ▶ eliminates a provision requiring a petitioner seeking to disconnect an area from a municipality to prove that the disconnection will not leave or create an unincorporated island or peninsula; and
- ▶ makes leaving or creating an unincorporated island or peninsula a factor that a court must consider in determining whether a petitioner seeking to disconnect an area from a municipality has met the petitioner's burden of proof.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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



28 **10-2-502.7**, as renumbered and amended by Chapter 279, Laws of Utah 2003



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

31 Section 1. Section **10-2-418** is amended to read:

32 **10-2-418. Annexation of an island or peninsula without a petition -- Notice --**
33 **Hearing.**

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

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

38 (B) the majority of each island or peninsula consists of residential or commercial
39 development;

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

42 (D) the municipality has provided most or all of the municipal-type services to the area
43 for more than one year; [~~or~~]

44 (ii) (A) the area to be annexed consists of one or more unincorporated islands within
45 the municipality, each of which has fewer than 500 residents; and

46 (B) the municipality has provided one or more municipal-type services to the area for
47 at least one year[~~;~~]; or

48 (iii) the area to be annexed is:

49 (A) owned by the municipality; and

50 (B) contiguous to the municipality.

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

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

57 (ii) for an annexation of one or more unincorporated islands under Subsection
58 (1)(a)(ii), the entire island of unincorporated area, of which a portion is being annexed,

59 complies with the requirement of Subsection (1)(a)(ii)(A) relating to the number of residents.

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

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

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

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

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

72 (iv) hold a public hearing on the proposed annexation no earlier than 60 days after the
73 adoption of the resolution under Subsection (2)(a)(i).

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

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

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

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

79 (iv) state in conspicuous and plain terms that the municipal legislative body will annex
80 the area unless, at or before the public hearing under Subsection (2)(a)(iv), written protests to
81 the annexation are filed by the owners of private real property that:

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

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

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

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

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

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

96 (ii) covers:

97 (A) for a proposed annexation under Subsection (1)(a)(i), a majority of the total private
98 land area within the entire area proposed for annexation; or

99 (B) for a proposed annexation under Subsection (1)(a)(ii), 10% of the total private land
100 area within the island of unincorporated area that is proposed for annexation; and

101 (iii) is equal in value to at least:

102 (A) for a proposed annexation under Subsection (1)(a)(i), 1/2 the value of all private
103 real property within the entire area proposed for annexation; or

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

106 (b) A municipal legislative body may not adopt an ordinance annexing an area
107 proposed for annexation under Subsection (1)(a)(ii) unless the legislative body of the county in
108 which the area proposed for annexation has previously adopted a resolution approving the
109 annexation.

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

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

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

118 **10-2-502.7. Court action.**

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

121 hearing.

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

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

126 (a) the viability of the disconnection;

127 (b) that justice and equity require that the territory be disconnected from the
128 municipality;

129 (c) that the proposed disconnection will not:

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

133 (ii) make it economically or practically unfeasible for the municipality to continue to
134 function as a municipality; ~~[or]~~ and

135 ~~[(iii) leave or create one or more islands or peninsulas of unincorporated territory; and]~~

136 (d) that the county in which the area proposed for disconnection is located is capable,
137 in a cost-effective manner and without materially increasing the county's costs of providing
138 municipal services, of providing to the area the services that the municipality will no longer
139 provide to the area due to the disconnection.

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

142 (a) the effect of the proposed disconnection on:

143 ~~[(a)]~~ (i) the municipality or community as a whole;

144 ~~[(b)]~~ (ii) adjoining property owners;

145 ~~[(c)]~~ (iii) existing or projected streets or public ways;

146 ~~[(d)]~~ (iv) water mains and water services;

147 ~~[(e)]~~ (v) sewer mains and sewer services;

148 ~~[(f)]~~ (vi) law enforcement;

149 ~~[(g)]~~ (vii) zoning; and

150 ~~[(h)]~~ (viii) other municipal services[-]; and

151 (b) whether the proposed disconnection will leave or create one or more islands or

152 peninsulas of unincorporated territory.

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

Legislative Review Note
as of 12-8-06 1:09 PM

Office of Legislative Research and General Counsel

S.B. 130 - Municipal Code 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.

1/22/2007, 11:38:55 AM, Lead Analyst: Wardrop, T.

Office of the Legislative Fiscal Analyst