

TOWN INCORPORATION PROCESS

AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Melvin R. Brown

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions relating to the incorporation of a town.

Highlighted Provisions:

This bill:

- ▶ requires at least five sponsors to be designated on a petition to incorporate an area as a town;
- ▶ prohibits the filing of a petition to incorporate an area as a town if the petition sponsors own more than 40% of the total area proposed to be incorporated;
- ▶ eliminates definitions of "base petition" and "qualifying petition";
- ▶ eliminates a requirement that a county legislative body grant a petition for the incorporation of a town if the petition meets a certain signature threshold;
- ▶ requires a majority of voters to sign a petition to incorporate as a town;
- ▶ allows a county legislative body the option whether to commission a financial feasibility study with respect to a proposed incorporation of a town and provides a process for commissioning a financial feasibility study;
- ▶ establishes financial feasibility study criteria;
- ▶ requires the initial officers of a newly incorporated town to be elected rather than appointed by the county legislative body;
- ▶ modifies election provisions to allow the election of officers of a newly



28 incorporated town to be conducted within 60 days after the county legislative body adopts a
29 resolution approving the incorporation;

- 30 ▶ provides for when newly elected town officers in a new town take office;
- 31 ▶ modifies the date upon which a town is incorporated; and
- 32 ▶ applies amendments made by this bill to currently pending and future town
33 incorporation petitions.

34 **Monies Appropriated in this Bill:**

35 None

36 **Other Special Clauses:**

37 This bill provides an immediate effective date.

38 This bill provides revisor instructions.

39 **Utah Code Sections Affected:**

40 AMENDS:

41 **10-2-109**, as last amended by Laws of Utah 1997, Second Special Session, Chapter 3

42 **10-2-125**, as last amended by Laws of Utah 2007, Chapter 212

43 **20A-1-203**, as last amended by Laws of Utah 2007, Chapter 215

44 **20A-1-204**, as last amended by Laws of Utah 2004, Chapter 371



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

47 Section 1. Section **10-2-109** is amended to read:

48 **10-2-109. Incorporation petition -- Requirements and form.**

49 (1) At any time within 18 months of the completion of the public hearings required
50 under Subsection 10-2-108(1), a petition for incorporation of the area proposed to be
51 incorporated as a city may be filed in the office of the clerk of the county in which the area is
52 located.

53 (2) Each petition under Subsection (1) shall:

54 (a) be signed by the owners of private real property that:

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

56 (ii) covers at least 1/3 of the total private land area within the area; and

57 (iii) is equal in value to at least 1/3 of the value of all private real property within the
58 area;

59 (b) indicate the typed or printed name and current residence address of each owner
60 signing the petition;

61 (c) describe the area proposed to be incorporated as a city, as described in the
62 feasibility study request or modified request that meets the requirements of Subsection (3);

63 (d) state the proposed name for the proposed city;

64 (e) designate five signers of the petition as petition sponsors, one of whom shall be
65 designated as the contact sponsor, with the mailing address and telephone number of each;

66 (f) state that the signers of the petition appoint the sponsors, if the incorporation
67 measure passes, to represent the signers in the process of:

68 (i) selecting the number of commission or council members the new city should have;

69 and

70 (ii) drawing district boundaries for the election of commission or council members, if
71 the voters decide to elect commission or council members by district;

72 (g) be accompanied by and circulated with an accurate plat or map, prepared by a
73 licensed surveyor, showing the boundaries of the proposed city; and

74 (h) substantially comply with and be circulated in the following form:

75 PETITION FOR INCORPORATION OF (insert the proposed name of the proposed
76 city)

77 To the Honorable County Legislative Body of (insert the name of the county in which
78 the proposed city is located) County, Utah:

79 We, the undersigned owners of real property within the area described in this petition,
80 respectfully petition the county legislative body to submit to the registered voters residing
81 within the area described in this petition, at a special election held for that purpose, the
82 question of whether the area should incorporate as a city. Each of the undersigned affirms that
83 each has personally signed this petition and is an owner of real property within the described
84 area, and that the current residence address of each is correctly written after the signer's name.
85 The area proposed to be incorporated as a city is described as follows: (insert an accurate
86 description of the area proposed to be incorporated).

87 (3) A petition for incorporation of a city under Subsection (1) may not be filed unless
88 the results of the feasibility study or supplemental feasibility study show that the average
89 annual amount of revenue under Subsection 10-2-106(4)(a)(ix) does not exceed the average

90 annual amount of cost under Subsection 10-2-106(4)(a)(viii) by more than 5%.

91 (4) A signature on a request under Section 10-2-103 or a modified request under
92 Section 10-2-107 may be used toward fulfilling the signature requirement of Subsection (2)(a):

93 (a) if the request under Section 10-2-103 or modified request under Section 10-2-107
94 notified the signer in conspicuous language that the signature, unless withdrawn, would also be
95 used for purposes of a petition for incorporation under this section; and

96 (b) unless the signer files with the county clerk a written withdrawal of the signature
97 before the petition under this section is filed with the clerk.

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

99 **10-2-125. Incorporation of a town.**

100 [~~(1) As used in this section:~~]

101 [~~(a) "Base petition" means a petition under this section proposing the incorporation of a
102 town and signed by the owners of private real property that:]~~

103 [~~(i) is located within the area proposed to be incorporated;]~~

104 [~~(ii) covers at least a majority of the total private land area within the area proposed to
105 be incorporated; and]~~

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

108 [~~(b) "Qualifying petition" means a petition under this section proposing the
109 incorporation of a town and signed by the owners of private real property that:]~~

110 [~~(i) is located within the area proposed to be incorporated;]~~

111 [~~(ii) covers at least a majority of the total private land area within the area proposed to
112 be incorporated; and]~~

113 [~~(iii) is equal in value to more than 1/2 of the value of all private real property within
114 the area proposed to be incorporated.]~~

115 [~~(2)~~] (1) (a) A contiguous area of a county not within a municipality, with a population
116 of at least 100 but less than 1,000, may incorporate as a town as provided in this section.

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

119 (ii) If the population figure is not available from the United States Bureau of the
120 Census, the population figure shall be derived from the estimate from the Utah Population

121 Estimates Committee.

122 ~~[(3)]~~ (2) (a) The process to incorporate an area as a town is initiated by filing a petition
123 with the clerk of the county in which the area is located.

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

125 (i) be signed by:

126 (A) the owners of private real property that:

127 ~~[(A)]~~ (I) is located within the area proposed to be incorporated;

128 ~~[(B)]~~ (II) covers a majority of the total private land area within the area; and

129 ~~[(C)]~~ (III) is equal in value to ~~[at least 1/3]~~ more than 1/2 of the value of all private real
130 property within the area; and

131 (B) registered voters within the area proposed to be incorporated equal in number to at
132 least a majority of all voters within that area who voted in the last gubernatorial election;

133 (ii) state the legal description of the boundaries of the area proposed to be incorporated
134 as a town;

135 (iii) designate ~~[up to]~~ at least five signers of the petition as sponsors, one of whom
136 shall be designated as the contact sponsor, with the mailing address of each owner signing as a
137 sponsor;

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

140 (v) substantially comply with and be circulated in the following form:

141 PETITION FOR INCORPORATION OF (insert the proposed name of the proposed
142 town)

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

145 We, the undersigned owners of real property and registered voters within the area
146 described in this petition, respectfully petition the county legislative body for the area described
147 in this petition to be incorporated as a town. Each of the undersigned affirms that each has
148 personally signed this petition and is either an owner of real property within the described area
149 or a registered voter residing within the described area, and that the current residence address
150 of each is correctly written after the signer's name. The area proposed to be incorporated as a
151 town is described as follows: (insert an accurate description of the area proposed to be

152 incorporated).

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

155 (i) was filed before the filing of the petition; and

156 (ii) is still pending on the date the petition is filed.

157 (d) A petition may not be filed under this section if the private real property owned by
158 the petition sponsors, designated under Subsection (2)(b)(iii), cumulatively exceeds 40% of the
159 total private land area within the area proposed to be incorporated as a town.

160 ~~[(4)]~~ (3) Section 10-2-104 applies to a petition for incorporation as a town in any
161 county, except that the notice under Subsection 10-2-104(1) shall be sent within seven calendar
162 days after the filing of a petition under Subsection ~~[(3)]~~ (2).

163 (4) (a) (i) As used in this Subsection (4), "financial feasibility study" means a study to
164 determine:

165 (A) the projected revenues for the proposed town during the first three years after
166 incorporation; and

167 (B) the projected costs, including overhead, that the proposed town will incur in
168 providing governmental services during the first three years after incorporation.

169 ~~[(5)(a)(i)]~~ (ii) The legislative body of ~~[each]~~ a county with which a ~~[base]~~ petition is
170 filed under this section ~~[shall]~~ may, at its option and upon verifying that the petition meets all
171 applicable requirements, commission and pay for a financial feasibility study [as provided in
172 Section 10-2-103].

173 (iii) If the county legislative body chooses to commission a financial feasibility study,
174 the county legislative body shall:

175 (A) within 20 days after the incorporation petition is filed, select and engage a
176 feasibility consultant; and

177 (B) require the feasibility consultant to complete the financial feasibility study and
178 submit written results of the study to the county legislative body no later than 30 days after the
179 feasibility consultant is engaged to conduct the financial feasibility study.

180 ~~[(ii)]~~ (b) If the county legislative body commissions a financial feasibility study and the
181 results of the financial feasibility study [under Subsection (5)(a)(i) meet the requirements of
182 Subsection 10-2-109(3)] show that the average annual amount of revenue under Subsection

183 (4)(a)(i)(A) does not exceed the average annual amount of cost under Subsection (4)(a)(i)(B)
 184 by more than 10%, the county legislative body shall ~~[grant the petition]~~ adopt a resolution
 185 approving the creation of the new town.

186 ~~[(iii)]~~ (c) If the results of the feasibility study under Subsection ~~[(5)]~~ (4)(a)(i) do not
 187 meet the requirements of Subsection 10-2-109(3)] show that the average annual amount of
 188 revenue under Subsection (4)(a)(i)(A) exceeds the average annual amount of cost under
 189 Subsection (4)(a)(i)(B) by more than 10%, the county legislative body may:

190 ~~[(A)]~~ (i) deny the petition;

191 ~~[(B) grant the petition]~~ (ii) adopt a resolution approving the creation of the new town;

192 or

193 ~~[(C)]~~ (iii) with the consent of the petition sponsors, ~~[grant the petition]~~ adopt a
 194 resolution approving the creation of the new town, after:

195 ~~[(F)]~~ (A) imposing conditions to mitigate the fiscal inequities identified in the financial
 196 feasibility study; or

197 ~~[(H)]~~ (B) altering the boundaries of the area proposed to be incorporated as a town to
 198 approximate the boundaries necessary to ~~[meet the requirements of Subsection 10-2-109(3)]~~
 199 prevent the average annual amount of revenue under Subsection (4)(a)(i)(A) from exceeding
 200 the average annual amount of cost under Subsection (4)(a)(i)(B).

201 ~~[(iv)]~~ (d) Each town that incorporates pursuant to a petition ~~[granted]~~ approved after
 202 the county legislative body imposes conditions under Subsection ~~[(5)(a)(iii)(C)(F)]~~ (4)(c)(iii)(A)
 203 shall comply with those conditions.

204 ~~[(b) The legislative body of each county of the second, third, fourth, fifth, or sixth class~~
 205 ~~with which a qualifying petition is filed shall grant the petition.]~~

206 (5) If the county legislative body chooses not to commission a financial feasibility
 207 study under Subsection (4)(a), the county legislative body shall, after verifying that the petition
 208 meets all applicable requirements, adopt a resolution approving the creation of the new town.

209 (6) (a) ~~[Upon the granting of]~~ Within 60 days after adopting a ~~[petition filed under this~~
 210 section] resolution approving the creation of a new town, the legislative body of the county in
 211 which the proposed town is located shall ~~[appoint a mayor and members of the town council~~
 212 from a list of qualified individuals approved by the petition sponsors] hold an election for town
 213 officers.

214 (b) The officers elected at an election under Subsection (6)(a) shall take office:
 215 (i) at noon on the first Monday in January next following the election, if the election is
 216 held on a regular general or municipal general election date; or
 217 (ii) at noon on the first day of the month next following the effective date of the
 218 incorporation under Subsection (9), if the election of officers is held on any other date.

219 ~~[(b) The officers appointed under Subsection (6)(a) shall hold office until the next~~
 220 ~~regular municipal election and until their successors are elected and qualified.]~~

221 (7) Each newly incorporated town shall operate under the ~~[six-member]~~ five-member
 222 council form of government as described in Section 10-3-101.

223 (8) (a) ~~[Each mayor appointed under Subsection (6) shall, within]~~ Within seven days
 224 ~~[of appointment, file]~~ after the canvass of the final election of town officers under Subsection
 225 (6), the mayor-elect of the new town shall file at least three copies of the articles of
 226 incorporation of the new town with the lieutenant governor.

227 (b) The articles of incorporation shall meet the requirements of Subsection
 228 10-2-119(2).

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

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

233 (9) A town is incorporated:

234 (a) on December 31 of the year in which the lieutenant governor issues a certificate of
 235 entity creation for the town under Section 67-1a-6.5, if the election of town officers under
 236 Subsection (6) is held on a regular general or municipal general election date; or

237 (b) on the last day of the month during which the lieutenant governor issues a
 238 certificate of entity creation for the town under Section 67-1a-6.5, if the election of town
 239 officers under Subsection (6) is held on any other date.

240 (10) This section applies to each petition to incorporate a town:

241 (a) filed on or after the effective date of this section; or

242 (b) pending on the effective date of this section.

243 Section 3. Section **20A-1-203** is amended to read:

244 **20A-1-203. Calling and purpose of special elections.**

245 (1) Statewide and local special elections may be held for any purpose authorized by
246 law.

247 (2) (a) Statewide special elections shall be conducted using the procedure for regular
248 general elections.

249 (b) Except as otherwise provided in this title, local special elections shall be conducted
250 using the procedures for regular municipal elections.

251 (3) The governor may call a statewide special election by issuing an executive order
252 that designates:

253 (a) the date for the statewide special election; and

254 (b) the purpose for the statewide special election.

255 (4) The Legislature may call a statewide special election by passing a joint or
256 concurrent resolution that designates:

257 (a) the date for the statewide special election; and

258 (b) the purpose for the statewide special election.

259 (5) (a) The legislative body of a local political subdivision may call a local special
260 election only for:

261 (i) a vote on a bond or debt issue;

262 (ii) a vote on a voted leeway program authorized by Section 53A-17a-133 or
263 53A-17a-134;

264 (iii) an initiative authorized by Chapter 7, Part 5, Local Initiatives - Procedure;

265 (iv) a referendum authorized by Chapter 7, Part 6, Local Referenda - Procedures;

266 (v) if required or authorized by federal law, a vote to determine whether or not Utah's
267 legal boundaries should be changed;

268 (vi) a vote authorized or required by Title 59, Chapter 12, Sales and Use Tax Act; ~~or~~

269 (vii) a vote to elect members to school district boards for a new school district and a
270 remaining school district, as defined in Section 53A-2-117, following the creation of a new
271 school district under Section 53A-2-118.1[-]; or

272 (viii) an election of town officers of a newly incorporated town under Subsection
273 10-2-125(6).

274 (b) The legislative body of a local political subdivision may call a local special election
275 by adopting an ordinance or resolution that designates:

276 (i) the date for the local special election; and

277 (ii) the purpose for the local special election.

278 Section 4. Section **20A-1-204** is amended to read:

279 **20A-1-204. Date of special election -- Legal effect.**

280 (1) (a) The governor, Legislature, or the legislative body of a local political subdivision
281 calling a statewide special election or local special election under Section 20A-1-203 shall
282 schedule the special election to be held on:

283 (i) the fourth Tuesday in June; [~~or~~]

284 (ii) the first Tuesday after the first Monday in November[-:]; or

285 (iii) for an election of town officers of a newly incorporated town under Subsection
286 10-2-125(6), on any date that complies with the requirements of that subsection.

287 (b) Except as provided in Subsection (1)(c), the governor, Legislature, or the legislative
288 body of a local political subdivision calling a statewide special election or local special election
289 under Section 20A-1-203 may not schedule a special election to be held on any other date.

290 (c) (i) Notwithstanding the requirements of Subsection (1)(b), the legislative body of a
291 local political subdivision may call a local special election on a date other than those specified
292 in this section if the legislative body:

293 (A) determines and declares that there is a disaster, as defined in Section 63-5-2,
294 requiring that a special election be held on a date other than the ones authorized in statute;

295 (B) identifies specifically the nature of the disaster, as defined in Section 63-5-2, and
296 the reasons for holding the special election on that other date; and

297 (C) votes unanimously to hold the special election on that other date.

298 (ii) The legislative body of a local political subdivision may not call a local special
299 election for the date established in Title 20A, Chapter 9, Part 8, Western States Presidential
300 Primary, for Utah's Western States Presidential Primary.

301 (d) Nothing in this section prohibits:

302 (i) the governor or Legislature from submitting a matter to the voters at the regular
303 general election if authorized by law; or

304 (ii) a local government from submitting a matter to the voters at the regular municipal
305 election if authorized by law.

306 (2) (a) Two or more entities shall comply with Subsection (2)(b) if those entities hold a

307 special election within a county on the same day as:

- 308 (i) another special election;
- 309 (ii) a regular general election; or
- 310 (iii) a municipal general election.

311 (b) Entities described in Subsection (2)(a) shall, to the extent practicable, coordinate:

- 312 (i) polling places;
- 313 (ii) ballots;
- 314 (iii) election officials; and
- 315 (iv) other administrative and procedural matters connected with the election.

316 **Section 5. Effective date.**

317 If approved by two-thirds of all the members elected to each house, this bill takes effect
318 upon approval by the governor, or the day following the constitutional time limit of Utah
319 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
320 the date of veto override.

321 **Section 6. Revisor instructions.**

322 It is the intent of the Legislature that the Office of Legislative Research and General
323 Counsel, in preparing the Utah Code database for publication, replace the phrase "the effective
324 date of this section" in Subsection 10-2-125(10)(b) of this bill with the actual effective date of
325 this bill.

Legislative Review Note
as of 1-18-08 11:16 AM

Office of Legislative Research and General Counsel

H.B. 164 - Town Incorporation Process Amendments

Fiscal Note

2008 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 existing local governments. Enactment of this bill could increase the cost to petitioners looking to incorporate.
