

**MUNICIPAL INCORPORATION AMENDMENTS**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Dennis E. Stowell**

House Sponsor: Melvin R. Brown

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**LONG TITLE**

**Committee Note:**

The Political Subdivisions Interim Committee recommended this bill.

**General Description:**

This bill modifies provisions relating to the incorporation of municipalities.

**Highlighted Provisions:**

This bill:

- ▶ repeals a provision relating to the incorporation of a town; and
- ▶ makes the process for incorporating a town the same as the process for

incorporating a city, except that in the process of incorporating a town:

- the county legislative body may waive the feasibility study requirement;
- the percentage of allowable annual average revenue over average annual expenses is increased from 5% to 10%; and
- an incorporation petition may not be filed if the feasibility study results indicate that annual average revenue exceeds average annual expenses by more than 10% unless the county legislative body consents, with or without conditions.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**



28 AMENDS:

- 29 **10-2-102**, as repealed and reenacted by Laws of Utah 1997, Chapter 389
- 30 **10-2-103**, as last amended by Laws of Utah 2000, Chapter 184
- 31 **10-2-104**, as last amended by Laws of Utah 2003, Chapter 129
- 32 **10-2-106**, as last amended by Laws of Utah 2007, Chapter 329
- 33 **10-2-107**, as last amended by Laws of Utah 2000, Chapter 184
- 34 **10-2-108**, as repealed and reenacted by Laws of Utah 1997, Chapter 389
- 35 **10-2-109**, as last amended by Laws of Utah 1997, Second Special Session, Chapter 3
- 36 **10-2-111**, as repealed and reenacted by Laws of Utah 1997, Chapter 389
- 37 **10-2-112**, as last amended by Laws of Utah 2004, Chapter 202
- 38 **10-2-113**, as repealed and reenacted by Laws of Utah 1997, Chapter 389
- 39 **10-2-114**, as last amended by Laws of Utah 2004, Chapter 202
- 40 **10-2-115**, as last amended by Laws of Utah 2000, Chapter 1
- 41 **10-2-116**, as enacted by Laws of Utah 1997, Chapter 389
- 42 **10-2-119**, as last amended by Laws of Utah 2005, Chapter 233
- 43 **10-2-120**, as last amended by Laws of Utah 2005, Chapter 233
- 44 **10-2-121**, as last amended by Laws of Utah 2005, First Special Session, Chapter 9
- 45 **10-2-122**, as last amended by Laws of Utah 2000, Chapter 38
- 46 **10-2-123**, as enacted by Laws of Utah 1997, Chapter 389



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

49 Section 1. Section **10-2-102** is amended to read:

50 **10-2-102. Incorporation of a contiguous area.**

51 [(1)] A contiguous unincorporated area [~~of a county not within a municipality~~] with a  
52 population of 100 or more may incorporate as a municipality as provided in this part.

53 [~~(2) Incorporation as a city is governed by Sections 10-2-103 through 10-2-124.~~  
54 ~~Incorporation as a town is governed by Section 10-2-125.~~]

55 Section 2. Section **10-2-103** is amended to read:

56 **10-2-103. Request for feasibility study -- Requirements -- Limitations.**

57 (1) The process to incorporate a contiguous area of a county as a [city] municipality is  
58 initiated by a request for a feasibility study filed with the clerk of the county in which the area

59 is located.

60 (2) Each request under Subsection (1) shall:

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

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

63 (ii) covers at least 10% of the total private land area within the area; and

64 (iii) is equal in value to at least 7% of the value of all private real property within the  
65 area;

66 (b) indicate the typed or printed name and current residence address of each owner  
67 signing the request;

68 (c) describe the contiguous area proposed to be incorporated as a [city] municipality;

69 (d) designate up to five signers of the request as sponsors, one of whom shall be  
70 designated as the contact sponsor, with the mailing address and telephone number of each;

71 (e) be accompanied by and circulated with an accurate map or plat, prepared by a  
72 licensed surveyor, showing the boundaries of the proposed [city] municipality; and

73 (f) request the county legislative body to commission a study to determine the  
74 feasibility of incorporating the area as a [city] municipality.

75 (3) A request for a feasibility study under this section may not propose for  
76 incorporation an area that includes some or all of an area that is the subject of a completed  
77 feasibility study or supplemental feasibility study whose results comply with Subsection  
78 10-2-109(3) unless:

79 (a) the proposed incorporation that is the subject of the completed feasibility study or  
80 supplemental feasibility study has been defeated by the voters at an election under Section  
81 10-2-111; or

82 (b) the time provided under Subsection 10-2-109(1) for filing an incorporation petition  
83 based on the completed feasibility study or supplemental feasibility study has elapsed without  
84 the filing of a petition.

85 (4) (a) Except as provided in Subsection (4)(b), a request under this section may not  
86 propose for incorporation an area that includes some or all of an area proposed for annexation  
87 in an annexation petition under Section 10-2-403 that:

88 (i) was filed before the filing of the request; and

89 (ii) is still pending on the date the request is filed.

90 (b) Notwithstanding Subsection (4)(a), a request may propose for incorporation an area  
91 that includes some or all of an area proposed for annexation in an annexation petition described  
92 in Subsection (4)(a) if:

93 (i) the proposed annexation area that is part of the area proposed for incorporation does  
94 not exceed 20% of the area proposed for incorporation;

95 (ii) the request complies with Subsections (2) and (3) with respect to the area proposed  
96 for incorporation excluding the proposed annexation area; and

97 (iii) excluding the area proposed for annexation from the area proposed for  
98 incorporation would not cause the area proposed for incorporation to lose its contiguousness.

99 (c) Except as provided in Section 10-2-107, each request to which Subsection (4)(b)  
100 applies shall be considered as not proposing the incorporation of the area proposed for  
101 annexation.

102 (5) At the time of filing the request for a feasibility study with the county clerk, the  
103 sponsors of the request shall mail or deliver a copy of the request to the chair of the planning  
104 commission of each township in which any part of the area proposed for incorporation is  
105 located.

106 Section 3. Section **10-2-104** is amended to read:

107 **10-2-104. Notice to owner of more than 1% of property -- Exclusion of property**  
108 **from proposed boundaries.**

109 (1) Within seven calendar days of the date on which a request under Section 10-2-103  
110 is filed, the county clerk shall notify of the proposed incorporation each owner of real property  
111 owning more than 1% of the assessed value of all property in the proposed incorporation  
112 boundaries.

113 (2) (a) A property owner within the boundaries of a proposed municipality, owning  
114 more than 1% of the assessed value of all property in the proposed incorporation boundaries,  
115 may exclude all or part of the property owner's property from the proposed boundaries by filing  
116 a Notice of Exclusion within ten calendar days of receiving the clerk's notice under Subsection  
117 (1).

118 (b) The county legislative body shall exclude the property identified in the Notice of  
119 Exclusion from the proposed boundaries only if the property:

120 (i) is currently nonurban;

121 (ii) does not or will not require municipal provision of municipal-type services  
122 including:

- 123 (A) culinary or irrigation water;
- 124 (B) sewage collection or treatment;
- 125 (C) storm drainage or flood control;
- 126 (D) recreational facilities or parks;
- 127 (E) electric generation or transportation;
- 128 (F) construction or maintenance of local streets and roads;
- 129 (G) curb and gutter or sidewalk maintenance;
- 130 (H) garbage and refuse collection; and
- 131 (I) street lighting; and

132 (iii) exclusion will not leave an unincorporated island within the proposed  
133 municipality.

134 (3) This section [~~applies only to counties of the first or second~~] does not apply to a  
135 proposed incorporation of a city in a county of the third, fourth, fifth, or sixth class.

136 (4) If the county legislative body excludes property from the proposed boundaries  
137 under Subsection (2)(b), the county legislative body shall, within five days of the exclusion,  
138 send written notice of its action to the contact sponsor.

139 Section 4. Section **10-2-106** is amended to read:

140 **10-2-106. Feasibility study -- Feasibility study consultant.**

141 (1) [~~Within~~] (a) Except as provided in Subsection (1)(b), within 60 days [of receipt of]  
142 after receiving a certified request under Subsection 10-2-105(1)(b)(i), the county legislative  
143 body shall engage the feasibility consultant chosen under Subsection (2) to conduct a feasibility  
144 study.

145 (b) The county legislative body may waive the requirement of a feasibility study for the  
146 proposed incorporation of a town.

147 (2) The feasibility consultant shall be chosen by a majority vote of a selection  
148 committee consisting of:

- 149 (a) a person designated by the county legislative body;
- 150 (b) a person designated by the sponsors of the request for a feasibility study; and
- 151 (c) a person designated by the governor.

- 152 (3) The county legislative body shall require the feasibility consultant to:
- 153 (a) complete the feasibility study and submit the written results to the county legislative
- 154 body and the contact sponsor no later than 90 days after the feasibility consultant is engaged to
- 155 conduct the study;
- 156 (b) submit with the full written results of the feasibility study a summary of the results
- 157 no longer than one page in length; and
- 158 (c) attend the public hearings under Subsection 10-2-108(1) and present the feasibility
- 159 study results and respond to questions from the public at those hearings.
- 160 (4) (a) The feasibility study shall consider:
- 161 (i) the population and population density within the area proposed for incorporation
- 162 and the surrounding area;
- 163 (ii) the history, geography, geology, and topography of and natural boundaries within
- 164 the area proposed to be incorporated and the surrounding area;
- 165 (iii) whether the proposed boundaries eliminate or create an unincorporated island or
- 166 peninsula;
- 167 (iv) whether the proposed incorporation will hinder or prevent a future and more
- 168 logical and beneficial incorporation or a future logical and beneficial annexation;
- 169 (v) the fiscal impact on unincorporated areas, other municipalities, local districts,
- 170 special service districts, and other governmental entities in the county;
- 171 (vi) current and five-year projections of demographics and economic base in the
- 172 proposed [city] municipality and surrounding area, including household size and income,
- 173 commercial and industrial development, and public facilities;
- 174 (vii) projected growth in the proposed [city] municipality and in adjacent areas during
- 175 the next five years;
- 176 (viii) subject to Subsection (4)(c), the present and five-year projections of the cost,
- 177 including overhead, of governmental services in the proposed [city] municipality;
- 178 (ix) the present and five-year projected revenue for the proposed [city] municipality;
- 179 (x) the projected impact the incorporation will have over the following five years on
- 180 the amount of taxes that property owners within the proposed [city] municipality and in the
- 181 remaining unincorporated county will pay;
- 182 (xi) past expansion in terms of population and construction in the proposed [city]

183 municipality and the surrounding area;

184 (xii) the extension of the boundaries of other nearby municipalities during the past ten  
185 years, the willingness of those municipalities to annex the area proposed for incorporation, and  
186 the probability that those municipalities would annex territory within the area proposed for  
187 incorporation within the next five years except for the incorporation; and

188 (xiii) whether the legislative body of the county in which the area proposed to be  
189 incorporated favors the incorporation proposal.

190 (b) For purposes of Subsection (4)(a)(ix), the feasibility consultant shall assume ad  
191 valorem property tax rates on residential property within the proposed [city] municipality at the  
192 same level at which they would have been without the incorporation.

193 (c) For purposes of Subsection (4)(a)(viii):

194 (i) the feasibility consultant shall assume a level and quality of governmental services  
195 to be provided to the proposed [city] municipality in the future that fairly and reasonably  
196 approximate the level and quality of governmental services being provided to the proposed  
197 [city] municipality at the time of the feasibility study;

198 (ii) in determining the present cost of a governmental service, the feasibility consultant  
199 shall consider:

200 (A) the amount it would cost the proposed [city] municipality itself to provide the  
201 service after incorporation;

202 (B) if the county is currently providing the service to the proposed [city] municipality,  
203 the county's cost of providing the service; and

204 (C) if the county is not currently providing the service to the proposed [city]  
205 municipality, the amount the proposed [city] municipality can reasonably expect to pay for the  
206 service under a contract for the service; and

207 (iii) the five-year projected cost of a governmental service shall be based on the  
208 amount calculated under Subsection (4)(c)(ii), taking into account inflation and anticipated  
209 growth.

210 (5) If the results of the feasibility study or revised feasibility study do not meet the  
211 requirements of Subsection 10-2-109(3), the feasibility consultant shall, as part of the  
212 feasibility study or revised feasibility study and if requested by the sponsors of the request,  
213 make recommendations as to how the boundaries of the proposed [city] municipality may be

214 altered so that the requirements of Subsection 10-2-109(3) may be met.

215 (6) (a) For purposes of this Subsection (6), "pending" means that the process to  
216 incorporate an unincorporated area has been initiated by the filing of a request for feasibility  
217 study under Section 10-2-103 but that, as of the date this Subsection (6) becomes effective, a  
218 petition under Section 10-2-109 has not yet been filed.

219 (b) The amendments to Subsection (4) that become effective upon the effective date of  
220 this Subsection (6):

221 (i) apply to each pending proceeding proposing the incorporation of an unincorporated  
222 area; and

223 (ii) do not apply to a municipal incorporation proceeding under this part in which a  
224 petition under Section 10-2-109 has been filed.

225 (c) (i) If, in a pending incorporation proceeding, the feasibility consultant has, as of the  
226 effective date of this Subsection (6), already completed the feasibility study, the county  
227 legislative body shall, within 20 days after the effective date of this Subsection (6) and except  
228 as provided in Subsection (6)(c)(iii), engage the feasibility consultant to revise the feasibility  
229 study to take into account the amendments to Subsection (4) that became effective on the  
230 effective date of this Subsection (6).

231 (ii) Except as provided in Subsection (6)(c)(iii), the county legislative body shall  
232 require the feasibility consultant to complete the revised feasibility study under Subsection  
233 (6)(c)(i) within 20 days after being engaged to do so.

234 (iii) Notwithstanding Subsections (6)(c)(i) and (ii), a county legislative body is not  
235 required to engage the feasibility consultant to revise the feasibility study if, within 15 days  
236 after the effective date of this Subsection (6), the request sponsors file with the county clerk a  
237 written withdrawal of the request signed by all the request sponsors.

238 (d) All provisions of this part that set forth the incorporation process following the  
239 completion of a feasibility study shall apply with equal force following the completion of a  
240 revised feasibility study under this Subsection (6), except that, if a petition under Section  
241 10-2-109 has already been filed based on the feasibility study that is revised under this  
242 Subsection (6):

243 (i) the notice required by Section 10-2-108 for the revised feasibility study shall  
244 include a statement informing signers of the petition of their right to withdraw their signatures



245 from the petition and of the process and deadline for withdrawing a signature from the petition;

246 (ii) a signer of the petition may withdraw the signer's signature by filing with the  
247 county clerk a written withdrawal within 30 days after the final notice under Subsection  
248 10-2-108(2) has been given with respect to the revised feasibility study; and

249 (iii) unless withdrawn, a signature on the petition may be used toward fulfilling the  
250 signature requirements under Subsection 10-2-109(2)(a) for a petition based on the revised  
251 feasibility study.

252 Section 5. Section **10-2-107** is amended to read:

253 **10-2-107. Modified request for feasibility study -- Supplemental feasibility study.**

254 (1) (a) (i) The sponsors of a request may modify the request to alter the boundaries of  
255 the proposed [~~city~~] municipality and then refile the request, as modified, with the county clerk  
256 if:

257 (A) the results of the feasibility study do not meet the requirements of Subsection  
258 10-2-109(3); or

259 (B) (I) the request meets the conditions of Subsection 10-2-103(4)(b);

260 (II) the annexation petition that proposed the annexation of an area that is part of the  
261 area proposed for incorporation has been denied; and

262 (III) an incorporation petition based on the request has not been filed.

263 (ii) (A) A modified request under Subsection (1)(a)(i)(A) may not be filed more than  
264 90 days after the feasibility consultant's submission of the results of the study.

265 (B) A modified request under Subsection (1)(a)(i)(B) may not be filed more than 18  
266 months after the filing of the original request under Section 10-2-103.

267 (b) (i) Subject to Subsection (1)(b)(ii), each modified request under Subsection (1)(a)  
268 shall comply with the requirements of Subsections 10-2-103(2), (3), (4), and (5).

269 (ii) Notwithstanding Subsection (1)(b)(i), a signature on a request filed under Section  
270 10-2-103 may be used toward fulfilling the signature requirement of Subsection 10-2-103(2)(a)  
271 for the request as modified under Subsection (1)(a), unless the modified request proposes the  
272 incorporation of an area that is more than 20% greater or smaller than the area described by the  
273 original request in terms of:

274 (A) private land area; or

275 (B) value of private real property.

276 (2) Within 20 days after the county clerk's receipt of the modified request, the county  
277 clerk shall follow the same procedure for the modified request as provided under Subsection  
278 10-2-105(1) for an original request.

279 (3) The timely filing of a modified request under Subsection (1) gives the modified  
280 request the same processing priority under Subsection 10-2-105(2) as the original request.

281 (4) Within ten days after the county legislative body's receipt of a certified modified  
282 request under Subsection (1)(a)(i)(A) or a certified modified request under Subsection  
283 (1)(a)(i)(B) that was filed after the completion of a feasibility study on the original request, the  
284 county legislative body shall commission the feasibility consultant who conducted the  
285 feasibility study to supplement the feasibility study to take into account the information in the  
286 modified request that was not included in the original request.

287 (5) The county legislative body shall require the feasibility consultant to complete the  
288 supplemental feasibility study and to submit written results of the supplemental study to the  
289 county legislative body and to the contact sponsor no later than 30 days after the feasibility  
290 consultant is commissioned to conduct the supplemental feasibility study.

291 (6) (a) Subject to Subsection (6)(b), if the results of the supplemental feasibility study  
292 do not meet the requirements of Subsection 10-2-109(3):

293 (i) the sponsors may file a further modified request as provided in Subsection (1); and  
294 (ii) Subsections (2), (4), and (5) apply to a further modified request under Subsection  
295 (6)(a)(i).

296 (b) A further modified request under Subsection (6)(a) shall, for purposes of its  
297 processing priority, be considered as an original request for a feasibility study under Section  
298 10-2-103.

299 Section 6. Section **10-2-108** is amended to read:

300 **10-2-108. Public hearings on feasibility study results -- Notice of hearings.**

301 (1) If the results of the feasibility study or supplemental feasibility study meet the  
302 requirements of Subsection 10-2-109(3), the county legislative body shall, at its next regular  
303 meeting after receipt of the results of the feasibility study or supplemental feasibility study,  
304 schedule at least two public hearings to be held:

305 (a) within the following 60 days;

306 (b) at least seven days apart;

307 (c) in geographically diverse locations within the proposed [city] municipality; and

308 (d) for the purpose of allowing:

309 (i) the feasibility consultant to present the results of the study; and

310 (ii) the public to become informed about the feasibility study results and to ask

311 questions about those results of the feasibility consultant.

312 (2) (a) (i) The county clerk shall publish notice of the public hearings required under

313 Subsection (1) at least once a week for three successive weeks in a newspaper of general

314 circulation within the proposed [city] municipality.

315 (ii) The last publication of notice required under Subsection (2)(a)(i) shall be at least

316 three days before the first public hearing required under Subsection (1).

317 (b) (i) If there is no newspaper of general circulation within the proposed [city]

318 municipality, the county clerk shall post at least one notice of the hearings per 1,000 population

319 in conspicuous places within the proposed [city] municipality that are most likely to give notice

320 of the hearings to the residents of the proposed [city] municipality.

321 (ii) The clerk shall post the notices under Subsection (2)(b)(i) at least seven days before

322 the first hearing under Subsection (1).

323 (c) The notice under Subsections (2)(a) and (b) shall include the feasibility study

324 summary under Subsection 10-2-106(3)(b) and shall indicate that a full copy of the study is

325 available for inspection and copying at the office of the county clerk.

326 Section 7. Section **10-2-109** is amended to read:

327 **10-2-109. Incorporation petition -- Requirements and form.**

328 (1) At any time within 18 months of the completion of the public hearings required

329 under Subsection 10-2-108(1), a petition for incorporation of the area proposed to be

330 incorporated as a [city] municipality may be filed in the office of the clerk of the county in

331 which the area is located.

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

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

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

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

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

337 area;

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

340 (c) describe the area proposed to be incorporated as a [city] municipality, as described  
341 in the feasibility study request or modified request that meets the requirements of Subsection  
342 (3);

343 (d) state the proposed name for the proposed [city] municipality;

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

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

348 (i) selecting the number of [~~commission or~~] council members the new [city]  
349 municipality should have; and

350 (ii) drawing district boundaries for the election of [~~commission or~~] council members, if  
351 the voters decide to elect [~~commission or~~] council members by district;

352 (g) be accompanied by and circulated with an accurate plat or map, prepared by a  
353 licensed surveyor, showing the boundaries of the proposed [city] municipality; and

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

355 PETITION FOR INCORPORATION OF (insert the proposed name of the proposed  
356 [city] municipality)

357 To the Honorable County Legislative Body of (insert the name of the county in which  
358 the proposed [city] municipality is located) County, Utah:

359 We, the undersigned owners of real property within the area described in this petition,  
360 respectfully petition the county legislative body to submit to the registered voters residing  
361 within the area described in this petition, at a special election held for that purpose, the  
362 question of whether the area should incorporate as a [city] municipality. Each of the  
363 undersigned affirms that each has personally signed this petition and is an owner of real  
364 property within the described area, and that the current residence address of each is correctly  
365 written after the signer's name. The area proposed to be incorporated as a [city] municipality is  
366 described as follows: (insert an accurate description of the area proposed to be incorporated).

367 (3) (a) A petition for incorporation of a city under Subsection (1) may not be filed  
368 unless the results of the feasibility study or supplemental feasibility study show that the average

369 annual amount under Subsection 10-2-106(4)(a)(ix) does not exceed the average annual  
370 amount under Subsection 10-2-106(4)(a)(viii) by more than 5%.

371 (b) (i) If the results of the feasibility study or supplemental feasibility study for a  
372 proposed incorporation of a town show that the average annual amount under Subsection  
373 10-2-106(4)(a)(ix) exceeds the average annual amount under Subsection 10-2-106(4)(a)(viii)  
374 by more than 10%, a petition for incorporation may not be filed unless the legislative body of  
375 the county in which the proposed town is located consents.

376 (ii) In giving its consent under Subsection (3)(b)(i), a county legislative body may, with  
377 the consent of the petition sponsors:

378 (A) impose conditions to mitigate the fiscal inequities identified in the feasibility  
379 study; or

380 (B) alter the boundaries of the area proposed to be incorporated as a town to  
381 approximate the boundaries necessary to keep the average annual amount under Subsection  
382 10-2-106(4)(a)(ix) from exceeding the average annual amount under Subsection  
383 10-2-106(4)(a)(viii) by more than 10%.

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

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

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

391 Section 8. Section **10-2-111** is amended to read:

392 **10-2-111. Incorporation election.**

393 (1) At the next special election date under Section 20A-1-204 more than 45 days after  
394 the county legislative body's receipt of the certified petition or certified modified petition under  
395 Subsection 10-2-110(1)(b)(i), the county legislative body shall hold an election on the proposed  
396 incorporation.

397 (2) (a) The county clerk shall publish notice of the election in a newspaper of general  
398 circulation within the area proposed to be incorporated at least once a week for three successive  
399 weeks.

- 400 (b) The notice required by Subsection (2)(a) shall contain:  
401 (i) a statement of the contents of the petition;  
402 (ii) a description of the area proposed to be incorporated as a [city] municipality;  
403 (iii) a statement of the date and time of the election and the location of polling places;

404 and

405 (iv) if the feasibility study was not waived under Subsection 10-2-106(1)(b), the  
406 feasibility study summary under Subsection 10-2-106(3)(b) and a statement that a full copy of  
407 the study is available for inspection and copying at the office of the county clerk.

408 (c) The last publication of notice required under Subsection (2)(a) shall occur at least  
409 one day but no more than seven days before the election.

410 (d) (i) If there is no newspaper of general circulation within the proposed [city]  
411 municipality, the county clerk shall post at least one notice of the election per 1,000 population  
412 in conspicuous places within the proposed [city] municipality that are most likely to give notice  
413 of the election to the voters of the proposed [city] municipality.

414 (ii) The clerk shall post the notices under Subsection (2)(d)(i) at least seven days before  
415 the election under Subsection (1).

416 Section 9. Section **10-2-112** is amended to read:

417 **10-2-112. Ballot used at the incorporation election.**

418 (1) The ballot at the incorporation election under Subsection 10-2-111(1) shall pose the  
419 incorporation question substantially as follows:

420 Shall the area described as (insert a description of the proposed [city] municipality) be  
421 incorporated as the city or town of (insert the proposed name of the proposed [city]  
422 municipality)?

423 (2) The ballot shall provide a space for the voter to answer yes or no to the question in  
424 Subsection (1).

425 (3) (a) The ballot at the incorporation election for a proposal to incorporate a city shall  
426 also pose the question relating to the form of government substantially as follows:

427 If the above incorporation proposal passes, under what form of municipal government  
428 shall (insert the name of the proposed city) operate? Vote for one:

429 Five-member City Council form

430 Six-member City Council form

431 Council-Mayor form

432 Council-Manager form.

433 (b) The ballot shall provide a space for the voter to vote for one form of government.

434 (4) (a) The ballot at the incorporation election shall also pose the question of whether

435 to elect city or town council members by district substantially as follows:

436 If the above incorporation proposal passes, shall members of the city or town council of  
437 (insert the name of the proposed [city] municipality) be elected by district?

438 (b) The ballot shall provide a space for the voter to answer yes or no to the question in  
439 Subsection (4)(a).

440 Section 10. Section **10-2-113** is amended to read:

441 **10-2-113. Notification to lieutenant governor of incorporation election results.**

442 Within ten days of the canvass of the incorporation election, the county clerk shall send  
443 written notice to the lieutenant governor of:

444 (1) the results of the election; and

445 (2) if the incorporation measure passes:

446 (a) the name of the [city] municipality; and

447 (b) the class of the [city] municipality as provided under Section 10-2-301.

448 Section 11. Section **10-2-114** is amended to read:

449 **10-2-114. Determination of number of council members -- Determination of**  
450 **election districts -- Hearings and notice.**

451 (1) If the incorporation proposal passes, the petition sponsors shall, within 25 days of  
452 the canvass of the election under Section 10-2-111:

453 (a) if the proposal is to incorporate as a city and the voters at the incorporation election  
454 choose either the council-mayor or the council-manager form of government, determine the  
455 number of council members that will constitute the council of the future city;

456 (b) if the voters at the incorporation election vote to elect council members by district,  
457 determine the number of council members to be elected by district and draw the boundaries of  
458 those districts, which shall be substantially equal in population;

459 (c) determine the initial terms of the mayor and members of the [city] municipality  
460 council so that:

461 (i) the mayor and approximately half the members of the [city] council are elected to

462 serve an initial term, of no less than one year, that allows their successors to serve a full  
463 four-year term that coincides with the schedule established in Subsection 10-3-205(1); and

464 (ii) the remaining members of the [city] council are elected to serve an initial term, of  
465 no less than one year, that allows their successors to serve a full four-year term that coincides  
466 with the schedule established in Subsection 10-3-205(2); and

467 (d) submit in writing to the county legislative body the results of the sponsors'  
468 determinations under Subsections (1)(a), (b), and (c).

469 (2) (a) Before making a determination under Subsection (1)(a), (b), or (c), the petition  
470 sponsors shall hold a public hearing within the future [city] municipality on the applicable  
471 issues under Subsections (1)(a), (b), and (c).

472 (b) (i) The petition sponsors shall publish notice of the public hearing under Subsection  
473 (2)(a) in a newspaper of general circulation within the future [city] municipality at least once a  
474 week for two successive weeks before the hearing.

475 (ii) The last publication of notice under Subsection (2)(b)(i) shall be at least three days  
476 before the public hearing under Subsection (2)(a).

477 (c) (i) If there is no newspaper of general circulation within the future [city]  
478 municipality, the petition sponsors shall post at least one notice of the hearing per 1,000  
479 population in conspicuous places within the future [city] municipality that are most likely to  
480 give notice of the hearing to the residents of the future [city] municipality.

481 (ii) The petition sponsors shall post the notices under Subsection (2)(c)(i) at least seven  
482 days before the hearing under Subsection (2)(a).

483 Section 12. Section **10-2-115** is amended to read:

484 **10-2-115. Notice of number of commission or council members to be elected and**  
485 **of district boundaries -- Declaration of candidacy for city office.**

486 (1) (a) Within 20 days of the county legislative body's receipt of the information under  
487 Subsection 10-2-114(1)(d), the county clerk shall publish in a newspaper of general circulation  
488 within the future [city] municipality a notice containing:

489 (i) the number of [~~commission or~~] council members to be elected for the new [city]  
490 municipality;

491 (ii) if some or all of the [~~commission or~~] council members are to be elected by district,  
492 a description of the boundaries of those districts as designated by the petition sponsors under



493 Subsection 10-2-114(1)(b);

494 (iii) information about the deadline for filing a declaration of candidacy for those  
495 seeking to become candidates for mayor or ~~[city commission or]~~ council; and

496 (iv) information about the length of the initial term of each of the ~~[city]~~ municipality  
497 officers, as determined by the petition sponsors under Subsection 10-2-114(1)(c).

498 (b) The notice under Subsection (1)(a) shall be published at least once a week for two  
499 successive weeks.

500 (c) (i) If there is no newspaper of general circulation within the future ~~[city]~~  
501 municipality, the county clerk shall post at least one notice per 1,000 population in conspicuous  
502 places within the future ~~[city]~~ municipality that are most likely to give notice to the residents of  
503 the future ~~[city]~~ municipality.

504 (ii) The notice under Subsection (1)(c)(i) shall contain the information required under  
505 Subsection (1)(a).

506 (iii) The petition sponsors shall post the notices under Subsection (1)(c)(i) at least  
507 seven days before the deadline for filing a declaration of candidacy under Subsection (2).

508 (2) Notwithstanding Subsection 20A-9-203(2)(a), each person seeking to become a  
509 candidate for mayor or ~~[city commission or]~~ municipal council of a ~~[city]~~ municipality  
510 incorporating under this part shall, within 45 days of the incorporation election under Section  
511 10-2-111, file a declaration of candidacy with the clerk of the county in which the future ~~[city]~~  
512 municipality is located.

513 Section 13. Section **10-2-116** is amended to read:

514 **10-2-116. Election of officers of new municipality.**

515 (1) For the election of ~~[city]~~ municipality officers, the county legislative body shall:

516 (a) unless a primary election is prohibited by Subsection 20A-9-404(2), hold a primary  
517 election; and

518 (b) hold a final election.

519 (2) Each election under Subsection (1) shall be:

520 (a) appropriate to the form of government chosen by the voters at the incorporation  
521 election, if applicable;

522 (b) consistent with the voters' decision about whether to elect ~~[commission or]~~ council  
523 members by district and, if applicable, consistent with the boundaries of those districts as

524 determined by the petition sponsors; and

525 (c) consistent with the sponsors' determination of the number of [~~commission or~~]  
526 council members to be elected and the length of their initial term.

527 (3) (a) Subject to Subsection (3)(b) and except as provided in Subsection (5), the  
528 primary election under Subsection (1)(a) shall be held at the earliest of the next:

- 529 (i) regular general election under Section 20A-1-201;
- 530 (ii) municipal primary election under Section 20A-9-404;
- 531 (iii) municipal general election under Section 20A-1-202; or
- 532 (iv) special election under Section 20A-1-204.

533 (b) Notwithstanding Subsection (3)(a), the primary election under Subsection (1)(a)  
534 may not be held until 75 days after the incorporation election under Section 10-2-111.

535 (4) Except as provided in Subsection (5), the final election under Subsection (1)(b)  
536 shall be held at the next special election date under Section 20A-1-204:

- 537 (a) after the primary election; or
- 538 (b) if there is no primary election, more than 75 days after the incorporation election  
539 under Section 10-2-111.

540 (5) Notwithstanding Subsections (3) and (4), the county legislative body may hold the  
541 primary and final elections required under Subsection (1) on the dates provided for the next  
542 municipal primary election under Section 20A-9-404 and the next municipal general election  
543 under Section 20A-1-202, respectively, after the incorporation election, if:

- 544 (a) with the results under Subsection 10-2-114(1)(d), the petition sponsors submit to  
545 the county legislative body a written request to that effect; and
- 546 (b) the incorporation election under Section 10-2-111 took place in February or May of  
547 an odd-numbered year.

548 (6) (a) (i) The county clerk shall publish notice of an election under this section at least  
549 once a week for two successive weeks in a newspaper of general circulation within the future  
550 [~~city~~] municipality.

551 (ii) The later notice under Subsection (6)(a)(i) shall be at least one day but no more  
552 than seven days before the election.

553 (b) (i) If there is no newspaper of general circulation within the future [~~city~~]  
554 municipality, the county clerk shall post at least one notice of the election per 1,000 population

555 in conspicuous places within the future [city] municipality that are most likely to give notice of  
556 the election to the voters.

557 (ii) The county clerk shall post the notices under Subsection (6)(b)(i) at least seven  
558 days before each election under Subsection (1).

559 (7) Until the [city] municipality is incorporated, the county clerk is the election officer  
560 for all purposes in an election of officers of the [city] municipality approved at an incorporation  
561 election.

562 Section 14. Section **10-2-119** is amended to read:

563 **10-2-119. Filing of articles of incorporation with lieutenant governor.**

564 (1) Within seven days after the canvass of the final election of [city] municipality  
565 officers under Section 10-2-116, the mayor-elect of the new [city] municipality shall file at  
566 least three copies of the articles of incorporation with the lieutenant governor.

567 (2) The articles of incorporation shall:

568 (a) contain the name of the [city] municipality;

569 (b) contain an accurate map or plat, prepared by a licensed surveyor, approved by the  
570 legislative body, and filed with the county surveyor in accordance with Section 17-23-17,  
571 showing the boundaries of the [city] municipality;

572 (c) contain the city's class according to population as defined in Section 10-2-301; and

573 (d) be signed and verified by the mayor-elect of the [city] municipality.

574 (3) The legislative body of the new [city] municipality shall comply with the notice  
575 requirements of Section 10-1-116.

576 Section 15. Section **10-2-120** is amended to read:

577 **10-2-120. Alternative to filing articles of incorporation -- Powers of officers-elect.**

578 (1) (a) Before filing articles of incorporation, the mayor-elect of the future [city]  
579 municipality may file with the lieutenant governor a verified notice of intention to file the  
580 articles of incorporation.

581 (b) The notice under Subsection (1)(a) shall contain:

582 (i) the name of the future [city] municipality;

583 (ii) an accurate map or plat, prepared by a licensed surveyor, approved by the  
584 legislative body, and filed with the county surveyor in accordance with Section 17-23-17,  
585 showing the boundaries of the future [city] municipality;

586 (iii) the [city's] municipality's class according to population as defined in Section  
587 10-2-301; and

588 (iv) the proposed date for filing the articles of incorporation.

589 (2) Upon the lieutenant governor's certification of the notice under Section 67-1a-6.5  
590 and until the future [city] municipality becomes legally incorporated, the officers of the future  
591 [city] municipality may:

592 (a) prepare and adopt, under Chapter 6, Uniform Fiscal Procedures Act for Utah Cities,  
593 or Chapter 5, Uniform Fiscal Procedures Act for Utah Towns, as applicable, a proposed budget  
594 and compilation of ordinances;

595 (b) negotiate and make personnel contracts and hirings;

596 (c) negotiate and make service contracts;

597 (d) file the notification required by Subsection 10-1-116(1);

598 (e) negotiate and make contracts to purchase equipment, materials, and supplies;

599 (f) borrow funds from the county in which the future [city] municipality is located  
600 under Subsection 10-2-121(3);

601 (g) borrow funds for startup expenses of the future municipality; and

602 (h) issue tax anticipation notes in the name of the future municipality.

603 (3) The [city's] municipality's legislative body shall review and ratify each contract  
604 made by the officers-elect under Subsection (2) within 30 days of the effective date of  
605 incorporation under Section 10-2-122.

606 Section 16. Section **10-2-121** is amended to read:

607 **10-2-121. Division of municipal-type services revenues -- County may provide**  
608 **startup funds -- Filing of plat or map -- Notice requirements.**

609 (1) The county in which an area incorporating under this part is located shall, until the  
610 date of the [city's] municipality's incorporation under Section 10-2-122, continue:

611 (a) to levy and collect ad valorem property tax and other revenues from or pertaining to  
612 the future [city] municipality; and

613 (b) except as otherwise agreed by the county and the officers-elect of the [city]  
614 municipality after the filing of the notice under Subsection 10-2-120(1), to provide the same  
615 services to the future [city] municipality as the county provided before the commencement of  
616 the incorporation proceedings.

617 (2) (a) The legislative body of the county in which a newly incorporated [city]  
618 municipality is located shall share pro rata with the new [city] municipality, based on the date  
619 of incorporation, the taxes and service charges or fees levied and collected by the county under  
620 Section 17-34-3 during the year of the new [city's] municipality's incorporation if and to the  
621 extent that the new [city] municipality provides, by itself or by contract, the same services for  
622 which the county levied and collected the taxes and service charges or fees.

623 (b) (i) The legislative body of a county in which a [city] municipality incorporated after  
624 January 1, 2004, is located may share with the new [city] municipality taxes and service  
625 charges or fees that were levied and collected by the county under Section 17-34-3:

626 (A) before the year of the new [city's] municipality's incorporation;

627 (B) from the previously unincorporated area that, because of the [city's] municipality's  
628 incorporation, is located within the boundaries of the newly incorporated [city] municipality;  
629 and

630 (C) for the purpose of providing services to the area that before the new [city's]  
631 municipality's incorporation was unincorporated.

632 (ii) A county legislative body may share taxes and service charges or fees under  
633 Subsection (2)(b)(i) by a direct appropriation of funds or by a credit or offset against amounts  
634 due under a contract for municipal-type services provided by the county to the new [city]  
635 municipality.

636 (3) (a) The legislative body of a county in which an area incorporating under this part is  
637 located may appropriate county funds to:

638 (i) before incorporation but after a notice under Subsection 10-2-120(1) is filed, the  
639 officers-elect of the future [city] municipality to pay startup expenses of the future [city]  
640 municipality; or

641 (ii) after incorporation, the new [city] municipality.

642 (b) Funds appropriated under Subsection (3)(a) may be distributed in the form of a  
643 grant, a loan, or as an advance against future distributions under Subsection (2).

644 (4) (a) Within 30 days of incorporation, the legislative body of the new [city]  
645 municipality shall record with the recorder of the county in which the new [city] municipality is  
646 located a plat or map, prepared by a licensed surveyor and approved by the legislative body of  
647 the new [city] municipality, the county recorder, and county surveyor, showing the boundaries

648 of the new [city] municipality.

649 (b) The legislative body of the new [city] municipality shall comply with the notice  
650 requirements of Section 10-1-116.

651 Section 17. Section **10-2-122** is amended to read:

652 **10-2-122. When incorporation complete -- Incorporation presumed conclusive.**

653 (1) A [city] municipality is incorporated upon the lieutenant governor's certification of  
654 the [city's] municipality's articles of incorporation under [~~Subsection 10-2-119(3)(a)~~] Section  
655 67-1a-6.5.

656 (2) Notwithstanding any other provision of law, a [city] municipality shall be  
657 conclusively presumed to be lawfully incorporated and existing if for two years following the  
658 [city's] municipality's incorporation:

659 (a) (i) the [city] municipality has levied and collected a property tax; or

660 (ii) for a [city] municipality incorporated on or after July 1, 1998, the [city]  
661 municipality has imposed a sales and use tax; and

662 (b) no challenge to the existence or incorporation of the [city] municipality has been  
663 filed in the district court for the county in which the [city] municipality is located.

664 Section 18. Section **10-2-123** is amended to read:

665 **10-2-123. Costs of incorporation.**

666 (1) Subject to Subsection (2), all costs of the incorporation proceeding, including  
667 request certification, feasibility study, petition certification, publication of notices, public  
668 hearings, and elections, shall be paid by the county in which the proposed [city] municipality is  
669 located.

670 (2) If incorporation occurs, the new municipality shall reimburse the county for the  
671 costs of the notices and hearing under Section 10-2-114, the notices and elections under  
672 Section 10-2-116, and all other incorporation activities occurring after the elections under  
673 Section 10-2-116.

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**Legislative Review Note**  
as of 11-14-07 2:02 PM

**Office of Legislative Research and General Counsel**

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**S.B. 25 - Municipal Incorporation Amendments**

**Fiscal Note**

2008 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**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.

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