

**Senator Dennis E. Stowell** proposes the following substitute bill:

**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**

**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;



- 26           ▶ modifies election provisions to allow the election of officers of a newly
- 27 incorporated town to be conducted within 60 days after the county legislative body
- 28 adopts a resolution approving the incorporation;
- 29           ▶ provides for when newly elected town officers in a new town take office;
- 30           ▶ modifies the date upon which a town is incorporated; and
- 31           ▶ applies amendments made by this bill to currently pending and future town
- 32 incorporation petitions.

33 **Monies Appropriated in this Bill:**

34           None

35 **Other Special Clauses:**

36           This bill provides an immediate effective date.

37           This bill provides revisor instructions.

38 **Utah Code Sections Affected:**

39 AMENDS:

40           **10-2-109**, as last amended by Laws of Utah 1997, Second Special Session, Chapter 3

41           **10-2-125**, as last amended by Laws of Utah 2007, Chapter 212

42           **20A-1-203**, as last amended by Laws of Utah 2007, Chapter 215

43           **20A-1-204**, as last amended by Laws of Utah 2004, Chapter 371



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

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

47           **10-2-109. Incorporation petition -- Requirements and form.**

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

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

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

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

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

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

57 area;

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

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

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

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

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

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

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

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

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

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

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

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

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

88 annual amount of revenue under Subsection 10-2-106(4)(a)(ix) does not exceed the average  
89 annual amount of cost under Subsection 10-2-106(4)(a)(viii) by more than 5%.

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

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

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

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

98 **10-2-125. Incorporation of a town.**

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

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

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

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

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

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

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

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

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

114 [~~(2)~~] (1) (a) A contiguous area of a county not within a municipality, with a population  
115 of at least 100 but less than 1,000, may incorporate as a town as provided in this section.

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

118 (ii) If the population figure is not available from the United States Bureau of the

119 Census, the population figure shall be derived from the estimate from the Utah Population  
120 Estimates Committee.

121 ~~[(3)]~~ (2) (a) The process to incorporate an area as a town is initiated by filing a petition  
122 with the clerk of the county in which the area is located.

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

124 (i) be signed by:

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

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

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

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

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

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

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

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

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

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

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

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

150 town is described as follows: (insert an accurate description of the area proposed to be  
151 incorporated).

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

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

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

159 ~~[(4)]~~ (3) Section 10-2-104 applies to a petition for incorporation as a town in any  
160 county, except that the notice under Subsection 10-2-104(1) shall be sent within seven calendar  
161 days after the filing of a petition under Subsection ~~[(3)]~~ (2).

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

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

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

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

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

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

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

179 ~~[(ii)]~~ (b) If the county legislative body commissions a financial feasibility study and the  
180 results of the financial feasibility study ~~[under Subsection (5)(a)(i)]~~ meet the requirements of

181 ~~Subsection 10-2-109(3)]~~ show that the average annual amount of revenue under Subsection  
 182 (4)(a)(i)(A) does not exceed the average annual amount of cost under Subsection (4)(a)(i)(B)  
 183 by more than 10%, the county legislative body shall ~~[grant the petition]~~ adopt a resolution  
 184 approving the creation of the new town.

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

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

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

191 or

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

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

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

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

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

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

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

212 officers.

213 (b) The officers elected at an election under Subsection (6)(a) shall take office:

214 (i) at noon on the first Monday in January next following the election, if the election is  
215 held on a regular general or municipal general election date; or

216 (ii) at noon on the first day of the month next following the effective date of the  
217 incorporation under Subsection (9), if the election of officers is held on any other date.

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

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

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

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

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

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

232 (9) A town is incorporated:

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

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

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

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

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

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



243 **20A-1-203. Calling and purpose of special elections.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

273 (b) The legislative body of a local political subdivision may call a local special election

274 by adopting an ordinance or resolution that designates:

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

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

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

278 **20A-1-204. Date of special election -- Legal effect.**

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

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

283 (ii) the first Tuesday after the first Monday in November[~~;~~]; or

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

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

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

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

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

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

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

300 (d) Nothing in this section prohibits:

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

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

305 (2) (a) Two or more entities shall comply with Subsection (2)(b) if those entities hold a  
306 special election within a county on the same day as:

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

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

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

315 **Section 5. Effective date.**

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

320 **Section 6. Revisor instructions.**

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