

**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";
- ▶ clarifies that the value of property for petition purposes is assessed value;
- ▶ provides a petition certification process;
- ▶ 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;



- 26           ▶ requires the initial officers of a newly incorporated town to be elected rather than
- 27 appointed by the county legislative body;
- 28           ▶ modifies the form of government under which a newly incorporated town is
- 29 required to operate;
- 30           ▶ modifies the criteria for when a county legislative body is required to approve a
- 31 petition to incorporate a town;
- 32           ▶ modifies election provisions to require the election of officers of a newly
- 33 incorporated town to be conducted within 60 days after the county legislative body
- 34 adopts a resolution approving the incorporation;
- 35           ▶ provides for when newly elected town officers in a new town take office;
- 36           ▶ modifies the date upon which a town is incorporated; and
- 37           ▶ applies amendments made by this bill to certain pending and all future town
- 38 incorporation petitions, except for allowing petition sponsors under certain petitions
- 39 filed before the effective date of this bill to choose whether to have the initial town
- 40 officers appointed or elected.

41 **Monies Appropriated in this Bill:**

42           None

43 **Other Special Clauses:**

44           This bill provides an immediate effective date.

45           This bill provides revisor instructions.

46 **Utah Code Sections Affected:**

47 AMENDS:

48           **10-2-109**, as last amended by Laws of Utah 1997, Second Special Session, Chapter 3

49           **10-2-125**, as last amended by Laws of Utah 2007, Chapter 212

50           **20A-1-203**, as last amended by Laws of Utah 2007, Chapter 215

51           **20A-1-204**, as last amended by Laws of Utah 2004, Chapter 371



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

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

55           **10-2-109. Incorporation petition -- Requirements and form.**

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

57 under Subsection 10-2-108(1), a petition for incorporation of the area proposed to be  
58 incorporated as a city may be filed in the office of the clerk of the county in which the area is  
59 located.

60 (2) Each petition 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 1/3 of the total private land area within the area; and

64 (iii) is equal in value to at least 1/3 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 petition;

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

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

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

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

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

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

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

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

82 PETITION FOR INCORPORATION OF (insert the proposed name of the proposed  
83 city)

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

86 We, the undersigned owners of real property within the area described in this petition,  
87 respectfully petition the county legislative body to submit to the registered voters residing

88 within the area described in this petition, at a special election held for that purpose, the  
89 question of whether the area should incorporate as a city. Each of the undersigned affirms that  
90 each has personally signed this petition and is an owner of real property within the described  
91 area, and that the current residence address of each is correctly written after the signer's name.  
92 The area proposed to be incorporated as a city is described as follows: (insert an accurate  
93 description of the area proposed to be incorporated).

94 (3) A petition for incorporation of a city under Subsection (1) may not be filed unless  
95 the results of the feasibility study or supplemental feasibility study show that the average  
96 annual amount of revenue under Subsection 10-2-106(4)(a)(ix) does not exceed the average  
97 annual amount of cost under Subsection 10-2-106(4)(a)(viii) by more than 5%.

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

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

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

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

106 **10-2-125. Incorporation of a town.**

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

108 [~~(a) "Base petition" means a petition under this section proposing the incorporation of a~~  
109 ~~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 at least 1/3 but not more than 1/2 of the value of all private~~  
114 ~~real property within the area proposed to be incorporated.]~~

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

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

118 [~~(ii) covers at least a majority of the total private land area within the area proposed to~~

119 be incorporated; and]

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

122 [~~(2)~~] (1) (a) A contiguous area of a county not within a municipality, with a population  
123 of at least 100 but less than 1,000, may incorporate as a town as provided in this section.

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

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

129 [~~(3)~~] (2) (a) The process to incorporate an area as a town is initiated by filing a petition  
130 with the clerk of the county in which the area is located.

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

132 (i) be signed by:

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

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

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

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

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

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

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

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

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

148 PETITION FOR INCORPORATION OF (insert the proposed name of the proposed  
149 town)

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

152 We, the undersigned owners of real property and registered voters within the area  
153 described in this petition, respectfully petition the county legislative body for the area described  
154 in this petition to be incorporated as a town. Each of the undersigned affirms that each has  
155 personally signed this petition and is either an owner of real property within the described area  
156 or a registered voter residing within the described area, and that the current residence address  
157 of each is correctly written after the signer's name. The area proposed to be incorporated as a  
158 town is described as follows: (insert an accurate description of the area proposed to be  
159 incorporated).

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

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

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

167 [~~4~~] (3) Section 10-2-104 applies to a petition for incorporation as a town in any  
168 county, except that the notice under Subsection 10-2-104(1) shall be sent within seven calendar  
169 days after the filing of a petition under Subsection [~~3~~] (2).

170 (4) Within 20 days after the filing of a petition under Subsection (2)(a), the county  
171 clerk shall:

172 (a) with the assistance of other county officers from whom the clerk requests  
173 assistance, determine whether the petition complies with the requirements of Subsection (2);  
174 and

175 (b) (i) if the clerk determines that the petition complies with those requirements:

176 (A) certify the petition and deliver the certified petition to the county legislative body;

177 and

178 (B) mail or deliver written notification of the certification to:

179 (I) the contact sponsor; and

180 (II) if applicable, the chair of the planning commission of each township in which any

181 part of the area proposed for incorporation is located; or

182 (ii) if the clerk determines that the petition fails to comply with any of those  
183 requirements, reject the petition and notify the contact sponsor in writing of the rejection and  
184 the reasons for the objection.

185 (5) (a) (i) A petition that is rejected under Subsection (4)(b)(ii) may be amended to  
186 correct a deficiency for which it was rejected and then refiled with the county clerk.

187 (ii) A valid signature on a petition filed under Subsection (2)(a) may be used toward  
188 fulfilling the signature requirement of Subsection (2)(b) for the same petition that is amended  
189 under Subsection (5)(a)(i) and then refiled with the county clerk.

190 (b) If a petition is amended and refiled under Subsection (5)(a)(i) after having been  
191 rejected by the county clerk under Subsection (4)(b)(ii):

192 (i) the amended petition shall be considered as a newly filed petition; and

193 (ii) the amended petition's processing priority is determined by the date on which it is  
194 refiled.

195 (6) (a) (i) As used in this Subsection (6), "financial feasibility study" means a study to  
196 determine:

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

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

201 ~~[(5) (a) (i)]~~ (ii) The legislative body of [each] a county with which a [base] petition is  
202 filed under this section [shall] may, at its option and upon the petition being certified under  
203 Subsection (4), commission and pay for a financial feasibility study [as provided in Section  
204 10-2-103].

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

207 (A) within 20 days after the incorporation petition is certified, select and engage a  
208 feasibility consultant; and

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

212 ~~[(iv)]~~ (b) If the county legislative body commissions a financial feasibility study and the  
 213 results of the financial feasibility study ~~[under Subsection (5)(a)(i) meet the requirements of~~  
 214 Subsection 10-2-109(3)] show that the average annual amount of revenue under Subsection  
 215 (6)(a)(i)(A) does not exceed the average annual amount of cost under Subsection (6)(a)(i)(B)  
 216 by more than 10%, the county legislative body shall ~~[grant the petition]~~, within 20 days after  
 217 the feasibility consultant submits the written results of the financial feasibility study, adopt a  
 218 resolution approving the creation of the new town.

219 ~~[(iii)]~~ (c) (i) If the results of the feasibility study under Subsection ~~[(5)]~~ (4)(a) ~~[(i) do not~~  
 220 meet the requirements of Subsection 10-2-109(3)] show that the average annual amount of  
 221 revenue under Subsection (6)(a)(i)(A) exceeds the average annual amount of cost under  
 222 Subsection (6)(a)(i)(B) by more than 10%, the county legislative body may, subject to  
 223 Subsection (6)(c)(ii):

- 224 (A) deny the petition;
- 225 (B) ~~[grant the petition]~~ adopt a resolution approving the creation of the new town; or
- 226 (C) with the consent of the petition sponsors, ~~[grant the petition]~~ adopt a resolution  
 227 approving the creation of the new town, after:

228 (I) imposing conditions to mitigate the fiscal inequities identified in the financial  
 229 feasibility study; or

230 (II) altering the boundaries of the area proposed to be incorporated as a town to  
 231 approximate the boundaries necessary to ~~[meet the requirements of Subsection 10-2-109(3)]~~  
 232 prevent the average annual amount of revenue under Subsection (6)(a)(i)(A) from exceeding  
 233 the average annual amount of cost under Subsection (6)(a)(i)(B).

234 (ii) (A) A county legislative body intending to deny a petition under Subsection  
 235 (6)(c)(i)(A) or to adopt a resolution under Subsection (6)(c)(i)(B) shall deny the petition or  
 236 adopt the resolution within 20 days after the feasibility consultant submits the written results of  
 237 the financial feasibility study.

238 (B) A county legislative body intending to adopt a resolution under Subsection  
 239 (6)(c)(i)(C) shall adopt the resolution within 60 days after the feasibility consultant submits the  
 240 written results of the financial feasibility study.

241 ~~[(iv)]~~ (d) Each town that incorporates pursuant to a petition ~~[granted]~~ approved after  
 242 the county legislative body imposes conditions under Subsection ~~[(5)(a)(iii)(C)(i)]~~



243 ~~(6)(c)(i)(C)(I)~~ shall comply with those conditions.

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

246 (7) If the county legislative body chooses not to commission a financial feasibility  
247 study under Subsection (6)(a), the county legislative body shall, within 20 days after the  
248 petition is certified, adopt a resolution approving the creation of the new town.

249 ~~[(6) (8) (a) [Upon the granting of a petition filed under this section,] If the legislative~~  
250 ~~body of [the] a county in which [the] a proposed new town is located [shall appoint a mayor~~  
251 ~~and members of the town council from a list of qualified individuals approved by the petition~~  
252 ~~sponsors] adopts a resolution under Subsection (7) or (8) approving the incorporation of the~~  
253 ~~new town, the county legislative body shall, within 60 days after adopting the resolution, hold~~  
254 ~~an election for town officers.~~

255 (b) The officers elected at an election under Subsection (8)(a) shall take office:

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

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

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

262 ~~[(7) (9) Each newly incorporated town shall operate under the [six-member]~~  
263 ~~five-member council form of government as described in Section 10-3-101.~~

264 ~~[(8) (10) (a) [Each mayor appointed under Subsection (6) shall, within] Within seven~~  
265 ~~days [of appointment, file] after the canvass of the final election of town officers under~~  
266 ~~Subsection (8), the mayor-elect of the new town shall file at least three copies of the articles of~~  
267 ~~incorporation of the new town with the lieutenant governor.~~

268 (b) The articles of incorporation shall meet the requirements of Subsection  
269 10-2-119(2).

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

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

274           (11) A town is incorporated:  
275           (a) on December 31 of the year in which the lieutenant governor issues a certificate of  
276 entity creation for the town under Section 67-1a-6.5, if the election of town officers under  
277 Subsection (8) is held on a regular general or municipal general election date; or  
278           (b) on the last day of the month during which the lieutenant governor issues a  
279 certificate of entity creation for the town under Section 67-1a-6.5, if the election of town  
280 officers under Subsection (8) is held on any other date.

281           (12) (a) This section applies to:  
282           (i) each petition to incorporate a town filed before the effective date of this section, if:  
283           (A) the petition was not a qualifying petition under the law in effect at the time the  
284 petition was filed; and  
285           (B) the petition has not been granted before the effective date of this section; and  
286           (ii) each petition to incorporate a town filed on or after the effective date of this  
287 section.

288           (b) (i) Subject to Subsection (12)(b)(ii), a petition filed before the effective date of this  
289 section that is a qualifying petition under the law in effect at the time the petition was filed is  
290 subject to and governed by the law in effect at the time the petition was filed.

291           (ii) (A) If a petition described in Subsection (12)(b)(i) is granted, the petition sponsors  
292 may choose whether to have the initial town officers:  
293           (I) appointed by the county legislative body, as provided under the law in effect at the  
294 time the petition was filed; or  
295           (II) elected, as provided in this section.

296           (B) (I) The petition sponsors shall make a choice under Subsection (12)(b)(ii)(A) by  
297 submitting a written statement to the county legislative body, within ten days after the petition  
298 to incorporate is granted, indicating the choice to have initial town officers appointed or  
299 elected.

300           (II) If petition sponsors choose to have the initial town officers elected, the county  
301 legislative body shall, notwithstanding Subsection (8)(a), hold an election for town officers  
302 within 60 days after the petition sponsors submit their written statement under Subsection  
303 (12)(b)(ii)(B)(I).

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

305 **20A-1-203. Calling and purpose of special elections.**

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

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

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

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

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

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

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

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

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

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

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

323 (ii) a vote on a voted leeway program authorized by Section 53A-17a-133 or  
324 53A-17a-134;

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

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

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

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

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

333 (viii) an election of town officers of a newly incorporated town under Section  
334 10-2-125.

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

336 by adopting an ordinance or resolution that designates:

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

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

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

340 **20A-1-204. Date of special election -- Legal effect.**

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

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

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

346 (iii) for an election of town officers of a newly incorporated town under Section  
347 10-2-125, on any date that complies with the requirements of that subsection.

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

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

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

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

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

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

362 (d) Nothing in this section prohibits:

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

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

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

- 369 (i) another special election;
- 370 (ii) a regular general election; or
- 371 (iii) a municipal general election.

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

- 373 (i) polling places;
- 374 (ii) ballots;
- 375 (iii) election officials; and
- 376 (iv) other administrative and procedural matters connected with the election.

377 **Section 5. Effective date.**

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

382 **Section 6. Revisor instructions.**

383 It is the intent of the Legislature that the Office of Legislative Research and General  
384 Counsel, in preparing the Utah Code database for publication, replace the phrase "the effective  
385 date of this section" in Subsection 10-2-125(12) of this bill with the actual effective date of this  
386 bill.

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**S.B. 25 3rd Sub. (Ivory) - 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, or businesses. Incorporating towns will bear the costs of an election of town officers.

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