

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

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";
- ▶ 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;
- ▶ prohibits an individual from signing a town incorporation petition as an owner of private real property unless the individual is a legal U.S. resident;
- ▶ 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;



- 26 ▶ establishes financial feasibility study criteria;
- 27 ▶ requires the initial officers of a newly incorporated town to be elected rather than
- 28 appointed by the county legislative body;
- 29 ▶ modifies the form of government under which a newly incorporated town is
- 30 required to operate;
- 31 ▶ modifies the criteria for when a county legislative body is required to approve a
- 32 petition to incorporate a town;
- 33 ▶ modifies election provisions to require the election of officers of a newly
- 34 incorporated town to be conducted within 60 days after the county legislative body
- 35 adopts a resolution approving the incorporation;
- 36 ▶ provides for when newly elected town officers in a new town take office;
- 37 ▶ modifies the date upon which a town is incorporated;
- 38 ▶ provides that town incorporation petitions filed before the effective date of this bill
- 39 are governed by the law in effect at the time of filing; and
- 40 ▶ allows petition sponsors under certain petitions filed before the effective date of this
- 41 bill to choose whether to have the initial town officers appointed or elected.

42 **Monies Appropriated in this Bill:**

43 None

44 **Other Special Clauses:**

45 This bill provides an immediate effective date.

46 This bill provides revisor instructions.

47 **Utah Code Sections Affected:**

48 AMENDS:

49 **10-2-109**, as last amended by Laws of Utah 1997, Second Special Session, Chapter 3

50 **10-2-125**, as last amended by Laws of Utah 2007, Chapter 212

51 **20A-1-203**, as last amended by Laws of Utah 2007, Chapter 215

52 **20A-1-204**, as last amended by Laws of Utah 2004, Chapter 371



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

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

56 **10-2-109. Incorporation petition -- Requirements and form.**

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

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

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

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

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

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

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

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

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

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

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

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

77 and

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

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

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

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

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

87 We, the undersigned owners of real property within the area described in this petition,

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

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

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

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

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

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

107 **10-2-125. Incorporation of a town.**

108 (1) As used in this section:

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

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

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

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

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

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

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

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

123 (a) "Assessed value," with respect to agricultural land, means the value at which the
124 land would be assessed without regard to a valuation for agricultural use under Section
125 59-2-503.

126 (b) "Financial feasibility study" means a study to determine:

127 (i) the projected revenues for the proposed town during the first three years after
128 incorporation; and

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

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

133 (b) (i) The population figure under Subsection (2)(a) shall be derived from the most
134 recent official census or census estimate of the United States Bureau of the Census.

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

138 (3) (a) The process to incorporate an area as a town is initiated by filing a petition with
139 the clerk of the county in which the area is located.

140 (b) Each petition under Subsection (3)(a) shall:

141 (i) be signed by:

142 (A) subject to Subsection (3)(e), the owners of private real property that:

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

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

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

147 (B) registered voters within the area proposed to be incorporated, according to the
148 official voter registration list maintained by the county on the date the petition is filed, equal in
149 number to at least a majority of all voters within that area who voted in the last gubernatorial

150 election:

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

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

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

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

159 PETITION FOR INCORPORATION OF (insert the proposed name of the proposed
160 town)

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

163 We, the undersigned owners of real property and registered voters within the area
164 described in this petition, respectfully petition the county legislative body for the area described
165 in this petition to be incorporated as a town. Each of the undersigned affirms that each has
166 personally signed this petition and is either an owner of real property within the described area
167 or a registered voter residing within the described area, and that the current residence address
168 of each is correctly written after the signer's name. The area proposed to be incorporated as a
169 town is described as follows: (insert an accurate description of the area proposed to be
170 incorporated).

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

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

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

175 (d) A petition may not be filed under this section if the private real property owned by
176 the petition sponsors, designated under Subsection (3)(b)(iii), cumulatively exceeds 40% of the
177 total private land area within the area proposed to be incorporated as a town.

178 (e) An individual may not sign a petition as an owner of private real property unless the
179 individual is a legal resident of the United States.

180 (f) A signer of a petition under this Subsection (3) may withdraw or, after withdrawn,

181 reinstate the signer's signature on the petition:

182 (i) at any time until the county clerk certifies the petition under Subsection (5); and

183 (ii) by filing a signed, written withdrawal or reinstatement with the county clerk.

184 (4) Section 10-2-104 applies to a petition for incorporation as a town in any county,
185 notwithstanding Subsection 10-2-104(3), except that the notice under Subsection 10-2-104(1)
186 shall be sent within seven calendar days after the filing of a petition under Subsection (3).

187 (5) Within 20 days after the filing of a petition under Subsection (2)(a), the county
188 clerk shall:

189 (a) with the assistance of other county officers from whom the clerk requests
190 assistance, determine whether the petition complies with the requirements of Subsection (3);

191 and

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

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

194 and

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

196 (I) the contact sponsor; and

197 (II) if applicable, the chair of the planning commission of each township in which any
198 part of the area proposed for incorporation is located; or

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

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

204 (ii) A valid signature on a petition filed under Subsection (3)(a) may be used toward
205 fulfilling the signature requirement of Subsection (3)(b) for the same petition that is amended
206 under Subsection (6)(a)(i) and then refiled with the county clerk.

207 (b) If a petition is amended and refiled under Subsection (6)(a)(i) after having been
208 rejected by the county clerk under Subsection (5)(b)(ii):

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

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

212 ~~(5)~~ (7) (a) (i) The legislative body of ~~each~~ a county with which a ~~base~~ petition is
213 filed under this section ~~shall~~ may, at its option, commission and pay for a financial feasibility
214 study ~~[as provided in Section 10-2-103]~~ after:

- 215 (A) the petition is certified under Subsection (4): and
- 216 (B) holding a public hearing on the proposed incorporation and the need for a financial
217 feasibility study.

218 (ii) If the county legislative body chooses to commission a financial feasibility study,
219 the county legislative body shall:

- 220 (A) within 20 days after the public hearing under Subsection (7)(a)(i)(B) but no more
221 than 40 days after the incorporation petition is certified, select and engage a feasibility
222 consultant; and

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

226 ~~(ii)~~ (b) If the county legislative body commissions a financial feasibility study and the
227 results of the financial feasibility study ~~[under Subsection (5)(a)(i)]~~ meet the requirements of
228 Subsection 10-2-109(3)] show that the average annual amount of revenues described in
229 Subsection (1)(b)(i) does not exceed the average annual amount of costs described in
230 Subsection (1)(b)(ii) by more than 10%, the county legislative body shall ~~[grant the petition],~~
231 within 30 days after the feasibility consultant submits the written results of the financial
232 feasibility study:

- 233 (i) hold a public hearing on the results of the financial feasibility study; and
- 234 (ii) adopt a resolution approving the creation of the new town.

235 ~~(iii)~~ (c) (i) If the results of the feasibility study under ~~this~~ Subsection ~~[(5)(a)(i)]~~ (7)
236 ~~[do not meet the requirements of Subsection 10-2-109(3)]~~ show that the average annual amount
237 of revenues described in Subsection (1)(b)(i) exceeds the average annual amount of costs
238 described in Subsection (1)(b)(ii) by more than 10%, the county legislative body may, ~~subject~~
239 to Subsection (7)(c)(ii):

- 240 (A) deny the petition;
- 241 (B) ~~[grant the petition]~~ adopt a resolution approving the creation of the new town; or
- 242 (C) with the consent of the petition sponsors, ~~[grant the petition]~~ adopt a resolution

243 approving the creation of the new town, after:

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

246 (II) altering the boundaries of the area proposed to be incorporated as a town to
247 approximate the boundaries necessary to ~~[meet the requirements of Subsection 10-2-109(3)]~~
248 prevent the average annual amount of revenue under Subsection (7)(a)(i)(A) from exceeding
249 the average annual amount of cost under Subsection (7)(a)(i)(B).

250 (ii) (A) A county legislative body intending to deny a petition under Subsection
251 (7)(c)(i)(A) or to adopt a resolution under Subsection (7)(c)(i)(B) shall deny the petition or
252 adopt the resolution within 20 days after the feasibility consultant submits the written results of
253 the financial feasibility study.

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

257 ~~[(iv)]~~ (d) Each town that incorporates pursuant to a petition ~~[granted]~~ approved after
258 the county legislative body imposes conditions under Subsection ~~[(5)(a)(iii)(C)(I)]~~
259 (7)(c)(i)(C)(I) shall comply with those conditions.

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

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

265 ~~[(6)]~~ (9) (a) [Upon the granting of a petition filed under this section,] If the legislative
266 body of [the] a county in which [the] a proposed new town is located [shall appoint a mayor
267 and members of the town council from a list of qualified individuals approved by the petition
268 sponsors] adopts a resolution under Subsection (7) or (8) approving the incorporation of the
269 new town, the county legislative body shall, within 60 days after adopting the resolution, hold
270 an election for town officers.

271 (b) The officers elected at an election under Subsection (9)(a) shall take office:

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

274 (ii) at noon on the first Monday of the month next following the effective date of the
275 incorporation under Subsection (12), if the election of officers is held on any other date.

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

278 ~~[(7)]~~ (10) Each newly incorporated town shall operate under the ~~[six-member]~~
279 five-member council form of government as described in Section 10-3-101.

280 ~~[(8)]~~ (11) (a) ~~[Each mayor appointed under Subsection (6) shall, within]~~ Within seven
281 days ~~[of appointment, file]~~ after the canvass of the final election of town officers under
282 Subsection (9), the mayor-elect of the new town shall file at least three copies of the articles of
283 incorporation of the new town with the lieutenant governor.

284 (b) The articles of incorporation shall meet the requirements of Subsection
285 10-2-119(2).

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

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

290 (12) A town is incorporated:

291 (a) on December 31 of the year in which the lieutenant governor issues a certificate of
292 entity creation for the town under Section 67-1a-6.5, if the election of town officers under
293 Subsection (9) is held on a regular general or municipal general election date; or

294 (b) on the last day of the month during which the lieutenant governor issues a
295 certificate of entity creation for the town under Section 67-1a-6.5, if the election of town
296 officers under Subsection (9) is held on any other date.

297 (13) (a) For each petition filed before the effective date of this section:

298 (i) the petition is subject to and governed by the law in effect at the time the petition
299 was filed; and

300 (ii) the law in effect at the time the petition was filed governs in all administrative and
301 judicial proceedings relating to the petition.

302 (b) (i) As used in this Subsection (13)(b), "specified petition" means a petition
303 proposing the incorporation of a town filed before the effective date of this section that is a
304 qualifying petition under the law in effect at the time the petition was filed.

305 (ii) (A) If a specified petition is granted, the petition sponsors may choose whether to
306 have the initial town officers:

307 (I) appointed by the county legislative body, as provided under the law in effect at the
308 time the petition was filed; or

309 (II) elected, as provided in this section.

310 (B) (I) The petition sponsors shall make a choice under Subsection (3)(b)(ii)(A) by
311 submitting a written statement to the county legislative body, within ten days after the petition
312 to incorporate is granted, indicating the choice to have initial town officers appointed or
313 elected.

314 (II) If petition sponsors choose to have the initial town officers elected, the county
315 legislative body shall, notwithstanding Subsection (9)(a), hold an election for town officers
316 within 60 days after the petition sponsors submit their written statement under Subsection
317 (13)(b)(ii)(B)(I).

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

319 **20A-1-203. Calling and purpose of special elections.**

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

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

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

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

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

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

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

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

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

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

- 336 (i) a vote on a bond or debt issue;
- 337 (ii) a vote on a voted leeway program authorized by Section 53A-17a-133 or
- 338 53A-17a-134;
- 339 (iii) an initiative authorized by Chapter 7, Part 5, Local Initiatives - Procedure;
- 340 (iv) a referendum authorized by Chapter 7, Part 6, Local Referenda - Procedures;
- 341 (v) if required or authorized by federal law, a vote to determine whether or not Utah's
- 342 legal boundaries should be changed;
- 343 (vi) a vote authorized or required by Title 59, Chapter 12, Sales and Use Tax Act; [or]
- 344 (vii) a vote to elect members to school district boards for a new school district and a
- 345 remaining school district, as defined in Section 53A-2-117, following the creation of a new
- 346 school district under Section 53A-2-118.1[-]; or
- 347 (viii) an election of town officers of a newly incorporated town under Section
- 348 10-2-125.

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

- 351 (i) the date for the local special election; and
- 352 (ii) the purpose for the local special election.

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

354 **20A-1-204. Date of special election -- Legal effect.**

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

- 358 (i) the fourth Tuesday in June; [or]
- 359 (ii) the first Tuesday after the first Monday in November[-]; or
- 360 (iii) for an election of town officers of a newly incorporated town under Section
- 361 10-2-125, on any date that complies with the requirements of that subsection.

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

365 (c) (i) Notwithstanding the requirements of Subsection (1)(b), the legislative body of a
 366 local political subdivision may call a local special election on a date other than those specified

367 in this section if the legislative body:

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

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

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

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

376 (d) Nothing in this section prohibits:

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

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

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

383 (i) another special election;

384 (ii) a regular general election; or

385 (iii) a municipal general election.

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

387 (i) polling places;

388 (ii) ballots;

389 (iii) election officials; and

390 (iv) other administrative and procedural matters connected with the election.

391 **Section 5. Effective date.**

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

396 **Section 6. Revisor instructions.**

397 It is the intent of the Legislature that the Office of Legislative Research and General

398 Counsel, in preparing the Utah Code database for publication, replace the phrase "the effective
399 date of this section" in Subsection 10-2-125(13) of this bill with the actual effective date of this
400 bill.

S.B. 25 5th Sub. (Gray) - Municipal Incorporation Amendments

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, or businesses. Incorporating towns will bear the costs of an election of town officers.
