

MUNICIPAL ANNEXATION AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Scott K. Jenkins

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions relating to municipal annexation.

Highlighted Provisions:

This bill:

▶ modifies the definition of "affected entity," which includes those entities that, among other things, are entitled to protest a proposed annexation, so that:

• counties of the third, fourth, fifth, and sixth class are not included unless the area proposed for annexation includes residents or commercial or industrial development; and

• local districts, special service districts, and school districts are included only if their boundary is proposed to be adjusted as a result of the annexation;

▶ modifies a provision requiring the owner's signature on an annexation petition if only part of the parcel is proposed to be included in an annexation to specify that property with multiple parcel numbers but owned by the same owner is considered to be a single parcel; and

▶ provides that a municipality may annex an area without a property owner annexation petition if the area is 50 acres or less and the municipality and county agree it should be annexed.

Monies Appropriated in this Bill:

None



28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **10-2-401**, as last amended by Laws of Utah 2008, Chapter 360

33 **10-2-402**, as last amended by Laws of Utah 2008, Chapter 167

34 **10-2-418**, as last amended by Laws of Utah 2007, Chapters 329 and 378

35

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

37 Section 1. Section **10-2-401** is amended to read:

38 **10-2-401. Definitions -- Property owner provisions.**

39 (1) As used in this part:

40 (a) "Affected entity" means:

41 (i) a county of the first or second class in whose unincorporated area the area proposed
42 for annexation is located;

43 (ii) a county of the third, fourth, fifth, or sixth class in whose unincorporated area the
44 area proposed for annexation is located, if the area includes residents or commercial or
45 industrial development;

46 [(ii)] (iii) a local district under Title 17B, Limited Purpose Local Government Entities -
47 Local Districts, or special service district under Title 17D, Chapter 1, Special Service District
48 Act, whose [~~boundaries include~~] boundary includes any part of an area proposed for
49 annexation, if the boundary is proposed to be adjusted as a result of the annexation;

50 [(iii)] (iv) a school district whose [~~boundaries include~~] boundary includes any part of
51 an area proposed for annexation, if the boundary is proposed to be adjusted as a result of the
52 annexation; and

53 [(iv)] (v) a municipality whose boundaries are within 1/2 mile of an area proposed for
54 annexation.

55 (b) "Annexation petition" means a petition under Section 10-2-403 proposing the
56 annexation to a municipality of a contiguous, unincorporated area that is contiguous to the
57 municipality.

58 (c) "Commission" means a boundary commission established under Section 10-2-409

59 for the county in which the property that is proposed for annexation is located.

60 (d) "Expansion area" means the unincorporated area that is identified in an annexation
61 policy plan under Section 10-2-401.5 as the area that the municipality anticipates annexing in
62 the future.

63 (e) "Feasibility consultant" means a person or firm with expertise in the processes and
64 economics of local government.

65 (f) "Municipal selection committee" means a committee in each county composed of
66 the mayor of each municipality within that county.

67 (g) "Private," with respect to real property, means not owned by the United States or
68 any agency of the federal government, the state, a county, a municipality, a school district, a
69 local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, a
70 special service district under Title 17D, Chapter 1, Special Service District Act, or any other
71 political subdivision or governmental entity of the state.

72 (h) "Specified county" means a county of the second, third, fourth, fifth, or sixth class.

73 (i) "Urban development" means:

74 (i) a housing development with more than 15 residential units and an average density
75 greater than one residential unit per acre; or

76 (ii) a commercial or industrial development for which cost projections exceed
77 \$750,000 for all phases.

78 (2) For purposes of this part:

79 (a) the owner of real property shall be the record title owner according to the records of
80 the county recorder on the date of the filing of the petition or protest; and

81 (b) the value of private real property shall be determined according to the last
82 assessment roll for county taxes before the filing of the petition or protest.

83 (3) For purposes of each provision of this part that requires the owners of private real
84 property covering a percentage or majority of the total private land area within an area to sign a
85 petition or protest:

86 (a) a parcel of real property may not be included in the calculation of the required
87 percentage or majority unless the petition or protest is signed by:

88 (i) except as provided in Subsection (3)(a)(ii), owners representing a majority
89 ownership interest in that parcel; or

90 (ii) if the parcel is owned by joint tenants or tenants by the entirety, 50% of the number
91 of owners of that parcel;

92 (b) the signature of a person signing a petition or protest in a representative capacity on
93 behalf of an owner is invalid unless:

94 (i) the person's representative capacity and the name of the owner the person represents
95 are indicated on the petition or protest with the person's signature; and

96 (ii) the person provides documentation accompanying the petition or protest that
97 substantiates the person's representative capacity; and

98 (c) subject to Subsection (3)(b), a duly appointed personal representative may sign a
99 petition or protest on behalf of a deceased owner.

100 Section 2. Section **10-2-402** is amended to read:

101 **10-2-402. Annexation -- Limitations.**

102 (1) (a) A contiguous, unincorporated area that is contiguous to a municipality may be
103 annexed to the municipality as provided in this part.

104 (b) An unincorporated area may not be annexed to a municipality unless:

105 (i) it is a contiguous area;

106 (ii) it is contiguous to the municipality;

107 (iii) except as provided in Subsection 10-2-418(1)(b), annexation will not leave or
108 create an unincorporated island or peninsula; and

109 (iv) for an area located in a specified county with respect to an annexation that occurs
110 after December 31, 2002, the area is within the proposed annexing municipality's expansion
111 area.

112 (2) Except as provided in Section 10-2-418, a municipality may not annex an
113 unincorporated area unless a petition under Section 10-2-403 is filed requesting annexation.

114 (3) (a) An annexation under this part may not include part of a parcel of real property
115 and exclude part of that same parcel unless the owner of that parcel has signed the annexation
116 petition under Section 10-2-403.

117 (b) A piece of real property that has more than one parcel number is considered to be a
118 single parcel for purposes of Subsection (3)(a) if owned by the same owner.

119 (4) A municipality may not annex an unincorporated area in a specified county for the
120 sole purpose of acquiring municipal revenue or to retard the capacity of another municipality to

121 annex the same or a related area unless the municipality has the ability and intent to benefit the
122 annexed area by providing municipal services to the annexed area.

123 (5) The legislative body of a specified county may not approve urban development
124 within a municipality's expansion area unless:

125 (a) the county notifies the municipality of the proposed development; and

126 (b) (i) the municipality consents in writing to the development; or

127 (ii) (A) within 90 days after the county's notification of the proposed development, the
128 municipality submits to the county a written objection to the county's approval of the proposed
129 development; and

130 (B) the county responds in writing to the municipality's objections.

131 (6) (a) An annexation petition may not be filed under this part proposing the
132 annexation of an area located in a county that is not the county in which the proposed annexing
133 municipality is located unless the legislative body of the county in which the area is located has
134 adopted a resolution approving the proposed annexation.

135 (b) Each county legislative body that declines to adopt a resolution approving a
136 proposed annexation described in Subsection (6)(a) shall provide a written explanation of its
137 reasons for declining to approve the proposed annexation.

138 (7) (a) As used in this Subsection (7), "airport" means an area that the Federal Aviation
139 Administration has, by a record of decision, approved for the construction or operation of a
140 Class I, II, or III commercial service airport, as designated by the Federal Aviation
141 Administration in 14 C.F.R. Part 139.

142 (b) A municipality may not annex an unincorporated area within 5,000 feet of the
143 center line of any runway of an airport operated or to be constructed and operated by another
144 municipality unless the legislative body of the other municipality adopts a resolution
145 consenting to the annexation.

146 (c) A municipality that operates or intends to construct and operate an airport and does
147 not adopt a resolution consenting to the annexation of an area described in Subsection (7)(b)
148 may not deny an annexation petition proposing the annexation of that same area to that
149 municipality.

150 Section 3. Section **10-2-418** is amended to read:

151 **10-2-418. Annexation of an island or peninsula without a petition -- Notice --**

152 **Hearing.**

153 (1) (a) Notwithstanding Subsection 10-2-402(2), a municipality may annex an
154 unincorporated area under this section without an annexation petition if:

155 (i) (A) the area to be annexed consists of one or more unincorporated islands within or
156 unincorporated peninsulas contiguous to the municipality;

157 (B) the majority of each island or peninsula consists of residential or commercial
158 development;

159 (C) the area proposed for annexation requires the delivery of municipal-type services;
160 and

161 (D) the municipality has provided most or all of the municipal-type services to the area
162 for more than one year; [or]

163 (ii) (A) the area to be annexed consists of one or more unincorporated islands within or
164 unincorporated peninsulas contiguous to the municipality, each of which has fewer than 800
165 residents; and

166 (B) the municipality has provided one or more municipal-type services to the area for
167 at least one year[-]; or

168 **§→ [(iii) (A) ~~the area consists of no more than 50 acres; and~~**
169 **~~(B) the municipality and the county in which the area is located agree that the area~~**
170 **~~should be included within the municipality.] ←§~~**

171 (b) Notwithstanding Subsection 10-2-402(1)(b)(iii), a municipality may annex a
172 portion of an island or peninsula under this section, leaving unincorporated the remainder of
173 the unincorporated island or peninsula, if:

174 (i) in adopting the resolution under Subsection (2)(a)(i), the municipal legislative body
175 determines that not annexing the entire unincorporated island or peninsula is in the
176 municipality's best interest; and

177 (ii) for an annexation of one or more unincorporated islands under Subsection
178 (1)(a)(ii), the entire island of unincorporated area, of which a portion is being annexed,
179 complies with the requirement of Subsection (1)(a)(ii)(A) relating to the number of residents.

180 (2) (a) The legislative body of each municipality intending to annex an area under this
181 section shall:

182 (i) adopt a resolution indicating the municipal legislative body's intent to annex the

183 area, describing the area proposed to be annexed;

184 (ii) (A) publish notice at least once a week for three successive weeks in a newspaper
185 of general circulation within the municipality and the area proposed for annexation; or

186 (B) if there is no newspaper of general circulation in the areas described in Subsection
187 (2)(a)(ii)(A), post at least one notice per 1,000 population in places within those areas that are
188 most likely to give notice to the residents of those areas;

189 (iii) send written notice to the board of each local district and special service district
190 whose boundaries contain some or all of the area proposed for annexation and to the legislative
191 body of the county in which the area proposed for annexation is located; and

192 (iv) hold a public hearing on the proposed annexation no earlier than 30 days after the
193 adoption of the resolution under Subsection (2)(a)(i).

194 (b) Each notice under Subsections (2)(a)(ii) and (iii) shall:

195 (i) state that the municipal legislative body has adopted a resolution indicating its intent
196 to annex the area proposed for annexation;

197 (ii) state the date, time, and place of the public hearing under Subsection (2)(a)(iv);

198 (iii) describe the area proposed for annexation; and

199 (iv) except for an annexation that meets the property owner consent requirements of
200 Subsection (3)(b), state in conspicuous and plain terms that the municipal legislative body will
201 annex the area unless, at or before the public hearing under Subsection (2)(a)(iv), written
202 protests to the annexation are filed by the owners of private real property that:

203 (A) is located within the area proposed for annexation;

204 (B) covers a majority of the total private land area within the entire area proposed for
205 annexation; and

206 (C) is equal in value to at least 1/2 the value of all private real property within the
207 entire area proposed for annexation.

208 (c) The first publication of the notice required under Subsection (2)(a)(ii)(A) shall be
209 within 14 days of the municipal legislative body's adoption of a resolution under Subsection
210 (2)(a)(i).

211 (3) (a) Upon conclusion of the public hearing under Subsection (2)(a)(iv), the
212 municipal legislative body may adopt an ordinance annexing the area proposed for annexation
213 under this section unless, at or before the hearing, written protests to the annexation have been

214 filed with the city recorder or town clerk, as the case may be, by the owners of private real
215 property that:

- 216 (i) is located within the area proposed for annexation;
- 217 (ii) covers a majority of the total private land area within the entire area proposed for
218 annexation; and
- 219 (iii) is equal in value to at least 1/2 the value of all private real property within the
220 entire area proposed for annexation.

221 (b) (i) Upon conclusion of the public hearing under Subsection (2)(a)(iv), a
222 municipality may adopt an ordinance annexing the area proposed for annexation under this
223 section without allowing or considering protests under Subsection (3)(a) if the owners of at
224 least 75% of the total private land area within the entire area proposed for annexation,
225 representing at least 75% of the value of the private real property within the entire area
226 proposed for annexation, have consented in writing to the annexation.

227 (ii) Upon adoption of an annexation ordinance under Subsection (3)(b)(i), the area
228 annexed shall be conclusively presumed to be validly annexed.

229 (4) (a) If protests are timely filed that comply with Subsection (3), the municipal
230 legislative body may not adopt an ordinance annexing the area proposed for annexation, and
231 the annexation proceedings under this section shall be considered terminated.

232 (b) Subsection (4)(a) may not be construed to prohibit the municipal legislative body
233 from excluding from a proposed annexation under Subsection (1)(a)(ii) the property within an
234 unincorporated island regarding which protests have been filed and proceeding under
235 Subsection (1)(b) to annex some or all of the remaining portion of the unincorporated island.

Legislative Review Note
as of 2-4-09 9:03 AM

Office of Legislative Research and General Counsel

S.B. 171 - Municipal Annexation Amendments

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
