

**Senator Scott K. Jenkins** proposes the following substitute bill:

**MUNICIPAL ANNEXATION AMENDMENTS**

2009 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Scott K. Jenkins**

House Sponsor: Kevin S. Garn

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**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

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

▶ adds a definition of "unincorporated peninsula;"

▶ 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 **Ⓢ→ an unincorporated island or peninsula of ←Ⓢ** 50 acres or less and the municipality and county

**1st Sub. S.B. 171**



26 agree the area should be annexed.

27 **Monies Appropriated in this Bill:**

28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **10-2-401**, as last amended by Laws of Utah 2008, Chapter 360

34 **10-2-402**, as last amended by Laws of Utah 2008, Chapter 167

35 **10-2-413**, as last amended by Laws of Utah 2007, Chapter 329

36 **10-2-418**, as last amended by Laws of Utah 2007, Chapters 329 and 378



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

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

40 **10-2-401. Definitions -- Property owner provisions.**

41 (1) As used in this part:

42 (a) "Affected entity" means:

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

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

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

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

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

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

60 (c) "Commission" means a boundary commission established under Section 10-2-409  
61 for the county in which the property that is proposed for annexation is located.

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

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

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

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

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

75 (i) "Unincorporated peninsula" means an unincorporated area:

76 (i) that is part of a larger unincorporated area;

77 (ii) that extends from the rest of the unincorporated area of which it is a part;

78 (iii) that is surrounded by land that is within a municipality, except where the area  
79 connects to and extends from the rest of the unincorporated area of which it is a part; and

80 (iv) whose width, at any point where a straight line may be drawn from a place where it  
81 borders a municipality to another place where it borders a municipality, is no more than 25% of  
82 the boundary of the area where it borders a municipality.

83 [(†)] (j) "Urban development" means:

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

86 (ii) a commercial or industrial development for which cost projections exceed  
87 \$750,000 for all phases.

88 (2) For purposes of this part:

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

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

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

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

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

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

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

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

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

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

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

111 **10-2-402. Annexation -- Limitations.**

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

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

115 (i) it is a contiguous area;

116 (ii) it is contiguous to the municipality;

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

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

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

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

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

129 (4) A municipality may not annex an unincorporated area in a specified county for the  
130 sole purpose of acquiring municipal revenue or to retard the capacity of another municipality to  
131 annex the same or a related area unless the municipality has the ability and intent to benefit the  
132 annexed area by providing municipal services to the annexed area.

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

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

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

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

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

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

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

148 (7) (a) As used in this Subsection (7), "airport" means an area that the Federal Aviation  
149 Administration has, by a record of decision, approved for the construction or operation of a

150 Class I, II, or III commercial service airport, as designated by the Federal Aviation  
151 Administration in 14 C.F.R. Part 139.

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

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

160 Section 3. Section **10-2-413** is amended to read:

161 **10-2-413. Feasibility consultant -- Feasibility study -- Modifications to feasibility**  
162 **study.**

163 (1) (a) For a proposed annexation of an area located in a county of the first class, unless  
164 a proposed annexing municipality denies an annexation petition under Subsection  
165 10-2-407(3)(a)(i)(A) and except as provided in Subsection (1)(b), the commission shall choose  
166 and engage a feasibility consultant within 45 days of:

167 (i) the commission's receipt of a protest under Section 10-2-407, if the commission had  
168 been created before the filing of the protest; or

169 (ii) the commission's creation, if the commission is created after the filing of a protest.

170 (b) Notwithstanding Subsection (1)(a), the commission may not require a feasibility  
171 study with respect to a petition that proposes the annexation of an area that:

172 (i) is undeveloped; and

173 (ii) covers an area that is equivalent to less than 5% of the total land mass of all private  
174 real property within the municipality.

175 (2) The commission shall require the feasibility consultant to:

176 (a) complete a feasibility study on the proposed annexation and submit written results  
177 of the study to the commission no later than 75 days after the feasibility consultant is engaged  
178 to conduct the study;

179 (b) submit with the full written results of the feasibility study a summary of the results  
180 no longer than a page in length; and

181 (c) attend the public hearing under Subsection 10-2-415(1) and present the feasibility  
182 study results and respond to questions at that hearing.

183 (3) (a) Subject to Subsection (4), the feasibility study shall consider:

184 (i) the population and population density within the area proposed for annexation, the  
185 surrounding unincorporated area, and, if a protest was filed by a municipality with boundaries  
186 within 1/2 mile of the area proposed for annexation, that municipality;

187 (ii) the geography, geology, and topography of and natural boundaries within the area  
188 proposed for annexation, the surrounding unincorporated area, and, if a protest was filed by a  
189 municipality with boundaries within 1/2 mile of the area proposed for annexation, that  
190 municipality;

191 (iii) whether the proposed annexation eliminates, leaves, or creates an unincorporated  
192 island or unincorporated peninsula;

193 (iv) whether the proposed annexation will hinder or prevent a future and more logical  
194 and beneficial annexation or a future logical and beneficial incorporation;

195 (v) the fiscal impact of the proposed annexation on the remaining unincorporated area,  
196 other municipalities, local districts, special service districts, school districts, and other  
197 governmental entities;

198 (vi) current and five-year projections of demographics and economic base in the area  
199 proposed for annexation and surrounding unincorporated area, including household size and  
200 income, commercial and industrial development, and public facilities;

201 (vii) projected growth in the area proposed for annexation and the surrounding  
202 unincorporated area during the next five years;

203 (viii) the present and five-year projections of the cost of governmental services in the  
204 area proposed for annexation;

205 (ix) the present and five-year projected revenue to the proposed annexing municipality  
206 from the area proposed for annexation;

207 (x) the projected impact the annexation will have over the following five years on the  
208 amount of taxes that property owners within the area proposed for annexation, the proposed  
209 annexing municipality, and the remaining unincorporated county will pay;

210 (xi) past expansion in terms of population and construction in the area proposed for  
211 annexation and the surrounding unincorporated area;

212 (xii) the extension during the past ten years of the boundaries of each other  
213 municipality near the area proposed for annexation, the willingness of the other municipality to  
214 annex the area proposed for annexation, and the probability that another municipality would  
215 annex some or all of the area proposed for annexation during the next five years if the  
216 annexation did not occur;

217 (xiii) the history, culture, and social aspects of the area proposed for annexation and  
218 surrounding area;

219 (xiv) the method of providing and the entity that has provided municipal-type services  
220 in the past to the area proposed for incorporation and the feasibility of municipal-type services  
221 being provided by the proposed annexing municipality; and

222 (xv) the effect on each school district whose boundaries include part or all of the area  
223 proposed for annexation or the proposed annexing municipality.

224 (b) For purposes of Subsection (3)(a)(ix), the feasibility consultant shall assume ad  
225 valorem property tax rates on residential property within the area proposed for annexation at  
226 the same level that residential property within the proposed annexing municipality would be  
227 without the annexation.

228 (c) For purposes of Subsection (3)(a)(viii), the feasibility consultant shall assume that  
229 the level and quality of governmental services that will be provided to the area proposed for  
230 annexation in the future is essentially comparable to the level and quality of governmental  
231 services being provided within the proposed annexing municipality at the time of the feasibility  
232 study.

233 (4) (a) Except as provided in Subsection (4)(b), the commission may modify the depth  
234 of study of and detail given to the items listed in Subsection (3)(a) by the feasibility consultant  
235 in conducting the feasibility study depending upon:

236 (i) the size of the area proposed for annexation;

237 (ii) the size of the proposed annexing municipality;

238 (iii) the extent to which the area proposed for annexation is developed;

239 (iv) the degree to which the area proposed for annexation is expected to develop and  
240 the type of development expected; and

241 (v) the number and type of protests filed against the proposed annexation.

242 (b) Notwithstanding Subsection (4)(a), the commission may not modify the



243 requirement that the feasibility consultant provide a full and complete analysis of the items  
244 listed in Subsections (3)(a)(viii), (ix), and (xv).

245 (5) If the results of the feasibility study do not meet the requirements of Subsection  
246 10-2-416(3), the feasibility consultant may, as part of the feasibility study, make  
247 recommendations as to how the boundaries of the area proposed for annexation may be altered  
248 so that the requirements of Subsection 10-2-416(3) may be met.

249 (6) (a) Except as provided in Subsection (6)(b), the feasibility consultant fees and  
250 expenses shall be shared equally by the proposed annexing municipality and each entity or  
251 group under Subsection 10-2-407(1) that files a protest.

252 (b) (i) Except as provided in Subsection (6)(b)(ii), if a protest is filed by property  
253 owners under Subsection 10-2-407(1)(a)(ii), the county in which the area proposed for  
254 annexation shall pay the owners' share of the feasibility consultant's fees and expenses.

255 (ii) Notwithstanding Subsection (6)(b)(i), if both the county and the property owners  
256 file a protest, the county and the proposed annexing municipality shall equally share the  
257 property owners' share of the feasibility consultant's fees and expenses.

258 Section 4. Section **10-2-418** is amended to read:

259 **10-2-418. Annexation of an island or peninsula without a petition -- Notice --**  
260 **Hearing.**

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

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

265 (B) the majority of each island or peninsula consists of residential or commercial  
266 development;

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

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

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

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

276 (iii) (A) the area consists of ~~§~~ :

276a **(I) an unincorporated island within or an unincorporated peninsula contiguous to the**  
 276b **municipality; and**

276c **(II) ~~←~~§ no more than 50 acres; and**

277 **(B) the county in which the area is located and the municipality agree that the area**  
 278 **should be included within the municipality.**

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

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

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

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

290 (i) adopt a resolution indicating the municipal legislative body's intent to annex the  
 291 area, describing the area proposed to be annexed;

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

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

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

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

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

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

305 (ii) state the date, time, and place of the public hearing under Subsection (2)(a)(iv);  
306 (iii) describe the area proposed for annexation; and  
307 (iv) except for an annexation that meets the property owner consent requirements of  
308 Subsection (3)(b), state in conspicuous and plain terms that the municipal legislative body will  
309 annex the area unless, at or before the public hearing under Subsection (2)(a)(iv), written  
310 protests to the annexation are filed by the owners of private real property that:  
311 (A) is located within the area proposed for annexation;  
312 (B) covers a majority of the total private land area within the entire area proposed for  
313 annexation; and  
314 (C) is equal in value to at least 1/2 the value of all private real property within the  
315 entire area proposed for annexation.  
316 (c) The first publication of the notice required under Subsection (2)(a)(ii)(A) shall be  
317 within 14 days of the municipal legislative body's adoption of a resolution under Subsection  
318 (2)(a)(i).  
319 (3) (a) Upon conclusion of the public hearing under Subsection (2)(a)(iv), the  
320 municipal legislative body may adopt an ordinance annexing the area proposed for annexation  
321 under this section unless, at or before the hearing, written protests to the annexation have been  
322 filed with the city recorder or town clerk, as the case may be, by the owners of private real  
323 property that:  
324 (i) is located within the area proposed for annexation;  
325 (ii) covers a majority of the total private land area within the entire area proposed for  
326 annexation; and  
327 (iii) is equal in value to at least 1/2 the value of all private real property within the  
328 entire area proposed for annexation.  
329 (b) (i) Upon conclusion of the public hearing under Subsection (2)(a)(iv), a  
330 municipality may adopt an ordinance annexing the area proposed for annexation under this  
331 section without allowing or considering protests under Subsection (3)(a) if the owners of at  
332 least 75% of the total private land area within the entire area proposed for annexation,  
333 representing at least 75% of the value of the private real property within the entire area  
334 proposed for annexation, have consented in writing to the annexation.  
335 (ii) Upon adoption of an annexation ordinance under Subsection (3)(b)(i), the area

336 annexed shall be conclusively presumed to be validly annexed.

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

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

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**S.B. 171 1st Sub. (Green) - Municipal Annexation Amendments**

**Fiscal Note**

2009 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

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

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