

MUNICIPAL ANNEXATION AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Scott K. Jenkins

House Sponsor: Kevin S. Garn

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 agree the area should be annexed.

Monies Appropriated in this Bill:

None

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 [(†)] (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 [(††)] (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 [(†††)] (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
81 it borders a municipality to another place where it borders a municipality, is no more than
82 25% of 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
90 of 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
95 a 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
101 number of owners of that parcel;

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

104 (i) the person's representative capacity and the name of the owner the person
105 represents 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
131 to annex the same or a related area unless the municipality has the ability and intent to benefit
132 the 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
143 annexing municipality is located unless the legislative body of the county in which the area is
144 located has 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
149 Aviation Administration has, by a record of decision, approved for the construction or
150 operation of a Class I, II, or III commercial service airport, as designated by the Federal
151 Aviation 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,
164 unless 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
168 had 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
174 private 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
214 to 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
232 feasibility 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
270 area for more than one year; [~~or~~]

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

277 (I) an unincorporated island within or an unincorporated peninsula contiguous to the
278 municipality; and

279 (II) no more than 50 acres; and

280 (B) the county in which the area is located and the municipality agree that the area
281 should be included within the municipality.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

322 (3) (a) Upon conclusion of the public hearing under Subsection (2)(a)(iv), the
323 municipal legislative body may adopt an ordinance annexing the area proposed for annexation
324 under this section unless, at or before the hearing, written protests to the annexation have been
325 filed with the city recorder or town clerk, as the case may be, by the owners of private real
326 property that:

327 (i) is located within the area proposed for annexation;

328 (ii) covers a majority of the total private land area within the entire area proposed for
329 annexation; and

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

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

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

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

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