

1 **INCORPORATION OF A TOWN AMENDMENTS**

2 2010 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Gage Froerer**

5 Senate Sponsor: Dennis E. Stowell

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions relating to the incorporation of a town.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ amends notice requirements;
- 13 ▶ requires that the legislative body of a county, based on certain results of the
- 14 financial feasibility study:
 - 15 • approve a petition to incorporate;
 - 16 • deny a petition to incorporate;
 - 17 • impose conditions on the area proposed to be incorporated; or
 - 18 • alter the boundaries of the area proposed to be incorporated; and
- 19 ▶ makes technical corrections.

20 **Monies Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **10-2-125**, as last amended by Laws of Utah 2009, Chapters 350 and 388

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

29 Section 1. Section **10-2-125** is amended to read:

30 **10-2-125. Incorporation of a town.**

31 (1) As used in this section:

32 (a) "Assessed value," with respect to agricultural land, means the value at which the
33 land would be assessed without regard to a valuation for agricultural use under Section
34 59-2-503.

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

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

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

40 (c) "Municipal service" means a publicly provided service that is not provided on a
41 countywide basis.

42 (d) "Nonurban" means having a residential density of less than one unit per acre.

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

45 (ii) An area within a county of the first class is not contiguous for purposes of
46 Subsection (2)(a)(i) if:

47 (A) the area includes a strip of land that connects geographically separate areas; and

48 (B) the distance between the geographically separate areas is greater than the average
49 width of the strip of land connecting the geographically separate areas.

50 (b) The population figure under Subsection (2)(a) shall be determined:

51 (i) as of the date the incorporation petition is filed; and

52 (ii) by the Utah Population Estimates Committee within 20 days after the county
53 clerk's certification under Subsection (6) of a petition filed under Subsection (4).

54 (3) (a) The process to incorporate an area as a town is initiated by filing a request for a
55 public hearing with the clerk of the county in which the area is located.

56 (b) Each request for a public hearing under Subsection (3)(a) shall:

57 (i) be signed by the owners of at least five separate parcels of private real property,

58 each owned by a different owner, located within the area proposed to be incorporated; and

59 (ii) be accompanied by an accurate map or plat depicting the boundary of the
60 proposed town.

61 (c) Within 10 days after a request for a public hearing is filed under Subsection (3)(a),
62 the county clerk shall, with the assistance of other county officers from whom the clerk
63 requests assistance, determine whether the petition complies with the requirements of
64 Subsection (3)(b).

65 (d) If the clerk determines that a request under Subsection (3)(a) fails to comply with
66 the requirements of Subsection (3)(b), the clerk shall reject the request and deliver written
67 notice of the rejection to the signers of the request.

68 (e) (i) If the clerk determines that a request under Subsection (3)(a) complies with the
69 requirements of Subsection (3)(b), the clerk shall:

70 (A) schedule and arrange for a public hearing to be held:

71 (I) (Aa) at a public facility located within the boundary of the proposed town; or

72 (Bb) if there is no public facility within the boundary of the proposed town, at another
73 nearby public facility or at the county seat; and

74 (II) within 20 days after the clerk provides the last notice required under Subsection
75 (3)(e)(i)(B); and

76 (B) subject to Subsection (3)(e)(ii), give notice of the public hearing on the proposed
77 incorporation by:

78 (I) posting notice of the public hearing on the county's Internet website, if the county
79 has an Internet website; ~~and~~

80 (II) (Aa) ~~(fi)~~ publishing notice of the public hearing at least once a week for two
81 consecutive weeks in a newspaper of general circulation within the proposed town; ~~and~~ or
82 ~~[(Hii) publishing notice of the public hearing in accordance with Section 45-1-101 for~~
83 ~~two weeks; or]~~

84 (Bb) ~~[in accordance with Subsection (3)(e)(i)(B)(H)(Aa)(fi);]~~ if there is no newspaper
85 of general circulation within the proposed town, posting notice of the public hearing in at least

86 five conspicuous public places within the proposed town[-]; and

87 (III) publishing notice of the public hearing in accordance with Section 63F-1-701 on
88 the Utah Public Notice Website.

89 (ii) The posting of notice required under [~~Subsection (3)(e)(i)(B)(I) and, if applicable,~~
90 ~~Subsection (3)(e)(i)(B)(II)(Bb) and the first publishing of notice required under Subsection~~
91 ~~(3)(e)(i)(B)(II)(Aa), if applicable]~~ Subsections (3)(e)(i)(B)(II)(Aa) and (3)(e)(i)(B)(III), and if
92 applicable, Subsections (3)(e)(i)(B)(I) and (3)(e)(i)(B)(II)(Bb), shall occur no later than 10
93 days after the day on which the clerk determines that a request complies with the requirements
94 of Subsection (3)(b).

95 (iii) Each public hearing under Subsection (3)(e)(i)(A) shall be conducted by the chair
96 of the county commission or council, or the chair's designee, to:

- 97 (A) introduce the concept of the proposed incorporation to the public;
 - 98 (B) allow the public to review the map or plat of the boundary of the proposed town;
 - 99 (C) allow the public to ask questions and become informed about the proposed
- 100 incorporation; and

101 (D) allow the public to express their views about the proposed incorporation,
102 including their views about the boundary of the area proposed to be incorporated.

103 (4) (a) At any time within three months after the public hearing under Subsection
104 (3)(e), a petition to incorporate the area as a town may be filed with the clerk of the county in
105 which the area is located.

106 (b) Each petition under Subsection (4)(a) shall:

- 107 (i) be signed by:
 - 108 (A) the owners of private real property that:
 - 109 (I) is located within the area proposed to be incorporated;
 - 110 (II) covers a majority of the total private land area within the area;
 - 111 (III) is equal in assessed value to more than 1/2 of the assessed value of all private real
 - 112 property within the area; and

113 (IV) consists, in number of parcels, of at least 1/3 of the number of all parcels of

114 private real property within the area proposed to be incorporated; and

115 (B) a majority of all registered voters within the area proposed to be incorporated as a
116 town, according to the official voter registration list maintained by the county on the date the
117 petition is filed;

118 (ii) designate as sponsors at least five of the property owners who have signed the
119 petition, one of whom shall be designated as the contact sponsor, with the mailing address of
120 each owner signing as a sponsor;

121 (iii) be accompanied by and circulated with an accurate map or plat, prepared by a
122 licensed surveyor, showing a legal description of the boundary of the proposed town; and

123 (iv) substantially comply with and be circulated in the following form:

124 PETITION FOR INCORPORATION OF (insert the proposed name of the proposed
125 town)

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

128 We, the undersigned owners of real property and registered voters within the area
129 described in this petition, respectfully petition the county legislative body for the area
130 described in this petition to be incorporated as a town. Each of the undersigned affirms that
131 each has personally signed this petition and is an owner of real property or a registered voter
132 residing within the described area, and that the current residence address of each is correctly
133 written after the signer's name. The area proposed to be incorporated as a town is described as
134 follows: (insert an accurate description of the area proposed to be incorporated).

135 (c) A petition under this Subsection (4) may not describe an area that includes some or
136 all of an area proposed for annexation in an annexation petition under Section 10-2-403 that:

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

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

139 (d) A petition may not be filed under this section if the private real property owned by
140 the petition sponsors, designated under Subsection (4)(b)(ii), cumulatively exceeds 40% of the
141 total private land area within the area proposed to be incorporated as a town.

142 (e) A signer of a petition under this Subsection (4) may withdraw or, after withdrawn,
143 reinstate the signer's signature on the petition:

144 (i) at any time until the county clerk certifies the petition under Subsection (6); and

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

146 (5) (a) If a petition is filed under Subsection (4)(a) proposing to incorporate as a town
147 an area located within a county of the first class, the county clerk shall deliver written notice of
148 the proposed incorporation:

149 (i) to each owner of private real property owning more than 1% of the assessed value
150 of all private real property within the area proposed to be incorporated as a town; and

151 (ii) within seven calendar days after the date on which the petition is filed.

152 (b) A private real property owner described in Subsection (5)(a)(i) may exclude all or
153 part of the owner's property from the area proposed to be incorporated as a town by filing a
154 notice of exclusion:

155 (i) with the county clerk; and

156 (ii) within 10 calendar days after receiving the clerk's notice under Subsection (5)(a).

157 (c) The county legislative body shall exclude from the area proposed to be
158 incorporated as a town the property identified in the notice of exclusion under Subsection
159 (5)(b) if:

160 (i) the property:

161 (A) is nonurban; and

162 (B) does not and will not require a municipal service; and

163 (ii) exclusion will not leave an unincorporated island within the proposed town.

164 (d) If the county legislative body excludes property from the area proposed to be
165 incorporated as a town, the county legislative body shall send written notice of the exclusion to
166 the contact sponsor within five days after the exclusion.

167 (6) Within 20 days after the filing of a petition under Subsection (4), the county clerk
168 shall:

169 (a) with the assistance of other county officers from whom the clerk requests

170 assistance, determine whether the petition complies with the requirements of Subsection (4);
171 and

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

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

174 and

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

176 (I) the contact sponsor;

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

179 (III) the Utah Population Estimates Committee; or

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

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

185 (ii) A valid signature on a petition filed under Subsection (4)(a) may be used toward
186 fulfilling the signature requirement of Subsection (4)(b) for the same petition that is amended
187 under Subsection (7)(a)(i) and then refiled with the county clerk.

188 (b) If a petition is amended and refiled under Subsection (7)(a)(i) after having been
189 rejected by the county clerk under Subsection (6)(b)(ii):

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

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

193 (8) (a) (i) The legislative body of a county with which a petition is filed under
194 Subsection (4) may, at its option and upon the petition being certified under Subsection (6),
195 commission and pay for a financial feasibility study.

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

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

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

203 (b) ~~[The]~~ If the county legislative body has commissioned a financial feasibility study
204 under Subsection (8)(a)(i), the county legislative body shall approve a petition proposing the
205 incorporation of a town and hold an election for town officers, as provided in Subsection (9),
206 if:

207 (i) the county clerk has certified the petition under Subsection (6); and

208 ~~[(ii) (A) (i) the county legislative body has commissioned a financial feasibility study~~
209 ~~under Subsection (8)(a); and]~~

210 ~~[(ii) (A) (ii) (A)]~~ (ii) (A) the results of the financial feasibility study described in Subsection
211 (8)(a)(i) show that the average annual amount of revenues described in Subsection (1)(b)(i)
212 does not exceed the average annual amount of costs described in Subsection (1)(b)(ii) by more
213 than ~~[+0%]~~ 15%; or

214 ~~[(B) the county legislative body chooses not to commission a financial feasibility~~
215 ~~study.]~~

216 (B) the results of the financial feasibility study described in Subsection (8)(a)(i) show
217 that the average annual amount of costs described in Subsection (1)(b)(ii) does not exceed the
218 average annual amount of revenues described in Subsection (1)(b)(i) by more than 15%.

219 (c) (i) ~~If [the county legislative body commissions a financial feasibility study under~~
220 ~~Subsection (8)(a) and]~~ the results of the financial feasibility study described in Subsection
221 (8)(a)(i) show that the average annual amount of revenues described in Subsection (1)(b)(i)
222 exceeds the average annual amount of costs described in Subsection (1)(b)(ii) by more than
223 ~~[+0%]~~ 15%, the county legislative body may:

224 (A) deny the petition, ~~[subject to]~~ in accordance with Subsection (8)(c)~~[(ii)]~~(iii), if the
225 results of the financial feasibility study show that the average annual amount of revenues

226 described in Subsection (1)(b)(i) exceeds the average annual amount of costs described in
227 Subsection (1)(b)(ii) by ~~[25% or more;]~~ more than 15%; or
228 ~~[(B) approve the petition and hold an election for town officers, as provided in~~
229 ~~Subsection (9); or]~~
230 ~~[(C)]~~ (B) (I) with the consent of the petition sponsors:
231 (Aa) impose conditions to ~~[mitigate the fiscal inequities identified in the financial~~
232 ~~feasibility study]~~ prevent the average annual amount of revenues described in Subsection
233 (1)(b)(i) from exceeding the average annual amount of costs described in Subsection (1)(b)(ii)
234 by more than 15%; or
235 (Bb) alter the boundaries of the area proposed to be incorporated as a town to
236 approximate the boundaries necessary to prevent the average annual amount of revenues
237 described in Subsection (1)(b)(i) from exceeding the average annual amount of costs described
238 in Subsection (1)(b)(ii) by more than 15%; and
239 (II) approve the incorporation petition and hold an election for town officers, as
240 provided in Subsection (9).
241 (ii) If the results of the financial feasibility study described in Subsection (8)(a)(i)
242 show that the average annual amount of costs described in Subsection (1)(b)(ii) exceeds the
243 average annual amount of revenues described in Subsection (1)(b)(i) by more than 15%, the
244 county legislative body shall:
245 (A) approve the petition;
246 (B) deny the petition in accordance with Subsection (8)(c)(iii); or
247 (C) (I) with the consent of the petition sponsors:
248 (Aa) impose conditions to prevent the average annual amount of costs described in
249 Subsection (1)(b)(ii) from exceeding the average annual amount of revenues described in
250 Subsection (1)(b)(i) by more than 15%; or
251 (Bb) alter the boundaries of the area proposed to be incorporated as a town to
252 approximate the boundaries necessary to prevent the average annual amount of costs described
253 in Subsection (1)(b)(ii) from exceeding the average annual amount of revenues described in

254 Subsection (1)(b)(i) by more than 15%; and

255 (II) approve the incorporation petition and hold an election for town officers, as
256 provided in Subsection (9).

257 ~~[(ii)]~~ (iii) A county legislative body intending to deny a petition under Subsection
258 (8)(c)(i)(A) or (8)(c)(ii)(B) shall deny the petition within 20 days after the feasibility
259 consultant submits the written results of the financial feasibility study.

260 (d) Each town that incorporates pursuant to a petition approved after the county
261 legislative body imposes conditions under Subsection (8)(c)(i)~~[(C)(i)]~~(B)(I)(Aa) or
262 (8)(c)(ii)(C)(I)(Aa) shall comply with those conditions.

263 (9) (a) The legislative body of the county in which the proposed new town is located
264 shall hold the election for town officers provided for in Subsection (8) within:

265 ~~[(i) 45 days after the petition is certified, for an election under Subsection~~
266 ~~(8)(b)(ii)(B);]~~

267 ~~[(ii)]~~ (i) 45 days after the day on which the feasibility consultant submits the written
268 results of the financial feasibility study, for an election under Subsection (8)(b)~~[(ii)(A) or~~
269 ~~(8)(c)(i)(B)];~~ or

270 ~~[(iii)]~~ (ii) 60 days after the day on which the feasibility consultant submits the written
271 results of the financial feasibility study, for an election under Subsection (8)(c)(i)~~[(C)]~~(B)(II)
272 or (8)(c)(ii)(B)(II).

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

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

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

278 (10) Each newly incorporated town shall operate under the five-member council form
279 of government as defined in Section 10-3b-102.

280 (11) The mayor-elect of the future town shall:

281 (a) within 30 days after the canvass of the election of town officers under Subsection

- 282 (9), file with the lieutenant governor:
- 283 (i) a copy of a notice of an impending boundary action, as defined in Section
284 67-1a-6.5, that meets the requirements of Subsection 67-1a-6.5(3); and
- 285 (ii) a copy of an approved final local entity plat, as defined in Section 67-1a-6.5; and
- 286 (b) upon the lieutenant governor's issuance of a certificate of incorporation under
287 Section 67-1a-6.5:
- 288 (i) if the town is located within the boundary of a single county, submit to the recorder
289 of that county the original:
- 290 (A) notice of an impending boundary action;
- 291 (B) certificate of incorporation; and
- 292 (C) approved final local entity plat; or
- 293 (ii) if the town is located within the boundaries of more than a single county, submit
294 the original of the documents listed in Subsections (11)(b)(i)(A), (B), and (C) to one of those
295 counties and a certified copy of those documents to each other county.
- 296 (12) (a) A new town is incorporated:
- 297 (i) on December 31 of the year in which the lieutenant governor issues a certificate of
298 incorporation under Section 67-1a-6.5, if the election of town officers under Subsection (9) is
299 held on a regular general or municipal general election date; or
- 300 (ii) on the last day of the month during which the lieutenant governor issues a
301 certificate of incorporation under Section 67-1a-6.5, if the election of town officers under
302 Subsection (9) is held on any other date.
- 303 (b) (i) The effective date of an incorporation for purposes of assessing property within
304 the new town is governed by Section 59-2-305.5.
- 305 (ii) Until the documents listed in Subsection (11)(b) are recorded in the office of the
306 recorder of each county in which the property is located, a newly incorporated town may not:
- 307 (A) levy or collect a property tax on property within the town;
- 308 (B) levy or collect an assessment on property within the town; or
- 309 (C) charge or collect a fee for service provided to property within the town.

310 (13) For each petition filed before March 5, 2008:

311 (a) the petition is subject to and governed by the law in effect at the time the petition
312 was filed; and

313 (b) the law in effect at the time the petition was filed governs in all administrative and
314 judicial proceedings relating to the petition.