

**ANNEXATION AMENDMENTS**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Curtis S. Bramble**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill amends provisions relating to the annexation of a resort area.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ authorizes property owners in a resort area to file an annexation request with a municipality;
- ▶ amends public hearing requirements; and
- ▶ makes technical corrections.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**10-2-401**, as last amended by Laws of Utah 2009, Chapters 92, 205, and 230

**10-2-402**, as last amended by Laws of Utah 2009, Chapters 92, 205, and 230

**10-2-418**, as last amended by Laws of Utah 2009, Chapters 230, 350, and 388

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



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

29 **10-2-401. Definitions -- Property owner provisions.**

30 (1) As used in this part:

31 (a) "Affected entity" means:

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

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

37 (iii) a local district under Title 17B, Limited Purpose Local Government Entities -  
38 Local Districts, or special service district under Title 17D, Chapter 1, Special Service District  
39 Act, whose boundary includes any part of an area proposed for annexation;

40 (iv) a school district whose boundary includes any part of an area proposed for  
41 annexation, if the boundary is proposed to be adjusted as a result of the annexation; and

42 (v) a municipality whose boundaries are within 1/2 mile of an area proposed for  
43 annexation.

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

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

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

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

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

56 (g) "Private," with respect to real property, means not owned by the United States or  
57 any agency of the federal government, the state, a county, a municipality, a school district, a  
58 local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, a

59 special service district under Title 17D, Chapter 1, Special Service District Act, or any other  
60 political subdivision or governmental entity of the state.

61 (h) "Resort area" means a developed area:

62 (i) on a mountain or large hill containing:

63 (A) ski trails; and

64 (B) support services, including:

65 (I) food services;

66 (II) rental equipment;

67 (III) parking facilities; and

68 (IV) a ski lift system; and

69 (ii) located 10 miles or less from the corporate limit of the proposed annexing  
70 municipality.

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

73 ~~(i)~~ (j) "Township" has the same meaning as defined in Section 17-27a-103.

74 ~~(j)~~ (k) "Unincorporated peninsula" means an unincorporated area:

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

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

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

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

82 ~~(k)~~ (l) "Urban development" means:

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

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

87 (2) For purposes of this part:

88 (a) the owner of real property shall be:

89 (i) except as provided in Subsection (2)(a)(ii), the record title owner according to the

90 records of the county recorder on the date of the filing of the petition or protest; or  
91 (ii) the lessee of military land, as defined in Section 63H-1-102, if the area proposed  
92 for annexation includes military land that is within a project area described in a project area  
93 plan adopted by the military installation development authority under Title 63H, Chapter 1,  
94 Military Installation Development Authority Act; and

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

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

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

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

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

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

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

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

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

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

115 **10-2-402. Annexation -- Limitations.**

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

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

119 (i) it is a contiguous area;

120 (ii) subject to Subsection (1)(c), it is contiguous to the municipality;

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

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

126 (c) For purposes of Subsection (1)(b)(ii), a resort area is contiguous to an annexing  
127 municipality if the annexing municipality and the resort area are separated only by land  
128 controlled or owned by the federal government.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

167 (8) An annexation petition may not be filed if it proposes the annexation of an area that  
168 is within a proposed township in a petition to establish a township under Subsection  
169 17-27a-306(1)(c) that has been certified under Subsection 17-27a-306(1)(f), until after the  
170 canvass of an election on the proposed township under Subsection 17-27a-306(1)(h).

171 (9) A municipality may not annex an unincorporated area located within a project area  
172 described in a project area plan adopted by the military installation development authority  
173 under Title 63H, Chapter 1, Military Installation Development Authority Act, without the  
174 authority's approval.

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

176 **10-2-418. Annexation of an island, resort area, or peninsula without a petition --**  
177 **Notice -- Hearing.**

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

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

182 (B) the majority of each island or peninsula consists of residential or commercial

183 development;

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

185 and

186 (D) the municipality has provided most or all of the municipal-type services to the area

187 for more than one year;

188 (ii) (A) the area to be annexed consists of one or more unincorporated islands within or

189 unincorporated peninsulas contiguous to the municipality, each of which has fewer than 800

190 residents; and

191 (B) the municipality has provided one or more municipal-type services to the area for

192 at least one year; [~~or~~]

193 (iii) (A) the area consists of:

194 (I) an unincorporated island within or an unincorporated peninsula contiguous to the

195 municipality; and

196 (II) no more than 50 acres; and

197 (B) the county in which the area is located and the municipality agree that the area

198 should be included within the municipality[-]; or

199 (iv) (A) the area to be annexed is a resort area; and

200 (B) the owners of at least one-third of the value of the private real property within the

201 resort area have filed with the city recorder or town clerk of the proposed annexing

202 municipality a request to annex into the municipality.

203 (b) Notwithstanding Subsection 10-2-402(1)(b)(iii), a municipality may annex a

204 portion of an unincorporated island, unincorporated resort area, or unincorporated peninsula

205 under this section, leaving unincorporated the remainder of the unincorporated island,

206 unincorporated resort area, or unincorporated peninsula, if:

207 (i) in adopting the resolution under Subsection (2)(a)(i), the municipal legislative body

208 determines that not annexing the entire unincorporated island, unincorporated resort area, or

209 unincorporated peninsula is in the municipality's best interest; and

210 (ii) for an annexation of one or more unincorporated islands under Subsection

211 (1)(a)(ii), the entire island of unincorporated area, of which a portion is being annexed,

212 complies with the requirement of Subsection (1)(a)(ii)(A) relating to the number of residents.

213 (2) (a) The legislative body of each municipality intending to annex an area under this

214 section shall:

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

217 (ii) publish notice:

218 (A) (I) at least once a week for three successive weeks in a newspaper of general  
219 circulation within the municipality and the area proposed for annexation; or

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

223 (B) in accordance with Section 45-1-101 for three weeks;

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

227 (iv) (A) hold a public hearing on the proposed annexation no earlier than 30 days after  
228 the [adoption of] day on which the resolution is adopted under Subsection (2)(a)(i)[-]; or

229 (B) for a proposed annexation of a resort area, hold a public hearing on the proposed  
230 annexation no earlier than 60 days after the day on which the resolution is adopted under  
231 Subsection (2)(a)(i).

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

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

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

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

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

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

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

244 (C) is equal in value to at least 1/2 the value of all private real property within the



245 entire area proposed for annexation.

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

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

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

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

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

259 (b) (i) Upon conclusion of the public hearing under Subsection (2)(a)(iv), a  
260 municipality may adopt an ordinance approving the annexation of the area proposed for  
261 annexation under this section without allowing or considering protests under Subsection (3)(a)  
262 if the owners of at least 75% of the total private land area within the entire area proposed for  
263 annexation, representing at least 75% of the value of the private real property within the entire  
264 area proposed for annexation, have consented in writing to the annexation.

265 (ii) Upon the effective date under Section 10-2-425 of an annexation approved by an  
266 ordinance adopted under Subsection (3)(b)(i), the area annexed shall be conclusively presumed  
267 to be validly annexed.

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

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

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**Legislative Review Note**  
as of 2-15-10 10:14 AM

**Office of Legislative Research and General Counsel**

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**S.B. 244 - Annexation Amendments**

**Fiscal Note**

2010 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 or businesses. There could however be a shift in tax collections between local governments if annexation shifts the resort communities between local entities.

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