

## **HB0502S01 compared with HB0502**

{~~deleted text~~} shows text that was in HB0502 but was deleted in HB0502S01.

inserted text shows text that was not in HB0502 but was inserted into HB0502S01.

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**Representative Melvin R. Brown proposes the following substitute bill:**

### **INCORPORATION AMENDMENTS**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Melvin R. Brown**

Senate Sponsor: \_\_\_\_\_

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#### **LONG TITLE**

#### **General Description:**

This bill amends provisions related to the incorporation of a city or town.

#### **Highlighted Provisions:**

This bill:

- ▶ amends definitions;
- ▶ amends language related to a request to incorporate a city;
- ▶ amends language related to the certification of a request for incorporation;
- ▶ repeals provisions that require a city incorporation feasibility study;
- ▶ amends language related to a city incorporation petition;
- ▶ requires a county legislative body to, in certain circumstances, hold a public hearing to discuss the incorporation of a city, including allowing public input and consideration of the feasibility of incorporation;

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- ▶ amends language related to an incorporation of a city election;
- ▶ repeals provisions that require a town incorporation feasibility study;
- ▶ amends language related to a town incorporation petition;
- ▶ requires a county legislative body to, in certain circumstances, hold a public hearing to discuss the incorporation of a town, including allowing public input and consideration of the feasibility of incorporation;
- ▶ enacts provisions related to an incorporation of a town election;
- ▶ enacts provisions related to a town form of government and election of town officers;
- ▶ enacts provisions requiring notice of a town incorporation to the lieutenant governor;
- ▶ enacts provisions related to the effective date of a town incorporation;
- ▶ amends language related to the duties of a planning commission of a township;
- ▶ amends the definition of "ballot proposition"; and
- ▶ makes technical corrections.

### **Money Appropriated in this Bill:**

None

### **Other Special Clauses:**

None

### **Utah Code Sections Affected:**

#### **AMENDS:**

- 10-2-101**, as last amended by Laws of Utah 2008, Chapter 360
- 10-2-102**, as repealed and reenacted by Laws of Utah 1997, Chapter 389
- 10-2-103**, as last amended by Laws of Utah 2000, Chapter 184
- 10-2-105**, as last amended by Laws of Utah 1998, Chapter 13
- 10-2-109**, as last amended by Laws of Utah 2010, Chapter 378
- 10-2-111**, as last amended by Laws of Utah 2009, Chapter 388
- 10-2-116**, as last amended by Laws of Utah 2009, Chapter 388
- 10-2-125**, as last amended by Laws of Utah 2010, Chapters 90, 122 and last amended by Coordination Clause, Laws of Utah 2010, Chapter 90
- 10-2-403**, as last amended by Laws of Utah 2010, Chapter 378

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**17-27a-302**, as renumbered and amended by Laws of Utah 2005, Chapter 254  
**20A-1-102**, as last amended by Laws of Utah 2011, Chapters 17, 40, 310, and 335  
**20A-1-203**, as last amended by Laws of Utah 2011, Chapter 371  
**20A-1-204**, as last amended by Laws of Utah 2008, Chapters 16 and 382

ENACTS:

**10-2-110.5**, Utah Code Annotated 1953  
**10-2-126**, Utah Code Annotated 1953  
**10-2-127**, Utah Code Annotated 1953  
**10-2-128**, Utah Code Annotated 1953  
**10-2-129**, Utah Code Annotated 1953

REPEALS:

**10-2-106**, as last amended by Laws of Utah 2007, Chapter 329  
**10-2-107**, as last amended by Laws of Utah 2000, Chapter 184  
**10-2-108**, as last amended by Laws of Utah 2010, Chapter 90  
**10-2-124**, as enacted by Laws of Utah 1997, Chapter 389

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

Section 1. Section **10-2-101** is amended to read:

**10-2-101. Definitions.**

(1) As used in this part[:(a)] "Commission" means a boundary commission established under Section 10-2-409 for the county in which the property that is proposed to be incorporated is located. (b) "Feasibility consultant" means a person or firm with expertise in the processes and economics of local government. (c) "Private,"], "private," with respect to real property, means [not owned by the United States or any agency of the federal government, the state, a county, a municipality, a school district, a local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, a special service district under Title 17D, Chapter 1, Special Service District Act, or any other political subdivision or governmental entity of the state] taxable property.

(2) For purposes of this part:

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

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- (b) the value of private real property shall be determined according to the last assessment roll for county taxes before the filing of the request or petition.
- (3) For purposes of each provision of this part that requires the owners of private real property covering a percentage or fraction of the total private land area within an area to sign a request or petition:
- (a) a parcel of real property may not be included in the calculation of the required percentage or fraction unless the request or petition is signed by:
    - (i) except as provided in Subsection (3)(a)(ii), owners representing a majority ownership interest in that parcel; or
    - (ii) if the parcel is owned by joint tenants or tenants by the entirety, 50% of the number of owners of that parcel;
  - (b) the signature of a person signing a request or petition in a representative capacity on behalf of an owner is invalid unless:
    - (i) the person's representative capacity and the name of the owner the person represents are indicated on the request or petition with the person's signature; and
    - (ii) the person provides documentation accompanying the request or petition that substantiates the person's representative capacity; and
  - (c) subject to Subsection (3)(b), a duly appointed personal representative may sign a request or petition on behalf of a deceased owner.

Section 2. Section **10-2-102** is amended to read:

**10-2-102. Incorporation of a contiguous area -- Governing provisions of city or town incorporation.**

- (1) A contiguous area of a county not within a municipality may incorporate as a municipality as provided in this part.
- (2) (a) Incorporation as a city is governed by Sections 10-2-103 through [10-2-124] 10-2-123.
- (b) Incorporation as a town is governed by [Section] Sections 10-2-125 through 10-2-129.

Section 3. Section **10-2-103** is amended to read:

**10-2-103. Request for incorporation -- Requirements -- Limitations.**

- (1) The process to incorporate a contiguous area of a county as a city is initiated by a

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request for [a feasibility study] incorporation filed with the clerk of the county in which the area is located.

(2) [~~Each~~] A request under Subsection (1) shall:

(a) be signed by the owners of private real property that[:~~(i)~~] is located within the area proposed to be incorporated;

[~~(ii) covers at least 10% of the total private land area within the area; and]~~

[~~(iii) is equal in value to at least 7% of the value of all private real property within the area;]~~

(b) indicate the typed or printed name and current residence address of each owner signing the request;

(c) describe the contiguous area proposed to be incorporated as a city;

(d) designate up to five signers of the request as sponsors, one of whom shall be designated as the contact sponsor, with the mailing address and telephone number of each; and

(e) be accompanied by and circulated with an accurate map or plat, prepared by a licensed surveyor, showing the boundaries of the proposed city[;~~and~~].

[~~(f) request the county legislative body to commission a study to determine the feasibility of incorporating the area as a city.]~~

[~~(3) A request for a feasibility study under this section may not propose for incorporation an area that includes some or all of an area that is the subject of a completed feasibility study or supplemental feasibility study whose results comply with Subsection 10-2-109(3) unless:]~~

[~~(a) the proposed incorporation that is the subject of the completed feasibility study or supplemental feasibility study has been defeated by the voters at an election under Section 10-2-111; or]~~

[~~(b) the time provided under Subsection 10-2-109(1) for filing an incorporation petition based on the completed feasibility study or supplemental feasibility study has elapsed without the filing of a petition.]~~

[~~(4)] (3) (a) Except as provided in Subsection [~~(4)] (3)(b), a request under this section may not propose for incorporation an area that includes some or all of an area proposed for annexation in an annexation petition under Section 10-2-403 that:~~~~

(i) was filed before the filing of the request; and

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- (ii) is still pending on the date the request is filed.
- (b) Notwithstanding Subsection [~~(4)~~] (3)(a), a request may propose for incorporation an area that includes some or all of an area proposed for annexation in an annexation petition described in Subsection [~~(4)~~] (3)(a) if:
  - (i) the proposed annexation area that is part of the area proposed for incorporation does not exceed 20% of the area proposed for incorporation;
  - (ii) the request complies with [Subsections (2) and (3)] Subsection (2) with respect to the area proposed for incorporation excluding the proposed annexation area; and
  - (iii) excluding the area proposed for annexation from the area proposed for incorporation would not cause the area proposed for incorporation to lose its contiguity.
- (c) [~~Except as provided in Section 10-2-107, each~~] A request to which Subsection [~~(4)~~] (3)(b) applies shall be considered as not proposing the incorporation of the area proposed for annexation.

[~~(5)~~] (4) At the time of filing the request for [~~a feasibility study~~] incorporation with the county clerk, the sponsors of the request shall mail or deliver a copy of the request to the chair of the planning commission of each township in which any part of the area proposed for incorporation is located, if any.

Section 4. Section **10-2-105** is amended to read:

**10-2-105. Processing a request for incorporation -- Certification or rejection by county clerk -- Processing priority -- Limitations -- Township planning commission recommendation.**

- (1) Within 45 days of the filing of a request under Section 10-2-103, the county clerk shall:
  - (a) with the assistance of other county officers from whom the clerk requests assistance, determine whether the request complies with Section 10-2-103; and
  - (b) (i) if the clerk determines that the request complies with Section 10-2-103:
    - (A) certify the request and deliver the certified request to the county legislative body; and
    - (B) mail or deliver written notification of the certification to:
      - (I) the contact sponsor; and
      - (II) the chair of the planning commission of each township in which any part of the

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area proposed for incorporation is located; or

(ii) if the clerk determines that the request fails to comply with [any of those] Section 10-2-103 requirements, reject the request and notify the contact sponsor in writing of the rejection and the reasons for the rejection.

(2) The county clerk shall certify or reject requests under Subsection (1) in the order in which they are filed.

(3) (a) (i) If the county clerk rejects a request under Subsection (1)(b)(ii), the request may be amended to correct the deficiencies for which it was rejected and then refiled with the county clerk.

(ii) A signature on a request under Section 10-2-103 may be used toward fulfilling the signature requirement of Subsection 10-2-103(2)(a) for the request as modified under Subsection (3)(a)(i).

(b) If a request is amended and refiled under Subsection (3)(a) after having been rejected by the county clerk under Subsection (1)(b)(ii), it shall be considered as a newly filed request, and its processing priority is determined by the date on which it is refiled.

[~~(4) (a) A township planning commission may recommend to the legislative body of the county in which the township is located that, for purposes of Subsection 10-2-106(4)(a)(xiii), the county legislative body support or oppose a proposed incorporation under this part of an area located within the township.]~~

[~~(b) (i) Except as provided in Subsection (4)(b)(ii), the township planning commission shall communicate each recommendation under Subsection (4)(a) in writing to the county legislative body within 60 days of the county clerk's certification under Subsection (1)(b)(i).]~~

[~~(ii) Notwithstanding Subsection (4)(b)(i), if the county clerk's certification under Subsection (1)(b)(i) is before July 17, 1997, the township planning commission shall communicate its recommendation under Subsection (4)(a) in writing to the county legislative body within 60 days of the county clerk's certification under Subsection (1)(b)(i) or August 31, 1997, whichever is later, but no later than:]~~

[~~(A) 75 days after the county legislative body has engaged the feasibility consultant under Subsection 10-2-106(1); or]~~

[~~(B) the completion of the feasibility study.]~~

[~~(iii) At the time the recommendation under Subsection (4)(b)(i) is delivered to the~~

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county legislative body, the township planning commission shall mail or deliver a copy of the recommendation to the contact sponsor.]

Section 5. Section 10-2-109 is amended to read:

### **10-2-109. Incorporation petition -- Requirements and form.**

(1) At any time within [18 months of the completion of the public hearings required under Subsection 10-2-108(1),] one year of filing a request for incorporation in accordance with Section 10-2-103, a petition for incorporation of the area proposed to be incorporated as a city may be filed in the office of the clerk of the county in which the area is located.

(2) Each petition under Subsection (1) shall:

(a) be signed by:

(i) the owners of private real property that:

[¶] (A) is located within the area proposed to be incorporated; and

[¶] (ii) covers at least [¶] 1/3 [¶] 1/8 of the total private land area within the area; and

[¶] (iii) (B) is equal in value to at least [1/3] 1/8 of the value of all private real property within the area; and

(ii) 1/8 of all registered voters within the area proposed to be incorporated as a city, according to the official voter registration list maintained by the county on the date the petition is filed;

(b) indicate the typed or printed name and current residence address of each owner signing the petition;

(c) describe the area proposed to be incorporated as a city, as described in the [feasibility study] request [or modified request that meets the requirements of Subsection (3)] for incorporation;

(d) state the proposed name for the proposed city;

(e) designate five signers of the petition as petition sponsors, one of whom shall be designated as the contact sponsor, with the mailing address and telephone number of each;

(f) state that the signers of the petition appoint the sponsors, if the incorporation measure passes, to represent the signers in the process of:

(i) selecting the number of commission or council members the new city will have; and

(ii) drawing district boundaries for the election of commission or council members, if the voters decide to elect commission or council members by district;

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(g) be accompanied by and circulated with an accurate plat or map, prepared by a licensed surveyor, showing the boundaries of the proposed city; and

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

PETITION FOR INCORPORATION OF (insert the proposed name of the proposed city)

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

We, the undersigned owners of real property within the area described in this petition, respectfully petition the county legislative body to submit to the registered voters residing within the area described in this petition, at [a special election held for that purpose] the next regular general election, the question of whether the area should incorporate as a city. Each of the undersigned affirms that each has personally signed this petition and is an owner of real property within the described area, and that the current residence address of each is correctly written after the signer's name. The area proposed to be incorporated as a city is described as follows: (insert an accurate description of the area proposed to be incorporated).

[~~(3) A petition for incorporation of a city under Subsection (1) may not be filed unless the results of the feasibility study or supplemental feasibility study show that the average annual amount of revenue under Subsection 10-2-106(4)(a)(ix) does not exceed the average annual amount of cost under Subsection 10-2-106(4)(a)(viii) by more than 5%.~~]

[~~(4) (3)~~] A signature on a request under Section 10-2-103 [~~or a modified request under Section 10-2-107~~] may be used toward fulfilling the signature requirement of Subsection (2)(a):

(a) if the request under Section 10-2-103 [~~or modified request under Section 10-2-107~~] notified the signer in conspicuous language that the signature, unless withdrawn, would also be used for purposes of a petition for incorporation under this section; and

(b) unless the signer files with the county clerk a written withdrawal of the signature before the petition under this section is filed with the clerk.

(4) (a) For purposes of this Subsection (4), "pending" means that the process to incorporate an unincorporated area has been initiated by:

(i) the certification of a request for a feasibility study under the prior provisions of this Chapter; or

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(ii) the filing of a request for incorporation under Section 10-2-103 ~~if, but that~~if, as of May ~~12~~8, 2012, a petition described in Section 10-2-109 has not yet been filed for final certification with the county clerk in accordance with Section 10-2-110.

(b) The amendments to Subsections (1) through (3) that become effective on May ~~12~~8, 2012:

(i) apply to ~~each~~a pending proceeding proposing the incorporation of an unincorporated area; and

(ii) do not apply to a municipal incorporation proceeding under this part in which a petition described in Section 10-2-109 has been filed for final certification with the county clerk in accordance with Section 10-2-110.

Section 6. Section **10-2-110.5** is enacted to read:

### **10-2-110.5. Public hearing -- Notice -- Feasibility of incorporation.**

(1) If, in accordance with Section 10-2-110, the county clerk certifies a petition for incorporation or a modified petition for incorporation, the county legislative body shall, at its next regular meeting after receipt of a certified petition, schedule at least two public hearings to be held:

(a) no later than 60 days after the day on which the legislative body receives the certified petition;

(b) at least seven days apart;

(c) in geographically diverse locations within the proposed city; and

(d) to consider, in accordance with Subsection (3), the feasibility of incorporation for the proposed city.

(2) (a) (i) The county clerk shall publish notice of the public hearings required under Subsection (1):

(A) at least once a week for three successive weeks in a newspaper of general circulation within the proposed city; and

(B) on the Utah Public Notice Website created in Section 63F-1-701, for three weeks.

(ii) The last publication of notice required under Subsection (2)(a)(i)(A) shall be at least three days before the first public hearing required under Subsection (1).

(b) (i) If, under Subsection (2)(a)(i)(A), there is no newspaper of general circulation within the proposed city, the county clerk shall post at least one notice of the hearings per

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1,000 population in conspicuous places within the proposed city that are most likely to give notice of the hearings to the residents of the proposed city.

(ii) The clerk shall post the notices under Subsection (2)(b)(i) at least seven days before the first hearing under Subsection (1).

(3) At a public hearing scheduled in accordance with Subsection (1), the county legislative body shall:

(a) allow the public to:

(i) review the map or plat of the boundary of the proposed city;

(ii) ask questions and become informed about the proposed incorporation; and

(iii) express their views about the proposed incorporation, including their views about the boundary of the area proposed to be incorporated; and

(b) consider:

(i) the population and population density within the area proposed for incorporation and the surrounding area;

(ii) whether the proposed boundaries eliminate or create an unincorporated island or peninsula;

(iii) the projected fiscal impact on unincorporated areas, local districts, special service districts, and other governmental entities in the county;

(iv) current and five-year projections of demographics and economic base in the proposed city and surrounding area, including household size and income, commercial and industrial development, and public facilities;

(v) projected growth in the proposed city and in adjacent areas during the next five years; and

(vi) the present and five-year projected revenue for the proposed city.

(4) For purposes of Subsection (3)(b)(vi), the legislative body shall assume ad valorem property tax rates on residential property within the proposed city at the same level at which they would have been without the incorporation.

(5) The county legislative body shall publish the hearing minutes and a summary of the hearing on the county's Internet website, if the county has a website, and provide a copy of the minutes and summary for public review at the legislative body's county office.

(6) The requirements of this section that become effective on May 12, 2012, do not

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apply to a petition for incorporation certified by the county clerk, in accordance with Section 10-2-110, before May 12, 2012.

Section 7. Section 10-2-111 is amended to read:

### **10-2-111. Incorporation election.**

(1) (a) At the next [special election] regular general election date under Section [20A-1-204] 20A-1-201 more than [45] 60 days after the county legislative body's receipt of the certified petition or certified modified petition under Subsection 10-2-110(1)(b)(i), the county legislative body shall hold an election on the proposed incorporation.

(b) Unless a person is a registered voter who resides, as defined in Section 20A-1-102, within the boundaries of the proposed city, the person may not vote on the proposed incorporation.

(2) (a) The county clerk shall publish notice of the election:

(i) in a newspaper of general circulation within the area proposed to be incorporated at least once a week for three successive weeks; and

(ii) in accordance with Section 45-1-101 for three weeks.

(b) The notice required by Subsection (2)(a) shall contain:

(i) a statement of the contents of the petition;

(ii) a description of the area proposed to be incorporated as a city;

(iii) a statement of the date and time of the election and the location of polling places;

and

[~~(iv) the feasibility study summary under Subsection 10-2-106(3)(b) and a statement that a full copy of the study is available for inspection and copying at the office of the county clerk.~~]

(iv) the county Internet website address, if applicable, and the address of the county office where the feasibility hearing minutes and summary are available, in accordance with Section 10-2-110.5.

(c) The last publication of notice required under Subsection (2)(a) shall occur at least one day but no more than seven days before the election.

(d) (i) In accordance with Subsection (2)(a)(i), if there is no newspaper of general circulation within the proposed city, the county clerk shall post at least one notice of the election per 1,000 population in conspicuous places within the proposed city that are most

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likely to give notice of the election to the voters of the proposed city.

(ii) The clerk shall post the notices under Subsection (2)(d)(i) at least seven days before the election under Subsection (1).

(3) If a majority of ~~the registered voters residing~~ those casting votes within the area boundaries of the proposed city vote to incorporate as a city, the area shall incorporate.

Section 8. Section **10-2-116** is amended to read:

**10-2-116. Election of officers of new city.**

(1) For the election of city officers, the county legislative body shall:

(a) unless a primary election is prohibited by Subsection 20A-9-404(2), hold a primary election; and

(b) hold a final election.

(2) Each election under Subsection (1) shall be:

(a) appropriate to the form of government chosen by the voters at the incorporation election;

(b) consistent with the voters' decision about whether to elect commission or council members by district and, if applicable, consistent with the boundaries of those districts as determined by the petition sponsors; and

(c) consistent with the sponsors' determination of the number of commission or council members to be elected and the length of their initial term.

(3) (a) Subject to Subsection (3)(b) [~~and except as provided in Subsection (5)~~], the primary election under Subsection (1)(a) shall be held at the earliest of the next:

- (i) regular general election under Section 20A-1-201;
- (ii) municipal primary election under Section 20A-9-404;
- (iii) municipal general election under Section 20A-1-202; or
- (iv) special election under Section 20A-1-204.

(b) Notwithstanding Subsection (3)(a), the primary election under Subsection (1)(a) may not be held until 75 days after the incorporation election under Section 10-2-111.

(4) [~~Except as provided in Subsection (5), the~~] The final election under Subsection (1)(b) shall be held at the next special election date under Section 20A-1-204:

- (a) after the primary election; or
- (b) if there is no primary election, more than 75 days after the incorporation election

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under Section 10-2-111.

[(5) Notwithstanding Subsections (3) and (4), the county legislative body may hold the primary and final elections required under Subsection (1) on the dates provided for the next municipal primary election under Section 20A-9-404 and the next municipal general election under Section 20A-1-202, respectively, after the incorporation election, if:]

[(a) with the results under Subsection 10-2-114(1)(d), the petition sponsors submit to the county legislative body a written request to that effect; and]

[(b) the incorporation election under Section 10-2-111 took place in February or May of an odd-numbered year.]

[~~(6)~~] (5) (a) (i) The county clerk shall publish notice of an election under this section:

(A) at least once a week for two successive weeks in a newspaper of general circulation within the future city; and

(B) in accordance with Section 45-1-101 for two weeks.

(ii) The later notice under Subsection [~~(6)~~] (5)(a)(i) shall be at least one day but no more than seven days before the election.

(b) (i) In accordance with Subsection [~~(6)~~] (5)(a)(i)(A), if there is no newspaper of general circulation within the future city, the county clerk shall post at least one notice of the election per 1,000 population in conspicuous places within the future city that are most likely to give notice of the election to the voters.

(ii) The county clerk shall post the notices under Subsection [~~(6)~~] (5)(b)(i) at least seven days before each election under Subsection (1).

[~~(7)~~] (6) Until the city is incorporated, the county clerk is the election officer for all purposes in an election of officers of the city approved at an incorporation election.

Section 9. Section **10-2-125** is amended to read:

### **10-2-125. Incorporation of a town -- Petition.**

(1) As used in this section:

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

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

[(i) the projected revenues for the proposed town during the first three years after

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incorporation; and]

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

[~~(e)~~] (b) "Municipal service" means a publicly provided service that is not provided on a countywide basis.

[~~(d)~~] (c) "Nonurban" means having a residential density of less than one unit per acre.

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

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

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

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

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

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

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

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

[~~(b) Each request for a public hearing under Subsection (3)(a) shall:~~] ]

[~~(i) be signed by the owners of at least five separate parcels of private real property, each owned by a different owner, located within the area proposed to be incorporated;~~ and]

[~~(ii) be accompanied by an accurate map or plat depicting the boundary of the proposed town.~~] ]

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

[~~(d) If the clerk determines that a request under Subsection (3)(a) fails to comply with the requirements of Subsection (3)(b), the clerk shall reject the request and deliver written~~

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notice of the rejection to the signers of the request.]

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

[~~(A)~~ schedule and arrange for a public hearing to be held:]

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

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

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

[~~(B)~~ no later than 10 days after the clerk determines that a request complies with the requirements of Subsection (3)(b), give notice of the public hearing on the proposed incorporation by:]

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

[~~(II) (Aa)~~ publishing notice of the public hearing at least once a week for two consecutive weeks in a newspaper of general circulation within the proposed town; or]

[~~(Bb)~~ if there is no newspaper of general circulation within the proposed town, posting notice of the public hearing in at least five conspicuous public places within the proposed town; and]

[~~(III)~~ publishing notice of the public hearing on the Utah Public Notice Website created in Section 63F-1-701.]

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

[~~(A)~~ introduce the concept of the proposed incorporation to the public;]

[~~(B)~~ allow the public to review the map or plat of the boundary of the proposed town;]

[~~(C)~~ allow the public to ask questions and become informed about the proposed incorporation; and]

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

[~~(4) (a)~~ At any time within three months after the public hearing under Subsection (3)(e), a petition to incorporate the area as a town may be filed with the clerk of the county in

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which the area is located.]

(b) [Each] A petition under Subsection [(4)] (3)(a) shall:

(i) be signed by:

(A) the owners of private real property that:

(I) is located within the area proposed to be incorporated; and

~~I(II) covers a majority of the total private land area within the area; 1~~

~~I(III) 1(II)~~ is equal in assessed value to more than [1/2] 1/8 of the assessed value of all private real property within the area; and

~~I(IV) consists, in number of parcels, of at least 1/3 1/8 of the number of all parcels of private real property within the area proposed to be incorporated; and 1~~

(B) ~~a majority~~1/8 of all registered voters within the area proposed to be incorporated as a town, according to the official voter registration list maintained by the county on the date the petition is filed;

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

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

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

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

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

We, the undersigned owners of real property and registered voters within the area described in this petition, respectfully petition the county legislative body ~~[for the area described in this petition to be incorporated]~~ to submit to the registered voters residing within the area described in this petition, at the next regular general election, the question of whether the area should incorporate as a town. Each of the undersigned affirms that each has personally signed this petition and is an owner of real property or a registered voter residing within the described area, and that the current residence address of each is correctly written after the signer's name. The area proposed to be incorporated as a town is described as follows: (insert

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an accurate description of the area proposed to be incorporated).

(c) A petition under this Subsection [~~(4)~~] (3) may not describe an area that includes some or all of an area proposed for annexation in an annexation petition under Section 10-2-403 that:

- (i) was filed before the filing of the petition; and
- (ii) is still pending on the date the petition is filed.

(d) A petition may not be filed under this section if the private real property owned by the petition sponsors, designated under Subsection [~~(4)~~] (3)(b)(ii), cumulatively exceeds 40% of the total private land area within the area proposed to be incorporated as a town.

(e) A signer of a petition under this Subsection [~~(4)~~] (3) may withdraw or, after withdrawn, reinstate the signer's signature on the petition:

(i) at any time until the county clerk certifies the petition under Subsection [~~(6)~~] (5); and

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

[~~(5)~~] (4) (a) If a petition is filed under Subsection [~~(4)~~] (3)(a) proposing to incorporate as a town an area located within a county of the first class, the county clerk shall deliver written notice of the proposed incorporation:

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

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

(b) A private real property owner described in Subsection [~~(5)~~] (4)(a)(i) may exclude all or part of the owner's property from the area proposed to be incorporated as a town by filing a notice of exclusion:

- (i) with the county clerk; and

(ii) within 10 calendar days after receiving the clerk's notice under Subsection [~~(5)~~] (4)(a).

(c) The county legislative body shall exclude from the area proposed to be incorporated as a town the property identified in the notice of exclusion under Subsection [~~(5)~~] (4)(b) if:

- (i) the property:

(A) is nonurban; and

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

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- (ii) exclusion will not leave an unincorporated island within the proposed town.
- (d) If the county legislative body excludes property from the area proposed to be incorporated as a town, the county legislative body shall send written notice of the exclusion to the contact sponsor within five days after the exclusion.
  - [~~(6)~~ (5) No later than 20 days after the filing of a petition under Subsection [~~(4)~~ (3), the county clerk shall:
    - (a) with the assistance of other county officers from whom the clerk requests assistance, determine whether the petition complies with the requirements of Subsection [~~(4)~~ (3); and
    - (b) (i) if the clerk determines that the petition complies with those requirements:
      - (A) certify the petition and deliver the certified petition to the county legislative body; and
      - (B) mail or deliver written notification of the certification to:
        - (I) the contact sponsor;
        - (II) if applicable, the chair of the planning commission of each township in which any part of the area proposed for incorporation is located; and
        - (III) the Utah Population Estimates Committee; or
    - (ii) if the clerk determines that the petition fails to comply with any of those requirements, reject the petition and notify the contact sponsor in writing of the rejection and the reasons for the rejection.
  - [~~(7)~~ (6) (a) (i) A petition that is rejected under Subsection [~~(6)~~ (5)(b)(ii) may be amended to correct a deficiency for which it was rejected and then refiled with the county clerk.
    - (ii) A valid signature on a petition filed under Subsection [~~(4)~~ (3)(a) may be used toward fulfilling the signature requirement of Subsection [~~(4)~~ (3)(b) for the same petition that is amended under Subsection [~~(7)~~ (6)(a)(i) and then refiled with the county clerk.
  - (b) If a petition is amended and refiled under Subsection [~~(7)~~ (6)(a)(i) after having been rejected by the county clerk under Subsection [~~(6)~~ (5)(b)(ii):
    - (i) the amended petition shall be considered as a newly filed petition; and
    - (ii) the amended petition's processing priority is determined by the date on which it is refiled.

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

[~~(ii) If the county legislative body chooses to commission a financial feasibility study, the county legislative body shall:~~]

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

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

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

[~~(i) the county clerk has certified the petition under Subsection (6); and~~]

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

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

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

[~~(A) deny the petition, in accordance with Subsection (8)(c)(iii), if the results of the financial feasibility study show that the average annual amount of revenues described in Subsection (1)(b)(i) exceeds the average annual amount of costs described in Subsection (1)(b)(ii) by more than 15%; or~~]

[~~(B) (I) with the consent of the petition sponsors:~~]

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[~~(Aa) impose conditions to prevent the average annual amount of revenues described in Subsection (1)(b)(i) from exceeding the average annual amount of costs described in Subsection (1)(b)(ii) by more than 15%; or~~]

[~~(Bb) alter the boundaries of the area proposed to be incorporated as a town to approximate the boundaries necessary to prevent the average annual amount of revenues described in Subsection (1)(b)(i) from exceeding the average annual amount of costs described in Subsection (1)(b)(ii) by more than 15%; and~~]

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

[~~(ii) If the results of the financial feasibility study described in Subsection (8)(a)(i) show that the average annual amount of costs described in Subsection (1)(b)(ii) exceeds the average annual amount of revenues described in Subsection (1)(b)(i) by more than 15%, the county legislative body shall:~~]

[~~(A) approve the petition;~~]

[~~(B) deny the petition in accordance with Subsection (8)(c)(iii); or~~]

[~~(C) (I) with the consent of the petition sponsors:~~]

[~~(Aa) impose conditions to prevent the average annual amount of costs described in Subsection (1)(b)(ii) from exceeding the average annual amount of revenues described in Subsection (1)(b)(i) by more than 15%; or~~]

[~~(Bb) alter the boundaries of the area proposed to be incorporated as a town to approximate the boundaries necessary to prevent the average annual amount of costs described in Subsection (1)(b)(ii) from exceeding the average annual amount of revenues described in Subsection (1)(b)(i) by more than 15%; and~~]

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

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

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

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

[~~(i) 45 days after the day on which the feasibility consultant submits the written results of the financial feasibility study, for an election under Subsection (8)(b), or~~]

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

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

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

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

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

[~~(11) The mayor-elect of the future town shall:~~]

[~~(a) within 30 days after the canvass of the election of town officers under Subsection (9), file with the lieutenant governor:~~]

[~~(i) a copy of a notice of an impending boundary action, as defined in Section 67-1a-6.5, that meets the requirements of Subsection 67-1a-6.5(3); and~~]

[~~(ii) a copy of an approved final local entity plat, as defined in Section 67-1a-6.5, and~~]

[~~(b) upon the lieutenant governor's issuance of a certificate of incorporation under Section 67-1a-6.5:~~]

[~~(i) if the town is located within the boundary of a single county, submit to the recorder of that county the original:~~]

[~~(A) notice of an impending boundary action;~~]

[~~(B) certificate of incorporation; and~~]

[~~(C) approved final local entity plat; or~~]

[~~(ii) if the town is located within the boundaries of more than a single county, submit the original of the documents listed in Subsections (11)(b)(i)(A), (B), and (C) to one of those counties and a certified copy of those documents to each other county.~~]

[~~(12) (a) A new town is incorporated:~~]

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[~~(i) on December 31 of the year in which the lieutenant governor issues a certificate of incorporation under Section 67-1a-6.5, if the election of town officers under Subsection (9) is held on a regular general or municipal general election date; or]~~

[~~(ii) on the last day of the month during which the lieutenant governor issues a certificate of incorporation under Section 67-1a-6.5, if the election of town officers under Subsection (9) is held on any other date.]~~

[~~(b) (i) The effective date of an incorporation for purposes of assessing property within the new town is governed by Section 59-2-305.5.]~~

[~~(ii) Until the documents listed in Subsection (11)(b) are recorded in the office of the recorder of each county in which the property is located, a newly incorporated town may not:~~

[~~(A) levy or collect a property tax on property within the town;]~~

[~~(B) levy or collect an assessment on property within the town; or]~~

[~~(C) charge or collect a fee for service provided to property within the town.]~~

[~~(13) For each petition filed before March 5, 2008:]~~

[~~(a) the petition is subject to and governed by the law in effect at the time the petition was filed; and]~~

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

Section 10. Section **10-2-126** is enacted to read:

### **10-2-126. Incorporation of town -- Public hearing on feasibility.**

(1) If, in accordance with Section 10-2-125, the county clerk certifies a petition for incorporation or an amended petition for incorporation, the county legislative body shall, at its next regular meeting after receipt of a certified petition, schedule a public hearing to:

(a) be held no later than 60 days after the day on which the legislative body receives the certified petition; and

(b) consider, in accordance with Subsection (3)(b), the feasibility of incorporation for the proposed town.

(2) The county legislative body shall give notice of the public hearing on the proposed incorporation by:

(a) posting notice of the public hearing on the county's Internet website, if the county has an Internet website;

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(b) (i) publishing notice of the public hearing at least once a week for two consecutive weeks in a newspaper of general circulation within the proposed town; or

(ii) if there is no newspaper of general circulation within the proposed town, posting notice of the public hearing in at least five conspicuous public places within the proposed town; and

(c) publishing notice of the public hearing on the Utah Public Notice Website created in Section 63F-1-701.

(3) At the public hearing scheduled in accordance with Subsection (1), the county legislative body shall:

(a) allow the public to:

(i) review the map or plat of the boundary of the proposed town;

(ii) ask questions and become informed about the proposed incorporation; and

(iii) express their views about the proposed incorporation, including their views about the boundary of the area proposed to be incorporated; and

(b) consider:

(i) the population and population density within the area proposed for incorporation and the surrounding area;

(ii) whether the proposed boundaries eliminate or create an unincorporated island or peninsula;

(iii) the projected fiscal impact on unincorporated areas, local districts, special service districts, and other governmental entities in the county;

(iv) current and five-year projections of demographics and economic base in the proposed town and surrounding area, including household size and income, commercial and industrial development, and public facilities;

(v) projected growth in the proposed town and in adjacent areas during the next five years; and

(vi) the present and five-year projected revenue for the proposed town.

(4) For purposes of Subsection (3)(b)(vi), the legislative body shall assume ad valorem property tax rates on residential property within the proposed town at the same level at which they would have been without the incorporation.

(5) The county legislative body shall publish the hearing minutes and a summary of the

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hearing on the county's Internet website, if the county has a website, and provide a copy of the minutes and summary for public review at the legislative body's county office.

Section 11. Section **10-2-127** is enacted to read:

**10-2-127. Incorporation of town -- Election to incorporate -- Ballot form.**

(1) (a) At the next regular general election, as defined in Section 20A-1-102, more than 60 days after the public hearing described in Section 10-2-126, the county legislative body shall hold an election on the proposed incorporation.

(b) Unless a person is a registered voter who resides, as defined in Section 20A-1-102, within the boundaries of the proposed town, the person may not vote on the proposed incorporation.

(2) (a) The county clerk shall publish notice of the election:

(i) in a newspaper of general circulation, within the area proposed to be incorporated, at least once a week for three successive weeks; and

(ii) in accordance with Section 45-1-101 for three weeks.

(b) The notice required by Subsection (2)(a) shall contain:

(i) a statement of the contents of the petition;

(ii) a description of the area proposed to be incorporated as a town;

(iii) a statement of the date and time of the election and the location of polling places; and

(iv) the county Internet website address, if applicable, and the address of the county office where the feasibility hearing minutes and summary, in accordance with Section 10-2-126, are available.

(c) The last publication of notice required under Subsection (2)(a) shall occur at least one day but no more than seven days before the election.

(d) (i) In accordance with Subsection (2)(a)(i), if there is no newspaper of general circulation within the proposed town, the county clerk shall post at least one notice of the election per 100 population in conspicuous places within the proposed town that are most likely to give notice of the election to the voters of the proposed town.

(ii) The clerk shall post the notices under Subsection (2)(d)(i) at least seven days before the election under Subsection (1)(a).

(3) The ballot at the incorporation election shall pose the incorporation question

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substantially as follows:

Shall the area described as (insert a description of the proposed town) be incorporated as the town of (insert the proposed name of the proposed town)?

(4) The ballot shall provide a space for the voter to answer yes or no to the question in Subsection (3).

(5) If a majority of (the registered voters residing) those casting votes within the area boundaries of the proposed town vote to incorporate as a town, the area shall incorporate.

Section 12. Section **10-2-128** is enacted to read:

**10-2-128. Form of government -- Election of officers of new town.**

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

(2) (a) The county legislative body of the county in which a newly incorporated town is located shall hold an election for town officers at the next special election after the regular general election in which the town incorporation is approved.

(b) The officers elected at an election described in Subsection (2)(a) shall take office at noon on the first Monday in January next following the special election described in Subsection (2)(a).

Section 13. Section **10-2-129** is enacted to read:

**10-2-129. Notice to lieutenant governor -- Effective date of incorporation -- Effect of recording documents.**

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

(a) within 30 days after the canvass of the election of town officers under Section 10-2-128, file with the lieutenant governor:

(i) a copy of a notice of an impending boundary action, as defined in Section 67-1a-6.5, that meets the requirements of Subsection 67-1a-6.5(3); and

(ii) a copy of an approved final local entity plat, as defined in Section 67-1a-6.5; and

(b) upon the lieutenant governor's issuance of a certificate of incorporation under Section 67-1a-6.5:

(i) if the town is located within the boundary of a single county, submit to the recorder of that county the original:

(A) notice of an impending boundary action;

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- (B) certificate of incorporation; and
- (C) approved final local entity plat; or
- (ii) if the town is located within the boundaries of more than a single county, submit the original of the documents listed in Subsections (1)(b)(i)(A), (B), and (C) to one of those counties and a certified copy of those documents to each other county.
- (2) (a) A new town is incorporated:
- (i) on December 31 of the year in which the lieutenant governor issues a certificate of incorporation under Section 67-1a-6.5, if the election of town officers under Section 10-2-128 is held on a regular general or municipal general election date; or
- (ii) on the last day of the month during which the lieutenant governor issues a certificate of incorporation under Section 67-1a-6.5, if the election of town officers under Section 10-2-128 is held on any other date.
- (b) (i) The effective date of an incorporation for purposes of assessing property within the new town is governed by Section 59-2-305.5.
- (ii) Until the documents listed in Subsection (1)(b)(i) are recorded in the office of the recorder of each county in which the property is located, a newly incorporated town may not:
- (A) levy or collect a property tax on property within the town;
- (B) levy or collect an assessment on property within the town; or
- (C) charge or collect a fee for service provided to property within the town.
- Section 14. Section **10-2-403** is amended to read:
- 10-2-403. Annexation petition -- Requirements -- Notice required before filing.**
- (1) Except as provided in Section 10-2-418, the process to annex an unincorporated area to a municipality is initiated by a petition as provided in this section.
- (2) (a) (i) Before filing a petition under Subsection (1) with respect to the proposed annexation of an area located in a county of the first class, the person or persons intending to file a petition shall:
- (A) file with the city recorder or town clerk of the proposed annexing municipality a notice of intent to file a petition; and
- (B) send a copy of the notice of intent to each affected entity.
- (ii) Each notice of intent under Subsection (2)(a)(i) shall include an accurate map of the area that is proposed to be annexed.

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(b) (i) Subject to Subsection (2)(b)(ii), the county in which the area proposed to be annexed is located shall:

(A) mail the notice described in Subsection (2)(b)(iii) to:

(I) each owner of real property located within the area proposed to be annexed; and

(II) each owner of real property located within 300 feet of the area proposed to be annexed; and

(B) send to the proposed annexing municipality a copy of the notice and a certificate indicating that the notice has been mailed as required under Subsection (2)(b)(i)(A).

(ii) The county shall mail the notice required under Subsection (2)(b)(i)(A) within 20 days after receiving from the person or persons who filed the notice of intent:

(A) a written request to mail the required notice; and

(B) payment of an amount equal to the county's expected actual cost of mailing the notice.

(iii) Each notice required under Subsection (2)(b)(i)(A) shall:

(A) be in writing;

(B) state, in bold and conspicuous terms, substantially the following:

"Attention: Your property may be affected by a proposed annexation.

Records show that you own property within an area that is intended to be included in a proposed annexation to (state the name of the proposed annexing municipality) or that is within 300 feet of that area. If your property is within the area proposed for annexation, you may be asked to sign a petition supporting the annexation. You may choose whether or not to sign the petition. By signing the petition, you indicate your support of the proposed annexation. If you sign the petition but later change your mind about supporting the annexation, you may withdraw your signature by submitting a signed, written withdrawal with the recorder or clerk of (state the name of the proposed annexing municipality) within 30 days after (state the name of the proposed annexing municipality) receives notice that the petition has been certified.

There will be no public election on the proposed annexation because Utah law does not provide for an annexation to be approved by voters at a public election. Signing or not signing the annexation petition is the method under Utah law for the owners of property within the area proposed for annexation to demonstrate their support of or opposition to the proposed annexation.

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You may obtain more information on the proposed annexation by contacting (state the name, mailing address, telephone number, and email address of the official or employee of the proposed annexing municipality designated to respond to questions about the proposed annexation), (state the name, mailing address, telephone number, and email address of the county official or employee designated to respond to questions about the proposed annexation), or (state the name, mailing address, telephone number, and email address of the person who filed the notice of intent under Subsection (2)(a)(i)(A), or, if more than one person filed the notice of intent, one of those persons). Once filed, the annexation petition will be available for inspection and copying at the office of (state the name of the proposed annexing municipality) located at (state the address of the municipal offices of the proposed annexing municipality)."; and

(C) be accompanied by an accurate map identifying the area proposed for annexation.

(iv) A county may not mail with the notice required under Subsection (2)(b)(i)(A) any other information or materials related or unrelated to the proposed annexation.

(c) (i) After receiving the certificate from the county as provided in Subsection (2)(b)(i)(B), the proposed annexing municipality shall, upon request from the person or persons who filed the notice of intent under Subsection (2)(a)(i)(A), provide an annexation petition for the annexation proposed in the notice of intent.

(ii) An annexation petition provided by the proposed annexing municipality may be duplicated for circulation for signatures.

(3) Each petition under Subsection (1) shall:

(a) be filed with the city recorder or town clerk, as the case may be, of the proposed annexing municipality;

(b) contain the signatures of:

(i) the owners of private real property that:

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

(B) (I) subject to Subsection (3)(b)(i)(B)(II), covers a majority of the private land area within the area proposed for annexation; and

(II) covers 100% of the private land area within the area proposed for annexation, if the area is within:

(Aa) an agriculture protection area created under Title 17, Chapter 41, Agriculture and

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Industrial Protection Areas; or

(Bb) a migratory bird production area created under Title 23, Chapter 28, Migratory Bird Production Area; and

(C) is equal in value to at least 1/3 of the value of all private real property within the area proposed for annexation; or

(ii) if all the real property within the area proposed for annexation is owned by a public entity other than the federal government, the owner of all the publicly owned real property;

(c) if the petition proposes the annexation of an area located within a township, explain that if the annexation petition is granted, the area will also be withdrawn from the township;

(d) be accompanied by:

(i) an accurate and recordable map, prepared by a licensed surveyor, of the area proposed for annexation; and

(ii) a copy of the notice sent to affected entities as required under Subsection (2)(a)(i)(B) and a list of the affected entities to which notice was sent;

(e) if the area proposed to be annexed is located in a county of the first class, contain on each signature page a notice in bold and conspicuous terms that states substantially the following:

"Notice:

• There will be no public election on the annexation proposed by this petition because Utah law does not provide for an annexation to be approved by voters at a public election.

• If you sign this petition and later decide that you do not support the petition, you may withdraw your signature by submitting a signed, written withdrawal with the recorder or clerk of (state the name of the proposed annexing municipality). If you choose to withdraw your signature, you shall do so no later than 30 days after (state the name of the proposed annexing municipality) receives notice that the petition has been certified.";

(f) if the petition proposes the annexation of an area located in a county that is not the county in which the proposed annexing municipality is located, be accompanied by a copy of the resolution, required under Subsection 10-2-402(6), of the legislative body of the county in which the area is located; and

(g) designate up to five of the signers of the petition as sponsors, one of whom shall be designated as the contact sponsor, and indicate the mailing address of each sponsor.

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(4) A petition under Subsection (1) may not propose the annexation of all or part of an area proposed for annexation to a municipality in a previously filed petition that has not been denied, rejected, or granted.

(5) A petition under Subsection (1) proposing the annexation of an area located in a county of the first class may not propose the annexation of an area that includes some or all of an area proposed to be incorporated in a request for [a feasibility study] incorporation under Section 10-2-103 or a petition under Section 10-2-125 if:

- (a) the request or petition was filed before the filing of the annexation petition; and
- (b) the request, a petition under Section 10-2-109 based on that request, or a petition under Section 10-2-125 is still pending on the date the annexation petition is filed.

(6) If practicable and feasible, the boundaries of an area proposed for annexation shall be drawn:

- (a) along the boundaries of existing local districts and special service districts for sewer, water, and other services, along the boundaries of school districts whose boundaries follow city boundaries or school districts adjacent to school districts whose boundaries follow city boundaries, and along the boundaries of other taxing entities;
- (b) to eliminate islands and peninsulas of territory that is not receiving municipal-type services;
- (c) to facilitate the consolidation of overlapping functions of local government;
- (d) to promote the efficient delivery of services; and
- (e) to encourage the equitable distribution of community resources and obligations.

(7) On the date of filing, the petition sponsors shall deliver or mail a copy of the petition to:

- (a) the clerk of the county in which the area proposed for annexation is located; and
- (b) if any of the area proposed for annexation is within a township:
  - (i) the legislative body of the county in which the township is located; and
  - (ii) the chair of the township planning commission.

(8) A property owner who signs an annexation petition proposing to annex an area located in a county of the first class may withdraw the owner's signature by filing a written withdrawal, signed by the property owner, with the city recorder or town clerk no later than 30 days after the municipal legislative body's receipt of the notice of certification under

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Subsection 10-2-405(2)(c)(i).

Section 15. Section **17-27a-302** is amended to read:

### **17-27a-302. Planning commission powers and duties.**

(1) Each countywide or township planning commission shall, with respect to the unincorporated area of the county, or the township, make a recommendation to the county legislative body for:

- (a) a general plan and amendments to the general plan;
- (b) land use ordinances, zoning maps, official maps, and amendments;
- (c) an appropriate delegation of power to at least one designated land use authority to hear and act on a land use application;
- (d) an appropriate delegation of power to at least one appeal authority to hear and act on an appeal from a decision of the land use authority; and
- (e) application processes that:
  - (i) may include a designation of routine land use matters that, upon application and proper notice, will receive informal streamlined review and action if the application is uncontested; and
  - (ii) shall protect the right of each:
    - (A) applicant and third party to require formal consideration of any application by a land use authority;
    - (B) applicant, adversely affected party, or county officer or employee to appeal a land use authority's decision to a separate appeal authority; and
    - (C) participant to be heard in each public hearing on a contested application.

(2) The planning commission of a township under this part may recommend to the legislative body of the county in which the township is located~~[(a) that the legislative body support or oppose a proposed incorporation of an area located within the township, as provided in Subsection 10-2-105(4); or (b)]~~ that the legislative body file a protest to a proposed annexation of an area located within the township, as provided in Subsection 10-2-407(1)(b).

Section 16. Section **20A-1-102** is amended to read:

### **20A-1-102. Definitions.**

As used in this title:

- (1) "Active voter" means a registered voter who has not been classified as an inactive

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voter by the county clerk.

(2) "Automatic tabulating equipment" means apparatus that automatically examines and counts votes recorded on paper ballots or ballot sheets and tabulates the results.

(3) (a) "Ballot" means the storage medium, whether paper, mechanical, or electronic, upon which a voter records the voter's votes.

(b) "Ballot" includes ballot sheets, paper ballots, electronic ballots, and secrecy envelopes.

(4) "Ballot sheet":

(a) means a ballot that:

(i) consists of paper or a card where the voter's votes are marked or recorded; and

(ii) can be counted using automatic tabulating equipment; and

(b) includes punch card ballots and other ballots that are machine-countable.

(5) "Ballot label" means the cards, papers, booklet, pages, or other materials that:

(a) contain the names of offices and candidates and statements of ballot propositions to be voted on; and

(b) are used in conjunction with ballot sheets that do not display that information.

(6) "Ballot proposition" means a question, issue, or proposal that is submitted to voters on the ballot for their approval or rejection including:

(a) an opinion question specifically authorized by the Legislature;

(b) a constitutional amendment;

(c) an initiative;

(d) a referendum;

(e) a bond proposition;

(f) a judicial retention question; [or]

(g) an incorporation of a city or town; or

[~~(g)~~] (h) any other ballot question specifically authorized by the Legislature.

(7) "Board of canvassers" means the entities established by Sections 20A-4-301 and 20A-4-306 to canvass election returns.

(8) "Bond election" means an election held for the purpose of approving or rejecting the proposed issuance of bonds by a government entity.

(9) "Book voter registration form" means voter registration forms contained in a bound

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book that are used by election officers and registration agents to register persons to vote.

(10) "By-mail voter registration form" means a voter registration form designed to be completed by the voter and mailed to the election officer.

(11) "Canvass" means the review of election returns and the official declaration of election results by the board of canvassers.

(12) "Canvassing judge" means a poll worker designated to assist in counting ballots at the canvass.

(13) "Contracting election officer" means an election officer who enters into a contract or interlocal agreement with a provider election officer.

(14) "Convention" means the political party convention at which party officers and delegates are selected.

(15) "Counting center" means one or more locations selected by the election officer in charge of the election for the automatic counting of ballots.

(16) "Counting judge" means a poll worker designated to count the ballots during election day.

(17) "Counting poll watcher" means a person selected as provided in Section 20A-3-201 to witness the counting of ballots.

(18) "Counting room" means a suitable and convenient private place or room, immediately adjoining the place where the election is being held, for use by the poll workers and counting judges to count ballots during election day.

(19) "County officers" means those county officers that are required by law to be elected.

(20) "Date of the election" or "election day" or "day of the election":

(a) means the day that is specified in the calendar year as the day that the election occurs; and

(b) does not include:

(i) deadlines established for absentee voting; or

(ii) any early voting or early voting period as provided under Chapter 3, Part 6, Early Voting.

(21) "Elected official" means:

(a) a person elected to an office under Section 20A-1-303;

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- (b) a person who is considered to be elected to a municipal office in accordance with Subsection 20A-1-206(1)(c)(ii); or
  - (c) a person who is considered to be elected to a local district office in accordance with Subsection 20A-1-206(3)(c)(ii).

(22) "Election" means a regular general election, a municipal general election, a statewide special election, a local special election, a regular primary election, a municipal primary election, and a local district election.

(23) "Election Assistance Commission" means the commission established by Public Law 107-252, the Help America Vote Act of 2002.

(24) "Election cycle" means the period beginning on the first day persons are eligible to file declarations of candidacy and ending when the canvass is completed.

(25) "Election judge" means a poll worker that is assigned to:

- (a) preside over other poll workers at a polling place;
- (b) act as the presiding election judge; or
- (c) serve as a canvassing judge, counting judge, or receiving judge.

(26) "Election officer" means:

- (a) the lieutenant governor, for all statewide ballots and elections;
- (b) the county clerk for:
  - (i) a county ballot and election; and
  - (ii) a ballot and election as a provider election officer as provided in Section 20A-5-400.1 or 20A-5-400.5;

(c) the municipal clerk for:

- (i) a municipal ballot and election; and

(ii) a ballot and election as a provider election officer as provided in Section 20A-5-400.1 or 20A-5-400.5;

(d) the local district clerk or chief executive officer for:

- (i) a local district ballot and election; and

(ii) a ballot and election as a provider election officer as provided in Section 20A-5-400.1 or 20A-5-400.5; or

(e) the business administrator or superintendent of a school district for:

- (i) a school district ballot and election; and

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- (ii) a ballot and election as a provider election officer as provided in Section 20A-5-400.1 or 20A-5-400.5.
- (27) "Election official" means:
- (a) for an election other than a bond election, the count of votes cast in the election and the election returns requested by the board of canvassers; or
  - (b) any election officer, election judge, or poll worker.
- (28) "Election results" means:
- (a) for an election other than a bond election, the count of votes cast in the election and the election returns requested by the board of canvassers; or
  - (b) for bond elections, the count of those votes cast for and against the bond proposition plus any or all of the election returns that the board of canvassers may request.
- (29) "Election returns" includes the pollbook, all affidavits of registration, the military and overseas absentee voter registration and voting certificates, one of the tally sheets, any unprocessed absentee ballots, all counted ballots, all excess ballots, all unused ballots, all spoiled ballots, the ballot disposition form, and the total votes cast form.
- (30) "Electronic ballot" means a ballot that is recorded using a direct electronic voting device or other voting device that records and stores ballot information by electronic means.
- (31) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
- (32) (a) "Electronic voting device" means a voting device that uses electronic ballots.
- (b) "Electronic voting device" includes a direct recording electronic voting device.
- (33) "Inactive voter" means a registered voter who has:
- (a) been sent the notice required by Section 20A-2-306; and
  - (b) failed to respond to that notice.
- (34) "Inspecting poll watcher" means a person selected as provided in this title to witness the receipt and safe deposit of voted and counted ballots.
- (35) "Judicial office" means the office filled by any judicial officer.
- (36) "Judicial officer" means any justice or judge of a court of record or any county court judge.
- (37) "Local district" means a local government entity under Title 17B, Limited Purpose

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Local Government Entities - Local Districts, and includes a special service district under Title 17D, Chapter 1, Special Service District Act.

(38) "Local district officers" means those local district officers that are required by law to be elected.

(39) "Local election" means a regular municipal election, a local special election, a local district election, and a bond election.

(40) "Local political subdivision" means a county, a municipality, a local district, or a local school district.

(41) "Local special election" means a special election called by the governing body of a local political subdivision in which all registered voters of the local political subdivision may vote.

(42) "Municipal executive" means:

(a) the mayor in the council-mayor form of government defined in Section 10-3b-102; or

(b) the mayor in the council-manager form of government defined in Subsection 10-3b-103(6).

(43) "Municipal general election" means the election held in municipalities and local districts on the first Tuesday after the first Monday in November of each odd-numbered year for the purposes established in Section 20A-1-202.

(44) "Municipal legislative body" means the council of the city or town in any form of municipal government.

(45) "Municipal office" means an elective office in a municipality.

(46) "Municipal officers" means those municipal officers that are required by law to be elected.

(47) "Municipal primary election" means an election held to nominate candidates for municipal office.

(48) "Official ballot" means the ballots distributed by the election officer to the poll workers to be given to voters to record their votes.

(49) "Official endorsement" means:

(a) the information on the ballot that identifies:

(i) the ballot as an official ballot;

## **HB0502S01 compared with HB0502**

- (ii) the date of the election; and
- (iii) the facsimile signature of the election officer; and
- (b) the information on the ballot stub that identifies:
  - (i) the poll worker's initials; and
  - (ii) the ballot number.

(50) "Official register" means the official record furnished to election officials by the election officer that contains the information required by Section 20A-5-401.

(51) "Paper ballot" means a paper that contains:

- (a) the names of offices and candidates and statements of ballot propositions to be voted on; and
- (b) spaces for the voter to record the voter's vote for each office and for or against each ballot proposition.

(52) "Political party" means an organization of registered voters that has qualified to participate in an election by meeting the requirements of Chapter 8, Political Party Formation and Procedures.

(53) (a) "Poll worker" means a person assigned by an election official to assist with an election, voting, or counting votes.

- (b) "Poll worker" includes election judges.
- (c) "Poll worker" does not include a watcher.

(54) "Pollbook" means a record of the names of voters in the order that they appear to cast votes.

(55) "Polling place" means the building where voting is conducted.

(56) "Position" means a square, circle, rectangle, or other geometric shape on a ballot in which the voter marks the voter's choice.

(57) "Provider election officer" means an election officer who enters into a contract or interlocal agreement with a contracting election officer to conduct an election for the contracting election officer's local political subdivision in accordance with Section 20A-5-400.1.

(58) "Provisional ballot" means a ballot voted provisionally by a person:

- (a) whose name is not listed on the official register at the polling place;
- (b) whose legal right to vote is challenged as provided in this title; or

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(c) whose identity was not sufficiently established by a poll worker.

(59) "Provisional ballot envelope" means an envelope printed in the form required by Section 20A-6-105 that is used to identify provisional ballots and to provide information to verify a person's legal right to vote.

(60) "Primary convention" means the political party conventions at which nominees for the regular primary election are selected.

(61) "Protective counter" means a separate counter, which cannot be reset, that:

(a) is built into a voting machine; and

(b) records the total number of movements of the operating lever.

(62) "Qualify" or "qualified" means to take the oath of office and begin performing the duties of the position for which the person was elected.

(63) "Receiving judge" means the poll worker that checks the voter's name in the official register, provides the voter with a ballot, and removes the ballot stub from the ballot after the voter has voted.

(64) "Registration form" means a book voter registration form and a by-mail voter registration form.

(65) "Regular ballot" means a ballot that is not a provisional ballot.

(66) "Regular general election" means the election held throughout the state on the first Tuesday after the first Monday in November of each even-numbered year for the purposes established in Section 20A-1-201.

(67) "Regular primary election" means the election on the fourth Tuesday of June of each even-numbered year, to nominate candidates of political parties and nonpolitical groups to advance to the regular general election.

(68) "Resident" means a person who resides within a specific voting precinct in Utah.

(69) "Sample ballot" means a mock ballot similar in form to the official ballot printed and distributed as provided in Section 20A-5-405.

(70) "Scratch vote" means to mark or punch the straight party ticket and then mark or punch the ballot for one or more candidates who are members of different political parties.

(71) "Secrecy envelope" means the envelope given to a voter along with the ballot into which the voter places the ballot after the voter has voted it in order to preserve the secrecy of the voter's vote.

## **HB0502S01 compared with HB0502**

(72) "Special election" means an election held as authorized by Section 20A-1-204.

(73) "Spoiled ballot" means each ballot that:

- (a) is spoiled by the voter;
- (b) is unable to be voted because it was spoiled by the printer or a poll worker; or
- (c) lacks the official endorsement.

(74) "Statewide special election" means a special election called by the governor or the Legislature in which all registered voters in Utah may vote.

(75) "Stub" means the detachable part of each ballot.

(76) "Substitute ballots" means replacement ballots provided by an election officer to the poll workers when the official ballots are lost or stolen.

(77) "Ticket" means each list of candidates for each political party or for each group of petitioners.

(78) "Transfer case" means the sealed box used to transport voted ballots to the counting center.

(79) "Vacancy" means the absence of a person to serve in any position created by statute, whether that absence occurs because of death, disability, disqualification, resignation, or other cause.

(80) "Valid voter identification" means:

(a) a form of identification that bears the name and photograph of the voter which may include:

- (i) a currently valid Utah driver license;
- (ii) a currently valid identification card that is issued by:
  - (A) the state; or
  - (B) a branch, department, or agency of the United States;
- (iii) a currently valid Utah permit to carry a concealed weapon;
- (iv) a currently valid United States passport; or
- (v) a currently valid United States military identification card;

(b) one of the following identification cards, whether or not the card includes a photograph of the voter:

- (i) a valid tribal identification card;
- (ii) a Bureau of Indian Affairs card; or

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- (iii) a tribal treaty card; or
- (c) two forms of identification not listed under Subsection (80)(a) or (b) but that bear the name of the voter and provide evidence that the voter resides in the voting precinct, which may include:
  - (i) a current utility bill or a legible copy thereof, dated within the 90 days before the election;
  - (ii) a bank or other financial account statement, or a legible copy thereof;
  - (iii) a certified birth certificate;
  - (iv) a valid Social Security card;
  - (v) a check issued by the state or the federal government or a legible copy thereof;
  - (vi) a paycheck from the voter's employer, or a legible copy thereof;
  - (vii) a currently valid Utah hunting or fishing license;
  - (viii) certified naturalization documentation;
  - (ix) a currently valid license issued by an authorized agency of the United States;
  - (x) a certified copy of court records showing the voter's adoption or name change;
  - (xi) a valid Medicaid card, Medicare card, or Electronic Benefits Transfer Card;
  - (xii) a currently valid identification card issued by:
    - (A) a local government within the state;
    - (B) an employer for an employee; or
    - (C) a college, university, technical school, or professional school located within the state; or
  - (xiii) a current Utah vehicle registration.
- (81) "Valid write-in candidate" means a candidate who has qualified as a write-in candidate by following the procedures and requirements of this title.
- (82) "Voter" means a person who:
  - (a) meets the requirements for voting in an election;
  - (b) meets the requirements of election registration;
  - (c) is registered to vote; and
  - (d) is listed in the official register book.
- (83) "Voter registration deadline" means the registration deadline provided in Section 20A-2-102.5.

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(84) "Voting area" means the area within six feet of the voting booths, voting machines, and ballot box.

(85) "Voting booth" means:

(a) the space or compartment within a polling place that is provided for the preparation of ballots, including the voting machine enclosure or curtain; or

(b) a voting device that is free standing.

(86) "Voting device" means:

(a) an apparatus in which ballot sheets are used in connection with a punch device for piercing the ballots by the voter;

(b) a device for marking the ballots with ink or another substance;

(c) an electronic voting device or other device used to make selections and cast a ballot electronically, or any component thereof;

(d) an automated voting system under Section 20A-5-302; or

(e) any other method for recording votes on ballots so that the ballot may be tabulated by means of automatic tabulating equipment.

(87) "Voting machine" means a machine designed for the sole purpose of recording and tabulating votes cast by voters at an election.

(88) "Voting poll watcher" means a person appointed as provided in this title to witness the distribution of ballots and the voting process.

(89) "Voting precinct" means the smallest voting unit established as provided by law within which qualified voters vote at one polling place.

(90) "Watcher" means a voting poll watcher, a counting poll watcher, an inspecting poll watcher, and a testing watcher.

(91) "Western States Presidential Primary" means the election established in Chapter 9, Part 8, Western States Presidential Primary.

(92) "Write-in ballot" means a ballot containing any write-in votes.

(93) "Write-in vote" means a vote cast for a person whose name is not printed on the ballot according to the procedures established in this title.

Section 17. Section **20A-1-203** is amended to read:

**20A-1-203. Calling and purpose of special elections -- Two-thirds vote limitations.**

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(1) Statewide and local special elections may be held for any purpose authorized by law.

(2) (a) Statewide special elections shall be conducted using the procedure for regular general elections.

(b) Except as otherwise provided in this title, local special elections shall be conducted using the procedures for regular municipal elections.

(3) The governor may call a statewide special election by issuing an executive order that designates:

- (a) the date for the statewide special election; and
- (b) the purpose for the statewide special election.

(4) The Legislature may call a statewide special election by passing a joint or concurrent resolution that designates:

- (a) the date for the statewide special election; and
- (b) the purpose for the statewide special election.

(5) (a) The legislative body of a local political subdivision may call a local special election only for:

- (i) a vote on a bond or debt issue;
- (ii) a vote on a voted local levy authorized by Section 53A-17a-133;
- (iii) an initiative authorized by Chapter 7, Part 5, Local Initiatives - Procedures;
- (iv) a referendum authorized by Chapter 7, Part 6, Local Referenda - Procedures;
- (v) if required or authorized by federal law, a vote to determine whether or not Utah's legal boundaries should be changed;

(vi) a vote authorized or required by Title 59, Chapter 12, Sales and Use Tax Act;

(vii) a vote to elect members to school district boards for a new school district and a remaining school district, as defined in Section 53A-2-117, following the creation of a new school district under Section 53A-2-118.1; or

(viii) an election of town officers of a newly incorporated town under [Subsection 10-2-125(9)] Section 10-2-128.

(b) The legislative body of a local political subdivision may call a local special election by adopting an ordinance or resolution that designates:

- (i) the date for the local special election; and

## **HB0502S01 compared with HB0502**

- (ii) the purpose for the local special election.
- (c) A local political subdivision may not call a local special election unless the ordinance or resolution calling a local special election under Subsection (5)(b) is adopted by a two-thirds majority of all members of the legislative body, if the local special election is for:
  - (i) a vote on a bond or debt issue as described in Subsection (5)(a)(i);
  - (ii) a vote on a voted leeway or levy program as described in Subsection (5)(a)(ii); or
  - (iii) a vote authorized or required for a sales tax issue as described in Subsection (5)(a)(vi).

Section 18. Section **20A-1-204** is amended to read:

**20A-1-204. Date of special election -- Legal effect.**

- (1) (a) The governor, Legislature, or the legislative body of a local political subdivision calling a statewide special election or local special election under Section 20A-1-203 shall schedule the special election to be held on:
  - (i) the fourth Tuesday in June;
  - (ii) the first Tuesday after the first Monday in November; or
  - (iii) for an election of town officers of a newly incorporated town under [Subsection 10-2-125(9)] Section 10-2-128, on any date that complies with the requirements of that subsection.

- (b) Except as provided in Subsection (1)(c), the governor, Legislature, or the legislative body of a local political subdivision calling a statewide special election or local special election under Section 20A-1-203 may not schedule a special election to be held on any other date.

- (c) (i) Notwithstanding the requirements of Subsection (1)(b), the legislative body of a local political subdivision may call a local special election on a date other than those specified in this section if the legislative body:

- (A) determines and declares that there is a disaster, as defined in Section 63K-3-102, requiring that a special election be held on a date other than the ones authorized in statute;

- (B) identifies specifically the nature of the disaster, as defined in Section 63K-3-102, and the reasons for holding the special election on that other date; and

- (C) votes unanimously to hold the special election on that other date.

- (ii) The legislative body of a local political subdivision may not call a local special election for the date established in [Title 20A,] Chapter 9, Part 8, Western States Presidential

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Primary, for Utah's Western States Presidential Primary.

- (d) Nothing in this section prohibits:
  - (i) the governor or Legislature from submitting a matter to the voters at the regular general election if authorized by law; or
  - (ii) a local government from submitting a matter to the voters at the regular municipal election if authorized by law.
- (2) (a) Two or more entities shall comply with Subsection (2)(b) if those entities hold a special election within a county on the same day as:
  - (i) another special election;
  - (ii) a regular general election; or
  - (iii) a municipal general election.
- (b) Entities described in Subsection (2)(a) shall, to the extent practicable, coordinate:
  - (i) polling places;
  - (ii) ballots;
  - (iii) election officials; and
  - (iv) other administrative and procedural matters connected with the election.

### **Section 19. Repealer.**

This bill repeals:

**Section 10-2-106, Feasibility study -- Feasibility study consultant.**

**Section 10-2-107, Modified request for feasibility study -- Supplemental feasibility study.**

**Section 10-2-108, Public hearings on feasibility study results -- Notice of hearings.**

**Section 10-2-124, Incorporation petitions before May 5, 1997.**

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### **Legislative Review Note**

**as of 2-9-12 8:16 AM**