

ELECTION OF OFFICIALS OF NEW MUNICIPALITY

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jon Cox

Senate Sponsor: Evan J. Vickers

LONG TITLE

General Description:

This bill amends provisions related to the election of an officer for a newly incorporated city and town.

Highlighted Provisions:

This bill:

- ▶ amends provisions governing a primary and final election of officers for a newly incorporated city;
- ▶ assigns certain duties to the county clerk in regard to the officer election in a newly incorporated city and town;
- ▶ provides for the determination of council officer terms in a newly incorporated town;
- ▶ requires that the county clerk publish notice regarding candidacy filing and terms of office for council members of a newly incorporated town;
- ▶ enacts provisions governing a primary and final election of officers of a newly incorporated town; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



28 **Utah Code Sections Affected:**

29 AMENDS:

- 30 [10-2-102](#), as last amended by Laws of Utah 2012, Chapter 359
- 31 [10-2-111](#), as last amended by Laws of Utah 2014, Chapter 158
- 32 [10-2-115](#), as last amended by Laws of Utah 2009, Chapter 388
- 33 [10-2-116](#), as last amended by Laws of Utah 2012, Chapter 359
- 34 [10-2-119](#), as last amended by Laws of Utah 2009, Chapter 350
- 35 [10-2-120](#), as last amended by Laws of Utah 2009, Chapter 350
- 36 [10-2-121](#), as last amended by Laws of Utah 2009, Chapter 350
- 37 [10-2-127](#), as last amended by Laws of Utah 2014, Chapter 158
- 38 [10-2-129](#), as enacted by Laws of Utah 2012, Chapter 359
- 39 [20A-1-203](#), as last amended by Laws of Utah 2014, Chapter 158
- 40 [20A-1-204](#), as last amended by Laws of Utah 2013, Chapters 295 and 415

41 ENACTS:

- 42 [10-2-128.1](#), Utah Code Annotated 1953
- 43 [10-2-128.2](#), Utah Code Annotated 1953

44 REPEALS AND REENACTS:

- 45 [10-2-128](#), as enacted by Laws of Utah 2012, Chapter 359



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

48 Section 1. Section **10-2-102** is amended to read:

49 **10-2-102. Incorporation of a contiguous area -- Governing provisions of city or**
50 **town incorporation.**

51 (1) A contiguous area of a county not within a municipality may incorporate as a
52 municipality as provided in this part.

53 (2) (a) Incorporation as a city is governed by Sections [10-2-103](#) through [10-2-124](#).

54 (b) Incorporation as a town is governed by Sections [10-2-125](#) through [~~[10-2-129](#)~~]
55 [10-2-131](#).

56 Section 2. Section **10-2-111** is amended to read:

57 **10-2-111. Incorporation election.**

58 (1) (a) Upon receipt of a certified petition under Subsection [10-2-110\(1\)\(b\)\(i\)](#) or a

59 certified modified petition under Subsection 10-2-110(3), the county legislative body shall
60 determine and set an election date for the incorporation election that is:

- 61 (i) (A) on a regular general election date under Section 20A-1-201; or
- 62 (B) on a local special election date under Section 20A-1-203; and
- 63 (ii) at least 65 days after the day that the legislative body receives the certified petition.
- 64 (b) Unless a person is a registered voter who resides, as defined in Section 20A-1-102,
65 within the boundaries of the proposed city, the person may not vote on the proposed
66 incorporation.

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

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

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

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

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

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

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

75 and

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

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

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

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

87 (3) If a majority of those casting votes within the area boundaries of the proposed city
88 vote to incorporate as a city, the area shall incorporate.

89 Section 3. Section 10-2-115 is amended to read:

90 **10-2-115. Notice of number of commission or council members to be elected and**
91 **of district boundaries -- Declaration of candidacy for city office.**

92 (1) (a) Within 20 days of the county legislative body's receipt of the information under
93 Subsection 10-2-114(1)(d), the county clerk shall publish, in accordance with Subsection
94 (1)(b), notice containing:

95 (i) the number of commission or council members to be elected for the new city;

96 (ii) if some or all of the commission or council members are to be elected by district, a
97 description of the boundaries of those districts as designated by the petition sponsors under
98 Subsection 10-2-114(1)(b);

99 (iii) information about the deadline for filing a declaration of candidacy for those
100 seeking to become candidates for mayor or city commission or council; and

101 (iv) information about the length of the initial term of each of the city officers, as
102 determined by the petition sponsors under Subsection 10-2-114(1)(c).

103 (b) The notice under Subsection (1)(a) shall be published:

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

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

107 (c) (i) In accordance with Subsection (1)(b)(i), if there is no newspaper of general
108 circulation within the future city, the county clerk shall post at least one notice per 1,000
109 population in conspicuous places within the future city that are most likely to give notice to the
110 residents of the future city.

111 (ii) The notice under Subsection (1)(c)(i) shall contain the information required under
112 Subsection (1)(a).

113 (iii) The petition sponsors shall post the notices under Subsection (1)(c)(i) at least
114 seven days before the deadline for filing a declaration of candidacy under Subsection (2).

115 (2) Notwithstanding Subsection 20A-9-203(2)(a), each person seeking to become a
116 candidate for mayor or city commission or council of a city incorporating under this part shall[;
117 ~~within 45 days of the incorporation election under Section 10-2-111;~~] file a declaration of
118 candidacy with the clerk of the county in which the future city is located and in accordance
119 with the deadlines set by the clerk as authorized by Section 10-2-116.

120 Section 4. Section 10-2-116 is amended to read:

121 **10-2-116. Election of officers of new city -- Primary and final election dates --**
 122 **County clerk duties -- Candidate duties -- Occupation of office.**

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

124 (a) unless a primary election is prohibited by Subsection [20A-9-404\(2\)](#), hold a primary
 125 election; and

126 (b) unless the election may be cancelled in accordance with Section [20A-1-206](#), hold a
 127 final election.

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

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

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

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

136 (3) (a) Subject to Subsection (3)(b), the primary election under Subsection (1)(a) shall
 137 be held at the earliest of the next:

138 (i) notwithstanding Subsection [20A-1-201.5\(2\)](#), regular general election under Section
 139 [20A-1-201](#);

140 (ii) notwithstanding Subsection [20A-1-201.5\(2\)](#), regular primary election under
 141 Subsection [20A-1-201.5\(1\)](#);

142 ~~[(ii)]~~ (iii) municipal primary election under Section [20A-9-404](#); or

143 ~~[(iii)]~~ (iv) notwithstanding Subsection [20A-1-201.5\(2\)](#), municipal general election
 144 under Section [20A-1-202](#)~~[-; or]~~.

145 ~~[(iv) special election under Section [20A-1-204](#).]~~

146 ~~[(b) Notwithstanding Subsection (3)(a), the primary election under Subsection (1)(a)~~
 147 ~~may not be held until]~~

148 (b) The county shall hold the primary election, if necessary, on the next earliest
 149 election date listed in Subsection (3)(a)(i), (ii), (iii), or (iv) that is at least:

150 (i) 75 days after the incorporation election under Section [10-2-111](#)~~[-]; and~~

151 (ii) 65 days after the last day of the candidate filing period.

152 (4) ~~[The]~~ (a) Subject to Subsection (4)(b), the county shall hold the final election under
153 Subsection (1)(b) [shall be held at the next special election date under Section 20A-1-204. (a)
154 after the primary election; or] on one of the following election dates:

- 155 (i) regular general election under Section 20A-1-201;
- 156 (ii) municipal primary election under Section 20A-9-404;
- 157 (iii) regular municipal general election under Section 20A-1-202; or
- 158 (iv) regular primary election under Section 20A-1-201.5.

159 (b) The county shall hold the final election on the earliest of the next election date that
160 is listed in Subsection (4)(a)(i), (ii), (iii), or (iv):

- 161 (i) that is after a primary election; or
- 162 ~~[(b)]~~ (ii) if there is no primary election, [more than] that is at least:
 - 163 (A) 75 days after the incorporation election under Section 10-2-111 [-]; and
 - 164 (B) 65 days after the candidate filing period.

165 (5) (a) (i) The county clerk shall publish notice of an election under this section:

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

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

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

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

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

177 (6) (a) Until the city is incorporated, the county clerk:

178 (i) is the election officer for all purposes in an election of officers of the city approved
179 at an incorporation election[-]; and

180 (ii) may, as necessary, determine appropriate deadlines, procedures, and instructions
181 that are not otherwise contrary to law.

182 (b) The county clerk shall require and determine deadlines for the filing of campaign

183 financial disclosures of city officer candidates in accordance with Section 10-3-208.

184 (c) The county clerk is responsible to ensure that:

185 (i) a primary or final election for the officials of a newly incorporated city is held on a
186 date authorized by this section; and

187 (ii) the ballot for the election includes each office that is required to be included in the
188 election for officers of the newly incorporated city and the term of each office.

189 (7) A person who has filed as a candidate for an office described in this section shall
190 comply with the campaign finance disclosure requirements of Section 10-3-208 and
191 requirements and deadlines as lawfully set forth by the county clerk.

192 (8) Notwithstanding Section 10-3-201, the officers elected at a final election described
193 in Subsection (4)(a) shall take office:

194 (a) after taking the oath of office; and

195 (b) at noon on the first Monday following the day on which the election official
196 transmits a certificate of nomination or election under the officer's seal to each elected
197 candidate in accordance with Subsection 20A-4-304(2)(c)(ii).

198 Section 5. Section 10-2-119 is amended to read:

199 **10-2-119. Filing of notice and approved final local entity plat with lieutenant**
200 **governor -- Effective date of incorporation -- Necessity of recording documents and effect**
201 **of not recording.**

202 (1) The [~~mayor-elect~~] mayor of the future city shall:

203 (a) within 30 days after the canvass of the final election of city officers under Section
204 10-2-116, file with the lieutenant governor:

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

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

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

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

212 (A) notice of an impending boundary action;

213 (B) certificate of incorporation; and

214 (C) approved final local entity plat; or
215 (ii) if the city is located within the boundaries of more than a single county, submit the
216 original of the documents listed in Subsections (1)(b)(i)(A), (B), and (C) to one of those
217 counties and a certified copy of those documents to each other county.

218 (2) (a) The incorporation is effective upon the lieutenant governor's issuance of a
219 certificate of incorporation under Section 67-1a-6.5.

220 (b) Notwithstanding any other provision of law, a city is conclusively presumed to be
221 lawfully incorporated and existing if, for two years following the city's incorporation:

222 (i) (A) the city has levied and collected a property tax; or

223 (B) for a city incorporated on or after July 1, 1998, the city has imposed a sales and use
224 tax; and

225 (ii) no challenge to the existence or incorporation of the city has been filed in the
226 district court for the county in which the city is located.

227 (3) (a) The effective date of an incorporation for purposes of assessing property within
228 the new city is governed by Section 59-2-305.5.

229 (b) Until the documents listed in Subsection (1)(b) are recorded in the office of the
230 recorder of each county in which the property is located, a newly incorporated city may not:

231 (i) levy or collect a property tax on property within the city;

232 (ii) levy or collect an assessment on property within the city; or

233 (iii) charge or collect a fee for service provided to property within the city.

234 Section 6. Section 10-2-120 is amended to read:

235 **10-2-120. Powers of officers.**

236 (1) Upon the canvass of the final election of city officers under Section 10-2-116 and
237 until the future city becomes legally incorporated, the officers of the future city may:

238 (a) prepare and adopt, under Chapter 6, Uniform Fiscal Procedures Act for Utah Cities,
239 a proposed budget and compilation of ordinances;

240 (b) negotiate and make personnel contracts and hirings;

241 (c) negotiate and make service contracts;

242 (d) negotiate and make contracts to purchase equipment, materials, and supplies;

243 (e) borrow funds from the county in which the future city is located under Subsection
244 10-2-121(3);

- 245 (f) borrow funds for startup expenses of the future city;
- 246 (g) issue tax anticipation notes in the name of the future city; and
- 247 (h) make appointments to the city's planning commission.

248 (2) The city's legislative body shall review and ratify each contract made by the
 249 ~~[officers-elect]~~ officers under Subsection (1) within 30 days after the effective date of
 250 incorporation under Section 10-2-119.

251 Section 7. Section 10-2-121 is amended to read:

252 **10-2-121. Division of municipal-type services revenues -- County may provide**
 253 **startup funds.**

254 (1) The county in which an area incorporating under this part is located shall, until the
 255 date of the city's incorporation under Section 10-2-119, continue:

256 (a) to levy and collect ad valorem property tax and other revenues from or pertaining to
 257 the future city; and

258 (b) except as otherwise agreed by the county and the ~~[officers-elect]~~ officers of the city,
 259 to provide the same services to the future city as the county provided before the
 260 commencement of the incorporation proceedings.

261 (2) (a) The legislative body of the county in which a newly incorporated city is located
 262 shall share pro rata with the new city, based on the date of incorporation, the taxes and service
 263 charges or fees levied and collected by the county under Section 17-34-3 during the year of the
 264 new city's incorporation if and to the extent that the new city provides, by itself or by contract,
 265 the same services for which the county levied and collected the taxes and service charges or
 266 fees.

267 (b) (i) The legislative body of a county in which a city incorporated after January 1,
 268 2004, is located may share with the new city taxes and service charges or fees that were levied
 269 and collected by the county under Section 17-34-3:

270 (A) before the year of the new city's incorporation;

271 (B) from the previously unincorporated area that, because of the city's incorporation, is
 272 located within the boundaries of the newly incorporated city; and

273 (C) for the purpose of providing services to the area that before the new city's
 274 incorporation was unincorporated.

275 (ii) A county legislative body may share taxes and service charges or fees under

276 Subsection (2)(b)(i) by a direct appropriation of funds or by a credit or offset against amounts
277 due under a contract for municipal-type services provided by the county to the new city.

278 (3) (a) The legislative body of a county in which an area incorporating under this part is
279 located may appropriate county funds to:

280 (i) before incorporation but after the canvass of the final election of city officers under
281 Section 10-2-116, the [~~officers-elect~~] officers of the future city to pay startup expenses of the
282 future city; or

283 (ii) after incorporation, the new city.

284 (b) Funds appropriated under Subsection (3)(a) may be distributed in the form of a
285 grant, a loan, or as an advance against future distributions under Subsection (2).

286 Section 8. Section 10-2-127 is amended to read:

287 **10-2-127. Incorporation of town -- Election to incorporate -- Ballot form.**

288 (1) (a) Upon receipt of a certified petition under Subsection 10-2-110(1)(b)(i) or a
289 certified modified petition under Subsection 10-2-110(3), the county legislative body shall
290 determine and set an election date for the incorporation election that is:

291 (i) (A) on a regular general election date under Section 20A-1-201; or

292 (B) on a local special election date under Section 20A-1-203; and

293 (ii) at least 65 days after the day that the legislative body receives the certified petition.

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

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

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

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

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

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

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

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

305 and

306 (iv) the county Internet website address, if applicable, and the address of the county

307 office where the feasibility study is available for review.

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

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

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

316 (3) The ballot at the incorporation election shall pose the incorporation question
317 substantially as follows:

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

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

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

324 Section 9. Section 10-2-128 is repealed and reenacted to read:

325 **10-2-128. Form of government -- Determination of council officer terms --**

326 **Hearings and notice.**

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

329 (2) If the incorporation proposal passes, the petition sponsors shall, within 25 days of
330 the canvass of the election under Section 10-2-127:

331 (a) determine the initial terms of the mayor and members of the city council so that:

332 (i) the mayor and approximately half the members of the town council are elected to
333 serve an initial term, of no less than one year, that allows their successors to serve a full
334 four-year term that coincides with the schedule established in Subsection 10-3-205(1); and

335 (ii) the remaining members of the town council are elected to serve an initial term, of
336 no less than one year, that allows their successors to serve a full four-year term that coincides
337 with the schedule established in Subsection 10-3-205(2); and

338 (b) submit in writing to the county legislative body the results of the sponsors'
339 determinations under Subsection (2)(a).

340 (3) (a) Before making a determination under Subsection (2)(a), the petition sponsors
341 shall hold a public hearing within the future town on the applicable issues under Subsections
342 (2)(a)(i) and (ii).

343 (b) (i) The petition sponsors shall publish notice of the public hearing under Subsection
344 (3)(a):

345 (A) in a newspaper of general circulation within the future town at least once a week
346 for two successive weeks before the day of the hearing; and

347 (B) on the Utah Public Notice Website, created in Section [63F-1-701](#), for two weeks
348 before the day of the hearing.

349 (ii) The last publication of notice under Subsection (3)(b)(i)(A) shall be at least three
350 days before the day of the public hearing under Subsection (3)(a).

351 (c) (i) In accordance with Subsection (3)(b)(i)(A), if there is no newspaper of general
352 circulation within the future town, the petition sponsors shall post at least one notice of the
353 hearing per 1,000 population in conspicuous places within the future town that are most likely
354 to give notice of the hearing to the residents of the future town.

355 (ii) The petition sponsors shall post the notices under Subsection (3)(c)(i) at least seven
356 days before the day that the hearing is held under Subsection (3)(a).

357 Section 10. Section **10-2-128.1** is enacted to read:

358 **10-2-128.1. Notice of number of council members to be elected and of district**
359 **boundaries -- Declaration of candidacy for city office -- Occupation of office.**

360 (1) (a) Within 20 days of the county legislative body's receipt of the information under
361 Subsection [10-2-128\(2\)\(b\)](#), the county clerk shall publish, in accordance with Subsection
362 (1)(b), notice containing:

363 (i) information about the deadline for filing a declaration of candidacy for those
364 seeking to become candidates for mayor or town council; and

365 (ii) information about the length of the initial term of each of the town officers, as
366 determined by the petition sponsors under Subsection [10-2-128\(2\)\(a\)](#).

367 (b) The notice under Subsection (1)(a) shall be published:

368 (i) in a newspaper of general circulation within the future town at least once a week for

369 two successive weeks; and

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

371 (c) (i) In accordance with Subsection (1)(b)(i), if there is no newspaper of general
372 circulation within the future city, the county clerk shall post at least one notice per 1,000
373 population in conspicuous places within the future town that are most likely to give notice to
374 the residents of the future town.

375 (ii) The notice under Subsection (1)(c)(i) shall contain the information required under
376 Subsection (1)(a).

377 (iii) The petition sponsors shall post the notices under Subsection (1)(c)(i) at least
378 seven days before the deadline for filing a declaration of candidacy under Subsection (2).

379 (2) Notwithstanding Subsection 20A-9-203(2)(a), each person seeking to become a
380 candidate for mayor or town council of a town incorporating under this part shall, within 45
381 days of the incorporation election under Section 10-2-127, file a declaration of candidacy with
382 the clerk of the county in which the future town is located.

383 Section 11. Section 10-2-128.2 is enacted to read:

384 **10-2-128.2. Election of officers of new town -- Primary and final election dates --**
385 **County clerk duties -- Candidate duties -- Occupation of office.**

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

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

389 (b) hold a final election unless the election may be cancelled in accordance with
390 Section 20A-1-206.

391 (2) Each election under Subsection (1) shall be consistent with the petition sponsors'
392 determination of the length of each council member's initial term.

393 (3) (a) Subject to Subsection (3)(b), the primary election under Subsection (1)(a) shall
394 be held on one of the following election dates:

395 (i) notwithstanding Subsection 20A-1-201.5(2), regular general election under Section
396 20A-1-201;

397 (ii) notwithstanding Subsection 20A-1-201.5(2), regular primary election under
398 Subsection 20A-1-201.5(1);

399 (iii) municipal primary election under Section 20A-9-404; or

400 (iv) notwithstanding Subsection 20A-1-201.5(2), municipal general election under
401 Section 20A-1-202.

402 (b) The county shall hold the primary election, if necessary, at the earliest of the next
403 election date listed in Subsection (3)(a)(i), (ii), (iii), or (iv) that is at least:

404 (i) 75 days after the incorporation election under Section 10-2-127; and

405 (ii) 65 days after the last day of the candidate filing period.

406 (4) (a) Subject to Subsection (4)(b), the county shall hold the final election under
407 Subsection (1)(b) on one of the following election dates:

408 (i) regular general election under Section 20A-1-201;

409 (ii) municipal primary election under Section 20A-9-404;

410 (iii) municipal general election under Section 20A-1-202; or

411 (iv) regular primary election under Section 20A-1-201.5.

412 (b) The county shall hold the final election on the next earliest election date listed in
413 Subsection (4)(a)(i), (ii), (iii), or (iv):

414 (i) that is after a primary election; or

415 (ii) if there is no primary election, that is at least:

416 (A) 75 days after the incorporation election under Section 10-2-111; and

417 (B) 65 days after the candidate filing period.

418 (5) (a) (i) The county clerk shall publish notice of an election under this section:

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

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

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

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

428 (ii) The county clerk shall post the notices under Subsection (5)(b)(i) at least seven
429 days before an election under Subsection (1)(a) or (b).

430 (6) (a) Until the town is incorporated, the county clerk:

431 (i) is the election officer for all purposes in an election of officers of the town approved
432 at an incorporation election; and

433 (ii) may, as necessary, determine appropriate deadlines, procedures, and instructions
434 that are not otherwise contrary to law.

435 (b) The county clerk shall require and determine deadlines for the filing of campaign
436 financial disclosures of town officer candidates in accordance with Section [10-3-208](#).

437 (c) The county clerk is responsible to ensure that:

438 (i) a primary or final election for the officials of a newly incorporated town is held on a
439 date authorized by this section; and

440 (ii) the ballot for the election includes each office that is required to be included in the
441 election for officers of the newly incorporated town and the term of each office.

442 (7) A person who has filed as a candidate for an office described in this section shall
443 comply with the campaign finance disclosure requirements of Section [10-3-208](#) and
444 requirements and deadlines as lawfully set forth by the county clerk.

445 (8) Notwithstanding Section [10-3-201](#), the officers elected at a final election described
446 in Subsection (4)(a) shall take office:

447 (a) after taking the oath of office; and

448 (b) at noon on the first Monday following the day on which the election official
449 transmits a certificate of nomination or election under the officer's seal to each elected
450 candidate in accordance with Subsection [20A-4-304\(2\)\(c\)\(ii\)](#).

451 Section 12. Section **10-2-129** is amended to read:

452 **10-2-129. Notice to lieutenant governor -- Effective date of incorporation -- Effect**
453 **of recording documents.**

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

455 (a) within 30 days after the canvass of the election of town officers under Section
456 [~~10-2-128~~] [10-2-130](#), file with the lieutenant governor:

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

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

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

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

464 (A) notice of an impending boundary action;

465 (B) certificate of incorporation; and

466 (C) approved final local entity plat; or

467 (ii) if the town is located within the boundaries of more than a single county, submit
468 the original of the documents listed in Subsections (1)(b)(i)(A), (B), and (C) to one of those
469 counties and a certified copy of those documents to each other county.

470 (2) (a) A new town is incorporated:

471 (i) on December 31 of the year in which the lieutenant governor issues a certificate of
472 incorporation under Section 67-1a-6.5, if the election of town officers under Section [~~10-2-128~~]
473 10-2-130 is held on a regular general or municipal general election date; or

474 (ii) on the last day of the month during which the lieutenant governor issues a
475 certificate of incorporation under Section 67-1a-6.5, if the election of town officers under
476 Section [~~10-2-128~~] 10-2-130 is held on any other date.

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

479 (ii) Until the documents listed in Subsection (1)(b)(i) are recorded in the office of the
480 recorder of each county in which the property is located, a newly incorporated town may not:

481 (A) levy or collect a property tax on property within the town;

482 (B) levy or collect an assessment on property within the town; or

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

484 Section 13. Section 20A-1-203 is amended to read:

485 **20A-1-203. Calling and purpose of special elections -- Two-thirds vote**

486 **limitations.**

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

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

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

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

495 (a) the date for the statewide special election; and

496 (b) the purpose for the statewide special election.

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

499 (a) the date for the statewide special election; and

500 (b) the purpose for the statewide special election.

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

503 (i) a vote on a bond or debt issue;

504 (ii) a vote on a voted local levy authorized by Section 53A-16-110 or 53A-17a-133;

505 (iii) an initiative authorized by Chapter 7, Part 5, Local Initiatives - Procedures;

506 (iv) a referendum authorized by Chapter 7, Part 6, Local Referenda - Procedures;

507 (v) if required or authorized by federal law, a vote to determine whether or not Utah's
 508 legal boundaries should be changed;

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

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

513 [~~(viii) an election of town officers of a newly incorporated town under Section~~
 514 ~~10-2-128;~~]

515 [~~(ix) an election of officers for a new city under Section 10-2-116;~~]

516 [~~(x)~~ (viii) a vote on a municipality providing cable television services or public
 517 telecommunications services under Section 10-18-204;

518 [~~(xi)~~ (ix) a vote to create a new county under Section 17-3-1;

519 [~~(xii)~~ (x) a vote on the creation of a study committee under Sections 17-52-202 and
 520 17-52-203.5;

521 [~~(xiii)~~ (xi) a vote on a special property tax under Section 53A-16-110;

522 [~~(xiv)~~ (xii) a vote on the incorporation of a city in accordance with Section 10-2-111;

523 or

524 [~~(xv)~~] (xiii) a vote on the incorporation of a town in accordance with Section 10-2-127.

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

527 (i) the date for the local special election as authorized by Section 20A-1-204; and

528 (ii) the purpose for the local special election.

529 (c) A local political subdivision may not call a local special election unless the
530 ordinance or resolution calling a local special election under Subsection (5)(b) is adopted by a
531 two-thirds majority of all members of the legislative body, if the local special election is for:

532 (i) a vote on a bond or debt issue as described in Subsection (5)(a)(i);

533 (ii) a vote on a voted leeway or levy program as described in Subsection (5)(a)(ii); or

534 (iii) a vote authorized or required for a sales tax issue as described in Subsection
535 (5)(a)(vi).

536 Section 14. Section 20A-1-204 is amended to read:

537 **20A-1-204. Date of special election -- Legal effect.**

538 (1) (a) Except as provided by Subsection (1)(d), the governor, Legislature, or the
539 legislative body of a local political subdivision calling a statewide special election or local
540 special election under Section 20A-1-203 shall schedule the special election to be held on:

541 (i) the fourth Tuesday in June; or

542 (ii) the first Tuesday after the first Monday in November~~[-or]~~.

543 [~~(iii) for an election of town officers of a newly incorporated town under Section
544 10-2-128, on any date that complies with the requirements of that subsection.]~~

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

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

551 (A) determines and declares that there is a disaster, as defined in Section 53-2a-102,
552 requiring that a special election be held on a date other than the ones authorized in statute;

553 (B) identifies specifically the nature of the disaster, as defined in Section 53-2a-102,
554 and the reasons for holding the special election on that other date; and

- 555 (C) votes unanimously to hold the special election on that other date.
- 556 (ii) The legislative body of a local political subdivision may not call a local special
557 election for the date established in Chapter 9, Part 8, Western States Presidential Primary, for
558 Utah's Western States Presidential Primary.
- 559 (d) The legislative body of a local political subdivision may only call a special election
560 for a ballot proposition related to a bond, debt, leeway, levy, or tax on the first Tuesday after
561 the first Monday in November.
- 562 (e) Nothing in this section prohibits:
- 563 (i) the governor or Legislature from submitting a matter to the voters at the regular
564 general election if authorized by law; or
- 565 (ii) a local government from submitting a matter to the voters at the regular municipal
566 election if authorized by law.
- 567 (2) (a) Two or more entities shall comply with Subsection (2)(b) if those entities hold a
568 special election within a county on the same day as:
- 569 (i) another special election;
- 570 (ii) a regular general election; or
- 571 (iii) a municipal general election.
- 572 (b) Entities described in Subsection (2)(a) shall, to the extent practicable, coordinate:
- 573 (i) polling places;
- 574 (ii) ballots;
- 575 (iii) election officials; and
- 576 (iv) other administrative and procedural matters connected with the election.

Legislative Review Note
as of 12-4-14 11:45 AM

Office of Legislative Research and General Counsel