

1 **ANNEXATION OF ISLANDS WITHIN CITIES**

2 2017 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: D. Gregg Buxton**

5 House Sponsor: Gage Froerer

7 **LONG TITLE**

8 **General Description:**

9 This bill addresses municipal annexation of unincorporated islands.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ clarifies provisions regarding municipal annexation of certain unincorporated islands;
- 13 ▶ modifies annexation procedures to allow a municipality to annex certain
- 14 unincorporated islands without allowing or considering protests under certain
- 15 circumstances;
- 16 ▶ provides for a recommendation of annexation from a county legislative body; and
- 17 ▶ makes technical and conforming changes.

18 **Money Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **10-2-402**, as last amended by Laws of Utah 2015, Chapters 352 and 462

25 **10-2-418**, as last amended by Laws of Utah 2015, Chapter 352

26 **10-2a-402**, as enacted by Laws of Utah 2015, Chapter 352

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

29 Section 1. Section **10-2-402** is amended to read:

30 **10-2-402. Annexation -- Limitations.**

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

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

34 (i) it is a contiguous area;

35 (ii) it is contiguous to the municipality;

36 (iii) annexation will not leave or create an unincorporated island or unincorporated
37 peninsula:

38 (A) except as provided in Subsection [~~10-2-418(2)(b)~~]; 10-2-418(3); or

39 (B) unless the county and municipality have otherwise agreed; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

85 (b) (i) Except as provided in Subsection (8)(b)(ii), the Military Installation Development

86 Authority may petition for annexation of a project area and contiguous surrounding land to a
 87 municipality as if it was the sole private property owner of the project area and surrounding
 88 land, if the area to be annexed is entirely contained within the boundaries of a military
 89 installation.

90 (ii) Before petitioning for annexation under Subsection (8)(b)(i), the Military
 91 Installation Development Authority shall provide the military installation with a copy of the
 92 petition for annexation. The military installation may object to the petition for annexation
 93 within 14 days of receipt of the copy of the annexation petition. If the military installation
 94 objects under this Subsection (8)(b)(ii), the Military Installation Development Authority may
 95 not petition for the annexation as if it was the sole private property owner.

96 (iii) If any portion of an area annexed under a petition for annexation filed by a Military
 97 Installation Development Authority is located in a specified county:

- 98 (A) the annexation process shall follow the requirements for a specified county; and
- 99 (B) the provisions of Subsection 10-2-402(6) do not apply.

100 Section 2. Section 10-2-418 is amended to read:

101 **10-2-418. Annexation of an island or peninsula without a petition -- Notice --**
 102 **Hearing.**

103 (1) ~~[For]~~ As used in Subsection (2)(b)(ii), for purposes of an annexation conducted in
 104 accordance with this section of an area located within a county of the first class, "municipal-type
 105 services" [for purposes of Subsection (2)(a)(ii)(B)] does not include a service provided by a
 106 municipality pursuant to a contract that the municipality has with another political subdivision as
 107 "political subdivision" is defined in Section 17B-1-102.

108 (2) ~~[(a)]~~ Notwithstanding Subsection 10-2-402(2), a municipality may annex an
 109 unincorporated area under this section without an annexation petition if:

110 ~~[(i)(A)]~~ (a) (i) the area to be annexed consists of one or more unincorporated islands
 111 within or unincorporated peninsulas contiguous to the municipality;

112 ~~[(B)]~~ (ii) the majority of each island or peninsula consists of residential or commercial
 113 development;

114 ~~[(C)]~~ (iii) the area proposed for annexation requires the delivery of municipal-type
115 services; and

116 ~~[(D)]~~ (iv) the municipality has provided most or all of the municipal-type services to the
117 area for more than one year;

118 ~~[(ii)-(A)]~~ (b) (i) the area to be annexed consists of one or more unincorporated islands
119 within or unincorporated peninsulas contiguous to the municipality, each of which has fewer
120 than 800 residents; and

121 ~~[(B)]~~ (ii) the municipality has provided one or more municipal-type services to the area
122 for at least one year; ~~[or]~~

123 ~~[(iii)-(A)]~~ (c) (i) the area consists of:

124 ~~[(F)]~~ (A) an unincorporated island within or an unincorporated peninsula contiguous to
125 the municipality; and

126 ~~[(H)]~~ (B) for an area outside of the county of the first class proposed for annexation, no
127 more than 50 acres; and

128 ~~[(B)]~~ (ii) the county in which the area is located, subject to Subsection ~~[(3)(b)]~~ (4)(b),
129 and the municipality agree that the area should be included within the municipality~~[-];~~ or

130 (d) (i) the area to be annexed consists only of one or more unincorporated islands in a
131 county of the second class;

132 (ii) the area to be annexed is located in the expansion area of a municipality; and

133 (iii) the county legislative body in which the municipality is located provides notice to
134 each property owner within the area to be annexed that:

135 (A) the county legislative body will hold a public hearing, no less than 15 days after the
136 day on which the county legislative body provides the notice; and

137 (B) after the public hearing the county legislative body may make a recommendation of
138 annexation to the municipality whose expansion area includes the area to be annexed.

139 ~~[(b)]~~ (3) Notwithstanding Subsection 10-2-402(1)(b)(iii), a municipality may annex a
140 portion of an unincorporated island or unincorporated peninsula under this section, leaving
141 unincorporated the remainder of the unincorporated island or unincorporated peninsula, if:

142 [(i)] (a) in adopting the resolution under Subsection [(4)(a)(i);] (5)(a) the municipal
143 legislative body determines that not annexing the entire unincorporated island or unincorporated
144 peninsula is in the municipality's best interest; and

145 [(i)] (b) for an annexation of one or more unincorporated islands under Subsection
146 [(2)(a)(ii)] (2)(b), the entire island of unincorporated area, of which a portion is being annexed,
147 complies with the requirement of Subsection [(2)(a)(ii)(A)] (2)(b)(i) relating to the number of
148 residents.

149 [(3)] (4) (a) This Subsection [(3)] (4) applies only to an annexation within a county of
150 the first class.

151 (b) A county of the first class shall agree to ~~[the]~~ an annexation if the majority of private
152 property owners within the area to be annexed ~~[has indicated in writing, subject to Subsection~~
153 ~~(3)(d), to the city or town recorder of the annexing city or town the private property owners'~~
154 ~~consent to be annexed into the municipality.]~~ give written consent to the annexation, in
155 accordance with Subsection (4)(d), to the recorder of the annexing municipality.

156 (c) For purposes of Subsection [(3)(b)] (4)(b), the majority of private property owners
157 is property owners who own:

158 (i) the majority of the total private land area within the area proposed for annexation;
159 and

160 (ii) private real property equal to at least one half the value of private real property
161 within the area proposed for annexation.

162 (d) [(i)] A property owner consenting to annexation shall indicate the property owner's
163 consent on a form which includes language in substantially the following form:

164 "Notice: If this written consent is used to proceed with an annexation of your property
165 in accordance with Utah Code Section [10-2-418](#), no public election is required by law to
166 approve the annexation. If you sign this consent and later decide you do not want to support
167 the annexation of your property, you may withdraw your signature by submitting a signed,
168 written withdrawal with the recorder or clerk of [name of annexing municipality]. If you choose
169 to withdraw your signature, you must do so no later than the close of the public hearing on the

170 annexation conducted in accordance with Utah Code Subsection [~~10-2-418(4)(a)(iv)]~~
171 10-2-418(4)(d)."

172 (e) A private property owner may withdraw the property owner's signature indicating
173 consent by submitting a signed, written withdrawal with the recorder or clerk no later than the
174 close of the public hearing held in accordance with Subsection [~~(4)(a)(iv)]~~ (5)(d).

175 [~~(4)(a)~~] (5) The legislative body of each municipality intending to annex an area under
176 this section shall:

177 [~~(i)~~] (a) adopt a resolution indicating the municipal legislative body's intent to annex the
178 area, describing the area proposed to be annexed;

179 [~~(ii)~~] (b) publish notice:

180 [~~(A)(i)~~] (i)(A) at least once a week for three successive weeks in a newspaper of
181 general circulation within the municipality and the area proposed for annexation; or

182 [~~(B)~~] (B) if there is no newspaper of general circulation in the areas described in
183 Subsection [~~(4)(a)(ii)(A)]~~ (5)(b)(i)(A), post at least one notice per 1,000 population in places
184 within those areas that are most likely to give notice to the residents of those areas; and

185 [~~(B)~~] (ii) on the Utah Public Notice Website created in Section 63F-1-701, for three
186 weeks;

187 [~~(iii)~~] (c) send written notice to:

188 (i) the board of each local district and special service district whose boundaries contain
189 some or all of the area proposed for annexation; and [~~to~~]

190 (ii) the legislative body of the county in which the area proposed for annexation is
191 located; and

192 [~~(iv)~~] (d) hold a public hearing on the proposed annexation no earlier than 30 days after
193 the adoption of the resolution under Subsection [~~(4)(a)(i)]~~ (5)(a).

194 (6) The legislative body of the annexing municipality shall ensure that:

195 [~~(b) Each~~] (a) each notice under Subsections [~~(4)(a)(ii) and (iii) shall~~] (5)(b) and (c):

196 (i) [state] states that the municipal legislative body has adopted a resolution indicating
197 its intent to annex the area proposed for annexation;

198 (ii) ~~[state]~~ states the date, time, and place of the public hearing under Subsection
199 ~~[(4)(a)(iv)]~~ (5)(d);

200 (iii) ~~[describe]~~ describes the area proposed for annexation; and

201 (iv) except for an annexation that meets the property owner consent requirements of
202 Subsection ~~[(5)(b), state]~~ (7)(b) or the recommendation of annexation requirements of
203 Subsection (7)(c), states in conspicuous and plain terms that the municipal legislative body will
204 annex the area unless, at or before the public hearing under Subsection ~~[(4)(a)(iv)]~~ (5)(d),
205 written protests to the annexation are filed by the owners of private real property that:

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

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

209 (C) is equal in value to at least 1/2 the value of all private real property within the entire
210 area proposed for annexation~~[-];~~ and

211 ~~[(c) The]~~ (b) the first publication of the notice required under Subsection ~~[(4)(a)(ii)(A)~~
212 ~~shall be]~~ (5)(b)(i) occurs within 14 days of the municipal legislative body's adoption of a
213 resolution under Subsection ~~[(4)(a)(i)]~~ (5)(a).

214 ~~[(5)(a) Upon]~~ (7) (a) Except as provided in Subsections (7)(b)(i) and (7)(c)(i), upon
215 conclusion of the public hearing under Subsection ~~[(4)(a)(iv)]~~ (5)(d), the municipal legislative
216 body may adopt an ordinance approving the annexation of the area proposed for annexation
217 under this section unless, at or before the hearing, written protests to the annexation have been
218 filed with the ~~[city recorder or town clerk, as the case may be,]~~ recorder or clerk of the
219 municipality by the owners of private real property that:

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

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

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

225 (b) (i) ~~[Upon]~~ Notwithstanding Subsection (7)(a), upon conclusion of the public hearing

226 under Subsection [~~(4)(a)(iv)~~], (5)(d) a municipality may adopt an ordinance approving the
227 annexation of the area proposed for annexation under this section without allowing or
228 considering protests under Subsection [~~(5)(a)~~] (7)(a) if the owners of at least 75% of the total
229 private land area within the entire area proposed for annexation, representing at least 75% of
230 the value of the private real property within the entire area proposed for annexation, have
231 consented in writing to the annexation.

232 (ii) Upon the effective date under Section 10-2-425 of an annexation approved by an
233 ordinance adopted under Subsection [~~(5)(b)(i)~~] (7)(b)(i), the area annexed [~~shall be~~] is
234 conclusively presumed to be validly annexed.

235 (c) (i) Notwithstanding Subsection (7)(a), upon conclusion of the public hearing under
236 Subsection (5)(d), a municipality may adopt an ordinance approving the annexation of an area
237 that the county legislative body proposes for annexation under this section without allowing or
238 considering protests under Subsection (7)(a) if the county legislative body has formally
239 recommended annexation to the annexing municipality and has made a formal finding that:

240 (A) the area to be annexed can be more efficiently served by the municipality than by
241 the county;

242 (B) the area to be annexed is not likely to be naturally annexed by the municipality in
243 the future as the result of urban development;

244 (C) annexation of the area is likely to facilitate the consolidation of overlapping
245 functions of local government; and

246 (D) annexation of the area is likely to result in an equitable distribution of community
247 resources and obligations.

248 (ii) The county legislative body may base the finding required in Subsection (7)(c)(i)(B)
249 on:

250 (A) existing development in the area;

251 (B) natural or other conditions that may limit the future development of the area; or

252 (C) other factors that the county legislative body considers relevant.

253 (iii) A county legislative body may make the recommendation for annexation required in

254 Subsection (7)(c)(i) for only a portion of an unincorporated island if, as a result of information
255 provided at the public hearing, the county legislative body makes a formal finding that it would
256 be equitable to leave a portion of the island unincorporated.

257 (iv) If a county legislative body has made a recommendation of annexation under
258 Subsection (7)(c)(i):

259 (A) the relevant municipality is not required to proceed with the recommended
260 annexation; and

261 (B) if the relevant municipality proceeds with annexation, the municipality shall annex
262 the entire area that the county legislative body recommended for annexation.

263 (v) Upon the effective date under Section 10-2-425 of an annexation approved by an
264 ordinance adopted under Subsection (7)(c)(i), the area annexed is conclusively presumed to be
265 validly annexed.

266 ~~[(6)(a) If]~~ (8) (a) Except as provided in Subsections (7)(b)(i) and (7)(c)(i), if protests
267 are timely filed that comply with Subsection ~~[(5)]~~ (7)(a), the municipal legislative body may not
268 adopt an ordinance approving the annexation of the area proposed for annexation, and the
269 annexation proceedings under this section shall be considered terminated.

270 (b) Subsection ~~[(6)(a) may not be construed to]~~ (8)(a) does not prohibit the municipal
271 legislative body from excluding from a proposed annexation under Subsection ~~[(2)(a)(ii)]~~ (2)(b)
272 the property within an unincorporated island regarding which protests have been filed and
273 proceeding under Subsection ~~[(2)(b)]~~ (3) to annex some or all of the remaining portion of the
274 unincorporated island.

275 Section 3. Section **10-2a-402** is amended to read:

276 **10-2a-402. Application.**

277 (1) The provisions of this part:

278 ~~[(a) apply to the following located in a county of the first class:]~~

279 ~~[(i)]~~ (a) apply to a planning township that is:

280 (i) located in a county of the first class; and

281 (ii) established before January 1, 2015; and

282 ~~[(ii) subject to Subsection (2), an unincorporated island located in a county of the first~~
283 ~~class on or after May 12, 2015, and before November 4, 2015; and]~~

284 (b) do not apply to a planning advisory area, as defined in Section 17-27a-103, or any
285 other unincorporated area located outside of a county of the first or second class.

286 (2) (a) The provisions of Part 2, Incorporation of a City, and Part 3, Incorporation of a
287 Town, apply to an unincorporated area described in Subsection (1) for an incorporation as a city
288 after November 3, 2015.

289 (b) The provisions of Chapter 2, Part 4, Annexation[:] apply to an unincorporated
290 island that is not annexed at an election under this part for purposes of annexation on or after
291 November 4, 2015.

292 ~~[(i) do not apply to an unincorporated island for purposes of annexation before~~
293 ~~November 4, 2015, unless:]~~

294 ~~[(A) otherwise indicated; or]~~

295 ~~[(B) before July 1, 2015, an annexation petition is filed in accordance with Section~~
296 ~~10-2-403 or an intent to annex resolution is adopted in accordance with Subsection~~
297 ~~10-2-418(2)(a)(i); and]~~

298 ~~[(ii) apply to an unincorporated island that is not annexed at an election under this part~~
299 ~~for purposes of annexation on or after November 4, 2015.]~~