

## SB0037S03 compared with SB0037S02

~~{deleted text}~~ shows text that was in SB0037S02 but was deleted in SB0037S03.

inserted text shows text that was not in SB0037S02 but was inserted into SB0037S03.

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~~{Senator Evan J. Vickers}~~Representative A. Cory Maloy proposes the following substitute bill:

### MUNICIPALITY INCORPORATION AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Evan J. Vickers**

House Sponsor: A. Cory Maloy

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#### LONG TITLE

##### General Description:

This bill amends provisions related to incorporating a municipality.

##### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ modifies the procedures and requirements for incorporating a municipality;
- ▶ modifies the procedures and requirements to request exclusion from an area proposed for incorporation;
- ▶ establishes a procedure and requirements for requesting inclusion in an area proposed for incorporation;
- ▶ transfers many of the duties currently fulfilled by the lieutenant governor, in relation

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to municipal incorporation, to the county of the area proposed for incorporation;

- ▶ describes the duties of the lieutenant governor in relation to municipal incorporation;
- ▶ provides for transition to the new incorporation process for a municipality; and
- ▶ makes technical and conforming changes.

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

None

### **Other Special Clauses:**

This bill provides revisor instructions.

[This bill coordinates provides a coordination clause.](#)

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

AMENDS:

**10-2-402**, as last amended by Laws of Utah 2021, Chapter 112

**10-2a-102**, as last amended by Laws of Utah 2019, Chapter 165

**10-2a-103**, as last amended by Laws of Utah 2015, Chapters 111, 157 and renumbered and amended by Laws of Utah 2015, Chapter 352

**10-2a-104**, as renumbered and amended by Laws of Utah 2015, Chapter 352

**10-2a-106**, as last amended by Laws of Utah 2019, Chapter 165 and further amended by Revisor Instructions, Laws of Utah 2019, Chapter 165

**10-2a-201.5**, as last amended by Laws of Utah 2021, Chapter 112

**10-2a-202**, as last amended by Laws of Utah 2019, Chapter 165

**10-2a-204**, as last amended by Laws of Utah 2019, Chapter 165

**10-2a-205**, as last amended by Laws of Utah 2019, Chapter 165

**10-2a-206**, as last amended by Laws of Utah 2021, Chapter 112

**10-2a-207**, as last amended by Laws of Utah 2021, Chapters 84, 112, 345, and 355

**10-2a-208**, as last amended by Laws of Utah 2019, Chapter 165

**10-2a-209**, as last amended by Laws of Utah 2019, Chapter 165

**10-2a-210**, as last amended by Laws of Utah 2021, First Special Session, Chapter 15

**10-2a-213**, as last amended by Laws of Utah 2021, First Special Session, Chapter 15

**10-2a-214**, as last amended by Laws of Utah 2021, First Special Session, Chapter 15

**10-2a-220**, as last amended by Laws of Utah 2019, Chapter 165

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### ENACTS:

**10-2a-204.3**, Utah Code Annotated 1953

### RENUMBERS AND AMENDS:

**10-2a-204.5**, (Renumbered from 10-2a-203, as last amended by Laws of Utah 2021, Chapter 112)

### REPEALS:

**10-2a-101**, as enacted by Laws of Utah 2015, Chapter 352

**10-2a-201**, as last amended by Laws of Utah 2019, Chapter 165

### Utah Code Sections Affected by Revisor Instructions:

**10-2a-106**, as last amended by Laws of Utah 2019, Chapter 165 and further amended by Revisor Instructions, Laws of Utah 2019, Chapter 165

### Utah Code Sections Affected by Coordination Clause:

**10-2a-207**, as last amended by Laws of Utah 2021, Chapters 84, 112, 345, and 355

**10-2a-213**, as last amended by Laws of Utah 2021, First Special Session, Chapter 15

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

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

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

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

(b) Except as provided in Subsection (1)(c), an unincorporated area may not be annexed to a municipality unless:

- (i) the unincorporated area is a contiguous area;
- (ii) the unincorporated area is contiguous to the municipality;
- (iii) annexation will not leave or create an unincorporated island or unincorporated peninsula:

- (A) except as provided in Subsection 10-2-418(3); or
- (B) unless the county and municipality have otherwise agreed; and
- (iv) for an area located in a specified county, the area is within the proposed annexing municipality's expansion area.

(c) A municipality may annex an unincorporated area within a specified county that

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does not meet the requirements of Subsection (1)(b), leaving or creating an unincorporated island or unincorporated peninsula, if:

- (i) the area is within the annexing municipality's expansion area;
- (ii) the specified county in which the area is located and the annexing municipality agree to the annexation;
- (iii) the area is not within the area of another municipality's annexation policy plan, unless the other municipality agrees to the annexation; and
- (iv) the annexation is for the purpose of providing municipal services to the area.

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

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

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

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

(5) (a) As used in this subsection, "expansion area urban development" means:

- (i) for a specified county, urban development within a city or town's expansion area; or
- (ii) for a county of the first class, urban development within a city or town's expansion area that:

(A) consists of 50 or more acres;

(B) requires the county to change the zoning designation of the land on which the urban development is located; and

(C) does not include commercial or industrial development that is located within a mining protection area as defined in Section 17-41-101, regardless of whether the commercial or industrial development is for a mining use as defined in Section 17-41-101.

(b) A county legislative body may not approve expansion area urban development unless:

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(i) the county notifies the city or town of the proposed development; and

(ii) (A) the city or town consents in writing to the development;

(B) within 90 days after the county's notification of the proposed development, the city or town submits to the county a written objection to the county's approval of the proposed development and the county responds in writing to the city or town's objection; or

(C) the city or town fails to respond to the county's notification of the proposed development within 90 days after the day on which the county provides the notice.

(6) (a) As used in this Subsection (6), "airport" means an area that the Federal Aviation Administration has, by a record of decision, approved for the construction or operation of a Class I, II, or III commercial service airport, as designated by the Federal Aviation Administration in 14 C.F.R. Part 139.

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

(c) A municipality that operates or intends to construct and operate an airport and does not adopt a resolution consenting to the annexation of an area described in Subsection (6)(b) may not deny an annexation petition proposing the annexation of that same area to that municipality.

(7) (a) As used in this Subsection (7), "project area" means a project area as defined in Section 63H-1-102 that is in a project area plan as defined in Section 63H-1-102 adopted by the Military Installation Development Authority under Title 63H, Chapter 1, Military Installation Development Authority Act.

(b) A municipality may not annex an unincorporated area located within a project area without the authority's approval.

(c) (i) Except as provided in Subsection (7)(c)(ii), the Military Installation Development Authority may petition for annexation of the following areas to a municipality as if the Military Installation Development Authority was the sole private property owner within the area:

(A) an area within a project area;

(B) an area that is contiguous to a project area and within the boundaries of a military

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installation;

(C) an area owned by the Military Installation Development Authority; and

(D) an area that is contiguous to an area owned by the Military Installation

Development Authority that the Military Installation Development Authority plans to add to an existing project area.

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

(A) the annexation process shall follow the requirements for a specified county; and

(B) the provisions of Section 10-2-402.5 do not apply.

(8) A municipality may not annex an unincorporated area if:

(a) the area is proposed for incorporation in~~[-(i)]~~ a feasibility study conducted under Section 10-2a-205~~[-or (ii)]~~ or a supplemental feasibility study conducted under Section 10-2a-206; and

(b) the ~~lieutenant governor~~ county clerk completes the ~~[first]~~ second public hearing on the proposed incorporation under Subsection 10-2a-207(4)~~[-and]~~.

~~[(c) the time period for a specified landowner, as defined in Section 10-2a-203, to request that the lieutenant governor exclude the specified landowner's property from the proposed incorporation under Subsection 10-2a-207(5)(a) has expired.]~~

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

### **10-2a-102. Definitions.**

(1) As used in this part and Part 2, Incorporation of a Municipality:

(a) "Contact sponsor" means the person designated in the feasibility request as the contact sponsor under Subsection 10-2a-202(2)(d).

(b) (i) "Contiguous" means, except as provided in Subsection (1)(b)(ii), the same as that term is defined in Section 10-1-104.

(ii) "Contiguous" does not include a circumstance where:

(A) two areas of land are only connected by a strip of land between geographically separate areas; and

(B) the distance between the geographically separate areas described in Subsection (1)(b)(i)(A) is greater than the average width of the strip of land connecting the geographically separate areas.

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~~[(a)]~~ (c) "Feasibility consultant" means a person or firm:

- (i) with expertise in the processes and economics of local government; and
- (ii) who is independent of and not affiliated with a county or sponsor of a petition to

incorporate.

(d) "Feasibility request" means a request, described in Section 10-2a-202, for a feasibility study for the proposed incorporation of a municipality.

~~[(b)]~~ (e) (i) "Municipal service" means any of the following that are publicly provided:

- (A) culinary water;
- (B) secondary water;
- (C) sewer service;
- (D) storm drainage or flood control;
- (E) recreational facilities or parks;
- (F) electrical power generation or distribution;
- (G) construction or maintenance of local streets and roads;
- (H) street lighting;
- (I) curb, gutter, and sidewalk maintenance;
- (J) law or code enforcement service;
- (K) fire protection service;
- (L) animal services;
- (M) planning and zoning;
- (N) building permits and inspections;
- (O) refuse collection; or
- (P) weed control.

(ii) "Municipal service" includes the physical facilities required to provide a service described in Subsection ~~[(1)(b)(i)]~~ (1)(e)(i).

~~[(c)]~~ (f) "Private," with respect to real property, means 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 feasibility request or petition for incorporation; and

(b) the assessed fair market value of private real property shall be determined

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according to the last assessment roll for county taxes before the filing of the feasibility request or petition for incorporation.

(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 feasibility request or a petition for incorporation:

(a) a parcel of real property may not be included in the calculation of the required percentage or fraction unless the feasibility request or petition for incorporation 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 feasibility request or a petition for incorporation 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 feasibility request or petition for incorporation with the person's signature; and

(ii) the person provides documentation accompanying the feasibility request or petition for incorporation that substantiates the person's representative capacity; and

(c) subject to Subsection (3)(b), a duly appointed personal representative may sign a feasibility request or a petition for incorporation on behalf of a deceased owner.

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

**10-2a-103. Incorporation of a contiguous area -- Incorporation involving more than one county.**

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

(2) If a proposed incorporation relates to an area in more than one county:

(a) the individual who files the feasibility request shall file the request with each county containing a portion of the area proposed for incorporation; and

(b) the counties shall work together, in accordance with direction given by the lieutenant governor, to complete the actions required by this chapter.

Section 4. Section **10-2a-104** is amended to read:



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### **10-2a-104. Elections governed by the Election Code.**

Except as otherwise provided in this chapter, each election under this chapter ~~[shall be]~~ is governed by the provisions of Title 20A, Election Code.

Section 5. Section **10-2a-106** is amended to read:

### **10-2a-106. Feasibility request filed before changes to law take effect.**

~~[(1) If a request for a feasibility study to incorporate a city is filed under Section 10-2a-202 before May 12, 2015, the request and a subsequent feasibility study, petition, public hearing, election, and any other city incorporation action applicable to that request shall be filed with and be acted upon, held, processed, or paid for by the county legislative body or county clerk, as applicable, as designated, directed, or authorized before Laws of Utah 2015, Chapter 157, takes effect.]~~

~~[(2) If a petition to incorporate a town is filed before May 12, 2015, the petition and a subsequent feasibility study, petition, public hearing, election, and any other town incorporation action applicable to that petition to incorporate shall be filed with and be acted upon, held, processed, or paid for by the county legislative body or county clerk, as applicable, as designated, directed, or authorized before Laws of Utah 2015, Chapter 157, takes effect.]~~

~~[(3)]~~ (1) If an individual files a ~~[request for a feasibility study for the incorporation of a city, or an application for an incorporation petition for the incorporation of a]~~ feasibility request for incorporation of a city or town~~;~~ before May 14, 2019, the process for incorporating ~~[that]~~ the city or town ~~[under that request or application]~~ is not subject to Laws of Utah 2019, Chapter 165 or this bill, and is instead subject to the municipal incorporation law in effect on the day on which the individual files the feasibility request.

(2) If an individual files a feasibility request for incorporation of a city or town before May 3, 2023, the process for incorporating the city or town is not subject to this bill, and is subject to the municipal incorporation law in effect on the day on which the individual files the feasibility request.

Section 6. Section **10-2a-201.5** is amended to read:

### **10-2a-201.5. Qualifications for incorporation.**

(1) (a) An area may incorporate as a town in accordance with this part if the area:

(i) ~~[subject to Subsection (1)(c),]~~ is contiguous;

(ii) has a population of at least 100 people, but fewer than 1,000 people; and

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(iii) is not already part of a municipality.

(b) An area may incorporate as a city in accordance with this part if the area:

(i) ~~[subject to Subsection (1)(c),]~~ is contiguous;

(ii) has a population of 1,000 people or more; and

(iii) is not already part of a municipality.

~~[(c) An area is not contiguous for purposes of Subsection (1)(a)(i) or (b)(i) if:]~~

~~[(i) the area includes a strip of land that connects geographically separate areas; and]~~

~~[(ii) the distance between the geographically separate areas is greater than the average width of the strip of land connecting the geographically separate areas.]~~

(2) (a) An area may not incorporate under this part if:

(i) the area has a population of fewer than 100 people; or

(ii) except as provided in Subsection (2)(b), the area has an average population density of fewer than seven people per square mile.

(b) ~~[Subject to Subsection (1)(c), an area that does not comply with Subsection (2)(a)(ii) may incorporate under this part if the]~~ Subsection (2)(a)(ii) does not prohibit incorporation of an area if:

(i) noncompliance with Subsection (2)(a)(ii) is necessary to connect separate areas that share a demonstrable community interest[-]; and

(ii) the area is contiguous.

(3) ~~[Subject to Subsection (1)(c), an]~~ An area incorporating under this part may not include land owned by the United States federal government unless:

(a) the area, including the land owned by the United States federal government, is contiguous; and

(b) [(a)] (i) incorporating the land is necessary to connect separate areas that share a demonstrable community interest; or

[(b)] (ii) excluding the land from the incorporating area would create an unincorporated island within the proposed municipality.

(4) (a) Except as provided in Subsection (4)(b), an area incorporating under this part may not include 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 for a feasibility study, described in Section

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10-2a-202, relating to the incorporating area; and

(ii) is still pending on the date the request for the feasibility study described in Subsection (4)(a)(i) is filed.

(b) A ~~[request for a feasibility study]~~ feasibility 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)(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 feasibility request complies with Subsections 10-2a-202(1) ~~[and (2)]~~ through (4) with respect to excluding the proposed annexation area from the area proposed for incorporation; and

(iii) excluding the area proposed for annexation from the area proposed for incorporation would not cause the area proposed for incorporation to not be contiguous ~~[under Subsection (1)(c)]~~.

(c) Except as provided in Section 10-2a-206, the lieutenant governor shall consider each feasibility request to which Subsection (4)(b) applies as not proposing the incorporation of an area proposed for annexation.

(5) (a) An area incorporating under this part may not include part of a parcel of real property and exclude part of that same parcel unless the owner of the parcel gives written consent to exclude part of the parcel.

(b) A piece of real property that has more than one parcel number is considered to be a single parcel for purposes of Subsection (5)(a) if owned by the same owner.

Section 7. Section **10-2a-202** is amended to read:

### **10-2a-202. Feasibility request -- Requirements -- Limitations.**

(1) The process to incorporate a contiguous area of a county as a municipality is initiated by an individual filing a ~~[request for a feasibility study with the Office of the Lieutenant Governor that:]~~ feasibility request, with the county clerk of the county where the area proposed to be incorporated is located, that includes:

(a) ~~[is signed by]~~ the signatures of 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

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(iii) is, as of January 1 of the current year, equal in assessed fair market value to at least 7% of the assessed fair market value of all private real property within the area; and

(b) [~~indicates~~] the typed or printed name and current residence address of each owner signing the request[;].

(2) The feasibility request shall include:

[~~(c)~~] (a) [~~describes~~] a description of the contiguous area proposed to be incorporated as a municipality;

[~~(d)~~] (b) [~~designates~~] a designation of up to five signers of the request as sponsors, one of whom is designated as the contact sponsor, with the mailing address and telephone number of each;

[~~(e)~~] (c) [~~is accompanied by and circulated with~~] an accurate map or plat, prepared by a licensed surveyor, showing a legal description of the boundaries of the proposed municipality; and

[~~(f)~~] (d) [~~requests the lieutenant governor to~~] a request that the lieutenant governor commission a study to determine the feasibility of incorporating the area as a municipality.

(3) The individual described in Subsection (1) shall, on the day on which the individual files the feasibility request with the county clerk, provide to the lieutenant governor:

(a) written notice that the individual filed the feasibility request that indicates the day on which the individual filed the feasibility request; and

(b) a complete copy of the feasibility request.

[~~(2)~~] (4) A feasibility 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 [~~10-2a-205(6)(a)~~] 10-2a-205(5)(a) 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 10-2a-210; or

(b) the time described in Subsection 10-2a-208(1) for filing an incorporation petition based on the completed feasibility study or supplemental feasibility study has elapsed without the sponsors filing an incorporation petition under Section 10-2a-208.

[~~(3)~~] (5) Sponsors may not file a feasibility request [~~under this section regarding~~]

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relating to the incorporation of a town if the cumulative private real property that the sponsors own exceeds 40% of the total private land area within the boundaries of the proposed town.

Section 8. Section **10-2a-204** is amended to read:

### **10-2a-204. Processing a feasibility request -- Certification or rejection --**

#### **Processing priority -- Determination by the Utah Population Committee.**

(1) Within 45 days after the day on which an individual files a feasibility request under Section 10-2a-202, the [~~lieutenant governor~~] county clerk shall:

(a) [~~with the assistance of other county officers of the county in which the incorporation is proposed from whom the lieutenant governor requests assistance;~~] determine whether the feasibility request complies with Section 10-2a-202; and

(b) notify the lieutenant governor, in writing, of the determination made under Subsection (1)(a) and the grounds for the determination.

(2) The county clerk:

(a) shall keep the lieutenant governor apprised of the county clerk's progress in making the determination described in Subsection (1)(a); and

(b) may consult with the lieutenant governor in making the determination described in Subsection (1)(a).

~~[(b)]~~ (3) Within five days after the day on which the county clerk provides the notification described in Subsection (1)(b), the lieutenant governor shall:

(a) review the determination and the grounds for the determination to evaluate whether the feasibility request complies with Section 10-2a-202; and

(b) (i) uphold the determination;

(ii) reverse the determination; or

(iii) require the county clerk to provide additional information that the lieutenant governor identifies as necessary for the lieutenant governor to uphold or reverse the county clerk's determination.

(4) If the office requires the county clerk to provide additional information under Subsection (3)(b)(iii):

(a) the county clerk shall provide the additional information to the office within five days after the day on which the office notifies the county clerk that the additional information is required; and

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(b) the office shall, within five days after the day on which the county clerk provides the additional information, uphold or reverse the determination of the county clerk described in Subsection (1)(b).

~~[(i) if the lieutenant governor]~~

(5) If the lieutenant governor determines that the feasibility request complies with Section 10-2a-202, the lieutenant governor shall:

~~[(A)]~~ (a) certify the request;

~~[(B)]~~ (b) transmit written notification of the certification to the contact sponsor; and

~~[(C)]~~ (c) transmit written notification of the certification to the Utah Population Committee~~[, or]~~.

~~[(ii)]~~ (6) [if the lieutenant governor] If the lieutenant governor determines that the feasibility request fails to comply with Section 10-2a-202, the lieutenant governor shall reject the feasibility request and notify the contact sponsor in writing of the rejection and the [reasons] grounds for the rejection.

~~[(2)]~~ (7) (a) Within 20 days after the day on which the lieutenant governor transmits written notification under Subsection ~~[(1)(b)(i)(C)]~~ (5)(c), the Utah Population Committee shall:

(i) determine whether, on the date the sponsors filed the feasibility request ~~[under Section 10-2a-202 for the proposed municipality]~~, the proposed municipality complied with the population, population density, and contiguity requirements described in Section 10-2a-201.5; and

(ii) provide notice of the determination to the lieutenant governor and the county clerk.

(b) If the Utah Population Committee determines that a proposed municipality does not comply with the population, population density, or contiguity requirements described in Section 10-2a-201.5, the lieutenant governor shall rescind the certification described in Subsection ~~[(1)(b)(i)]~~ (5)(a) and reject the ~~[application in accordance with Subsection (1)(b)(ii)]~~ feasibility request.

~~[(3)]~~ (8) The lieutenant governor shall certify or reject feasibility requests [under Subsection (1)] in the order in which the requests are filed.

~~[(4)]~~ (9) (a) [(i)] If the lieutenant governor [rejects a request under Subsection (1)(b)(ii)] determines that the feasibility request fails to comply with Section 10-2a-202, or

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rejects the feasibility request under Subsection (7)(b), the sponsors may, subject to Section 10-2a-206, amend the feasibility request to correct the deficiencies [for which the lieutenant governor rejected the request] and refile the feasibility request with the [lieutenant governor] county clerk.

~~[(ii)]~~ (b) The sponsors shall submit any amended feasibility request within 90 days after the day on which the lieutenant governor ~~[rejects the request under Subsection (1)(b)(ii)]~~ makes the determination or rejection described in Subsection (9)(a).

~~[(iii)]~~ (c) The sponsors may reuse a signature described in Subsection ~~[10-2a-202(1)(a)]~~ 10-2a-202(2)(a) that is on a rejected feasibility request or on an amended feasibility request described in Subsection ~~[(4)(a)(i)]~~ (9)(a).

~~[(b)]~~ (d) The county clerk and the lieutenant governor shall consider a feasibility request that is amended and refiled under Subsection ~~[(4)(a)]~~ (9)(a) as a newly filed feasibility request and process the feasibility request in accordance with ~~[Subsection (3)]~~ this section.

Section 9. Section **10-2a-204.3** is enacted to read:

### **10-2a-204.3. Notice to property owners -- First public hearing.**

(1) Unless the lieutenant governor rescinds the certification under Subsection 10-2a-204(7)(b), the county clerk shall:

(a) hold the first public hearing in relation to the proposed incorporation, at a location approved by the lieutenant governor, no later than 30 days after the day on which the county clerk receives the notice described in Subsection 10-2a-204(7)(a)(ii);

(b) publish notice of the hearing in accordance with Subsection 10-2a-207(7); and

(c) within seven calendar days after the day on which the county clerk receives the notice described in Subsection 10-2a-204(7)(a)(ii), mail written notice of the proposed incorporation and of the first public hearing described in this section to:

(i) each residence within, and each owner of real property located within:

(A) the proposed incorporation boundaries; and

(B) 300 feet of the proposed incorporation boundaries;

(ii) the contact sponsor; and

(iii) the lieutenant governor.

(2) The written notice provided by the county clerk under Subsections (1)(b) and (c) shall include:

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(a) the following statement: "NOTICE OF PROPOSED INCORPORATION AND FIRST PUBLIC HEARING You have received this notice because you reside or own property within an area proposed for incorporation, or an area within 300 feet of an area proposed for incorporation. The first public hearing in relation to the proposed incorporation will be held on [insert date, time, and location]. The purpose of the first public hearing is to provide information regarding the proposed incorporation, the incorporation process, including the process for deciding whether to incorporate, and certain rights you may have in relation to the proposed incorporation. A specified landowner, as defined in Utah Code Section 10-2a-204.5, may, within 30 days after the day of the public hearing, request that the county clerk exclude all or part of the specified landowner's land from the area proposed for incorporation. A specified landowner may not request exclusion after the end of the 30-day period. Any owner of land within a county where the area proposed for incorporation is located may, within 30 days after the day of the public hearing, request that the county clerk include all or part of that land in the area proposed for incorporation. An owner of land may not request inclusion after the end of the 30-day period."; and

(b) a clear description of the area proposed for incorporation.

(3) Notwithstanding that the county conducts the first public hearing, the lieutenant governor, or a designee of the lieutenant governor, shall:

(a) direct the proceedings at the first public hearing, with the assistance of the county clerk as needed;

(b) provide information regarding the proposed incorporation, the incorporation process, including the process for deciding whether to incorporate, and the rights citizens may have in relation to the proposed incorporation;

(c) describe the process by which a specified landowner may request that the county clerk exclude all or part of the specified landowner's land from the area proposed for incorporation;

(d) describe the process by which an owner of land described in Subsection 10-2a-204.5(2)(b) may request that the county clerk include all or part of that land in the area proposed for incorporation;

(e) describe the criteria for granting a request for exclusion or inclusion of land; and

(f) answer questions from individuals who attend the first public hearing.



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(4) The contact sponsor, or an agent of the contact sponsor, and the county clerk, or an employee of the county clerk designated by the county clerk, shall attend the first public hearing.

(5) The county clerk shall:

(a) provide the location and equipment for the public hearing, subject to approval by the lieutenant governor; and

(b) ensure compliance with the requirements of Title 52, Chapter 4, Open and Public Meetings Act, in relation to the public hearing.

Section 10. Section **10-2a-204.5**, which is renumbered from Section 10-2a-203 is renumbered and amended to read:

**~~10-2a-203~~.            10-2a-204.5. Notice to owner of property -- Exclusion or inclusion of property from or in proposed municipality.**

(1) As used in this section:

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

~~[(b)]~~ (a) "Owner" means a person having an interest in real property, including an affiliate, subsidiary, or parent company.

~~[(c)]~~ (b) "Specified landowner" means a record owner of real property:

(i) who owns more than:

(A) 1% of the assessed fair market value, as of January 1 of the current year, of all property within the boundaries of a proposed incorporation; or

(B) 10% of the total private land area within the boundaries of a proposed incorporation; or

(ii) located in a mining protection area as defined in Section 17-41-101.

~~[(2) Within seven calendar days after the day on which an individual files a request for a feasibility study under Section 10-2a-202, the lieutenant governor shall mail written notice of the proposed incorporation to each residence within, and each owner of real property located within:]~~

~~[(a) the proposed incorporation boundaries; and]~~

~~[(b) 300 feet of the proposed incorporation boundaries.]~~

~~[(3)]~~ (2) ~~[A specified landowner may, within]~~ Within 30 calendar days after the day ~~[on~~

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~~which the specified landowner receives notice under Subsection (2);] of the first public hearing described in Section 10-2a-204.3:~~

~~(a) a specified landowner may request that the [lieutenant governor] county clerk exclude all or part of the [property] land owned by the specified landowner from the area proposed for incorporation by filing a [notice of] request for exclusion with the [Office of the Lieutenant Governor] county clerk that describes the [property] land for which the specified landowner requests exclusion; or~~

~~(b) any owner of land located within the county where the area proposed for incorporation is located may file a request that all or part of that land be included in the area proposed for incorporation by filing a request for inclusion with the county clerk that describes the land that the landowner desires to include.~~

~~[(4)] (3) The [lieutenant governor] county clerk shall exclude the [property] land identified by a specified landowner under Subsection [(3)] (2)(a) from the proposed incorporation boundaries unless the [lieutenant governor] county clerk finds by clear and convincing evidence that:~~

~~(a) the exclusion will leave an unincorporated island within the proposed municipality; and~~

~~(b) the [property] land receives from the county a majority of currently provided municipal services.~~

~~(4) The county clerk shall include land identified by a landowner under Subsection (2)(b) in the area proposed for incorporation unless the county clerk finds by clear and convincing evidence that:~~

~~(a) the land will not be contiguous with the area of the proposed municipality, taking into account other requests for inclusion or requests for exclusion received before the deadline described in Subsection (2); or~~

~~(b) the inclusion will cause the area proposed for incorporation to violate a requirement for incorporation described in this part.~~

~~(5) The county clerk shall:~~

~~(a) no earlier than 30 days after, but no later than 44 days after, the day of the first public hearing described in Section 10-2a-204.3, make a determination on all timely requests for exclusion or inclusion;~~

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(b) forward to the lieutenant governor for review;

(i) all timely requests for exclusion or inclusion;

(ii) the county clerk's determination on each of the requests described in Subsection (5)(b)(i); and

(iii) the reasons, including the supporting data, for each determination described in Subsection (5)(b)(ii); and

~~[(5)] [(a)]~~ (c) ~~[Within]~~ within five days after the day on which the lieutenant governor makes a final determination on whether to include or exclude ~~[a property]~~ land under Subsection ~~[(4), the lieutenant governor]~~ (7), the county clerk shall mail or transmit written notice of whether the ~~[property]~~ land is included or excluded from the proposed incorporation boundaries to:

(i) for a request for exclusion, the specified landowner that requested the ~~[property's]~~ exclusion; ~~[and]~~

(ii) for a request for inclusion, the owner of land that requested the inclusion; and

~~[(ii)]~~ (iii) the contact sponsor.

~~[(b)]~~ (6) ~~[If the lieutenant governor makes a determination to include a property under Subsection (4), the lieutenant governor]~~ For a request for exclusion or inclusion that is denied, the county clerk shall include, in the written notice described in Subsection ~~[(5)(a)]~~ (5)(c), a detailed explanation of the ~~[lieutenant governor's determination]~~ reason for the denial and the facts supporting the denial.

(7) Within 14 days after the day on which the lieutenant governor receives the information described in Subsection (5)(b) the lieutenant governor shall:

(a) review each determination;

(b) uphold or reverse each determination; and

(c) forward to the county clerk:

(i) the lieutenant governor's final determinations; and

(ii) if the lieutenant governor reverses a determination of the county clerk, the reason for the reversal and the supporting facts.

Section 11. Section **10-2a-205** is amended to read:

**10-2a-205. Feasibility study -- Feasibility study consultant -- Qualifications for proceeding with incorporation.**

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~~[(1) Within 90 days after the day on which the lieutenant governor receives a request that the lieutenant governor certifies under Subsection 10-2a-204(1)(b)(i), the lieutenant governor shall engage a feasibility consultant selected, in accordance with Subsection (2), to conduct a feasibility study.]~~

(1) Unless the lieutenant governor rescinds the certification under Subsection 10-2a-204(7)(b), the lieutenant governor shall, within 90 days after the day on which the lieutenant governor certifies a feasibility request under Subsection 10-2a-204(5)(a), in accordance with Subsection (2), engage a feasibility consultant to conduct a feasibility study.

(2) ~~[(a)]~~ The lieutenant governor shall:

(a) select a feasibility consultant in accordance with Title 63G, Chapter 6a, Utah Procurement Code~~[-]~~;

~~(b) [The lieutenant governor shall ensure that a feasibility consultant selected under Subsection (2)(a)]~~ ensure that the feasibility consultant:

(i) has expertise in the processes and economics of local government; and

(ii) is not affiliated with~~[- (A)]~~ a sponsor of the feasibility ~~[study]~~ request ~~[to which the feasibility study relates; or (B)]~~ or the county in which the proposed municipality is located~~[-]~~; and

~~[(3)]~~ (c) ~~[The lieutenant governor shall]~~ require the feasibility consultant to:

~~[(a)]~~ (i) submit a draft of the feasibility study to each applicable person with whom the feasibility consultant is required to consult under Subsection ~~[(4)(c)]~~ (3)(c) within 90 days after the day on which the lieutenant governor engages the feasibility consultant to conduct the study;

~~[(b)]~~ (ii) allow each person to whom the consultant provides a draft under Subsection ~~[(3)(a)]~~ (2)(c)(i) to review and provide comment on the draft;

~~[(c)]~~ (iii) submit a completed feasibility study, including a one-page summary of the results, to the following within 120 days after the day on which the lieutenant governor engages the feasibility consultant to conduct the feasibility study:

~~[(i)]~~ (A) the lieutenant governor;

~~[(ii)]~~ (B) the county legislative body of the county in which the incorporation is proposed;

~~[(iii)]~~ (C) the contact sponsor; and

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~~[(iv)]~~ (D) each person to whom the consultant provided a draft under Subsection ~~[(3)(a)]~~ (2)(c)(i); and

~~[(d)]~~ (iv) attend the public hearings described in Section 10-2a-207 to present the feasibility study results and respond to questions from the public.

~~[(4)]~~ (3) (a) The feasibility ~~[consultant shall ensure that the feasibility study includes]~~ study shall include:

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

(ii) the current and projected five-year demographics and tax base within the boundaries of the proposed municipality and surrounding area, including household size and income, commercial and industrial development, and public facilities;

(iii) subject to Subsection ~~[(4)(b)]~~ (3)(b), the current and five-year projected cost of providing municipal services to the proposed municipality, including administrative costs;

(iv) assuming the same tax categories and tax rates as currently imposed by the county and all other current service providers, the present and five-year projected revenue for the proposed municipality;

(v) an analysis of the risks and opportunities that might affect the actual costs described in Subsection ~~[(4)(a)(iii)]~~ (3)(a)(iii) or revenues described in Subsection ~~[(4)(a)(iv)]~~ (3)(a)(iv) of the newly incorporated municipality;

(vi) an analysis of new revenue sources that may be available to the newly incorporated municipality that are not available before the area incorporates, including an analysis of the amount of revenues the municipality might obtain from those revenue sources;

(vii) the projected tax burden per household of any new taxes that may be levied within the proposed municipality within five years after incorporation;

(viii) the fiscal impact of the municipality's incorporation on unincorporated areas, other municipalities, local districts, special service districts, and other governmental entities in the county; and

(ix) if the ~~[lieutenant governor]~~ county clerk excludes property from, or includes property in, the proposed municipality under Section ~~[10-2a-203]~~ 10-2a-204.5, an update to the map and legal description described in Subsection ~~[10-2a-202(1)(c)]~~ 10-2a-202(2)(e).

(b) (i) ~~[For purposes of Subsection (4)(a)(iii)]~~ In calculating the projected costs under

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Subsection (3)(a)(iii), the feasibility consultant shall assume the proposed municipality will provide a level and quality of municipal services that fairly and reasonably approximate the level and quality of municipal services that are provided to the area of the proposed municipality at the time the feasibility consultant conducts the feasibility study.

(ii) In [~~determining the present~~] calculating the current cost of a municipal service under Subsection (3)(a)(iii), the feasibility consultant shall consider:

(A) the amount it would cost the proposed municipality to provide the municipal service for the first five years after the municipality's incorporation; and

(B) the current municipal service provider's present and five-year projected cost of providing the municipal service.

(iii) In calculating costs under Subsection [~~(4)(a)(iii)~~] (3)(a)(iii), the feasibility consultant shall account for inflation and anticipated growth.

(c) In conducting the feasibility study, the feasibility consultant shall consult with the following before submitting a draft of the feasibility study under Subsection [~~(3)(a)~~] (2)(c)(i):

(i) if the proposed municipality will include lands owned by the United States federal government, the entity within the United States federal government that has jurisdiction over the land;

(ii) if the proposed municipality will include lands owned by the state, the entity within state government that has jurisdiction over the land;

(iii) each entity that provides a municipal service to a portion of the proposed municipality; and

(iv) [~~any~~] each other special service district that provides services to a portion of the proposed municipality.

[~~(5)~~] (4) If the five-year projected revenues calculated under Subsection [~~(4)(a)(iv)~~] (3)(a)(iv) exceed the five-year projected costs calculated under Subsection [~~(4)(a)(iii)~~] (3)(a)(iii) by more than 5%, the feasibility consultant shall project and report the expected annual revenue surplus to the contact sponsor and the lieutenant governor.

[~~(6)~~] (5) (a) Except as provided in Subsection [~~(6)(b)~~] (5)(b), if the results of the feasibility study, or a supplemental feasibility study described in Section 10-2a-206, show that the average annual amount of revenue calculated under Subsection [~~(4)(a)(iv)~~] (3)(a)(iv) does not exceed the average annual cost calculated under Subsection [~~(4)(a)(iii)~~] (3)(a)(iii) by more

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than 5%, the process to incorporate the area that is the subject of the feasibility study or supplemental feasibility study may not proceed.

(b) The process to incorporate an area described in Subsection ~~[(6)(a)]~~ (5)(a) may proceed if a subsequent supplemental feasibility study conducted under Section 10-2a-206 for the proposed incorporation demonstrates compliance with Subsection ~~[(6)(a)]~~ (5)(a).

~~[(7)]~~ (6) If the results of the feasibility study or revised feasibility study do not comply with Subsection ~~[(6)]~~ (5), and if requested by the sponsors of the request, the feasibility consultant shall, as part of the feasibility study or revised feasibility study, make recommendations regarding how the boundaries of the proposed municipality may be altered to comply with Subsection ~~[(6)]~~ (5).

~~[(8)]~~ (7) The lieutenant governor shall post a copy of the feasibility study, and any supplemental feasibility study described in Section 10-2a-206, on the lieutenant governor's website and make a copy available for public review at the ~~[Office of the Lieutenant Governor]~~ lieutenant governor's office.

Section 12. Section **10-2a-206** is amended to read:

### **10-2a-206. Modified feasibility request -- Supplemental feasibility study.**

(1) (a) The sponsors of a feasibility ~~[study]~~ request may modify the request to alter the boundaries of the proposed municipality and refile the modified feasibility request with the ~~[lieutenant governor]~~ county clerk if:

(i) the results of the feasibility study do not comply with Subsection ~~[10-2a-205(6)(a)]~~ 10-2a-205(5)(a); or

(ii) (A) the feasibility request complies with Subsection 10-2a-201.5(4)(b);

(B) the annexation petition described in Subsection 10-2a-201.5(4)(b) that proposed the annexation of an area that is part of the area proposed for incorporation has been denied; and

(C) an incorporation petition based on the feasibility request has not been filed[;].

~~[(iii) (A) the lieutenant governor completes the first public hearing described in Subsection 10-2a-207(4); and]~~

~~[(B) property is excluded from the proposed municipality in accordance with Subsection 10-2a-207(5)(b); or]~~

~~[(iv) before the time period for a specified landowner, as defined in Section 10-2a-203;~~

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to request that the lieutenant governor exclude the specified landowner's property from the proposed incorporation under Subsection 10-2a-207(5)(a) has expired, a municipal legislative body:]

~~[(A) approves an annexation petition proposing the annexation of an area that is part of the area proposed for incorporation under Section 10-2-407 or 10-2-408; or]~~

~~[(B) adopts an ordinance approving the annexation of an area that is part of the area proposed for incorporation under Section 10-2-418.]~~

(b) (i) The sponsors of a feasibility ~~[study]~~ request may not file a modified request under Subsection (1)(a)(i) more than 90 days after the day on which the feasibility consultant submits the final results of the feasibility study under Subsection ~~[10-2a-205(3)(c)]~~ 10-2a-205(2)(c)(iii).

(ii) The sponsors of a feasibility request may not file a modified request under Subsection (1)(a)(ii) more than 18 months after filing the original feasibility request under Section 10-2a-202.

~~[(iii) The sponsors of a request may not file a modified request under Subsection (1)(a)(iii) more than 90 days after the day on which the lieutenant governor mails or transmits written notice under Subsection 10-2a-207(4)(c).]~~

~~[(iv) The sponsors of a request may not file a modified request under Subsection (1)(a)(iv) more than 90 days after the day on which the municipal legislative body:]~~

~~[(A) approves the annexation petition under Section 10-2-407 or 10-2-408; or]~~

~~[(B) adopts the ordinance approving the annexation under Section 10-2-418.]~~

(c) (i) Subject to Subsection (1)(c)(ii), each modified feasibility request under Subsection (1)(a) shall comply with Subsections 10-2a-202(1) ~~[and (2)]~~ through (4) and Subsection 10-2a-201.5(4).

(ii) Notwithstanding Subsection (1)(c)(i), a signature on a feasibility request filed under Section 10-2a-202 may be used toward fulfilling the signature requirement of Subsection ~~[10-2a-202(1)(a)]~~ 10-2a-202(2)(a) for the feasibility request as modified under Subsection (1)(a), unless the modified feasibility request proposes the incorporation of an area that is more than 20% larger or smaller than the area described by the original feasibility request in terms of:

(A) private land area; or



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(B) assessed fair market value of private real property, as of January 1 of the current year.

~~[(2)]~~ (d) Within 20 days after the ~~[lieutenant governor's receipt of]~~ day on which the county clerk receives the modified request, the ~~[lieutenant governor]~~ county clerk and the lieutenant governor shall follow the same procedure ~~[under Subsection 10-2a-204(1)]~~ described in Subsections 10-2a-204(1) through (6) for the modified feasibility request as for an original feasibility request.

~~[(3)]~~ (2) The timely filing of a modified feasibility request under Subsection (1) gives the modified feasibility request the same processing priority under Subsection ~~[10-2a-204(3)]~~ 10-2a-204(8) as the original feasibility request.

~~[(4)]~~ (3) Within 10 days after the day on which the ~~[lieutenant governor]~~ county clerk receives a modified feasibility request under Subsection (1)(a) that relates to a request for which a feasibility study has already been completed, the lieutenant governor shall commission the feasibility consultant who conducted the feasibility study to conduct a supplemental feasibility study that accounts for the modified feasibility request.

~~[(5)]~~ (4) The lieutenant governor shall require the feasibility consultant to:

(a) submit a draft of the supplemental feasibility study to each applicable person with whom the feasibility consultant is required to consult under Subsection ~~[10-2a-205(4)(c)]~~ 10-2a-205(3)(c) within 30 days after the day on which the feasibility consultant is engaged to conduct the supplemental study;

(b) allow each person to whom the consultant provided a draft under Subsection ~~[(5)(a)]~~ (4)(a) to review and provide comment on the draft; and

(c) submit a completed supplemental feasibility study, to the following within 45 days after the day on which the feasibility consultant is engaged to conduct the feasibility study:

- (i) the lieutenant governor;
- (ii) the county legislative body of the county in which the incorporation is proposed;
- (iii) the contact sponsor; and
- (iv) each person to whom the consultant provided a draft under Subsection ~~[(5)(a)]~~ (4)(a).

~~[(6)]~~ (5) (a) Subject to Subsection ~~[(6)(b)]~~ (5)(b), if the results of the supplemental feasibility study do not comply with Subsection ~~[10-2a-205(6)(a)]~~ 10-2a-205(5)(a), the

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sponsors may further modify the request in accordance with Subsection (1).

(b) Subsections ~~[(2), (4), and (5)]~~ (1)(d), (5), and (6) apply to a modified feasibility request described in Subsection ~~[(6)(a)]~~ (5)(a).

(c) The ~~[lieutenant governor]~~ county clerk shall consider a modified feasibility request described in Subsection ~~[(6)(a)]~~ (5)(a) as an original feasibility request ~~[for a feasibility study]~~ for purposes of determining the modified feasibility request's processing priority under Subsection ~~[10-2a-204(3)]~~ 10-2a-204(8).

Section 13. Section **10-2a-207** is amended to read:

### **10-2a-207. Additional public hearings on feasibility study results -- Notice of hearings.**

(1) As used in this section, "specified landowner" means the same as that term is defined in Section ~~[10-2a-203]~~ 10-2a-204.5.

(2) If the results of the feasibility study or supplemental feasibility study comply with Subsection ~~[10-2a-205(6)(a)]~~ 10-2a-205(5)(a), the ~~[lieutenant governor]~~ county clerk shall, after receipt of the results of the feasibility study or supplemental feasibility study, conduct ~~[two]~~ additional public hearings in accordance with this section.

(3) (a) If an area proposed for incorporation is approved for annexation after the feasibility study or supplemental feasibility study is conducted but before the ~~[lieutenant governor]~~ county clerk conducts the ~~[first]~~ second public hearing under Subsection (4), the ~~[lieutenant governor]~~ county clerk may not conduct the ~~[first]~~ second public hearing under Subsection (4) unless:

(i) the sponsors of the feasibility study file a modified feasibility request ~~[for a feasibility study]~~ in accordance with Section 10-2a-206; and

(ii) the results of the supplemental feasibility study comply with Subsection ~~[10-2a-205(6)(a)]~~ 10-2a-205(5)(a).

(b) For purposes of Subsection (3)(a), an area is approved for annexation if ~~[a condition described in Subsection 10-2a-206(1)(a)(iv) occurs]~~ a municipal legislative body:

(i) approves an annexation petition proposing the annexation of an area that is part of the area proposed for incorporation under Section 10-2-407 or 10-2-408; or

(ii) adopts an ordinance approving the annexation of an area that is part of the area proposed for incorporation under Section 10-2-418.

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(4) The ~~[lieutenant governor]~~ county clerk shall conduct the ~~[first]~~ second public hearing:

(a) within 60 days after the day on which the ~~[lieutenant governor]~~ county clerk receives the results under Subsection (2) or (3)(a)(ii);

(b) at a location approved by the lieutenant governor within or near the proposed municipality; and

(c) to allow the feasibility consultant to present the results of the feasibility study~~;~~ and ~~(d) to~~ inform the public about the results [of the feasibility study].

~~[(5)(a) Within 30 calendar days after the day on which the lieutenant governor completes the first public hearing under Subsection (4), a specified landowner may request that the lieutenant governor exclude all or part of the property owned by the specified landowner from the proposed incorporation by filing a notice of exclusion with the Office of the Lieutenant Governor that describes the property for which the specified landowner requests exclusion.]~~

~~[(b) The lieutenant governor shall exclude the property identified by a specified landowner under Subsection (5)(a) from the proposed incorporation boundaries unless the lieutenant governor finds by clear and convincing evidence that:]~~

~~[(i) the exclusion will leave an unincorporated island within the proposed municipality; and]~~

~~[(ii) the property receives from the county a majority of currently provided municipal services:]~~

~~[(c)(i) Within five days after the day on which the lieutenant governor determines whether to exclude property under Subsection (5)(b), the lieutenant governor shall mail or transmit written notice of whether the property is included or excluded from the proposed municipality to:]~~

~~[(A) the specified landowner that requested the property's exclusion; and]~~

~~[(B) the contact sponsor:]~~

~~[(ii) If the lieutenant governor makes a determination to include a property under Subsection (5)(b), the lieutenant governor shall include, in the written notice described in Subsection (5)(c)(i), a detailed explanation of the lieutenant governor's determination.]~~

~~[(d)(i) If the lieutenant governor excludes property from the proposed municipality~~

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~~under Subsection (5)(b), or if an area proposed for incorporation is approved for annexation within the time period for a specified landowner to request an exclusion under Subsection (5)(a), the lieutenant governor may not conduct the second public hearing under Subsection (6); unless:]~~

~~[(A) the sponsors of the feasibility study file a modified request for a feasibility study in accordance with Section 10-2a-206; and]~~

~~[(B) the results of the supplemental feasibility study comply with Subsection 10-2a-205(6)(a).]~~

~~[(ii) For purposes of Subsection (5)(d)(i), an area is approved for annexation if a condition described in Subsection 10-2a-206(1)(a)(iv) occurs.]~~

~~[(6) The lieutenant governor shall conduct the second public hearing:]~~

~~[(a) (i) within 30 days after the day on which the time period described in Subsection (5)(a) expires, if Subsection (5)(d) does not apply; or]~~

~~[(ii) within 30 days after the day on which the lieutenant governor receives the results of the supplemental feasibility study described in Subsection (5)(d)(i)(B), if Subsection (5)(d) applies;]~~

~~[(b) within or near the proposed municipality; and]~~

~~[(c) to allow the feasibility consultant to present the results of and inform the public about:]~~

~~[(i) the feasibility study presented to the public in the first public hearing under Subsection (4), if Subsection (5)(d) does not apply; or]~~

~~[(ii) the supplemental feasibility study described in Subsection (5)(d)(i)(B), if Subsection (5)(d) applies.]~~

(5) The county clerk shall:

(a) conduct an additional public hearing following each occasion when, after the day of the second public hearing, the county clerk receives the results of a supplemental feasibility study that comply with Subsection 10-2a-205(5); and

(b) hold the public hearing described in Subsection (5)(a):

(i) within 30 days after the day on which the county clerk receives the results of the supplemental feasibility study;

(ii) at a location approved by the lieutenant governor within or near the proposed

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municipality;

(iii) to inform the public that the feasibility presented to the public at the preceding public hearing does not apply; and

(iv) to allow the feasibility consultant to present the results of the supplemental feasibility study and inform the public about the results.

[~~(7)~~] (6) At each public hearing required under this section, the [~~lieutenant governor~~] county clerk shall:

- (a) provide a map or plat of the boundary of the proposed municipality;
- (b) provide a copy of the applicable feasibility study for public review;
- (c) allow members of the public to express views about the proposed incorporation, including views about the proposed boundaries; and
- (d) allow the public to ask the feasibility consultant questions about the applicable feasibility study.

[~~(8)~~] (7) The [~~lieutenant governor~~] county clerk shall publish notice of each public hearing required under this section and Section 10-2a-204.3:

(a) (i) at least three weeks before the day of the public hearing, by posting one notice, and at least one additional notice per 2,000 population of the proposed municipality, in places within the proposed municipality that are most likely to give notice to the residents within, and the owners of real property located within, the proposed municipality; or

(ii) at least three weeks before the public hearing, by mailing notice to each residence within, and each owner of real property located within, the proposed municipality;

(b) on the Utah Public Notice Website created in Section 63A-16-601, for three weeks before the day of the public hearing; and

(c) on the [~~lieutenant governor's~~] county's website for three weeks before the day of the public hearing.

[~~(9)~~] (8) (a) Except as provided in Subsection [~~(9)(b)~~], (8)(b), for a hearing described in this section, the notice described in Subsection [~~(8)~~] (7) shall:

(i) include the feasibility study summary described in Subsection [~~10-2a-205(3)(c)~~] 10-2a-205(2)(c)(iii); and

(ii) indicate that a full copy of the feasibility study is available on the [~~lieutenant governor's~~] county's website and for inspection at the [~~Office of the Lieutenant Governor; and~~]

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county clerk's office.

~~[(iii) indicate that under no circumstances may property be excluded or annexed from the proposed incorporation after the time period specified in Subsection (5)(a) has expired, if the notice is for the first public hearing under Subsection (4).]~~

(b) Instead of publishing the feasibility summary under Subsection ~~[(9)(a)(i), the lieutenant governor]~~ (8)(a)(i), the county clerk may publish a statement that specifies the following sources where a resident within, or the owner of real property located within, the proposed municipality, may view or obtain a copy of the feasibility study:

(i) the lieutenant governor's website;

(ii) the county's website;

~~[(iii)]~~ (iii) the physical address of the ~~[Office of the Lieutenant Governor]~~ county clerk's office; and

~~[(iii)]~~ (iv) a mailing address and telephone number.

Section 14. Section **10-2a-208** is amended to read:

### **10-2a-208. Petition for incorporation -- Requirements and form.**

(1) At any time within one year after the day on which the ~~[lieutenant governor]~~ county clerk completes the public hearings ~~[described in]~~ required under Section 10-2a-207, individuals within the proposed municipality may proceed with the incorporation process by circulating, and submitting to the ~~[lieutenant governor an incorporation]~~ county clerk, a petition for incorporation that, to be certified under Subsection 10-2a-209(1)(b)(i), is required to be signed by:

(a) 10% of all registered voters within the area proposed to be incorporated as a municipality, as of the ~~[date]~~ day on which the petition for incorporation is filed;

(b) if the petition for incorporation proposes the incorporation of a city, and subject to Subsection (4), 10% of all registered voters within 90% of the voting precincts within the area proposed to be incorporated as a city, as of the ~~[date]~~ day on which the petition for incorporation is filed; and

(c) the owners of private real property that:

(i) is located within the proposed municipality;

(ii) covers at least 10% of the total private land area within the proposed municipality;

and

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(iii) ~~[is]~~ on January 1 of the current year, was equal in assessed fair market value to at least 7% of the assessed fair market value of all private real property within the proposed municipality.

(2) The ~~[petition sponsors shall ensure that the]~~ petition for incorporation shall:

(a) ~~[includes]~~ include the typed or printed name and current residence address of each voter ~~[that]~~ who signs the petition for incorporation;

(b) ~~[describes]~~ describe the area proposed to be incorporated as a municipality, as described in the feasibility ~~[study]~~ request or the modified feasibility request that complies with Subsection ~~[10-2a-205(6)(a)]~~ 10-2a-205(5)(a);

(c) ~~[states]~~ state the proposed name for the proposed municipality;

(d) ~~[designates]~~ designate five signers of the petition for incorporation as petition sponsors, one of whom is designated as the contact sponsor, with the mailing address and telephone number of each;

(e) if the sponsors propose the incorporation of a city, ~~[states]~~ state that the signers of the petition for incorporation appoint the sponsors, if the incorporation measure passes, to represent the signers in:

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

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

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

(g) substantially ~~[complies]~~ comply with and ~~[is]~~ be circulated in the following form:

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

To the Honorable Lieutenant Governor and the [name of county legislative body]:

We, the undersigned registered voters within the area described in this petition for incorporation, respectfully petition the lieutenant governor ~~[to direct]~~ and the county legislative body to submit to the registered voters residing within the area described in this petition for incorporation, at the next regular general election, the question of whether the area should incorporate as a municipality. Each of the undersigned affirms that each has personally signed this petition for incorporation and is a registered voter who resides within the described area,

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and that the current residence address of each is correctly written after the signer's name. The area proposed to be incorporated as a municipality is described as follows: [~~(f)~~](~~f~~)~~(~~[insert an accurate description of the area proposed to be incorporated~~)]~~ ].

(3) (a) [~~A~~] Except as provided in Subsection (3)(b), a valid signature on a feasibility request described in Section 10-2a-202 or a modified feasibility request described in Section 10-2a-206 may [not] be used toward fulfilling the signature requirement described in Subsection (1)[~~-(a)~~] if the feasibility request notified the signer in conspicuous language that the signature, unless withdrawn, would also be used for a petition for incorporation under this section[~~,-and~~].

(b) [~~unless~~] A signature described in Subsection (3)(a) may not be used toward fulfilling the signature requirement described in Subsection (1) if the signer files with the [lieutenant governor] county clerk a written withdrawal of the signature before the petition for incorporation is filed with the county clerk under this section [with the lieutenant governor].

(4) (a) A signature does not qualify under Subsection (1)(b) if the signature is gathered from a voting precinct that:

(i) except in a proposed municipality that will be a city of the fifth class, is not located entirely within the boundaries of a proposed city; or

(ii) includes less than 50 registered voters.

(b) A voting precinct that is not located entirely within the boundaries of the proposed city does not qualify as a voting precinct under Subsection (1)(b).

Section 15. Section **10-2a-209** is amended to read:

### **10-2a-209. Processing of petition by county clerk -- Certification or rejection -- Petition modification.**

(1) Within 45 days after the day on which [~~an incorporation~~] a petition for incorporation is filed under Section 10-2a-208, the [~~lieutenant governor~~] county clerk shall:

(a) [~~with the assistance of other county officers of the county in which the incorporation is proposed, and from whom the lieutenant governor requests assistance,~~] determine whether the petition for incorporation complies with Section 10-2a-208; and

(b) (i) if the [~~lieutenant governor~~] county clerk determines that the petition for incorporation complies with Section 10-2a-208, certify the petition for incorporation and notify in writing the contact sponsor of the certification; or



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(ii) if the [~~lieutenant governor~~] county clerk determines that the petition for incorporation fails to comply with Section 10-2a-208, reject the petition for incorporation and notify the contact sponsor in writing of the rejection and the reasons for the rejection.

(2) (a) If the [~~lieutenant governor~~] county clerk rejects a petition for incorporation under Subsection (1)(b)(ii), the [~~petition~~] sponsors of the petition for incorporation may correct the deficiencies for which the petition for incorporation was rejected and refile the petition for incorporation with the [~~lieutenant governor~~] county clerk.

(b) Notwithstanding the deadline described in Subsection 10-2a-208(1), the [~~petition~~] sponsors of the petition for incorporation may file a modified petition for incorporation under Subsection (2)(a) no later than 30 days after the day on which the [~~lieutenant governor~~] county clerk notifies the contact sponsor of rejection under Subsection (1)(b)(ii).

(c) A valid signature on [~~an incorporation~~] a petition for incorporation described in Section 10-2a-208 may be used toward fulfilling the signature requirement described in Subsection 10-2a-208(1) for a petition for incorporation that is modified under Subsection (2)(a).

(3) (a) Within 20 days after the day on which the [~~lieutenant governor~~] county clerk receives a modified petition for incorporation under Subsection (2)(a), the [~~lieutenant governor~~] county clerk shall review the modified petition for incorporation in accordance with Subsection (1).

(b) The sponsors of [~~an incorporation~~] a petition for incorporation may not modify the petition for incorporation more than once.

Section 16. Section **10-2a-210** is amended to read:

**10-2a-210. Incorporation election -- Notice of election -- Voter information pamphlet.**

(1) (a) If the [~~lieutenant governor~~] county clerk certifies a petition for incorporation under Subsection 10-2a-209(1)(b), the lieutenant governor shall schedule an incorporation election for the proposed municipality described in the petition for incorporation to be held on the date of the next regular general election described in Section 20A-1-201, or the next municipal general election described in Section 20A-1-202, that is at least 65 days after the day on which the [~~lieutenant governor~~] county clerk certifies the petition for incorporation.

(b) (i) The lieutenant governor shall direct the county legislative body of the county in

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which the proposed municipality is located to hold the election on the date that the lieutenant governor schedules under Subsection (1)(a).

(ii) The county legislative body shall hold the election as directed by the lieutenant governor under Subsection (1)(b)(i).

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

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

(ii) at least three weeks before the day of the election, by posting one notice, and at least one additional notice per 2,000 population of the area proposed to be incorporated, in places within the area proposed to be incorporated that are most likely to give notice to the voters within the area proposed to be incorporated, subject to a maximum of 10 notices; or

(iii) at least three weeks before the day of the election, by mailing notice to each registered voter in the area proposed to be incorporated;

(b) by posting notice on the Utah Public Notice Website, created in Section 63A-16-601, for three weeks before the day of the election;

(c) if the proposed municipality has a website, by posting notice on the proposed municipality's website for three weeks before the day of the election; and

(d) by posting notice on the county's website for three weeks before the day of the election.

(3) (a) The notice [~~required by~~] described in Subsection (2) shall [~~contain~~] include:

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

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

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

and

(iv) except as provided in Subsection (3)(b), the feasibility study summary described in Subsection [~~10-2a-205(3)(c)~~] 10-2a-205(2)(c)(iii) and a statement that a full copy of the study is available on the [~~lieutenant governor's~~] county's website and for inspection at the [~~Office of the Lieutenant Governor~~] county offices.

(b) Instead of including the feasibility summary under Subsection (3)(a)(iv), the notice may include a statement that specifies the following sources where a registered voter in the area proposed to be incorporated may view or obtain a copy of the feasibility study:

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(i) the [~~lieutenant governor's~~] county's website;  
(ii) the physical address of the [~~Office of the Lieutenant Governor~~] county clerk office;  
and

(iii) a mailing address and telephone number.

(4) (a) In addition to the notice [~~required under~~] described in Subsection (2), the county clerk shall publish and distribute, before the incorporation election is held, a voter information pamphlet:

(i) in accordance with the procedures and requirements of Section 20A-7-402;  
(ii) in consultation with the lieutenant governor; and  
(iii) in a manner that the county clerk determines is adequate, subject to Subsections (4)(a)(i) and (ii).

(b) The voter information pamphlet described in Subsection (4)(a):

(i) shall inform the public of the proposed incorporation; and  
(ii) may include written statements, printed in the same font style and point size, from proponents and opponents of the proposed incorporation.

(5) An individual may not vote in an incorporation election under this section unless the individual is a registered voter who resides, as defined in Section 20A-1-102, within the boundaries of the proposed municipality.

(6) If a majority of those who vote in an incorporation election held under this section cast votes in favor of incorporation, the area shall incorporate.

Section 17. Section **10-2a-213** is amended to read:

**10-2a-213. Determination of number of council members -- Determination of election districts -- Hearings and notice.**

(1) If the incorporation proposal passes, the [~~petition~~] sponsors of the petition for incorporation shall, within 60 days after the day on which the county conducts the canvass of the election under Section 10-2a-212:

(a) for the incorporation of a city:  
(i) if the voters at the incorporation election choose the council-mayor form of government, determine the number of council members that will constitute the city council of the city; and  
(ii) if the voters at the incorporation election vote to elect council members by district,

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determine the number of council members to be elected by district and draw the boundaries of those districts, which shall be substantially equal in population; and

(b) for the incorporation of any municipality:

(i) determine the initial terms of the mayor and members of the municipal council so that:

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

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

(ii) submit in writing to the county legislative body the results of the determinations made by the sponsors under Subsections (1)(a) and (b)(i).

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

(3) Before making a determination under Subsection (1)(a) or (b)(i), the ~~[petition]~~ sponsors of the petition for incorporation shall, under the direction of the county clerk, hold a public hearing within the future municipality on the applicable issues described in Subsections (1)(a) and (b)(i).

(4) ~~[The petition sponsors shall provide notice]~~ Notice of the public hearing described in Subsection (3) shall be provided as follows:

(a) the sponsors of the petition for incorporation shall:

(i) at least two weeks before the day of the public hearing, ~~[by posting]~~ post one notice, and at least one additional notice per 2,000 population of the future municipality, in places within the future municipality that are most likely to give notice to the residents within, and the owners of real property located within, the future municipality, subject to a maximum of 10 notices; or

(ii) at least two weeks before the day of the public hearing, ~~[by mailing]~~ mail notice to each residence within, and each owner of real property located within, the future municipality;

(b) ~~[by posting]~~ the county clerk shall post notice on the Utah Public Notice Website,

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created in Section 63A-16-601, for two weeks before the day of the public hearing;

(c) if the future municipality has a website, ~~[by posting]~~ the sponsors of the petition for incorporation shall post notice on the future municipality's website for two weeks before the day of the public hearing; and

(d) ~~[by posting notice]~~ the county clerk shall post notice on the county's website for two weeks before the day of the public hearing.

Section 18. Section **10-2a-214** is amended to read:

**10-2a-214. Notice of number of commission or council members to be elected and of district boundaries -- Declaration of candidacy for municipal office.**

(1) Within 20 days after the day on which a county legislative body receives the ~~[petition sponsors' determination under]~~ determination described in Subsection 10-2a-213(1)(b)(ii), the county clerk shall provide a notice, in accordance with Subsection (2), containing:

(a) the number of municipal council members to be elected for the new municipality;

(b) except as provided in Subsection (3), if some or all of the municipal council members are to be elected by district, a description of the boundaries of those districts;

(c) information about the deadline for an individual to file a declaration of candidacy to become a candidate for mayor or municipal council; and

(d) information about the length of the initial term of each of the municipal officers.

(2) The county clerk shall provide the notice described in Subsection (1):

(a) (i) by posting one notice, and at least one additional notice per 2,000 population of the future municipality, in places within the future municipality that are most likely to give notice to the residents in the future municipality, subject to a maximum of 10 notices; or

(ii) by mailing notice to each residence in the future municipality;

(b) by posting notice on the Utah Public Notice Website, created in Section 63A-16-601, for two weeks;

(c) if the future municipality has a website, by posting notice on the future municipality's website for two weeks; and

(d) by posting notice on the county's website for two weeks.

(3) Instead of including a description of the district boundaries under Subsection (1)(b), the notice may include a statement that specifies the following sources where a resident of the

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future municipality may view or obtain a copy of the district boundaries:

- (a) the county website;
- (b) the physical address of the county [~~offices~~] clerk's office; and
- (c) a mailing address and telephone number.

(4) Notwithstanding Subsection 20A-9-203(3)(a), each individual seeking to become a candidate for mayor or municipal council of a municipality incorporating under this part shall file a declaration of candidacy with the clerk of the county in which the future municipality is located and in accordance with:

(a) for an incorporation held on the date of a regular general election, the deadlines for filing a declaration of candidacy under Section 20A-9-202; or

(b) for an incorporation held on the date of a municipal general election, the deadlines for filing a declaration of candidacy under Section 20A-9-203.

Section 19. Section **10-2a-220** is amended to read:

### **10-2a-220. Costs of incorporation -- Fees established by lieutenant governor.**

(1) (a) There is created an expendable special revenue fund known as the "Municipal Incorporation Expendable Special Revenue Fund."

(b) The fund shall consist of:

(i) appropriations from the Legislature; and

(ii) fees the [~~Office of the Lieutenant Governor~~] lieutenant governor collects and remits to the fund under this section.

(c) The [~~Office of the Lieutenant Governor~~] lieutenant governor shall deposit all money collected under this section into the fund.

(2) (a) The lieutenant governor shall establish a fee in accordance with Section 63J-1-504 for a cost incurred by the lieutenant governor or the county for an incorporation proceeding, including:

- (i) a request certification;
- (ii) a feasibility study;
- (iii) a petition certification;
- (iv) publication of notices;
- (v) public hearings;
- (vi) all other incorporation activities occurring after the elections; and

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(vii) any other cost incurred by the lieutenant governor or county in relation to an incorporation proceeding.

(b) A cost under Subsection (2)(a) does not include a cost incurred by a county for holding an election under Section 10-2a-210.

(3) The lieutenant governor shall pay for a cost described in Subsection (2)(a) using funds from the Municipal Incorporation Expendable Special Revenue Fund.

(4) (a) An area that incorporates as a municipality shall pay:

(i) to the lieutenant governor each fee established under Subsection (2) for each cost described in Subsection (2)(a) incurred by the lieutenant governor or the county; and

(ii) the county for a cost described in Subsection (2)(b).

(b) The lieutenant governor shall execute a payback agreement with each new municipality for the new municipality to pay the fees described in Subsection (4)(a) over a period that, except as provided in Subsection (4)(c), may not exceed five years.

(c) If necessary, the lieutenant governor may extend a fee payment deadline beyond the deadline described in Subsection (4)(b) by amending the payback agreement described in Subsection (4)(b).

(d) The lieutenant governor shall deposit each fee the lieutenant governor collects under Subsection (4)(a)(i) into the Municipal Incorporation Expendable Special Revenue Fund.

(5) If the lieutenant governor expends funds from the Municipal Incorporation Expendable Special Revenue Fund that are not repaid to the lieutenant governor under Subsection (4)(a)(i) because an area did not incorporate as a municipality, the Legislature shall appropriate money to the fund in an amount equal to the funds that are not repaid.

### **Section 20. Repealer.**

This bill repeals:

Section **10-2a-101**, Title.

Section **10-2a-201**, Title.

### **Section 21. Revisor instructions.**

The Legislature intends that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication, replace the references in Subsections 10-2a-106(1) and (2) in this bill from "this bill" to the citation to the bill in the Laws of Utah.

### **Section 22. Coordinating S.B. 37 with S.B. 43 -- Substantive and technical**

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### **amendments.**

If this S.B. 37 and S.B. 43, Public Notice Requirements, both pass and become law, it is the intent of the Legislature that the Office of Legislative Research and General Counsel shall prepare the Utah Code database for publication by:

(1) amending Subsection 10-2a-207(8) as follows:

"[(8)] (7) The [lieutenant governor] county clerk shall publish notice of each public hearing required under this section[:], and Section 10-2a-204.3, for the proposed municipality, as a class B notice under Section 63G-28-102, for at least three weeks before the day of the public hearing.

[(a) (i) at least three weeks before the day of the public hearing, by posting one notice, and at least one additional notice per 2,000 population of the proposed municipality, in places within the proposed municipality that are most likely to give notice to the residents within, and the owners of real property located within, the proposed municipality; or]

[(ii) at least three weeks before the public hearing, by mailing notice to each residence within, and each owner of real property located within, the proposed municipality;]

[(b) on the Utah Public Notice Website created in Section 63A-16-601, for three weeks before the day of the public hearing; and]

[(c) on the lieutenant governor's website for three weeks before the day of the public hearing.]; and

(2) amending Subsection 10-2a-213(4) as follows:

"(4) [The petition sponsors shall provide notice] Notice of the public hearing described in Subsection (3) shall be provided as follows:

[(a) (i) at least two weeks before the day of the public hearing, by posting one notice, and at least one additional notice per 2,000 population of the future municipality, in places within the future municipality that are most likely to give notice to the residents within, and the owners of real property located within, the future municipality, subject to a maximum of 10 notices; or]

[(ii) at least two weeks before the day of the public hearing, by mailing notice to each residence within, and each owner of real property located within, the future municipality;]

[(b) by posting notice on the Utah Public Notice Website, created in Section 63A-16-601, for two weeks before the day of the public hearing;]



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(a) the county clerk shall provide notice for the future municipality, as a class B notice under Section 63G-28-102, for at least two weeks before the day of the public hearing; and

~~[(c)]~~ (b) if the future municipality has a website, ~~[by posting]~~ the sponsors of the petition for incorporation shall post notice on the future municipality's website for at least two weeks before the day of the public hearing~~[- and]~~.

~~[(d) by posting notice on the county's website for two weeks before the day of the public hearing.]".~~