

SB0258S02 compared with SB0258S01

~~{deleted text}~~ shows text that was in SB0258S01 but was deleted in SB0258S02.

inserted text shows text that was not in SB0258S01 but was inserted into SB0258S02.

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~~{Senator Curtis S}~~Representative James A. ~~{Bramble}~~Dunnigan proposes the following substitute bill:

MUNICIPAL INCORPORATION AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: ~~{}~~Curtis S. Bramble

House Sponsor: ~~{~~James A. Dunnigan

LONG TITLE

General Description:

This bill amends the Utah Municipal Code to provide for a pilot program for the incorporation of a preliminary municipality.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ establishes a process for landowners to incorporate a preliminary municipality for the purpose of developing land for eventual incorporation into a town;
- ▶ describes requirements and procedures for applying to incorporate an area as a preliminary municipality;
- ▶ describes the responsibilities of the lieutenant governor and a county clerk in

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relation to the processes described in this bill;

- ▶ establishes the procedure for incorporating an area as a preliminary municipality, including a feasibility study, a public hearing, and the posting of a bond;
- ▶ describes development requirements;
- ▶ provides for appointment of a board and a board chair for a preliminary municipality;
- ▶ addresses the powers of, and limitations on, a preliminary municipality;
- ▶ requires for the transition of a preliminary municipality to a town when the population of the preliminary municipality reaches a certain level;
- ▶ describes the requirements and procedures for transitioning a preliminary municipality into a town;
- ▶ provides for the election of officers for the future town;
- ▶ provides a sunset date for the provisions of this bill; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-1-104, as last amended by Laws of Utah 2015, Chapter 352

10-2a-201.5, as last amended by Laws of Utah 2023, Chapter 224

10-2a-202, as last amended by Laws of Utah 2023, Chapter 224

63I-1-210, as last amended by Laws of Utah 2022, Chapter 274

ENACTS:

10-2a-501, Utah Code Annotated 1953

10-2a-502, Utah Code Annotated 1953

10-2a-503, Utah Code Annotated 1953

10-2a-504, Utah Code Annotated 1953

10-2a-505, Utah Code Annotated 1953

10-2a-506, Utah Code Annotated 1953

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10-2a-507, Utah Code Annotated 1953

10-2a-508, Utah Code Annotated 1953

10-2a-509, Utah Code Annotated 1953

10-2a-510, Utah Code Annotated 1953

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

Section 1. Section **10-1-104** is amended to read:

10-1-104. Definitions.

As used in this title:

(1) "City" means a municipality that is classified by population as a city of the first class, a city of the second class, a city of the third class, a city of the fourth class, or a city of the fifth class, under Section 10-2-301.

(2) "Contiguous" means:

(a) if used to described an area, continuous, uninterrupted, and without an island of territory not included as part of the area; and

(b) if used to describe an area's relationship to another area, sharing a common boundary.

(3) "Governing body" means collectively the legislative body and the executive of any municipality. Unless otherwise provided:

(a) in a city of the first or second class, the governing body is the city commission;

(b) in a city of the third, fourth, or fifth class, the governing body is the city council;

(c) in a town, the governing body is the town council; and

(d) in a metro township, the governing body is the metro township council.

(4) "Municipal" means of or relating to a municipality.

(5) "Municipality" means:

(a) a city of the first class, city of the second class, city of the third class, city of the fourth class, city of the fifth class;

(b) a town, as classified in Section 10-2-301; ~~or~~

(c) a metro township as that term is defined in Section 10-2a-403 unless the term is used in the context of authorizing, governing, or otherwise regulating the provision of municipal services~~]; or~~

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(d) a preliminary municipality incorporated under Chapter 2a, Part 5, Incorporation of a Preliminary Municipality.

(6) "Peninsula," when used to describe an unincorporated area, means an area surrounded on more than 1/2 of its boundary distance, but not completely, by incorporated territory and situated so that the length of a line drawn across the unincorporated area from an incorporated area to an incorporated area on the opposite side shall be less than 25% of the total aggregate boundaries of the unincorporated area.

(7) "Person" means an individual, corporation, partnership, organization, association, trust, governmental agency, or any other legal entity.

(8) "Provisions of law" shall include other statutes of the state of Utah and ordinances, rules, and regulations properly adopted by any municipality unless the construction is clearly contrary to the intent of state law.

(9) "Recorder," unless clearly inapplicable, includes and applies to a town clerk.

(10) "Town" means a municipality classified by population as a town under Section 10-2-301.

(11) "Unincorporated" means not within a municipality.

Section 2. 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) is contiguous;
- (ii) has a population of at least 100 people, but fewer than 1,000 people; and
- (iii) is not already part of a municipality.

(b) A preliminary municipality may transition to, and incorporate as, a town, in accordance with Section 10-2a-510.

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

- (i) is contiguous;
- (ii) has a population of 1,000 people or more; and
- (iii) is not already part of a municipality.

(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

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of fewer than seven people per square mile.

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

(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 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 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) 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.

(c) Except as provided in Section 10-2a-206, the lieutenant governor shall consider

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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 3. 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 feasibility request, with the county clerk of the county where the area proposed to be incorporated is located, that includes:

(a) 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

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

(2) The feasibility request shall include:

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

(b) 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;

(c) an accurate map or plat, prepared by a licensed surveyor, showing a legal description of the boundaries of the proposed municipality; and

(d) 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

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(b) a complete copy of the feasibility request.

(4) A feasibility request may not propose for incorporation an area that includes [~~some~~ ~~or~~] all or part of an area that is the subject of a completed feasibility study or supplemental feasibility study whose results comply with Subsection 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.

(5) A feasibility request may not propose for incorporation an area that includes all or part of an area that is the subject of a completed feasibility study or supplemental feasibility study whose results comply with Subsection 10-2a-504(4), unless the time described in Subsection 10-2a-507(1) for filing a petition for incorporation based on the completed feasibility study or supplemental feasibility study has elapsed without the sponsors filing a petition for incorporation under Section 10-2a-507.

~~[(5)]~~ (6) Sponsors may not file a feasibility request 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 4. Section **10-2a-501** is enacted to read:

Part 5. Incorporation of a Preliminary Municipality

10-2a-501. Definitions.

As used in this part:

(1) "Affordable housing" means housing occupied or reserved for occupancy by households with a gross household income equal to or less than 80% of the median gross income of the applicable municipal or county statistical area for households of the same size.

(2) "Board," in relation to a preliminary municipality, means the same as a council described in Section 10-3b-402.

(3) "Board chair," in relation to a preliminary municipality, means the same as a mayor described in Section 10-3b-402.

(4) "Contiguous" means the same as that term is defined in Section 10-2a-102.

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(5) "Feasibility consultant" means a person or firm:

(a) with expertise in the processes and economics of local government; and

(b) who is independent of, and not affiliated with, a county or a sponsor of a petition to incorporate a preliminary municipality under this part.

(6) "Feasibility request" means a request, described in Section 10-2a-502, for a feasibility study for the proposed incorporation of a preliminary municipality.

(7) "Initial landowners" means the persons who owned the land within the proposed preliminary municipality area when the person filed the feasibility request under Section 20A-1-501.

(8) "Municipal service" means the same as that term is defined in Section 10-2a-102.

(9) "Pending annexation area" means an area proposed for annexation in an annexation petition described in Section 10-2-403 that is filed before, and is still pending when, a person files the applicable request for a feasibility study under Section 10-2a-502.

(10) "Primary sponsor contact" means:

(a) in relation to a feasibility request:

(i) the individual designated as the primary sponsor contact for a feasibility request under Subsection 10-2a-502(5)(c); or

(ii) an individual designated, in writing, by the initial landowners if a replacement primary sponsor contact is needed; or

(b) in relation to a petition for incorporation of a preliminary municipality:

(i) the individual designated as the primary sponsor contact for a petition for incorporation of a preliminary municipality under Subsection 10-2a-507(1)(d); or

(ii) an individual designated, in writing, by the initial landowners if a replacement primary sponsor contact is needed.

(11) "Private," in relation to real property, means taxable real property.

(12) "Proposed preliminary municipality area" means the area proposed for incorporation as a preliminary municipality in a feasibility request.

(13) "System infrastructure" means, as shown on the map or plat described in Subsection 10-2a-502(5)(e) for the proposed preliminary municipal area:

(a) the main thoroughfares within the proposed preliminary municipal area, including the roads that connect the proposed preliminary municipal area to an existing road outside the

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proposed preliminary municipal area; and

(b) the main lines that will connect a utility to the proposed preliminary municipal area, including the stubs that will connect the main lines to the development in the proposed preliminary municipal area.

Section 5. Section **10-2a-502** is enacted to read:

10-2a-502. Incorporation of a preliminary municipality -- Feasibility request -- Requirements.

(1) A person may apply to incorporate an area as a preliminary municipality by filing a feasibility request in accordance with this section.

(2) Subject to Subsection (6), a person may file a feasibility request in relation to an area that the person seeks to incorporate as a preliminary municipality if:

(a) the area is contiguous;

(b) no part of the area is within a county of the first class or second class;

(c) no part of the area is within, or within .25 miles of, a municipality;

(d) on the day on which the person files the feasibility request:

(i) the area is owned by no more than three persons, all of whom consent to incorporation as a preliminary municipality; and

(ii) at least 50% of the area is undeveloped;

(e) the persons who sign the feasibility request intend to develop the area to the point that:

(i) at least 100 individuals reside in the area;

(ii) the area will have an average population density of no less than seven individuals per square mile, unless:

(A) a population density of less than seven individuals per square mile is necessary in order to connect separate areas that share a demonstrable community interest; and

(B) the average population of the area has a population density of no less than seven individuals per square mile if the land necessary to connect the separate areas described in Subsection (2)(e)(ii)(A) is not included in the calculation; and

(iii) at least 10% of the housing in the preliminary municipality is affordable housing;

(f) the area does not include land owned by the United States government unless:

(i) the area, including the land owned by the United States government, is contiguous;

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and

(ii) (A) incorporating the land is necessary to connect separate areas that share a demonstrable community interest; or

(B) excluding the land from the area would create an unincorporated island within the proposed preliminary municipality;

(g) the area is entirely within one county; and

(h) the feasibility request complies with Subsection (3).

(3) (a) A proposed preliminary municipality area may not include all or part of a pending annexation area, unless:

(i) the portion of the pending annexation area included in the proposed preliminary municipality area does not exceed 20% of the proposed preliminary municipality area; and

(ii) the feasibility request would comply with the requirements of this section regardless of whether the portion of the pending annexation area included in the proposed preliminary municipality area is excluded from, or remains included in, the proposed preliminary municipality area.

(b) A proposed preliminary municipality area may not include all or part of an area that is the subject of a completed feasibility study or supplemental feasibility study that qualifies to proceed under Subsection 10-2a-205(5)(a), unless:

(i) 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

(ii) 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.

(c) A proposed preliminary municipality area may not include all or part of an area that is the subject of a completed feasibility study or supplemental feasibility study whose results comply with Subsection 10-2a-504(4), unless the time described in Subsection 10-2a-507(1) for filing a petition for incorporation based on the completed feasibility study or supplemental feasibility study has elapsed without the sponsors filing a petition for incorporation under Section 10-2a-507.

(4) Except as provided in Section 10-2a-505, the lieutenant governor shall consider

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each feasibility request that includes an area described in Subsection (3)(a) as if the request does not include the area described in Subsection (3)(a).

(5) A person who files a feasibility request under this section shall file the feasibility request with the lieutenant governor, including in the feasibility request:

(a) the signatures of all owners of real property included in proposed preliminary municipality area, showing that the owners consent to including the real property in the proposed preliminary municipality area;

(b) the name, address, and phone number of each owner signing the feasibility request;

(c) a designation of one individual who signs the feasibility request as the primary sponsor contact for the feasibility request;

(d) a description of the proposed preliminary municipality area;

(e) an accurate map or plat, prepared by a licensed surveyor, showing:

(i) a legal description of the boundaries of the proposed preliminary municipality area and each phase of the proposed preliminary municipality area;

(ii) all development planned for the proposed preliminary municipality area; and

(iii) that the first phase of the proposed preliminary municipality area is projected to have at least 100 residents when completed; and

(f) a request that the lieutenant governor commission a study to determine the feasibility of incorporating the area as a preliminary municipality.

(6) (a) The provisions of this part, providing for the incorporation of a preliminary municipality, is a pilot project that ends on January 1, 2031.

(b) Except as provided in Subsection (7), a person may not file a feasibility request under this part in a calendar year during which two or more requests have already been filed in the state.

(7) A feasibility request does not count towards the limit described in Subsection (6)(b) if:

(a) the sponsors who file the request withdraw the request;

(b) the lieutenant governor rejects the feasibility request under Subsection 10-2a-503(4) or (5)(b), and the sponsors:

(i) do not timely amend the feasibility request under Subsection 10-2a-503(7)(b); or

(ii) are prohibited from amending the feasibility request under Subsection

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10-2a-503(7)(c); or

(c) the process to incorporate is prohibited from proceeding under Subsection 10-2a-504(5)(a) and the sponsors:

(i) do not timely file a modified feasibility request under Subsection 10-2a-505(1)(b)(i); or

(ii) are prohibited from filing a modified feasibility request under Subsection 10-2a-505(3).

Section 6. Section **10-2a-503** is enacted to read:

10-2a-503. 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-502, the lieutenant governor shall:

(a) determine whether the feasibility request complies with Section 10-2a-502; and

(b) notify the clerk of the county where the proposed preliminary municipality area is located, in writing, of the determination made under Subsection (1)(a) and the grounds for the determination.

(2) A county clerk shall comply with a request by the lieutenant governor to provide information or a record to the lieutenant governor or to a sponsor of the feasibility request, to assist in complying with this part, within five calendar days after the day on which the lieutenant governor makes the request.

(3) If the lieutenant governor determines that the feasibility request complies with Section 10-2a-502, the lieutenant governor shall:

(a) certify the feasibility request; and

(b) transmit written notification of the certification to the primary sponsor contact, the county clerk, and the Utah Population Committee.

(4) If the lieutenant governor determines that the feasibility request fails to comply with Section 10-2a-502, the lieutenant governor shall reject the feasibility request and notify the primary sponsor contact and the county clerk, in writing, of the rejection and the grounds for the rejection.

(5) (a) Within 20 days after the day on which the lieutenant governor transmits written notification under Subsection (3)(b), the Utah Population Committee shall:

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(i) determine whether, based on the map or plat described in Subsection 10-2a-502(5)(e), the proposed preliminary municipality will, when all phases of the map or plat are completed, likely comply with the population, population density, and contiguity requirements described in Section 10-2a-502; and

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

(b) If the Utah Population Committee determines, under Subsection (5)(a)(i), that, when all phases of the plan or plat are completed, the proposed preliminary municipality will not likely comply with the population, population density, and contiguity requirements described in Section 10-2a-502, the lieutenant governor shall rescind the certification described in Subsection (3) and reject the feasibility request.

(6) The lieutenant governor shall certify or reject feasibility requests in the order in which the requests are filed.

(7) (a) If the lieutenant governor determines, under Subsection (4), that the feasibility request fails to comply with Section 10-2a-502, or rejects the feasibility request under Subsection (5)(b), the sponsors may, subject to Section 10-2a-505, amend the feasibility request to correct the deficiencies and refile the feasibility request with the lieutenant governor.

(b) Except as provided in Subsection (7)(c), the sponsors may submit an amended feasibility request within 90 days after the day on which the lieutenant governor makes the determination or rejection described in Subsection (7)(a).

(c) The sponsors may not submit an amended feasibility request more than once.

(d) The lieutenant governor shall consider a feasibility request that is amended and refiled under Subsection (7)(a) as a newly filed feasibility request and process the feasibility request in accordance with this section.

Section 7. Section **10-2a-504** is enacted to read:

10-2a-504. Feasibility study -- Feasibility study consultant -- Qualifications for proceeding with incorporation.

(1) Unless the lieutenant governor rescinds the certification under Subsection 10-2a-503(5)(b), the lieutenant governor shall, within 90 days after the day on which the lieutenant governor certifies a feasibility request under Subsection 10-2a-503(3)(a), in accordance with Subsection (2), engage a feasibility consultant to conduct a feasibility study.

(2) The lieutenant governor shall:

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

(b) ensure that the feasibility consultant:

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

(ii) is not affiliated with a sponsor of the feasibility request or the county in which the proposed municipality is located; and

(c) require the feasibility consultant to:

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

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

(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:

(A) the lieutenant governor;

(B) the county legislative body of the county in which the proposed preliminary municipality area is located;

(C) the primary sponsor contact; and

(D) each person to whom the consultant provided a draft under Subsection (2)(c)(i);

and

(iv) attend the public hearings described in Section 10-2a-506 to present the feasibility study results and respond to questions from the public.

(3) (a) The feasibility study shall include:

(i) an analysis of:

(A) the likely population and population density within the proposed preliminary municipality area when all phases of the map or plat for the proposed preliminary municipality area are completed; and

(B) the population and population density of the area surrounding the proposed preliminary municipality area on the day on which the feasibility request was submitted;

(ii) an analysis of the following, determined as if, at the time of the analysis, the

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proposed preliminary municipality area is incorporated as a town with a population of 100 people:

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

(B) subject to Subsection (3)(b), the initial and five-year projected cost of providing municipal services to the proposed preliminary municipality area, including administrative costs;

(C) assuming the same tax categories and tax rates as imposed by the county and all other current service providers at the time during which the feasibility consultant prepares the feasibility study, the initial and five-year projected revenue for the proposed preliminary municipality area;

(D) the risks and opportunities that might affect the actual costs described in Subsection (3)(a)(ii)(B) or the revenues described in Subsection (3)(a)(ii)(C) of the proposed preliminary municipality area;

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

(F) the projected tax burden per household of any new taxes that may be levied within the proposed preliminary municipality area within five years after incorporation as a town; and

(G) the fiscal impact of the proposed preliminary municipality area's incorporation as a town on unincorporated areas, other municipalities, special districts, special service districts, and other governmental entities in the county; and

(iii) an analysis regarding whether sufficient water will be available to support the proposed preliminary municipal area when the development of the area is complete.

(b) (i) In calculating the projected costs under Subsection (3)(a)(ii)(B), the feasibility consultant shall assume the proposed preliminary municipality area 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 surrounding the proposed preliminary municipality area at the time the feasibility consultant conducts the feasibility study.

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(ii) In calculating the current cost of a municipal service under Subsection (3)(a)(ii)(B), the feasibility consultant shall consider:

(A) the amount it would cost the proposed preliminary municipality area to provide the municipal service for the first five years after the area incorporates as a town; and

(B) the proposed or current municipal service provider's initial and five-year projected cost of providing the municipal service after the proposed preliminary municipality area incorporates as a town.

(iii) In calculating costs under Subsection (3)(a)(ii)(B), 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 (2)(c)(iii):

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

(iii) each entity that provides, or is proposed to provide, a municipal service to a portion of the proposed preliminary municipality area; and

(iv) each other special service district that provides, or is proposed to provide, services to a portion of the proposed preliminary municipality area.

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

(5) (a) Except as provided in Subsection (5)(b), if the results of the feasibility study, or a supplemental feasibility study described in Section 10-2a-505, show that the average annual amount of revenue calculated under Subsection (3)(a)(ii)(C) does not exceed the average annual cost calculated under Subsection (3)(a)(ii)(B) by more than 5%, the process to incorporate the area that is the subject of the feasibility study or supplemental feasibility study may not proceed.

(b) Except as provided in Subsection 10-2a-505(3), the process to incorporate an area

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described in Subsection (5)(a) may proceed if a subsequent supplemental feasibility study conducted under Section 10-2a-505 for the proposed incorporation demonstrates compliance with Subsection (5)(a).

(6) If the results of the feasibility study or revised feasibility study do not comply with Subsection (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 proposed preliminary municipality area may be altered to comply with Subsection (5), unless the sponsors are precluded from modifying the feasibility request under Subsection 10-2a-505(3).

(7) The lieutenant governor shall post a copy of the feasibility study, and any supplemental feasibility study described in Section 10-2a-505, on the lieutenant governor's website and make a copy available for public review at the lieutenant governor's office.

Section 8. Section **10-2a-505** is enacted to read:

10-2a-505. Modified feasibility request -- Supplemental feasibility study.

(1) (a) The sponsors of a feasibility request may modify the request to alter the boundaries of the proposed preliminary municipality area and refile the modified feasibility request with the lieutenant governor if:

(i) the results of the feasibility study do not comply with Subsection 10-2a-504(5)(a);

or

(ii) (A) the feasibility request complies with Subsection 10-2a-502(3)(a);

(B) the annexation petition described in Subsection 10-2a-502(3)(a) that proposed the annexation of an area that is part of the proposed preliminary municipality area has been denied; and

(C) a petition for incorporation described in Section 10-2a-507, based on the feasibility request, has not been filed.

(b) (i) The sponsors of a feasibility 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-504(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-502.

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(c) A modified feasibility request under Subsection (1)(a) shall comply with Subsections 10-2a-502(1) through (4).

(d) Within 20 days after the day on which the lieutenant governor receives the modified request, the lieutenant governor shall follow the same procedure described in Subsections 10-2a-503(1) through (4) for the modified feasibility request as for an original feasibility request.

(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-503(6) as the original feasibility request.

(3) The sponsors of a feasibility request may not file a modified feasibility request under Subsection (1)(a)(i) more than once.

(4) Within 10 days after the day on which the 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) 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-504(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) 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 primary sponsor contact; and

(iv) each person to whom the consultant provided a draft under Subsection (5)(a).

(6) (a) Subject to Subsections (3) and (6)(b), if the results of the supplemental feasibility study do not comply with Subsection 10-2a-504(4), the sponsors may further modify

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the request in accordance with Subsection (1).

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

(c) The lieutenant governor shall consider a modified feasibility request described in Subsection (6)(a) as an original feasibility request for purposes of determining the modified feasibility request's processing priority under Subsection 10-2a-503(6).

Section 9. Section **10-2a-506** is enacted to read:

10-2a-506. Public hearings on feasibility study results -- Notice of hearings.

(1) If the results of the feasibility study or supplemental feasibility study comply with Subsection 10-2a-504(4), the lieutenant governor shall, after receipt of the results of the feasibility study or supplemental feasibility study, conduct public hearings in accordance with this section.

(2) (a) If a portion of the proposed preliminary municipality area is approved for annexation after the feasibility study or supplemental feasibility study is conducted but before the lieutenant governor conducts a public hearing under Subsection (4), the lieutenant governor may not conduct the public hearing under Subsection (4) unless:

(i) the sponsors of the feasibility study file a modified feasibility request in accordance with Section 10-2a-505; and

(ii) the results of the supplemental feasibility study comply with Subsection 10-2a-504(4).

(b) For purposes of Subsection (2)(a), an area is approved for annexation if a municipal legislative body:

(i) approves an annexation petition proposing the annexation of an area that is part of the proposed preliminary municipality area 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 proposed preliminary municipality area under Section 10-2-418.

(3) The lieutenant governor shall conduct a public hearing:

(a) within 60 days after the day on which the lieutenant governor receives the results under Subsection (1) or (2)(a)(ii);

(b) at a location within or near the proposed preliminary municipality; and

(c) to allow the feasibility consultant to present the results of the feasibility study and

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inform the public about the results.

(4) The lieutenant governor shall:

(a) conduct an additional public hearing following each occasion when, after the day of the initial public hearing, the lieutenant governor receives the results of a supplemental feasibility study that comply with Subsection 10-2a-504(4); and

(b) hold the public hearing described in Subsection (4)(a):

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

(ii) at a location within or near the proposed preliminary 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.

(5) At each public hearing required under this section, the lieutenant governor shall:

(a) provide a map or plat of the boundary of the proposed preliminary 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 preliminary municipality, including views about the proposed boundaries; and

(d) allow the public to ask the feasibility consultant questions about the applicable feasibility study.

(6) The lieutenant governor shall publish notice of each public hearing required under this section for the proposed preliminary municipality area, as a class B notice under Section 63G-30-102, for at least three weeks before the day of the public hearing.

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

(i) include the feasibility study summary described in Subsection 10-2a-504(2)(c)(iii); and

(ii) indicate that a full copy of the feasibility study is available on the lieutenant governor's website and for inspection at the lieutenant governor's office.

(b) Instead of publishing the feasibility summary under Subsection (7)(a)(i), the lieutenant governor may publish a statement that specifies the following sources where a

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person may view or obtain a copy of the feasibility study:

- (i) the lieutenant governor's website;
- (ii) the lieutenant governor's office; and
- (iii) a mailing address and telephone number.

Section 10. Section **10-2a-507** is enacted to read:

10-2a-507. Petition for incorporation -- Requirements and form.

(1) At any time within one year after the day on which the lieutenant governor completes the public hearings required under Section 10-2a-506, the owners of the property who filed the feasibility request under Section 10-2a-502 for the proposed preliminary municipal area may proceed with the incorporation process by filing a petition for incorporation of the proposed preliminary municipality that:

(a) includes the typed or printed name, signature, address, and phone number of the initial landowners;

(b) describes the proposed preliminary municipality area, as described in the feasibility request or the modified feasibility;

(c) demonstrates compliance with Subsection 10-2a-504(4);

(d) states the proposed name for the proposed preliminary municipality;

(e) designates the primary sponsor contact for the proposed preliminary municipality;

(f) designates the board chair and three of the four board members who will serve as a five member council form of government for the preliminary municipality, described in Section 10-3b-402, for the preliminary municipality;

(g) is accompanied by an accurate map or plat, prepared by a licensed surveyor, showing:

(i) the boundaries of the proposed preliminary municipality;

(ii) a single development plan for the proposed municipality, depicting each phase of the development;

(h) is accompanied by a bond, cash deposit, or letter of credit that:

(i) is posted by the initial landowners;

(ii) is in favor of the proposed preliminary municipality, to guarantee that the initial landowners will complete the system infrastructure no later than six years after the day on which the initial landowners file the petition for incorporation described in this section; and

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(iii) will be refunded to the initial landowners in percentages that reflect the progress toward completing the system infrastructure; and

(i) is accompanied by payment in full, from the initial landowners, of the costs incurred by the lieutenant governor for the feasibility study, the public notices, the hearings, and the other expenses incurred by the lieutenant governor to comply with the requirements of this part in relation to the proposed preliminary municipality.

(2) If, within six years after the day on which the initial landowners file a petition for incorporation under Subsection (1), the system infrastructure for the preliminary municipality is not completed, the portion of the bond, cash deposit, or letter of credit described in Subsection (1)(h) that has not been refunded to the initial landowners shall forfeit to the preliminary municipality.

(3) If, within **four years after the day on which the first residential certificate of occupancy is issued for the development described in Subsection 10-2a-503(5)(e), or** six years after the day on which the initial landowners file a petition for incorporation under Subsection (1), the preliminary municipality has not transitioned to a town:

(a) the lieutenant governor shall issue a certificate dissolving the preliminary municipality;

(b) all roads and infrastructure within the preliminary municipality revert to the county in which the preliminary municipality is located;

(c) the area within the proposed municipality falls under the jurisdiction of the county and is no longer incorporated; and

(d) the initial landowners are liable to the county for damages caused to the county due to the dissolution of the preliminary municipality.

Section 11. Section **10-2a-508** is enacted to read:

10-2a-508. Processing of petition by lieutenant governor -- Certification or rejection -- Petition modification.

(1) Within 45 days after the day on which a petition for incorporation is filed under Section 10-2a-507, the lieutenant governor shall:

(a) determine whether the petition for incorporation complies with Section 10-2a-507; and

(b) (i) if the lieutenant governor determines that the petition for incorporation complies

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with Section 10-2a-507, incorporate the preliminary municipality, issue a certificate of incorporation, and appoint the board chair and three board members designated under Subsection 10-2a-507(1)(e); or

(ii) if the lieutenant governor determines that the petition for incorporation fails to comply with Section 10-2a-507, reject the petition for incorporation and notify the primary sponsor contact in writing of the rejection and the reasons for the rejection.

(2) (a) If the lieutenant governor rejects a petition for incorporation under Subsection (1)(b)(ii), the 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.

(b) Notwithstanding the deadline described in Subsection 10-2a-507(1), the 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 notifies the primary sponsor contact of the rejection under Subsection (1)(b)(ii).

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

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

Section 12. Section **10-2a-509** is enacted to read:

10-2a-509. Governance of preliminary municipality -- Utilities -- Road maintenance.

(1) (a) Within 30 days after the day on which the lieutenant governor issues a certificate of incorporation described in Subsection 10-2a-508(1)(b)(i), the county in which the preliminary municipality is located shall appoint one board member for the preliminary municipality.

(b) If the county fails to timely comply with Subsection (1)(a), the board chair and the three board members appointed under Subsection 10-2a-508(1)(b)(i) shall, by majority vote, appoint the final board member.

(2) The board chair and board members, described in Subsection (1), of a preliminary municipality:

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(a) are not required to be residents of the preliminary municipality; and

(b) shall serve as the board for the preliminary municipality until replaced by election under Section 10-2a-510.

(3) (a) Within 14 days after the day on which the first residential certificate of occupancy is issued for the development described in Subsection 10-2a-503(5)(e), the engineer described in Subsection 10-2a-509(6), shall notify the county and the lieutenant governor, in writing:

(i) that the first residential certificate of occupancy has been issued for the preliminary municipality;

(ii) of the date on which the first residential certificate of occupancy was issued; and

(iii) of the physical address for which the first residential certificate of occupancy was issued.

(b) No later than the next municipal general election, or regular general election, that is at least 30 days after the date described in Subsection (3)(a)(ii), the initial landowners shall:

(i) replace the board chair or a board member with an individual who is a resident of the preliminary municipality; and

(ii) notify the county and the lieutenant governor of the appointment, in writing.

(4) (a) Subject to Subsection (~~3~~4)(b), a preliminary municipality has all the powers and duties of a municipality ~~as described in Chapter 8, Powers and Duties of Municipalities~~.

(b) A preliminary municipality:

(i) may not impose a tax;

(ii) may enter into an interlocal agreement with a special district to provide utility services to the preliminary municipality;

(iii) has the same authority as another municipality to make decisions regarding zoning and land use; ~~and~~

(iv) may not receive an allocation of sales tax or gas tax ~~;~~; and

(v) may not exercise eminent domain authority.

(~~4~~5) As needed, the county shall provide all services and utility connections to the preliminary municipality that the county provides other areas in the county if the preliminary municipality:

(a) pays the uniformly assessed rates for the services and utilities and reasonable

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connection fees; and

(b) complies with the county's established regulations and specifications for the construction and connection of the local improvements.

(~~5~~6) The preliminary municipality shall maintain and repair any roadway that, on the day on which the individual filed the feasibility request under Section 10-2a-502:

(a) existed within the preliminary municipality;

(b) was within a public right of way that abuts the preliminary municipality; or

(c) was within 1/2 mile of the preliminary municipality and connected to, or was proposed in the feasibility request to be connected to, the preliminary municipality.

(~~6~~7) Before the preliminary municipality submits a petition to transition to a town, the preliminary municipality shall select an independent third-party engineer to review and approve all building permit applications within the preliminary municipality to ensure compliance with the law.

(~~7~~8) Chapter 2, Classification, Boundaries, Consolidation, and Dissolution of Municipalities, does not apply to a preliminary municipality.

Section 13. Section **10-2a-510** is enacted to read:

10-2a-510. Transitioning from a preliminary municipality to a town -- Petition -- Election of officers.

(1) Within 30 days after the day on which the population of a preliminary municipality exceeds 99 people, a person who filed the application to incorporate as a preliminary municipality or a resident of the preliminary municipality shall file with the lieutenant governor a petition to transition the preliminary municipality into a town.

(2) A petition to transition a preliminary municipality into a town shall include:

(a) a request that the lieutenant governor certify the transition of the preliminary municipality to, and the incorporation of the preliminary municipality as, a town;

(b) the name, address, and phone number of the person filing the request;

(c) the map or plat of the preliminary municipality;

(d) a legal description of the boundaries of the preliminary municipality;

(e) information regarding the preliminary municipality, including:

(i) the number of residences in the preliminary municipality;

(ii) the population of the preliminary municipality;

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(iii) the number of adults and the number of children who reside in the preliminary municipality; and

(iv) information regarding the providers of municipal services and emergency services to the preliminary municipality;

(f) the proposed name for the town; and

(g) a signature sheet containing the names, addresses, and signatures of a majority of the adult residents of the preliminary municipality, supporting the proposed name for the town.

(3) Within 30 days after the day on which a person files a petition to transition a preliminary municipality into a town, the lieutenant governor shall:

(a) determine whether the preliminary municipality has a population of more than 99 people;

(b) examine the petition to determine whether the petition complies with Subsection (2);

(c) if the lieutenant governor determines that the preliminary municipality has a population of more than 99 people and that the petition complies with Subsection (2), proceed to transition the preliminary municipality as a town in accordance with Subsection (4);

(d) if the lieutenant governor determines that the preliminary municipality has a population of less than 100 people, deny the petition, inform the person who filed the petition of the determination, and request that the person refile the petition when the population exceeds 99 people; and

(e) if the lieutenant governor determines that the petition fails to comply with Subsection (2), deny the petition, inform the person who filed the petition of the denial and the reason for the denial, and request that the person correct and refile the petition.

(4) After making the determination described in Subsection (3)(c), the lieutenant governor shall:

(a) inform the person who filed the petition of the determination;

(b) inform the county in which the preliminary municipality is located of the determination; and

(c) direct the county to conduct an election for mayor and city council of the future town, 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

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least 65 days after the day on which the lieutenant governor directs the county to hold the election.

(5) The county shall:

(a) comply with the direction given by the lieutenant governor under Subsection (4)(c);

(b) determine the initial terms of the mayor and municipal council members to ensure

that:

(i) the mayor and two of the municipal county members are elected in the next municipal general election;

(ii) the remaining municipal council members are elected at elections that result in the staggering of council member terms; and

(iii) the council members who receive the highest number of votes are assigned the longer initial terms; and

(c) provide notice of the election for preliminary municipality as a class B notice under Section 63G-30-102, for at least three weeks before the day of the election.

(6) The notice described in Subsection (5)(c) shall include:

(a) a statement of the contents of the petition to transition the preliminary municipality to a town;

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

(c) the name of the town;

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

(e) information about the initial terms of office;

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

and

(g) a statement that the purpose of the election is to elect a mayor and a council to govern the town upon the town's incorporation.

(7) (a) In addition to the notice described in Subsection (6), the county clerk shall publish and distribute, before the 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.

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(b) The voter information pamphlet described in Subsection (7)(a):

(i) shall inform the public of the election and the purpose of the election; and

(ii) may include additional information regarding the election of the elected officials and the incorporation of the town.

(8) An individual may not vote in the election described in this section unless the individual is a registered voter who is a resident, as defined in Section 20A-1-102, within the boundaries of the preliminary municipality.

(9) The town, incorporated under Subsection (10)(b), shall pay to the county the cost of running the election described in this section.

(10) On the day after the day on which the canvass for the election is completed:

(a) the elected mayor and council members shall take office and replace the board chair and board members of the preliminary municipality;

(b) the lieutenant governor shall issue a certification that the preliminary municipality has transitioned to, and is incorporated as, a town; and

(c) subject to Subsection (14), the town holds all authority and power of a town.

(11) The former mayor and council members for the preliminary municipality shall assist the newly-elected mayor of the town and the newly-elected council members of the town with the transition to a town and the transfer of power to the elected government of the town.

(12) The initial government of a town incorporated under this section is the five member council form of government described in Chapter 3b, Part 4, Five-Member Council Form of Municipal Government, with the mayor and council members elected at large.

(13) Within 30 days after the day on which the mayor takes office under Subsection (10)(a), the mayor shall record the certification described in Subsection (10)(b), and a copy of the plat for the municipality, with the county recorder.

(14) Until the mayor complies with Subsection (13), the municipality may not:

(a) levy or collect a property tax on property within the municipality;

(b) levy or collect an assessment on property within the municipality; or

(c) charge or collect a fee for a service provided to property within the municipality.

(15) Section 10-2a-220 applies to a town incorporated under this section.

Section 14. Section **63I-1-210** is amended to read:

63I-1-210. Repeal dates: Title 10.

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The following are repealed on January 1, 2031:

(1) Subsection 10-1-104(5)(d);

(2) Subsection 10-2a-201.5(1)(b);

(3) Subsection 10-2a-202(5); and

(4) Title 10, Chapter 2a, Part 5, Incorporation of a Preliminary Municipality.

Section 15. **Effective date.**

This bill takes effect on May 1, 2024.