

ANNEXATION OF ISLANDS WITHIN CITIES

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: D. Gregg Buxton

House Sponsor: Gage Froerer

LONG TITLE

General Description:

This bill addresses municipal annexation of unincorporated islands.

Highlighted Provisions:

This bill:

▶ clarifies provisions regarding municipal annexation of certain unincorporated islands;

▶ modifies annexation procedures to allow a municipality to annex certain unincorporated islands without allowing or considering protests under certain circumstances;

▶ provides for a recommendation of annexation from a county legislative body; and

▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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



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

(i) it is a contiguous area;

(ii) it 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(2)(b)~~]; 10-2-418(3); or

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

(iv) for an area located in a specified county with respect to an annexation that occurs after December 31, 2002, the area is within the proposed annexing municipality's expansion 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) The legislative body of a specified county may not approve urban development within a municipality's expansion area unless:

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

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

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

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

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

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

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

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

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

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

86 (b) (i) Except as provided in Subsection (8)(b)(ii), the Military Installation
87 Development Authority may petition for annexation of a project area and contiguous
88 surrounding land to a municipality as if it was the sole private property owner of the project
89 area and surrounding land, if the area to be annexed is entirely contained within the boundaries

90 of a military installation.

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

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

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

100 (B) the provisions of Subsection 10-2-402(6) do not apply.

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

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

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

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

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

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

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

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

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

121 than 800 residents; and

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

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

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

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

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

131 (d) (i) the area to be annexed consists ~~§~~→ **only** ←~~§~~ of one or more unincorporated islands
131a in a

132 county of the second class;

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

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

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

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

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

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

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

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

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

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

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

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

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

165 "Notice: If this written consent is used to proceed with an annexation of your property
 166 in accordance with Utah Code Section [10-2-418](#), no public election is required by law to
 167 approve the annexation. If you sign this consent and later decide you do not want to support
 168 the annexation of your property, you may withdraw your signature by submitting a signed,
 169 written withdrawal with the recorder or clerk of [name of annexing municipality]. If you
 170 choose to withdraw your signature, you must do so no later than the close of the public hearing
 171 on the annexation conducted in accordance with Utah Code Subsection ~~[[10-2-418\(4\)\(a\)\(iv\)\]](#)~~
 172 [10-2-418\(4\)\(d\)](#)".

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

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

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

180 ~~[(††)]~~ (b) publish notice:

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

183 ~~[(H)]~~ (B) if there is no newspaper of general circulation in the areas described in
184 Subsection ~~[(4)(a)(ii)(A)]~~ (5)(b)(i)(A), post at least one notice per 1,000 population in places
185 within those areas that are most likely to give notice to the residents of those areas; and
186 ~~[(B)]~~ (ii) on the Utah Public Notice Website created in Section 63F-1-701, for three
187 weeks;
188 ~~[(iii)]~~ (c) send written notice to:
189 (i) the board of each local district and special service district whose boundaries
190 contain some or all of the area proposed for annexation; and ~~[to]~~
191 (ii) the legislative body of the county in which the area proposed for annexation is
192 located; and
193 ~~[(iv)]~~ (d) hold a public hearing on the proposed annexation no earlier than 30 days after
194 the adoption of the resolution under Subsection ~~[(4)(a)(i)]~~ (5)(a).
195 (6) The legislative body of the annexing municipality shall ensure that:
196 ~~[(b) Each]~~ (a) each notice under Subsections ~~[(4)(a)(ii) and (iii) shall]~~ (5)(b) and (c):
197 (i) [state] states that the municipal legislative body has adopted a resolution indicating
198 its intent to annex the area proposed for annexation;
199 (ii) [state] states the date, time, and place of the public hearing under Subsection
200 ~~[(4)(a)(iv)]~~ (5)(d);
201 (iii) [describe] describes the area proposed for annexation; and
202 (iv) except for an annexation that meets the property owner consent requirements of
203 Subsection ~~[(5)(b), state]~~ (7)(b) or the recommendation of annexation requirements of
204 Subsection (7)(c), states in conspicuous and plain terms that the municipal legislative body will
205 annex the area unless, at or before the public hearing under Subsection ~~[(4)(a)(iv)]~~ (5)(d),
206 written protests to the annexation are filed by the owners of private real property that:
207 (A) is located within the area proposed for annexation;
208 (B) covers a majority of the total private land area within the entire area proposed for
209 annexation; and
210 (C) is equal in value to at least 1/2 the value of all private real property within the
211 entire area proposed for annexation[-]; and
212 ~~[(c) The]~~ (b) the first publication of the notice required under Subsection ~~[(4)(a)(ii)(A)]~~
213 ~~shall be~~ (5)(b)(i) occurs within 14 days of the municipal legislative body's adoption of a

214 resolution under Subsection ~~[(4)(a)(i)]~~ (5)(a).

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

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

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

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

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

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

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

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

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

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

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

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

251 (A) existing development in the area;

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

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

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

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

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

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

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

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

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

276 Section 3. Section **10-2a-402** is amended to read:
277 **10-2a-402. Application.**
278 (1) The provisions of this part:
279 [~~(a) apply to the following located in a county of the first class:~~
280 [(†) (a) apply to a planning township that is:
281 (i) located in a county of the first class; and
282 (ii) established before January 1, 2015; and
283 [(ii) subject to Subsection (2), an unincorporated island located in a county of the first
284 class on or after May 12, 2015, and before November 4, 2015; and]
285 (b) do not apply to a planning advisory area, as defined in Section [17-27a-103](#), or any
286 other unincorporated area located outside of a county of the first or second class.
287 (2) (a) The provisions of Part 2, Incorporation of a City, and Part 3, Incorporation of a
288 Town, apply to an unincorporated area described in Subsection (1) for an incorporation as a
289 city after November 3, 2015.
290 (b) The provisions of Chapter 2, Part 4, Annexation[?] apply to an unincorporated
291 island that is not annexed at an election under this part for purposes of annexation on or after
292 November 4, 2015.
293 [~~(i) do not apply to an unincorporated island for purposes of annexation before~~
294 ~~November 4, 2015, unless:]~~
295 [~~(A) otherwise indicated; or]~~
296 [~~(B) before July 1, 2015, an annexation petition is filed in accordance with Section~~
297 ~~[10-2-403](#) or an intent to annex resolution is adopted in accordance with Subsection~~
298 ~~[10-2-418\(2\)\(a\)\(i\); and\]](#)~~
299 [(ii) apply to an unincorporated island that is not annexed at an election under this part
300 for purposes of annexation on or after November 4, 2015.]