

Municipal Incorporation Modifications

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael L. Kohler

Senate Sponsor:

LONG TITLE**General Description:**

This bill amends provisions relating to the incorporation of a preliminary municipality.

Highlighted Provisions:

This bill:

▸ provides that:

• a person may not apply to incorporate an area as a preliminary municipality after February 1, 2025; and

• a person who applies to incorporate an area as a preliminary municipality by filing a feasibility request on or before February 1, 2025, may proceed in accordance with Title 10, Chapter 2a, Part 5, Incorporation of a Preliminary Municipality, after February 1, 2025;

▸ requires:

• a proposed preliminary municipality to agree that initial landowners will fully compensate the county for damages to county property or infrastructure before the preliminary municipality can transition into a town;

• a preliminary municipality to comply with terms, conditions, or restrictions that were established in a development agreement between the initial landowners and the county before the feasibility request was filed; and

• that a petition to transition a preliminary municipality into a town shall certify that damages to county property or infrastructure have been paid in full.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides retrospective operation.

Utah Code Sections Affected:

AMENDS:

10-2a-502, as enacted by Laws of Utah 2024, Chapter 534

31 **10-2a-505**, as enacted by Laws of Utah 2024, Chapter 534

32 **10-2a-507**, as enacted by Laws of Utah 2024, Chapter 534

33 **10-2a-509**, as enacted by Laws of Utah 2024, Chapter 534

34 **10-2a-510**, as enacted by Laws of Utah 2024, Chapter 534

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

37 Section 1. Section **10-2a-502** is amended to read:

38 **10-2a-502 . Incorporation of a preliminary municipality -- Feasibility request --**
39 **Requirements.**

40 (1)(a) [A] Except as provided in Subsection (1)(b), a person may apply to incorporate an
41 area as a preliminary municipality by filing a feasibility request in accordance with
42 this section.

43 (b) A person may not file a feasibility request to incorporate an area as a preliminary
44 municipality after February 1, 2025.

45 (c) Subject to Subsection (6)(b), a person who, on or before February 1, 2025, files a
46 feasibility request under this section may:

47 (i) modify the request after February 1, 2025, in accordance with Section 10-2a-505;
48 or

49 (ii) proceed in accordance with this part after February 1, 2025.

50 (2) Subject to ~~[Subsection]~~ Subsections (1) and (6), a person may file a feasibility request in
51 relation to an area that the person seeks to incorporate as a preliminary municipality if:

52 (a) the area is contiguous;

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

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

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

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

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

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

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

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

64 (A) a population density of less than seven individuals per square mile is

- 65 necessary in order to connect separate areas that share a demonstrable
66 community interest; and
- 67 (B) the average population of the area has a population density of no less than
68 seven individuals per square mile if the land necessary to connect the separate
69 areas described in Subsection (2)(e)(ii)(A) is not included in the calculation;
70 and
- 71 (iii) at least 10% of the housing in the preliminary municipality is affordable housing;
- 72 (f) the area does not include land owned by the United States government unless:
- 73 (i) the area, including the land owned by the United States government, is
74 contiguous; and
- 75 (ii)(A) incorporating the land is necessary to connect separate areas that share a
76 demonstrable community interest; or
- 77 (B) excluding the land from the area would create an unincorporated island within
78 the proposed preliminary municipality;
- 79 (g) the area is entirely within one county; and
- 80 (h) the feasibility request complies with Subsection (3).
- 81 (3)(a) A proposed preliminary municipality area may not include all or part of a pending
82 annexation area, unless:
- 83 (i) the portion of the pending annexation area included in the proposed preliminary
84 municipality area does not exceed 20% of the proposed preliminary municipality
85 area; and
- 86 (ii) the feasibility request would comply with the requirements of this section
87 regardless of whether the portion of the pending annexation area included in the
88 proposed preliminary municipality area is excluded from, or remains included in,
89 the proposed preliminary municipality area.
- 90 (b) A proposed preliminary municipality area may not include all or part of an area that
91 is the subject of a completed feasibility study or supplemental feasibility study that
92 qualifies to proceed under Subsection 10-2a-205(5)(a), unless:
- 93 (i) the proposed incorporation that is the subject of the completed feasibility study or
94 supplemental feasibility study has been defeated by the voters at an election under
95 Section 10-2a-210; or
- 96 (ii) the time described in Subsection 10-2a-208(1) for filing an incorporation petition
97 based on the completed feasibility study or supplemental feasibility study has
98 elapsed without the sponsors filing an incorporation petition under Section

- 99 10-2a-208.
- 100 (c) A proposed preliminary municipality area may not include all or part of an area that
101 is the subject of a completed feasibility study or supplemental feasibility study whose
102 results comply with Subsection 10-2a-504(4), unless the time described in Subsection
103 10-2a-507(1) for filing a petition for incorporation based on the completed feasibility
104 study or supplemental feasibility study has elapsed without the sponsors filing a
105 petition for incorporation under Section 10-2a-507.
- 106 (4) Except as provided in Section 10-2a-505, the lieutenant governor shall consider each
107 feasibility request that includes an area described in Subsection (3)(a) as if the request
108 does not include the area described in Subsection (3)(a).
- 109 (5) A person who files a feasibility request under this section shall file the feasibility
110 request with the lieutenant governor, including in the feasibility request:
- 111 (a) the signatures of all owners of real property included in the proposed preliminary
112 municipality area, showing that the owners consent to including the real property in
113 the proposed preliminary municipality area;
- 114 (b) the name, address, and phone number of each owner signing the feasibility request;
- 115 (c) a designation of one individual who signs the feasibility request as the primary
116 sponsor contact for the feasibility request;
- 117 (d) a description of the proposed preliminary municipality area;
- 118 (e) an accurate map or plat, prepared by a licensed surveyor, showing:
- 119 (i) a legal description of the boundaries of the proposed preliminary municipality area
120 and each phase of the proposed preliminary municipality area;
- 121 (ii) all development planned for the proposed preliminary municipality area; and
- 122 (iii) that the first phase of the proposed preliminary municipality area is projected to
123 have at least 100 residents when completed; and
- 124 (f) a request that the lieutenant governor commission a study to determine the feasibility
125 of incorporating the area as a preliminary municipality.
- 126 (6)(a) The provisions of this part, providing for the incorporation of a preliminary
127 municipality, is a pilot project that ends on January 1, 2031.
- 128 (b) Except as provided in Subsection (7), a person may not file a feasibility request
129 under this part in a calendar year during which two or more requests have already
130 been filed in the state.
- 131 (7) A feasibility request does not count towards the limit described in Subsection (6)(b) if:
- 132 (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 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 2. Section **10-2a-505** is amended 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.
- (c) A modified feasibility request under Subsection (1)(a) shall comply with Subsections [~~10-2a-502(1)~~] 10-2a-502(2) 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 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 3. Section **10-2a-507** is amended 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 municipality 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 request;
 - (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
 - (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[-:]; and

(j) is accompanied by an agreement by the initial landowners that, before the preliminary municipality can transition into a town, the county will be fully compensated for any damages to county property or infrastructure that are directly attributable to development of the area.

(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)~~] 10-2a-502(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 4. Section **10-2a-509** is amended 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:

(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)~~] 10-2a-502(5)(e), the engineer described in Subsection [~~10-2a-509(6)~~] (7), 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 (4)(b), a preliminary municipality has all the powers and duties of a municipality.

(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;

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

(v) may not exercise eminent domain authority[~~-~~] ;

(vi) shall comply with terms, conditions, or restrictions that were established in a development agreement between the initial landowners and the county before the feasibility request was filed; and

(vii) may not modify or terminate any terms, conditions, or restrictions described in Subsection (4)(b)(vi) without the county's approval.

(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 connection fees; and

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

(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.

(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.

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

Section 5. Section **10-2a-510** is amended 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;

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

- 337 municipality; and
- 338 (iv) information regarding the providers of municipal services and emergency
- 339 services to the preliminary municipality;
- 340 (f) the proposed name for the town;[~~and~~]
- 341 (g) a signature sheet containing the names, addresses, and signatures of a majority of the
- 342 adult residents of the preliminary municipality, supporting the proposed name for the
- 343 town[~~;~~] ;
- 344 (h) certification that:
- 345 (i) all damages to county property or infrastructure resulting from development of the
- 346 area have been assessed and paid in full; or
- 347 (ii) no damages described in Subsection (2)(h)(i) exist; and
- 348 (i) an agreement by the initial landowners to accept liability for any damages to county
- 349 property or infrastructure that:
- 350 (i) occurred before the preliminary municipality's transition into a town but are
- 351 discovered after the transition; and
- 352 (ii) are directly attributable to development of the area.
- 353 (3) Within 30 days after the day on which a person files a petition to transition a
- 354 preliminary municipality into a town, the lieutenant governor shall:
- 355 (a) determine whether the preliminary municipality has a population of more than 99
- 356 people;
- 357 (b) examine the petition to determine whether the petition complies with Subsection (2);
- 358 (c) if the lieutenant governor determines that the preliminary municipality has a
- 359 population of more than 99 people and that the petition complies with Subsection (2),
- 360 proceed to transition the preliminary municipality as a town in accordance with
- 361 Subsection (4);
- 362 (d) if the lieutenant governor determines that the preliminary municipality has a
- 363 population of less than 100 people, deny the petition, inform the person who filed the
- 364 petition of the determination, and request that the person refile the petition when the
- 365 population exceeds 99 people; and
- 366 (e) if the lieutenant governor determines that the petition fails to comply with Subsection
- 367 (2), deny the petition, inform the person who filed the petition of the denial and the
- 368 reason for the denial, and request that the person correct and refile the petition.
- 369 (4) After making the determination described in Subsection (3)(c), the lieutenant governor
- 370 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 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 the 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.

(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 6. Effective Date.

This bill takes effect on May 7, 2025.

439 Section 7. **Retrospective operation.**

440 This bill has retrospective operation to February 1, 2025.