

ASSESSMENT AREA ACT MODIFICATIONS

2015 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill amends provisions related to the designation of an assessment area and the levy of an assessment.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ amends provisions related to an action to contest an assessment;
- ▶ allows a local entity to divide an assessment area into classifications;
- ▶ prohibits an assessment area that is coextensive or substantially coterminous with the boundaries of a local entity;
- ▶ amends notice requirements for an assessment area;
- ▶ amends provisions related to a protest filed against the designation of an assessment area;
- ▶ amends provisions related to a public hearing on a proposed assessment area and changes that a local entity may make to a proposed area;
- ▶ amends provisions related to a public meeting held to designate an assessment area;
- ▶ allows a local entity to make certain changes to a proposed assessment area if the changes do not result in an increase in an assessment for a property or result in adequate protests;
- ▶ amends provisions related to an assessment levy;
- ▶ amends provisions related to a board of equalization;
- ▶ amends provisions related to an assessment for economic promotion activities;
- ▶ requires that an assessment be roughly proportional for each assessed property;
- ▶ requires a local entity to pay for any increase in an improvement size or capacity for service to properties outside of an assessment area with funds other than those levied by the assessment; and
- ▶ makes technical corrections.

33 **Money Appropriated in this Bill:**

34 None

35 **Other Special Clauses:**

36 None

37 **Utah Code Sections Affected:**

38 AMENDS:

39 **11-42-102**, as last amended by Laws of Utah 2013, Chapter 24640 **11-42-106**, as enacted by Laws of Utah 2007, Chapter 32941 **11-42-201**, as last amended by Laws of Utah 2010, Chapter 23842 **11-42-202**, as last amended by Laws of Utah 2013, Chapters 246 and 26543 **11-42-203**, as last amended by Laws of Utah 2013, Chapter 26544 **11-42-204**, as last amended by Laws of Utah 2013, Chapter 26545 **11-42-206**, as last amended by Laws of Utah 2013, Chapter 26546 **11-42-401**, as last amended by Laws of Utah 2013, Chapter 26547 **11-42-402**, as last amended by Laws of Utah 2010, Chapters 90 and 23848 **11-42-403**, as last amended by Laws of Utah 2009, Chapter 24649 **11-42-406**, as last amended by Laws of Utah 2010, Chapter 23850 **11-42-409**, as enacted by Laws of Utah 2007, Chapter 329

51

52 *Be it enacted by the Legislature of the state of Utah:*53 Section 1. Section **11-42-102** is amended to read:54 **11-42-102. Definitions.**

55 (1) "Adequate protests" means timely filed, written protests under Section 11-42-203
 56 that represent at least [~~50%~~] 40% of the frontage, area, taxable value, fair market value, lots,
 57 number of connections, or equivalent residential units of the property proposed to be assessed,
 58 according to the same assessment method by which the assessment is proposed to be levied,
 59 after eliminating:

60 (a) protests relating to:

61 (i) property that has been deleted from a proposed assessment area; or

62 (ii) an improvement that has been deleted from the proposed improvements to be
 63 provided to property within the proposed assessment area; and

64 (b) protests that have been withdrawn under Subsection 11-42-203(3).

65 (2) "Assessment area" means an area, or, if more than one area is designated, the
66 aggregate of all areas within a local entity's jurisdictional boundaries that is designated by a
67 local entity under Part 2, Designating an Assessment Area, for the purpose of financing the
68 costs of improvements, operation and maintenance, or economic promotion activities that
69 benefit property within the area.

70 (3) "Assessment bonds" means bonds that are:

71 (a) issued under Section 11-42-605; and

72 (b) payable in part or in whole from assessments levied in an assessment area,
73 improvement revenues, and a guaranty fund or reserve fund.

74 (4) "Assessment fund" means a special fund that a local entity establishes under
75 Section 11-42-412.

76 (5) "Assessment lien" means a lien on property within an assessment area that arises
77 from the levy of an assessment, as provided in Section 11-42-501.

78 (6) "Assessment method" means the method:

79 (a) by which an assessment is levied against benefitted property, whether by frontage,
80 area, taxable value, fair market value, lot, parcel, number of connections, equivalent residential
81 unit, any combination of these methods, or any other method [~~that equitably reflects the benefit~~
82 ~~received from the improvement.~~]; and

83 (b) that, when applied to a benefitted property, accounts for an assessment that is
84 roughly proportional.

85 (7) "Assessment ordinance" means an ordinance adopted by a local entity under
86 Section 11-42-404 that levies an assessment on benefitted property within an assessment area.

87 (8) "Assessment resolution" means a resolution adopted by a local entity under Section
88 11-42-404 that levies an assessment on benefitted property within an assessment area.

89 (9) "Benefitted property" means property within an assessment area that directly or
90 indirectly benefits from improvements, operation and maintenance, or economic promotion
91 activities.

92 (10) "Bond anticipation notes" means notes issued under Section 11-42-602 in
93 anticipation of the issuance of assessment bonds.

94 (11) "Bonds" means assessment bonds and refunding assessment bonds.

95 (12) "Commercial area" means an area in which at least 75% of the property is devoted
96 to the interchange of goods or commodities.

97 (13) (a) "Commercial or industrial real property" means real property used directly or
98 indirectly or held for one of the following purposes or activities, regardless of whether the
99 purpose or activity is for profit:

- 100 (i) commercial;
- 101 (ii) mining;
- 102 (iii) industrial;
- 103 (iv) manufacturing;
- 104 (v) governmental;
- 105 (vi) trade;
- 106 (vii) professional;
- 107 (viii) a private or public club;
- 108 (ix) a lodge;
- 109 (x) a business; or
- 110 (xi) a similar purpose.

111 (b) "Commercial or industrial real property" includes real property that:

- 112 (i) is used as or held for dwelling purposes; and
- 113 (ii) contains four or more rental units.

114 (14) "Connection fee" means a fee charged by a local entity to pay for the costs of
115 connecting property to a publicly owned sewer, storm drainage, water, gas, communications, or
116 electrical system, whether or not improvements are installed on the property.

117 (15) "Contract price" means:

- 118 (a) the cost of acquiring an improvement, if the improvement is acquired; or
- 119 (b) the amount payable to one or more contractors for the design, engineering,
120 inspection, and construction of an improvement.

121 (16) "Designation ordinance" means an ordinance adopted by a local entity under
122 Section 11-42-206 designating an assessment area.

123 (17) "Designation resolution" means a resolution adopted by a local entity under
124 Section 11-42-206 designating an assessment area.

125 (18) "Economic promotion activities" means activities that promote economic growth

126 in a commercial area of a local entity, including:

127 (a) sponsoring festivals and markets;

128 (b) promoting business investment or activities;

129 (c) helping to coordinate public and private actions; and

130 (d) developing and issuing publications designed to improve the economic well-being

131 of the commercial area.

132 (19) "Energy efficiency upgrade" means an improvement that is permanently affixed to

133 commercial or industrial real property that is designed to reduce energy consumption,

134 including:

135 (a) insulation in:

136 (i) a wall, roof, floor, or foundation; or

137 (ii) a heating and cooling distribution system;

138 (b) a window or door, including:

139 (i) a storm window or door;

140 (ii) a multiglazed window or door;

141 (iii) a heat-absorbing window or door;

142 (iv) a heat-reflective glazed and coated window or door;

143 (v) additional window or door glazing;

144 (vi) a window or door with reduced glass area; or

145 (vii) other window or door modifications;

146 (c) an automatic energy control system;

147 (d) in a building or a central plant, a heating, ventilation, or air conditioning and

148 distribution system;

149 (e) caulk or weatherstripping;

150 (f) a light fixture that does not increase the overall illumination of a building unless an

151 increase is necessary to conform with the applicable building code;

152 (g) an energy recovery system;

153 (h) a daylighting system;

154 (i) measures to reduce the consumption of water, through conservation or more

155 efficient use of water, including:

156 (i) installation of low-flow toilets and showerheads;

- 157 (ii) installation of timer or timing systems for a hot water heater; or
158 (iii) installation of rain catchment systems; or
159 (j) a modified, installed, or remodeled fixture that is approved as a utility cost-saving
160 measure by the governing body of a local entity.
- 161 (20) "Equivalent residential unit" means a dwelling, unit, or development that is equal
162 to a single-family residence in terms of the nature of its use or impact on an improvement to be
163 provided in the assessment area.
- 164 (21) "Governing body" means:
165 (a) for a county, city, or town, the legislative body of the county, city, or town;
166 (b) for a local district, the board of trustees of the local district;
167 (c) for a special service district:
168 (i) the legislative body of the county, city, or town that established the special service
169 district, if no administrative control board has been appointed under Section 17D-1-301; or
170 (ii) the administrative control board of the special service district, if an administrative
171 control board has been appointed under Section 17D-1-301; and
172 (d) for the military installation development authority created in Section 63H-1-201,
173 the authority board, as defined in Section 63H-1-102.
- 174 (22) "Guaranty fund" means the fund established by a local entity under Section
175 11-42-701.
- 176 (23) "Improved property" means property [~~proposed to be assessed within an~~
177 ~~assessment area~~] upon which a residential, commercial, or other building has been built.
- 178 (24) "Improvement":
179 (a) (i) means a publicly owned infrastructure, system, or other facility, a publicly or
180 privately owned energy efficiency upgrade, or a publicly or privately owned renewable energy
181 system that:
182 (A) a local entity is authorized to provide;
183 (B) the governing body of a local entity determines is necessary or convenient to
184 enable the local entity to provide a service that the local entity is authorized to provide; or
185 (C) a local entity is requested to provide through an interlocal agreement in accordance
186 with Title 11, Chapter 13, Interlocal Cooperation Act; and
187 (ii) includes [~~facilities in an assessment area, including~~] a private driveway, an

188 irrigation ditch, and a water turnout, that:

189 (A) can be conveniently installed at the same time as an infrastructure, system, or other
190 facility described in Subsection (24)(a)(i); and

191 (B) are requested by a property owner on whose property or for whose benefit the
192 infrastructure, system, or other facility is being installed; or

193 (b) for a local district created to assess groundwater rights in accordance with Section
194 17B-1-202, means a system or plan to regulate groundwater withdrawals within a specific
195 groundwater basin in accordance with Sections 17B-1-202 and 73-5-15.

196 (25) "Improvement revenues":

197 (a) means charges, fees, impact fees, or other revenues that a local entity receives from
198 improvements; and

199 (b) does not include revenue from assessments.

200 (26) "Incidental refunding costs" means any reasonable costs of issuing refunding
201 assessment bonds and calling, retiring, or paying prior bonds, including:

202 (a) legal and accounting fees;

203 (b) charges of financial advisors, escrow agents, certified public accountant verification
204 entities, and trustees;

205 (c) underwriting discount costs, printing costs, the costs of giving notice;

206 (d) any premium necessary in the calling or retiring of prior bonds;

207 [~~(e) fees to be paid to the local entity to issue the refunding assessment bonds and to~~
208 ~~refund the outstanding prior bonds;~~]

209 [~~(f)~~] (e) any other costs that [~~the governing body determines~~] are necessary [~~or~~
210 ~~desirable~~] and proper to incur in connection with the issuance of refunding assessment bonds;
211 and

212 [~~(g)~~] (f) any interest on the prior bonds that is required to be paid in connection with
213 the issuance of the refunding assessment bonds.

214 (27) "Installment payment date" means the date on which an installment payment of an
215 assessment is payable.

216 (28) "Interim warrant" means a warrant issued by a local entity under Section
217 11-42-601.

218 (29) "Jurisdictional boundaries" means:

219 (a) for a county, the boundaries of the unincorporated area of the county; and

220 (b) for each other local entity, the boundaries of the local entity.

221 (30) "Local district" means a local district under Title 17B, Limited Purpose Local
222 Government Entities - Local Districts.

223 (31) "Local entity" means a county, city, town, special service district, local district, an
224 interlocal entity as defined in Section 11-13-103, a military installation development authority
225 created in Section 63H-1-201, or other political subdivision of the state.

226 (32) "Local entity obligations" means assessment bonds, refunding assessment bonds,
227 interim warrants, and bond anticipation notes issued by a local entity.

228 (33) "Mailing address" means:

229 (a) a property owner's last-known address using the name and address appearing on the
230 last completed real property assessment roll of the county in which the property is located; and

231 (b) if the property is improved property:

232 (i) the property's street number; or

233 (ii) the post office box, rural route number, or other mailing address of the property, if
234 a street number has not been assigned.

235 (34) "Net improvement revenues" means all improvement revenues that a local entity
236 has received since the last installment payment date, less all amounts payable by the local entity
237 from those improvement revenues for operation and maintenance costs.

238 (35) "Operation and maintenance costs":

239 (a) means the costs that a local entity incurs in operating and maintaining
240 improvements in an assessment area, whether or not those improvements have been financed
241 under this chapter; and

242 (b) includes service charges, administrative costs, ongoing maintenance charges, and
243 tariffs or other charges for electrical, water, gas, or other utility usage.

244 (36) "Overhead costs" means the actual costs incurred or the estimated costs to be
245 incurred by a local entity in connection with an assessment area for appraisals, legal fees, filing
246 fees, financial advisory charges, underwriting fees, placement fees, escrow, trustee, and paying
247 agent fees, publishing and mailing costs, costs of levying an assessment, recording costs, and
248 all other incidental costs.

249 (37) "Prior assessment ordinance" means the ordinance levying the assessments from

250 which the prior bonds are payable.

251 (38) "Prior assessment resolution" means the resolution levying the assessments from
252 which the prior bonds are payable.

253 (39) "Prior bonds" means the assessment bonds that are refunded in part or in whole by
254 refunding assessment bonds.

255 (40) "Project engineer" means the surveyor or engineer employed by or private
256 consulting engineer engaged by a local entity to perform the necessary engineering services for
257 and to supervise the construction or installation of the improvements.

258 (41) "Property" includes real property and any interest in real property, including water
259 rights and leasehold rights.

260 (42) "Property price" means the price at which a local entity purchases or acquires by
261 eminent domain property to make improvements in an assessment area.

262 (43) "Provide" or "providing," with reference to an improvement, includes the
263 acquisition, construction, reconstruction, renovation, maintenance, repair, operation, and
264 expansion of an improvement.

265 (44) "Public agency" means:

266 (a) the state or any agency, department, or division of the state; and

267 (b) a political subdivision of the state.

268 (45) "Reduced payment obligation" means the full obligation of an owner of property
269 within an assessment area to pay an assessment levied on the property after the assessment has
270 been reduced because of the issuance of refunding assessment bonds, as provided in Section
271 11-42-608.

272 (46) "Refunding assessment bonds" means assessment bonds that a local entity issues
273 under Section 11-42-607 to refund, in part or in whole, assessment bonds.

274 (47) "Renewable energy system" means a product, a system, a device, or an interacting
275 group of devices that:

276 (a) is permanently affixed to commercial or industrial real property; and

277 (b) produces energy from renewable resources, including:

278 (i) a photovoltaic system;

279 (ii) a solar thermal system;

280 (iii) a wind system;

281 (iv) a geothermal system, including:
 282 (A) a generation system;
 283 (B) a direct-use system; or
 284 (C) a ground source heat pump system;
 285 (v) a microhydro system; or
 286 (vi) other renewable sources approved by the governing body of a local entity.
 287 (48) "Reserve fund" means a fund established by a local entity under Section
 288 11-42-702.

289 (49) "Roughly proportional" or "roughly proportionate" means that the amount of the
 290 assessment levied against a benefitted property when compared to the total assessment for the
 291 assessment area, or, if applicable, when compared with the total assessment for all assessed
 292 properties within the same classification, is roughly equivalent to the benefit received by a
 293 benefitted property when compared with the benefit to all assessed properties within the
 294 assessment area or classification.

295 [~~(49)~~] (50) "Service" means:
 296 (a) water, sewer, storm drainage, garbage collection, library, recreation,
 297 communications, or electric service;
 298 (b) economic promotion activities; or
 299 (c) any other service that a local entity is required or authorized to provide.

300 [~~(50)~~] (51) "Special service district" has the same meaning as defined in Section
 301 17D-1-102.

302 (52) "Unassessed benefitted government property" means property that a local entity
 303 may not assess in accordance with Section 11-42-408 but is benefitted by an improvement,
 304 operation and maintenance, or economic promotion activities.

305 [~~(51)~~] (53) "Unimproved property" means property upon which no residential,
 306 commercial, or other building has been built.

307 [~~(52)~~] (54) "Voluntary assessment area" means an assessment area that contains only
 308 property whose owners have voluntarily consented to an assessment.

309 Section 2. Section **11-42-106** is amended to read:

310 **11-42-106. Action to contest assessment or proceeding -- Requirements --**
 311 **Exclusive remedy -- Bonds and assessment incontestable.**

312 (1) A person who contests an assessment or any proceeding to designate an assessment
313 area or levy an assessment may commence a civil action against the local entity to:

314 (a) set aside a proceeding to designate an assessment area; or

315 (b) enjoin the levy or collection of an assessment.

316 (2) (a) Each action under Subsection (1) shall be commenced in the district court with
317 jurisdiction in the county in which the assessment area is located.

318 (b) An action under Subsection (1) may not be commenced against and a summons
319 relating to the action may not be served on the local entity more than 30 days after the effective
320 date of the:

321 (i) designation resolution or designation ordinance, if the challenge is to the
322 designation of an assessment area;

323 (ii) assessment resolution or ordinance [or, in the case of an amendment, the], if the
324 challenge is to an assessment; or

325 (iii) amended resolution or ordinance, if the challenge is to an amendment.

326 (3) (a) An action under ~~[this section]~~ Subsection (1) is the exclusive remedy of a
327 person who:

328 (i) claims an error or irregularity in an assessment or in any proceeding to designate an
329 assessment area or levy an assessment[-]; or

330 (ii) challenges a bondholder's right to repayment.

331 (b) A court may not hear any complaint under Subsection (1) that a person was
332 authorized to make but did not make in a protest under Section 11-42-203 or at a hearing under
333 Section 11-42-204.

334 (4) An assessment or a proceeding to designate an assessment area or to levy an
335 assessment may not be declared invalid or set aside in part or in whole because of an error or
336 irregularity that does not go to the equity or justice of the proceeding or rough proportionality
337 of the assessment [or proceeding].

338 (5) If an action is brought in accordance with Subsection (1):

339 (a) there is a rebuttable presumption that, as applicable, an improvement, operation and
340 maintenance, or an economic promotion activity benefits all property located within the
341 assessment area; and

342 (b) the action and decision of the governing body as to all actions taken by the

343 governing body in relation to an action, matter, or thing provided in this chapter is prima facie
 344 evidence of its correctness in the absence of material misrepresentation, fraud, a violation of a
 345 constitutional right, inequity, or injustice.

346 ~~(5)~~ (6) After the expiration of the 30-day period referred to in Subsection (2)(b):

347 (a) assessment bonds and refunding assessment bonds issued or to be issued with
 348 respect to an assessment area and assessments levied on property in the assessment area
 349 become at that time incontestable against all persons who have not commenced an action and
 350 served a summons as provided in this section; and

351 (b) a suit to enjoin the issuance or payment of assessment bonds or refunding
 352 assessment bonds, the levy, collection, or enforcement of an assessment, or to attack or
 353 question in any way the legality of assessment bonds, refunding assessment bonds, or an
 354 assessment may not be commenced, and a court may not inquire into those matters.

355 (7) (a) This section may not be interpreted to insulate a local entity from a claim of
 356 misuse of assessment funds.

357 (b) An action in mandamus is the sole form of relief available to a party challenging
 358 the misuse of assessment funds.

359 Section 3. Section **11-42-201** is amended to read:

360 **11-42-201. Resolution or ordinance designating an assessment area --**
 361 **Classifications within an assessment area -- Preconditions to adoption of a resolution or**
 362 **ordinance.**

363 (1) (a) Subject to the requirements of this part, a governing body of a local entity
 364 intending to levy an assessment on property to pay some or all of the cost of providing
 365 improvements benefitting the property, performing operation and maintenance benefitting the
 366 property, or conducting economic promotion activities benefitting the property shall adopt a
 367 resolution or ordinance designating an assessment area.

368 (b) A designation resolution or designation ordinance described in Subsection (1)(a)
 369 may divide the assessment area into [~~zones~~] multiple classifications to allow the governing
 370 body to:

371 (i) levy a different level of assessment; or

372 (ii) use a different assessment method in each [~~zone~~] classification to reflect more
 373 fairly the benefits that property within the different [~~zones~~] classifications is expected to

374 receive because of the proposed improvement, operation and maintenance, or economic
375 promotion activities.

376 (c) The boundaries of a proposed assessment area;

377 (i) may include property that is not intended to be assessed[-]; and

378 (ii) may not be coextensive or substantially coterminous with the boundaries of the
379 local entity.

380 (2) Before adopting a designation resolution or designation ordinance described in
381 Subsection (1)(a), the governing body of the local entity shall:

382 (a) give notice as provided in Section 11-42-202;

383 (b) receive and consider all protests filed under Section 11-42-203; and

384 (c) hold a public hearing as provided in Section 11-42-204.

385 Section 4. Section **11-42-202** is amended to read:

386 **11-42-202. Requirements applicable to a notice of a proposed assessment area**
387 **designation.**

388 (1) Each notice required under Subsection 11-42-201(2)(a) shall:

389 (a) state that the local entity proposes to:

390 (i) designate one or more areas within the local entity's jurisdictional boundaries as an
391 assessment area;

392 (ii) provide an improvement to property within the proposed assessment area; and

393 (iii) finance some or all of the cost of improvements by an assessment on benefitted
394 property within the assessment area;

395 (b) describe the proposed assessment area by any reasonable method that allows an
396 owner of property in the proposed assessment area to determine that the owner's property is
397 within the proposed assessment area;

398 (c) describe, in a general way, the improvements to be provided to the assessment area,
399 including:

400 (i) the general nature of the improvements; and

401 (ii) the general location of the improvements, by reference to streets or portions or
402 extensions of streets or by any other means that the governing body chooses that reasonably
403 describes the general location of the improvements;

404 (d) state the estimated cost of the improvements as determined by a project engineer;

405 (e) for the version of notice mailed in accordance with Subsection (3)(b), state the
406 estimated annual assessment specific to the benefitted property for which the notice is mailed;

407 ~~[(e)]~~ (f) state that the local entity proposes to levy an assessment on benefitted property
408 within the assessment area to pay some or all of the cost of the improvements according to the
409 estimated ~~[direct and indirect]~~ benefits to the property from the improvements;

410 (g) if applicable, state that unassessed benefitted government property will receive
411 improvements for which the cost will be equally shared by the remaining benefitted properties
412 within the proposed assessment area and that a description of each unassessed benefitted
413 government property is available for public review at the location or website described in
414 Subsection (4);

415 ~~[(f)]~~ (h) state the assessment method by which the governing body proposes to levy the
416 assessment, including, if the local entity is a municipality or county, whether the assessment
417 will be collected:

418 (i) by directly billing a property owner; or

419 (ii) by inclusion on a property tax notice issued in accordance with Section 59-2-1317;

420 ~~[(g)]~~ (i) state:

421 (i) the date described in Section 11-42-203 and the location at which protests against
422 designation of the proposed assessment area or of the proposed improvements are required to
423 be filed; ~~[and]~~

424 (ii) the method by which the governing body will determine the number of protests
425 required to defeat the designation of the proposed assessment area or acquisition or
426 construction of the proposed improvements; and

427 (iii) in large, boldface, and conspicuous type that a property owner must protest the
428 designation of the assessment area in writing if the owner objects to being assessed for the
429 proposed improvements, operation and maintenance costs, or economic promotion activities;

430 ~~[(h)]~~ (j) state the date, time, and place of the public hearing required in Section
431 11-42-204;

432 ~~[(i)]~~ (k) if the governing body elects to create and fund a reserve fund under Section
433 11-42-702, include a description of:

434 (i) how the reserve fund will be funded and replenished; and

435 (ii) how remaining money in the reserve fund is to be disbursed upon full payment of

436 the bonds;

437 ~~(f)~~ (l) if the governing body intends to designate a voluntary assessment area, include

438 a property owner consent form that:

439 (i) estimates the total assessment to be levied against the particular parcel of property;

440 (ii) describes any additional benefits that the governing body expects the assessed

441 property to receive from the improvements; and

442 (iii) designates the date and time by which the fully executed consent form is required

443 to be submitted to the governing body;

444 ~~(k)~~ (m) if the local entity intends to levy an assessment to pay operation and

445 maintenance costs or for economic promotion activities, include:

446 (i) a description of the operation and maintenance costs or economic promotion

447 activities to be paid by assessments and the initial estimated annual assessment to be levied;

448 (ii) a description of how the estimated assessment will be determined;

449 (iii) a description of how and when the governing body will adjust the assessment to

450 reflect the costs of:

451 (A) in accordance with Section 11-42-406, current economic promotion activities; or

452 (B) current operation and maintenance costs;

453 (iv) a description of the method of assessment if different from the method of

454 assessment to be used for financing any improvement; and

455 (v) a statement of the maximum number of years over which the assessment will be

456 levied for:

457 (A) operation and maintenance costs; or

458 (B) economic promotion activities; ~~and~~

459 ~~(h)~~ (n) if the governing body intends to divide the proposed assessment area into

460 ~~[zones]~~ classifications under Subsection 11-42-201(1)(b), include a description of the proposed

461 ~~[zones:]~~ classifications;

462 (o) if applicable, state the portion and value of the improvement that will be increased

463 in size or capacity to serve property outside of the assessment area; and

464 (p) state whether the local entity will finance the improvements with a bond and, if so,

465 the estimated interest rate and term of financing for which the benefitted properties within the

466 assessment area may be obligated.

467 (2) A notice required under Subsection 11-42-201(2)(a) may contain other information
468 that the governing body considers to be appropriate, including:

469 (a) the amount or proportion of the cost of the improvement to be paid by the local
470 entity or from sources other than an assessment;

471 (b) the estimated total amount of each type of assessment for the various improvements
472 to be financed according to the method of assessment that the governing body chooses; and

473 (c) provisions for any improvements described in Subsection 11-42-102(24)(a)(ii).

474 (3) Each notice required under Subsection 11-42-201(2)(a) shall:

475 (a) (i) (A) be published in a newspaper of general circulation within the local entity's
476 jurisdictional boundaries, once a week for four consecutive weeks, with the last publication at
477 least five but not more than 20 days before the day of the hearing required in Section
478 11-42-204; or

479 (B) if there is no newspaper of general circulation within the local entity's jurisdictional
480 boundaries, be posted in at least three public places within the local entity's jurisdictional
481 boundaries at least 20 but not more than 35 days before the day of the hearing required in
482 Section 11-42-204; and

483 (ii) be published on the Utah Public Notice Website described in Section 63F-1-701 for
484 four weeks before the deadline for filing protests specified in the notice under Subsection
485 (1)(~~g~~)(i); and

486 (b) be mailed, postage prepaid, within 10 days after the first publication or posting of
487 the notice under Subsection (3)(a) to each owner of property to be assessed within the proposed
488 assessment area at the property owner's mailing address.

489 (4) A local entity shall make available on the local entity's website, or, if no website is
490 available, at the local entity's place of business, the address and type of use of each unassessed
491 benefitted government property described in Subsection (1)(g).

492 Section 5. Section **11-42-203** is amended to read:

493 **11-42-203. Protests.**

494 (1) An owner of property that is proposed to be assessed [~~within~~] and who does not
495 want the property to be included in an assessment area may, within 60 days after the day of the
496 hearing described in Subsection 11-42-204(1), file a written protest;

497 (a) against:

498 ~~(a)~~ (i) the designation of the assessment area;

499 ~~(b)~~ (ii) the inclusion of the owner's property in the proposed assessment area;

500 ~~(c)~~ (iii) the proposed improvements to be acquired or constructed; or

501 (iv) the inclusion of an unassessed benefitted government property, the benefit for

502 which the other assessed properties will collectively pay; or

503 ~~(d)~~ (b) protesting:

504 (i) whether the assessment is roughly proportional; or

505 (ii) any other aspect of the proposed designation of an assessment area.

506 (2) Each protest under Subsection (1)(a)(i) or (b)(i) shall describe or otherwise identify

507 the property owned by the person filing the protest.

508 (3) An owner may withdraw a protest at any time before the expiration of the 60-day

509 period described in Subsection (1), or, if applicable, the expiration of an extension of the

510 60-day period, by filing a written withdrawal with the governing body.

511 (4) If the governing body intends to assess property within the proposed assessment

512 area by type of improvement or ~~by zone~~, as described in Section 11-42-201, by classification,

513 and the governing body has clearly noticed its intent, the governing body shall[-];

514 (a) in determining whether adequate protests have been filed, aggregate the protests by

515 the type of improvement or by ~~zone~~ classification; and

516 (b) apply to and calculate for each type of improvement or classification the threshold

517 requirements of adequate protests.

518 (5) The failure of an owner of property within the proposed assessment area to file a

519 timely written protest constitutes a waiver of any objection to:

520 (a) the designation of the assessment area to the owner's property;

521 (b) any improvement to be provided to property within the assessment area; ~~and~~

522 (c) the inclusion of the owner's property within the assessment area[-];

523 (d) the fact, but not amount, of benefit; and

524 (e) the inclusion of an unassessed benefitted government property in the assessment

525 area.

526 (6) The local entity shall post an accurate total and percentage of the written protests it

527 receives on the local entity's website, or, if no website is available, at the local entity's place of

528 business at least five days before the public meeting described in Section 11-42-206.

529 Section 6. Section **11-42-204** is amended to read:

530 **11-42-204. Hearing -- Changes.**

531 (1) On the date and at the time and place specified in the notice under Section
532 11-42-202, the governing body shall hold a public hearing.

533 (2) (a) The governing body:

534 (i) subject to Subsection (2)(a)(ii), may continue the public hearing from time to time
535 to a fixed future date and time[-]; and

536 (ii) may not hold a public hearing that is a continuance less than five days before:

537 (A) the deadline for filing protests described in Section 11-42-203; or

538 (B) if applicable, five days before the expiration of the extension described in
539 Subsection (4)(c).

540 (b) ~~[The]~~ Except as provided in Subsection (4)(c), continuance of a public hearing does
541 not restart or extend the protest period described in Subsection 11-42-203(1).

542 (3) At the public hearing, the governing body shall:

543 (a) hear all:

544 (i) objections to the designation of the proposed assessment area or the improvements
545 proposed to be provided in the assessment area; ~~[and]~~

546 (ii) objections to the rough proportionality of the assessment to the benefitted
547 properties within the assessment area or, if applicable, within a classification;

548 (iii) objections to the inclusion within the assessment area of an unassessed benefitted
549 government property the benefit for which the other assessed properties will collectively pay;
550 and

551 ~~[(b)]~~ (iv) hear all persons desiring to be heard[-]; and

552 ~~[(4) The governing body may make changes in:]~~

553 (4) (a) Based on the testimony received, the governing body, either during or at a
554 continuance of the public hearing, may make changes in:

555 ~~[(a)]~~ (i) improvements proposed to be provided to the proposed assessment area; or

556 ~~[(b)]~~ (ii) the area or areas proposed to be included within the proposed assessment area.

557 (b) If a governing body makes a change under Subsection (4)(a) that results in an

558 assessment increase for a benefitted property within the proposed assessment area, the

559 governing body shall:

560 (i) renounce the proposed assessment area in accordance with Section 11-42-202 to
 561 reflect the change; and

562 (ii) include in the renounce the new protest filing deadline described in Subsection
 563 (4)(c).

564 (c) If a local entity is required to give renounce under Subsection (4)(b), the period for
 565 filing protests under Section 11-42-203 is extended for 15 business days after the day on which
 566 the local entity publishes the renounce.

567 (d) If a governing body makes a change, and that change does not result in an
 568 assessment increase for a benefitted property within the proposed assessment area, the
 569 governing body is not required to renounce the proposed assessment area or extend the protest
 570 filing period.

571 Section 7. Section **11-42-206** is amended to read:

572 **11-42-206. Public meeting -- Adoption of a resolution or ordinance regarding a**
 573 **proposed assessment area -- Designation prohibited if adequate protests filed --**
 574 **Recording of resolution or ordinance and notice of proposed assessment.**

575 (1) (a) After holding a public hearing under Section 11-42-204 and [~~considering~~
 576 ~~protests filed under Section 11-42-203, and subject to Subsection (3), the governing body shall~~
 577 ~~hold a public meeting to adopt a resolution or ordinance:~~] within 15 days after the day that the
 578 protest period expires in accordance with Subsection 11-42-203(1), or, if applicable,
 579 11-42-204(4)(c), the governing body shall:

580 (i) count the written protests filed or withdrawn in accordance with Section 11-42-203
 581 and calculate whether adequate protests have been filed; and

582 (ii) hold a public meeting to announce the protest tally and whether adequate protests
 583 have been filed.

584 (b) If adequate protests are not filed, the governing body at the public meeting may
 585 adopt a resolution or ordinance:

586 (i) abandoning the proposal to designate an assessment area; or

587 (ii) designating an assessment area as described in the notice under Section 11-42-202
 588 or with the changes made as authorized under Subsection 11-42-204(4).

589 [~~(b) In accordance with Section 11-42-203, the governing body:]~~

590 [~~(i) may not schedule the public meeting before the expiration of the 60-day protest~~

591 ~~period; and]~~
592 ~~[(ii) shall consider and report on any timely filed protests.]~~
593 (2) (a) If adequate protests are filed, the governing body at the public meeting:
594 (i) may not adopt a resolution or ordinance designating the assessment area unless the
595 governing body changes the assessment area in accordance with Subsection (2)(b); or
596 (ii) may adopt a resolution or ordinance to abandon the proposal to designate the
597 assessment area.
598 (b) If adequate protests are filed, a governing body may, subject to Subsection (3)(a),
599 decide to make changes in improvements to be provided to or operation and maintenance or
600 economic promotion activities conducted in the proposed assessment area, or the benefitted
601 properties proposed to be included within the proposed assessment area, if the changes result
602 in:
603 (i) an assessment for each property that is equal to or less than that previously
604 described for a property in a notice required under Section 11-42-202, or, if applicable, renote
605 under Section 11-42-204; and
606 (ii) the number of protests filed under Section 11-42-203 equal a number that is less
607 than an adequate protest as recalculated, in accordance with Subsection (3)(a)(ii), by the
608 governing body.
609 (3) If the governing body decides to make changes described in Subsection (2)(b), the
610 governing body, except as provided in Subsection (4)(a), at the public meeting described in
611 Subsection (1)(a)(ii):
612 (a) shall:
613 (i) decide what changes to make to the proposed improvements to be provided in the
614 assessment area or which benefitted properties to include in the assessment area;
615 (ii) recalculate the protests filed in accordance with Section 11-42-203 using the same
616 calculation method but to reflect the proposed changes;
617 (iii) describe, in detail, the proposed changes; and
618 (iv) state whether, as recalculated, adequate protests have been filed;
619 (b) may adopt a resolution or ordinance:
620 (i) designating the assessment area if:
621 (A) the changes described in Subsection (3)(a) result in an assessment to each

622 benefitted property that is equal to or less than the assessment proposed in the initial notice
 623 required under Section 11-42-202, or, if applicable, renote under Section 11-42-204; and

624 (B) adequate protests are not filed based on the recalculation under Subsection
 625 (3)(a)(ii); or

626 (ii) abandoning the proposed assessment area; and

627 (c) may not designate the assessment area if the proposed changes under this
 628 Subsection (3) result in an assessment increase to any benefitted property or the recalculation
 629 of protests show that adequate protests have been filed.

630 (4) A governing body:

631 (a) may, if necessary, continue the public meeting if the governing body in each notice
 632 for the continued public meetings describes in detail the proposed changes and recalculated
 633 adequate protest; and

634 (b) may not hold a continuance of the public meeting or take further action on the
 635 designation of the assessment area 30 days or more after the day of the initial public meeting
 636 described in Subsection (1)(a)(ii).

637 ~~[(2)]~~ (5) If the notice under Section 11-42-202 indicates that the proposed assessment
 638 area is a voluntary assessment area, the governing body shall:

639 (a) delete from the proposed assessment area all property whose owners have not
 640 submitted an executed consent form consenting to inclusion of the owner's property in the
 641 proposed assessment area; ~~[and]~~

642 (b) delete all improvements intended to benefit the property whose owners did not
 643 consent; and

644 ~~[(b)]~~ (c) determine whether to designate a voluntary assessment area, after considering:

645 (i) the extent of the improvements required to benefit property owners who consented;

646 ~~[(i)]~~ (ii) the amount of the proposed assessment to be levied on the property within the
 647 voluntary assessment area; ~~[and]~~

648 ~~[(ii)]~~ (iii) the value of the benefits that property within the voluntary assessment area
 649 will receive from improvements proposed to be financed by assessments on the property[-]; and

650 ~~[(3) If adequate protests have been filed, the governing body may not designate an~~
 651 ~~assessment area as described in the notice under Section 11-42-202.]~~

652 (iv) the extent to which the improvements may be scaled to benefit only the assessed

653 properties.

654 ~~[(4)]~~ (6) (a) If the governing body adopts a designation resolution or ordinance
655 designating an assessment area, the governing body shall, within 15 days after adopting the
656 designation resolution or ordinance:

657 (i) record the original or certified copy of the designation resolution or ordinance in the
658 office of the recorder of the county in which property within the assessment area is located; and

659 (ii) file with the recorder of the county in which property within the assessment area is
660 located a notice of proposed assessment that:

661 (A) states that the local entity has designated an assessment area; and

662 (B) lists, by legal description and tax identification number, the property proposed to
663 be assessed.

664 (b) A governing body's failure to comply with the requirements of Subsection ~~[(4)]~~
665 (6)(a) does not invalidate the designation of an assessment area.

666 ~~[(5)]~~ (7) After the adoption of a designation resolution or ordinance under Subsection
667 (1)~~[(a)]~~(b)(ii) or (3)(b)(i), the local entity may begin providing the specified improvements.

668 Section 8. Section **11-42-401** is amended to read:

669 **11-42-401. Levying an assessment -- Prerequisites -- Assessment list.**

670 (1) (a) If a local entity has designated an assessment area in accordance with Part 2,
671 Designating an Assessment Area, the local entity may levy an assessment against property
672 within that assessment area as provided in this part.

673 (b) If a local entity that is a municipality or county designates an assessment area in
674 accordance with this chapter, the municipality or county may levy an assessment and collect
675 the assessment in accordance with Subsection 11-42-202(1)~~[(f)]~~(h)(i) or (ii).

676 (c) An assessment billed by a municipality or county in the same manner as a property
677 tax and included on a property tax notice in accordance with Subsection
678 11-42-202(1)~~[(f)]~~(h)(ii) is enforced in accordance with, constitutes a lien in accordance with,
679 and is subject to other penalty provisions in accordance with this chapter.

680 (2) Before a governing body may adopt a resolution or ordinance levying an
681 assessment against property within an assessment area:

682 (a) the governing body shall:

683 (i) subject to Subsection (3), prepare an assessment list designating:

- 684 (A) each parcel of property proposed to be assessed; and
- 685 (B) the amount of the assessment to be levied against the property;
- 686 (ii) appoint a board of equalization as provided in Section 11-42-403; and
- 687 (iii) give notice as provided in Section 11-42-402; and
- 688 (b) the board of equalization, appointed under Section 11-42-403, shall:
- 689 (i) hold hearings[;];
- 690 (ii) determine if the assessment for each benefitted property is roughly proportional;
- 691 (iii) make necessary corrections so that assessed properties are not assessed for benefits
- 692 conferred exclusively outside of the assessment area;
- 693 (iv) make necessary corrections so that the benefitted properties are not charged for an
- 694 increase in size or capacity of an improvement where the increased size or capacity is to serve
- 695 property outside of the assessment area;
- 696 (iv) make any corrections it considers appropriate to an assessment[;]; and
- 697 (v) report its findings to the governing body as provided in Section 11-42-403.
- 698 (3) (a) The governing body of a local entity shall prepare the assessment list described
- 699 in Subsection (2)(a)(i) at any time after:
- 700 (i) the governing body has determined the estimated or actual operation and
- 701 maintenance costs, if the assessment is to pay operation and maintenance costs;
- 702 (ii) the governing body has determined the estimated or actual economic promotion
- 703 costs described in Section 11-42-206, if the assessment is to pay for economic promotion
- 704 activities; or
- 705 (iii) for any other assessment, the governing body has determined:
- 706 (A) the estimated or actual acquisition and construction costs of all proposed
- 707 improvements within the assessment area, including overhead costs actually incurred and
- 708 reasonably authorized contingencies;
- 709 (B) the estimated or actual property price for all property to be acquired to provide the
- 710 proposed improvements; and
- 711 (C) the [~~reasonable~~] estimated cost of any work to be [~~done~~] performed by the local
- 712 entity.
- 713 (b) In addition to the requirements of Subsection (3)(a), the governing body of a local
- 714 entity shall prepare the assessment list described in Subsection (2)(a)(i) before:

715 (i) the light service has commenced, if the assessment is to pay for light service; or

716 (ii) the park maintenance has commenced, if the assessment is to pay for park

717 maintenance.

718 (4) A local entity may levy an assessment for some or all of the cost of improvements

719 within an assessment area, including payment of:

720 (a) operation and maintenance costs of improvements constructed within the

721 assessment area to the extent the improvements provide exclusive benefits to the properties

722 within the assessment area;

723 (b) (i) if an outside entity furnishes utility services or maintains utility improvements,

724 the actual cost that the local entity pays for utility services or for maintenance of

725 improvements; or

726 (ii) if the local entity itself furnishes utility service or maintains improvements, for the

727 ~~reasonable~~ actual cost of supplying the utility service or maintenance;

728 (c) the ~~reasonable~~ actual cost of supplying labor, materials, or equipment in

729 connection with improvements; and

730 (d) (i) the reasonable cost of valid connection fees; or

731 (ii) the reasonable ~~[costs, as determined by the local entity governing body, if the local~~

732 ~~entity owns or supplies any sewer, storm drainage, water, gas, electric, or communications~~

733 ~~connections]~~ and generally applicable costs of locally provided utilities.

734 (5) A local entity may not levy an assessment for an amount donated or contributed for

735 an improvement or part of an improvement or for anything other than the costs actually

736 incurred by the local entity in order to provide the improvements or conduct operation and

737 maintenance costs or economic promotion activities as provided in Section 11-42-412.

738 (6) The validity of an otherwise valid assessment is not affected because the actual cost

739 of improvements exceeds the estimated cost.

740 (7) (a) Subject to Subsection (7)(b), an assessment levied to pay for operation and

741 maintenance costs may not be levied over a period of time exceeding five years beginning on

742 the day on which the local entity adopts the assessment ordinance or assessment resolution for

743 the operation and maintenance costs assessment.

744 (b) A local entity may levy an additional assessment described in Subsection (7)(a) in

745 the assessment area designated for the assessment described in Subsection (7)(a) if, after the

746 five-year period expires, the local entity;

747 (i) gives notice in accordance with Section 11-42-402 of the new five-year term of the
748 assessment; and

749 (ii) complies with the applicable levy provisions of this part.

750 Section 9. Section **11-42-402** is amended to read:

751 **11-42-402. Notice of assessment and board of equalization hearing.**

752 Each notice required under Subsection 11-42-401(2)(a)(iii) shall:

753 (1) state:

754 (a) that an assessment list is completed and available for examination at the offices of
755 the local entity;

756 (b) the total estimated or actual cost of the improvements;

757 (c) the amount of the total estimated or actual cost of the proposed improvements to be
758 paid by the local entity;

759 (d) the amount of the assessment to be levied against benefitted property within the
760 assessment area;

761 (e) the assessment method used to calculate the proposed assessment;

762 (f) the unit cost used to calculate the assessments shown on the assessment list, based
763 on the assessment method used to calculate the proposed assessment; and

764 (g) the dates, times, and place of the board of equalization hearings under Subsection
765 11-42-401(2)(b)(i);

766 (2) (a) beginning at least 20 but not more than 35 days before the day on which the first
767 hearing of the board of equalization is held:

768 (i) be published at least once in a newspaper of general circulation within the local
769 entity's jurisdictional boundaries; or

770 (ii) if there is no newspaper of general circulation within the local entity's jurisdictional
771 boundaries, be posted in at least three public places within the local entity's jurisdictional
772 boundaries; and

773 (b) be published on the Utah Public Notice Website created in Section 63F-1-701 for
774 35 days immediately before the day on which the first hearing of the board of equalization is
775 held; and

776 (3) be mailed, postage prepaid, within 10 days after the first publication or posting of

777 the notice under Subsection (2) to each owner of property to be assessed within the proposed
778 assessment area at the property owner's mailing address.

779 Section 10. Section **11-42-403** is amended to read:

780 **11-42-403. Board of equalization -- Hearings -- Corrections to proposed**
781 **assessment list -- Report to governing body -- Appeal -- Board findings final -- Waiver of**
782 **objections.**

783 (1) After preparing an assessment list under Subsection 11-42-401(2)(a)(i), the
784 governing body shall appoint a board of equalization.

785 (2) Each board of equalization under this section shall, at the option of the governing
786 body, consist of:

787 (a) three or more members of the governing body;

788 (b) (i) two members of the governing body; and

789 (ii) (A) a representative of the treasurer's office of the local entity; or

790 (B) a representative of the office of the local entity's engineer or the project engineer;

791 or

792 (c) (i) (A) one member of the governing body; or

793 (B) a representative of the governing body, whether or not a member of the governing
794 body, appointed by the governing body;

795 (ii) a representative of the treasurer's office of the local entity; and

796 (iii) a representative of the office of the local entity's engineer or the project engineer.

797 (3) (a) The board of equalization shall hold hearings on at least three consecutive days
798 for at least one hour per day between 9 a.m. and 9 p.m., as specified in the notice under Section
799 11-42-402.

800 (b) The board of equalization may continue a hearing from time to time to a specific
801 place and a specific hour and day until the board's work is completed.

802 (c) At each hearing, the board of equalization shall hear arguments from any person
803 who claims to be aggrieved, including arguments relating to:

804 (i) the [~~direct or indirect~~] amount of benefits accruing to a tract, block, lot, or parcel of
805 property in the assessment area; or

806 (ii) the amount of the proposed assessment against the tract, block, lot, or parcel.

807 (4) (a) After the hearings under Subsection (3) are completed, the board of equalization

808 shall:

809 (i) consider all facts and arguments presented at the hearings; and

810 (ii) make any corrections to the proposed assessment list ~~[that the board considers just~~
811 ~~and equitable]~~ necessary to ensure that the assessment is roughly proportional for each assessed
812 property.

813 (b) A correction under Subsection (4)(a)(ii) may:

814 (i) eliminate one or more pieces of property from the assessment list; or

815 (ii) increase or decrease the amount of the assessment proposed to be levied against a
816 parcel of property.

817 (c) (i) If the board of equalization makes a correction under Subsection (4)(a)(ii) that
818 results in an increase of a proposed assessment, the board shall, before approving a corrected
819 assessment list:

820 (A) give notice as provided in Subsection (4)(c)(ii);

821 (B) hold a hearing at which the owner whose assessment is proposed to be increased
822 may appear and object to the proposed increase; and

823 (C) after holding a hearing, make any further corrections that the board considers just
824 and equitable with respect to the proposed increased assessment.

825 (ii) Each notice required under Subsection (4)(c)(i)(A) shall:

826 (A) state:

827 (I) that the property owner's assessment is proposed to be increased;

828 (II) the amount of the proposed increased assessment;

829 (III) that a hearing will be held at which the owner may appear and object to the
830 increase; and

831 (IV) the date, time, and place of the hearing; and

832 (B) be mailed, at least 15 days before the date of the hearing, to each owner of property
833 as to which the assessment is proposed to be increased at the property owner's mailing address.

834 (5) (a) After the board of equalization has held all hearings required by this section and
835 has made all corrections the board considers just and equitable, the board shall report to the
836 governing body its findings that:

837 (i) each ~~[parcel of]~~ assessed property within the assessment area will be ~~[directly or~~
838 ~~indirectly benefitted in an amount not less than the assessment to be levied against the~~

839 ~~property]~~ assessed a levy that is roughly proportional; and

840 (ii) except as provided in Subsection 11-42-409(6), no parcel of property on the
841 assessment list will bear more than its roughly proportionate share of the cost of the
842 improvements benefitting the property.

843 (b) The board of equalization shall, within 10 days after submitting its report to the
844 governing body, mail a copy of the board's final report to each property owner who objected at
845 the board hearings to the assessment proposed to be levied against the property owner's
846 property at the property owner's mailing address.

847 (6) (a) If a board of equalization includes members other than the governing body of
848 the local entity, a property owner may appeal a decision of the board to the governing body by
849 filing with the governing body a written notice of appeal within 15 days after the board's final
850 report is mailed to property owners under Subsection (5)(b).

851 (b) Except as provided in Subsection (6)(a), no appeal may be taken from the findings
852 of a board of equalization.

853 (7) The findings of a board of equalization are final:

854 (a) when approved by the governing body, if no appeal is allowed under Subsection
855 (6); or

856 (b) after the time for appeal under Subsection (6) is passed, if an appeal is allowed
857 under that subsection.

858 (8) (a) If a governing body has levied an assessment to pay operation and maintenance
859 costs within an assessment area, the governing body may periodically appoint a new board of
860 equalization to review assessments for operation and maintenance costs.

861 (b) Each board of equalization appointed under Subsection (8)(a) shall comply with the
862 requirements of Subsections (3) through (6).

863 (9) The failure of an owner of property within the assessment area to appear before the
864 board of equalization to object to the levy of the assessment constitutes a waiver of all
865 objections to the levy, except an objection that the governing body failed to obtain jurisdiction
866 to order that the improvements which the assessment is intended to pay be provided to the
867 assessment area.

868 (10) (a) This section may not be interpreted to insulate a local entity from a claim of
869 misuse of assessment funds.

870 (b) An action in mandamus is the sole form of relief available to a party challenging
871 the misuse of assessment funds.

872 Section 11. Section **11-42-406** is amended to read:

873 **11-42-406. Assessment for economic promotion activities -- Reporting.**

874 (1) As used in this section:

875 (a) "Commercial property" means a property the use of which is limited by law,
876 covenant, or otherwise to primarily commercial, industrial, retail, or other business purposes.

877 (b) "Mixed-use property" means a property that includes, in accordance with law,
878 covenant, or otherwise, commercial and residential property.

879 (c) "Residential property" means property the use of which is limited by law, covenant,
880 or otherwise to primarily residential or recreational purposes.

881 ~~[(1)]~~ (2) (a) If the governing body of a local entity designates an assessment area in
882 accordance with Part 2, Designating an Assessment Area, for economic promotion activities,
883 the governing body:

884 (i) (A) subject to Subsection (2)(a)(i)(B), may levy an assessment to pay for economic
885 promotion activities by adopting an assessment resolution or ordinance in accordance with
886 Section 11-42-404; and

887 ~~[(ii) subject to Subsection (1)(b), may levy an additional assessment for economic~~
888 ~~promotion activities for the designated assessment area described in Subsection (1)(a):]~~

889 ~~[(A) by adopting an assessment resolution or an ordinance in accordance with Section~~
890 ~~11-42-404; and]~~

891 ~~[(B) for a period of five years, beginning on the day on which the local entity adopts~~
892 ~~the initial assessment resolution or ordinance described in Subsection (1)(a)(i):]~~

893 (B) except as provided in Subsection (2)(b), may not levy the assessment for a period
894 longer than five years;

895 (ii) may only levy an assessment on commercial property for the economic promotion
896 activities, including that portion of commercial property that is part of a mixed-use property.

897 (iii) shall use an assessment method that, when applied to a benefitted property,
898 accounts for:

899 (A) an assessment that is roughly proportionate; and

900 (B) the expected growth in economic activity that will be received by the benefitted

901 property.

902 (b) A governing body may [~~not~~] levy [~~an~~] additional [~~assessment~~] assessments to pay
 903 for economic promotion activities after the five-year period described in Subsection [~~(1)~~]
 904 (2)(a)(ii)(i)(B) [~~unless~~] if the governing body:

905 (i) designates a new assessment area in accordance with Part 2, Designating an
 906 Assessment Area; [~~and~~]

907 (ii) adopts a new assessment resolution or ordinance in accordance with Section
 908 11-42-404[-];

909 (iii) limits each additional assessment to a five-year period; and

910 (iv) complies with Subsections (2)(b)(i) through (iii) for each additional assessment.

911 [~~(2)~~] (3) If a local entity designates an assessment area for economic promotion
 912 activities, the local entity:

913 (a) shall spend on economic promotion activities at least 70% of the money generated
 914 from an assessment levied in the assessment area and from improvement revenues;

915 (b) may not spend more than 30% of the money generated from the assessment levied
 916 in the assessment area and from improvement revenues on administrative costs, including
 917 salaries, benefits, rent, travel, and costs incidental to publications; and

918 (c) in accordance with Subsection [~~(3)~~] (4), shall publish a detailed report including the
 919 following:

920 (i) an account of money deposited into the assessment fund described in Section
 921 11-42-412;

922 (ii) an account of expenditures from the fund described in Section 11-42-412; and

923 (iii) a detailed account of whether each expenditure described in Subsection [~~(2)~~]
 924 (3)(c)(ii) was made for economic promotion activities described in Subsection [~~(2)~~] (3)(a) or
 925 for administrative costs described in Subsection [~~(2)~~] (3)(b).

926 [~~(3)~~] (4) A local entity shall publish a report required in Subsection [~~(2)~~] (3)(c):

927 (a) on:

928 (i) if available, the local entity's public web site; and

929 (ii) if the local entity is not a county or municipality, on the public web site of any
 930 county or municipality in which the local entity has jurisdiction;

931 (b) (i) within one year after the day on which the local entity adopts a new assessment

932 resolution or ordinance for economic promotion activities; and

933 (ii) each subsequent year that the economic promotion activities levy is assessed by
934 updating the information described in Subsection ~~[(2)]~~ (3)(c); and

935 (c) for six months on a web site described in Subsection ~~[(3)]~~ (4)(a) after the day on
936 which the report is initially published under Subsection ~~[(3)]~~ (4)(b) or updated under
937 Subsection ~~[(3)]~~ (4)(b)(ii).

938 Section 12. Section **11-42-409** is amended to read:

939 **11-42-409. Assessment requirements.**

940 (1) (a) Each local entity that levies an assessment under this chapter shall levy the
941 assessment on each block, lot, tract, or parcel of property that ~~[borders, is adjacent to, or]~~
942 benefits from an improvement:

943 (i) to the extent that the ~~[improvement directly or indirectly benefits the property]~~
944 assessment is roughly proportional; and

945 (ii) to whatever depth on the parcel of property that the governing body determines,
946 including the full depth.

947 (b) The validity of an otherwise valid assessment is not affected by the fact that the
948 benefit to the property from the improvement~~[:]~~ does not increase the fair market value of the
949 property.

950 ~~[(i) is only indirect; or]~~

951 ~~[(ii) does not increase the fair market value of the property:]~~

952 (2) The assessment method a governing body uses to calculate an assessment may be
953 according to frontage, area, taxable value, fair market value, lot, number of connections,
954 equivalent residential unit, or any combination of these methods, as the governing body
955 considers ~~[fair and equitable]~~ appropriate to create an assessment that is roughly proportional.

956 (3) (a) In calculating assessments, a governing body may:

957 ~~[(a)]~~ (i) use different methods for different improvements in an assessment area; and

958 ~~[(b)]~~ (ii) assess different amounts in different ~~[zones]~~ classifications, even when using
959 the same method, if acquisition or construction costs differ from ~~[zone to zone]~~ classification
960 to classification.

961 (b) If a local entity intends to include improvements that will be increased in size or
962 capacity to serve property outside of the assessment area, the local entity:

963 (i) may not consider the costs of the improvement excess when calculating an
964 assessment or determining an assessment method; and

965 (ii) shall pay for the increased size or capacity with funds other than those levied by an
966 assessment.

967 (4) (a) Each local entity shall make an allowance for each corner lot receiving the same
968 improvement on both sides so that the property is not assessed at the full rate on both sides.

969 (b) A local entity may allocate a corner lot allowance under Subsection (4)(a) to all
970 other benefitted property within the assessment area by increasing the assessment levied
971 against the other property.

972 (5) (a) Assessments shall be [~~fair and equitable according to the benefit to the~~
973 ~~benefitted property from the improvement~~] roughly proportional.

974 (b) To comply with Subsection (5)(a), a local entity may levy assessments within
975 [~~zones~~] multiple classifications.

976 (6) A local entity may levy an assessment that would otherwise violate a provision of
977 this chapter if the owners of all property to be assessed enter into a written agreement with the
978 local entity consenting to the assessment.