

**ASSESSMENT AREA AMENDMENTS**

2014 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: R. Curt Webb**

Senate Sponsor: J. Stuart Adams

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**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;
- ▶ prohibits a governing body from designating an assessment area with boundaries that are coextensive or substantially coterminous with the boundaries of the assessing local entity;
- ▶ authorizes a governing body to circulate a petition to designate an assessment area if the protests to an assessment area are contestable;
- ▶ amends language authorizing a local entity to levy an assessment that provides an indirect benefit;
- ▶ prohibits a local entity that levies an assessment for economic promotion activities from using a taxable value assessment method or levying the assessment on a residential property; and
- ▶ makes technical corrections.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **11-42-102**, as last amended by Laws of Utah 2013, Chapter 246

32 **11-42-201**, as last amended by Laws of Utah 2010, Chapter 238

33 **11-42-202**, as last amended by Laws of Utah 2013, Chapters 246 and 265

34 **11-42-206**, as last amended by Laws of Utah 2013, Chapter 265

35 **11-42-403**, as last amended by Laws of Utah 2009, Chapter 246

36 **11-42-406**, as last amended by Laws of Utah 2010, Chapter 238

37 **11-42-409**, as enacted by Laws of Utah 2007, Chapter 329



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

40 Section 1. Section **11-42-102** is amended to read:

41 **11-42-102. Definitions.**

42 (1) (a) "Adequate protests" means timely filed, written protests [~~under Section~~  
43 ~~11-42-203~~] that represent [~~at least 50%~~] no less than 45% of the frontage, area, taxable value,  
44 fair market value, lots, number of connections, or equivalent residential units of the property  
45 proposed to be assessed, according to the same assessment method by which the assessment is  
46 proposed to be levied[~~, after eliminating~~].

47 [~~(a)~~] (b) "Adequate protests" does not include written protests relating to:

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

49 [(ii)] (B) an improvement that has been deleted from the proposed improvements to be  
50 provided to property within the proposed assessment area; and

51 [(b)] (ii) protests that have been withdrawn under Subsection **11-42-203(3)**.

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

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

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

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

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

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

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

66 (a) by which an assessment is levied against property, whether by frontage, area,  
67 taxable value, fair market value, lot, parcel, number of connections, equivalent residential unit,  
68 any combination of these methods, or any other method; and

69 (b) that equitably reflects the direct benefit received from the improvement.

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

72 (8) "Assessment resolution" means a resolution adopted by a local entity under Section  
73 11-42-404 that levies an assessment on benefitted property within an assessment area.

74 (9) "Benefitted property" means property within an assessment area that ~~H→~~ :

74a (a) ~~←H~~ directly [or

75 indirectly] benefits from improvements ~~H→~~ [s] or ~~←H~~ operation and maintenance ~~H→~~ [s] ; ~~←H~~ or

75a ~~H→~~ (b) directly or indirectly benefits from ~~←H~~ economic promotion

76 activities.

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

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

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

82 (13) (a) "Commercial or industrial real property" means real property used directly  
82a ~~H→~~ [H] or

83 indirectly [H] ~~←H~~ or held for one of the following purposes or activities, regardless of whether the  
84 purpose or activity is for profit:

85 (i) commercial;

86 (ii) mining;

87 (iii) industrial;

88 (iv) manufacturing;

89 (v) governmental;

- 90 (vi) trade;
- 91 (vii) professional;
- 92 (viii) a private or public club;
- 93 (ix) a lodge;
- 94 (x) a business; or
- 95 (xi) a similar purpose.
- 96 (b) "Commercial or industrial real property" includes real property that:
- 97 (i) is used as or held for dwelling purposes; and
- 98 (ii) contains four or more rental units.
- 99 (14) "Connection fee" means a fee charged by a local entity to pay for the costs of
- 100 connecting property to a publicly owned sewer, storm drainage, water, gas, communications, or
- 101 electrical system, whether or not improvements are installed on the property.
- 102 (15) (a) "Contestable protests" means timely filed, written protests that represent no
- 103 less than 35% and less than 45% of the frontage, area, taxable value, fair market value, lots,
- 104 number of connections, or equivalent residential units of the property proposed to be assessed,
- 105 according to the same assessment method by which the assessment is proposed to be levied.
- 106 (b) "Contestable protests" does not include written protests relating to:
- 107 (i) (A) property that has been deleted from a proposed assessment area;
- 108 (B) an improvement that has been deleted from the proposed improvements to be
- 109 provided to property within the proposed assessment area; and
- 110 (ii) protests that have been withdrawn under Subsection [11-42-203\(3\)](#).
- 111 [~~15~~] (16) "Contract price" means:
- 112 (a) the cost of acquiring an improvement, if the improvement is acquired; or
- 113 (b) the amount payable to one or more contractors for the design, engineering,
- 114 inspection, and construction of an improvement.
- 115 [~~16~~] (17) "Designation ordinance" means an ordinance adopted by a local entity
- 116 under Section [11-42-206](#) designating an assessment area.
- 117 [~~17~~] (18) "Designation resolution" means a resolution adopted by a local entity under
- 118 Section [11-42-206](#) designating an assessment area.
- 119 [~~18~~] (19) "Economic promotion activities" means activities that promote economic
- 120 growth in a commercial area of a local entity, including:

- 121 (a) sponsoring festivals and markets;
- 122 (b) promoting business investment or activities;
- 123 (c) helping to coordinate public and private actions; and
- 124 (d) developing and issuing publications designed to improve the economic well-being
- 125 of the commercial area.

126 ~~[(19)]~~ (20) "Energy efficiency upgrade" means an improvement that is permanently  
127 affixed to commercial or industrial real property that is designed to reduce energy  
128 consumption, including:

- 129 (a) insulation in:
  - 130 (i) a wall, roof, floor, or foundation; or
  - 131 (ii) a heating and cooling distribution system;
- 132 (b) a window or door, including:
  - 133 (i) a storm window or door;
  - 134 (ii) a multiglazed window or door;
  - 135 (iii) a heat-absorbing window or door;
  - 136 (iv) a heat-reflective glazed and coated window or door;
  - 137 (v) additional window or door glazing;
  - 138 (vi) a window or door with reduced glass area; or
  - 139 (vii) other window or door modifications;
- 140 (c) an automatic energy control system;
- 141 (d) in a building or a central plant, a heating, ventilation, or air conditioning and
- 142 distribution system;
- 143 (e) caulk or weatherstripping;
- 144 (f) a light fixture that does not increase the overall illumination of a building unless an
- 145 increase is necessary to conform with the applicable building code;
- 146 (g) an energy recovery system;
- 147 (h) a daylighting system;
- 148 (i) measures to reduce the consumption of water, through conservation or more
- 149 efficient use of water, including:
  - 150 (i) installation of low-flow toilets and showerheads;
  - 151 (ii) installation of timer or timing systems for a hot water heater; or

152 (iii) installation of rain catchment systems; or

153 (j) a modified, installed, or remodeled fixture that is approved as a utility cost-saving  
154 measure by the governing body of a local entity.

155 ~~[(20)]~~ (21) "Equivalent residential unit" means a dwelling, unit, or development that is  
156 equal to a single-family residence in terms of the nature of its use or impact on an improvement  
157 to be provided in the assessment area.

158 ~~[(21)]~~ (22) "Governing body" means:

159 (a) for a county, city, or town, the legislative body of the county, city, or town;

160 (b) for a local district, the board of trustees of the local district;

161 (c) for a special service district:

162 (i) the legislative body of the county, city, or town that established the special service  
163 district, if no administrative control board has been appointed under Section [17D-1-301](#); or

164 (ii) the administrative control board of the special service district, if an administrative  
165 control board has been appointed under Section [17D-1-301](#); and

166 (d) for the military installation development authority created in Section [63H-1-201](#),  
167 the authority board, as defined in Section [63H-1-102](#).

168 ~~[(22)]~~ (23) "Guaranty fund" means the fund established by a local entity under Section  
169 [11-42-701](#).

170 ~~[(23)]~~ (24) "Improved property" means property proposed to be assessed within an  
171 assessment area upon which a residential, commercial, or other building has been built.

172 ~~[(24)]~~ (25) "Improvement":

173 (a) (i) means a publicly owned infrastructure, system, or other facility, a publicly or  
174 privately owned energy efficiency upgrade, or a publicly or privately owned renewable energy  
175 system that:

176 (A) a local entity is authorized to provide;

177 (B) the governing body of a local entity determines is necessary or convenient to  
178 enable the local entity to provide a service that the local entity is authorized to provide; or

179 (C) a local entity is requested to provide through an interlocal agreement in accordance  
180 with Title 11, Chapter 13, Interlocal Cooperation Act; and

181 (ii) includes facilities in an assessment area, including a private driveway, an irrigation  
182 ditch, and a water turnout, that:

183 (A) can be conveniently installed at the same time as an infrastructure, system, or other  
184 facility described in Subsection ~~[(24)]~~ (25)(a)(i); and

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

187 (b) for a local district created to assess groundwater rights in accordance with Section  
188 17B-1-202, means a system or plan to regulate groundwater withdrawals within a specific  
189 groundwater basin in accordance with Sections 17B-1-202 and 73-5-15.

190 ~~[(25)]~~ (26) "Improvement revenues":

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

193 (b) does not include revenue from assessments.

194 (27) (a) "Inadequate protests" means timely filed, written protests that represent less  
195 than 35% of the frontage, area, taxable value, fair market value, lots, number of connections, or  
196 equivalent residential units of the property proposed to be assessed, according to the same  
197 assessment method by which the assessment is proposed to be levied.

198 (b) "Inadequate protests" does not include written protests relating to:

199 (i) (A) property that has been deleted from a proposed assessment area;

200 (B) an improvement that has been deleted from the proposed improvements to be  
201 provided to property within the proposed assessment area; and

202 (ii) protests that have been withdrawn under Subsection 11-42-203(3).

203 ~~[(26)]~~ (28) "Incidental refunding costs" means any costs of issuing refunding  
204 assessment bonds and calling, retiring, or paying prior bonds, including:

205 (a) legal and accounting fees;

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

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

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

210 (e) fees to be paid to the local entity to issue the refunding assessment bonds and to  
211 refund the outstanding prior bonds;

212 (f) any other costs that the governing body determines are necessary or desirable to  
213 incur in connection with the issuance of refunding assessment bonds; and

214 (g) any interest on the prior bonds that is required to be paid in connection with the  
215 issuance of the refunding assessment bonds.

216 [~~(27)~~] (29) "Installment payment date" means the date on which an installment  
217 payment of an assessment is payable.

218 [~~(28)~~] (30) "Interim warrant" means a warrant issued by a local entity under Section  
219 11-42-601.

220 [~~(29)~~] (31) "Jurisdictional boundaries" means:

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

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

223 [~~(30)~~] (32) "Local district" means a local district under Title 17B, Limited Purpose  
224 Local Government Entities - Local Districts.

225 [~~(31)~~] (33) "Local entity" means a county, city, town, special service district, local  
226 district, an interlocal entity as defined in Section 11-13-103, a military installation development  
227 authority created in Section 63H-1-201, or other political subdivision of the state.

228 [~~(32)~~] (34) "Local entity obligations" means assessment bonds, refunding assessment  
229 bonds, interim warrants, and bond anticipation notes issued by a local entity.

230 [~~(33)~~] (35) "Mailing address" means:

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

233 (b) if the property is improved property:

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

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

237 [~~(34)~~] (36) "Net improvement revenues" means all improvement revenues that a local  
238 entity has received since the last installment payment date, less all amounts payable by the local  
239 entity from those improvement revenues for operation and maintenance costs.

240 [~~(35)~~] (37) "Operation and maintenance costs":

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

244 (b) includes service charges, administrative costs, ongoing maintenance charges, and



245 tariffs or other charges for electrical, water, gas, or other utility usage.

246 ~~[(36)]~~ (38) "Overhead costs" means the actual costs incurred or the estimated costs to  
247 be incurred by a local entity in connection with an assessment area for appraisals, legal fees,  
248 filing fees, financial advisory charges, underwriting fees, placement fees, escrow, trustee, and  
249 paying agent fees, publishing and mailing costs, costs of levying an assessment, recording  
250 costs, and all other incidental costs.

251 ~~[(37)]~~ (39) "Prior assessment ordinance" means the ordinance levying the assessments  
252 from which the prior bonds are payable.

253 ~~[(38)]~~ (40) "Prior assessment resolution" means the resolution levying the assessments  
254 from which the prior bonds are payable.

255 ~~[(39)]~~ (41) "Prior bonds" means the assessment bonds that are refunded in part or in  
256 whole by refunding assessment bonds.

257 ~~[(40)]~~ (42) "Project engineer" means the surveyor or engineer employed by or private  
258 consulting engineer engaged by a local entity to perform the necessary engineering services for  
259 and to supervise the construction or installation of the improvements.

260 ~~[(41)]~~ (43) "Property" includes real property and any interest in real property, including  
261 water rights and leasehold rights.

262 ~~[(42)]~~ (44) "Property price" means the price at which a local entity purchases or  
263 acquires by eminent domain property to make improvements in an assessment area.

264 ~~[(43)]~~ (45) "Provide" or "providing," with reference to an improvement, includes the  
265 acquisition, construction, reconstruction, renovation, maintenance, repair, operation, and  
266 expansion of an improvement.

267 ~~[(44)]~~ (46) "Public agency" means:

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

269 (b) a political subdivision of the state.

270 ~~[(45)]~~ (47) "Reduced payment obligation" means the full obligation of an owner of  
271 property within an assessment area to pay an assessment levied on the property after the  
272 assessment has been reduced because of the issuance of refunding assessment bonds, as  
273 provided in Section [11-42-608](#).

274 ~~[(46)]~~ (48) "Refunding assessment bonds" means assessment bonds that a local entity  
275 issues under Section [11-42-607](#) to refund, in part or in whole, assessment bonds.

276            [~~(47)~~] (49) "Renewable energy system" means a product, a system, a device, or an  
277 interacting group of devices that:

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

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

280            (i) a photovoltaic system;

281            (ii) a solar thermal system;

282            (iii) a wind system;

283            (iv) a geothermal system, including:

284            (A) a generation system;

285            (B) a direct-use system; or

286            (C) a ground source heat pump system;

287            (v) a microhydro system; or

288            (vi) other renewable sources approved by the governing body of a local entity.

289            [~~(48)~~] (50) "Reserve fund" means a fund established by a local entity under Section  
290 11-42-702.

291            [~~(49)~~] (51) "Service" means:

292            (a) water, sewer, storm drainage, garbage collection, library, recreation,  
293 communications, or electric service;

294            (b) economic promotion activities; or

295            (c) any other service that a local entity is required or authorized to provide.

296            [~~(50)~~] (52) "Special service district" has the same meaning as defined in Section  
297 17D-1-102.

298            [~~(51)~~] (53) "Unimproved property" means property upon which no residential,  
299 commercial, or other building has been built.

300            [~~(52)~~] (54) "Voluntary assessment area" means an assessment area that contains only  
301 property whose owners have voluntarily consented to an assessment.

302            Section 2. Section 11-42-201 is amended to read:

303            **11-42-201. Resolution or ordinance designating an assessment area -- Zones**  
304 **within an assessment area -- Preconditions to adoption of a resolution or an ordinance.**

305            (1) (a) Subject to the requirements of this part, a governing body of a local entity  
306 intending to levy an assessment on property to pay some or all of the cost of providing

307 improvements benefitting the property, performing operation and maintenance benefitting the  
308 property, or conducting economic promotion activities benefitting the property shall adopt a  
309 resolution or ordinance designating an assessment area.

310 (b) A designation resolution or designation ordinance described in Subsection (1)(a)  
311 may divide the assessment area into zones to allow the governing body to:

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

313 (ii) use a different assessment method in each zone to reflect more fairly the benefits  
314 that property within the different zones is expected to receive because of the proposed  
315 improvement, operation and maintenance, or economic promotion activities.

316 (c) The boundaries of a proposed assessment area [~~may include property that is not~~  
317 ~~intended to be assessed.];~~

318 (i) may include property that is not intended to be assessed; and

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

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

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

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

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

326 Section 3. Section 11-42-202 is amended to read:

327 **11-42-202. Requirements applicable to a notice of a proposed assessment area**  
328 **designation.**

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

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

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

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

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

336 (b) describe the proposed assessment area by any reasonable method that allows an  
337 owner of property in the proposed assessment area to determine that the owner's property is

338 within the proposed assessment area;

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

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

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

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

346 (e) state that the local entity proposes to levy an assessment on benefitted property  
347 within the assessment area to pay some or all of the cost of the improvements according to the  
348 estimated  $\hat{H} \rightarrow$  ;

348a **(i) for an assessment for improvements or operation and maintenance,  $\leftarrow \hat{H}$  direct [and**  
348b **indirect] benefits to the property  $\hat{H} \rightarrow$  [from the improvements]  $\leftarrow \hat{H}$  ;  $\hat{H} \rightarrow$  or**

348c **(ii) for an assessment for economic promotion activities, direct or indirect benefits to the**  
348d **property;  $\leftarrow \hat{H}$**

349 (f) state the assessment method by which the governing body proposes to levy the  
350 assessment, including, if the local entity is a municipality or county, whether the assessment  
351 will be collected:

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

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

354 (g) state:

355 (i) the date described in Section 11-42-203 and the location at which protests against  
356 designation of the proposed assessment area or of the proposed improvements are required to  
357 be filed; and

358 (ii) the method by which the governing body will determine the number of protests  
359 required to defeat the designation of the proposed assessment area or acquisition or  
360 construction of the proposed improvements;

361 (h) state the date, time, and place of the public hearing required in Section 11-42-204;

362 (i) if the governing body elects to create and fund a reserve fund under Section  
363 11-42-702, include a description of:

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

365 (ii) how remaining money in the reserve fund is to be disbursed upon full payment of  
366 the bonds;

367 (j) if the governing body intends to designate a voluntary assessment area, include a  
368 property owner consent form that:

- 369 (i) estimates the total assessment to be levied against the particular parcel of property;
- 370 (ii) describes any additional benefits that the governing body expects the assessed  
371 property to receive from the improvements; and
- 372 (iii) designates the date and time by which the fully executed consent form is required  
373 to be submitted to the governing body;
- 374 (k) if the local entity intends to levy an assessment to pay operation and maintenance  
375 costs or for economic promotion activities, include:
- 376 (i) a description of the operation and maintenance costs or economic promotion  
377 activities to be paid by assessments and the initial estimated annual assessment to be levied;
- 378 (ii) a description of how the estimated assessment will be determined;
- 379 (iii) a description of how and when the governing body will adjust the assessment to  
380 reflect the costs of:
- 381 (A) in accordance with Section 11-42-406, current economic promotion activities; or  
382 (B) current operation and maintenance costs;
- 383 (iv) a description of the method of assessment if different from the method of  
384 assessment to be used for financing any improvement; and
- 385 (v) a statement of the maximum number of years over which the assessment will be  
386 levied for:
- 387 (A) operation and maintenance costs; or  
388 (B) economic promotion activities; and
- 389 (l) if the governing body intends to divide the proposed assessment area into zones  
390 under Subsection 11-42-201(1)(b), include a description of the proposed zones.
- 391 (2) A notice required under Subsection 11-42-201(2)(a) may contain other information  
392 that the governing body considers to be appropriate, including:
- 393 (a) the amount or proportion of the cost of the improvement to be paid by the local  
394 entity or from sources other than an assessment;
- 395 (b) the estimated amount of each type of assessment for the various improvements to  
396 be financed according to the method of assessment that the governing body chooses; and
- 397 (c) provisions for any improvements described in Subsection 11-42-102[(24)]  
398 (25)(a)(ii).
- 399 (3) Each notice required under Subsection 11-42-201(2)(a) shall:

400 (a) (i) (A) be published in a newspaper of general circulation within the local entity's  
401 jurisdictional boundaries, once a week for four consecutive weeks, with the last publication at  
402 least five but not more than 20 days before the day of the hearing required in Section  
403 11-42-204; or

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

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

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

414 Section 4. Section 11-42-206 is amended to read:

415 **11-42-206. Adoption of a resolution or an ordinance regarding a proposed**  
416 **assessment area -- Designation of an assessment area may not occur if adequate protests**  
417 **filed -- Recording of resolution or ordinance and notice of proposed assessment.**

418 (1) (a) After holding a public hearing under Section 11-42-204 and considering protests  
419 filed under Section 11-42-203, and subject to Subsection (3), the governing body shall hold a  
420 public meeting to adopt a resolution or ordinance:

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

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

424 (b) In accordance with Section 11-42-203, the governing body:

425 (i) may not schedule the public meeting before the expiration of the 60-day protest  
426 period; and

427 (ii) shall consider and report on any timely filed protests.

428 (2) If the notice under Section 11-42-202 indicates that the proposed assessment area is  
429 a voluntary assessment area, the governing body shall:

430 (a) delete from the proposed assessment area all property whose owners have not

431 submitted an executed consent form consenting to inclusion of the owner's property in the  
432 proposed assessment area; and

433 (b) determine whether to designate a voluntary assessment area, after considering:

434 (i) the amount of the proposed assessment to be levied on the property within the  
435 voluntary assessment area; and

436 (ii) the benefits that property within the voluntary assessment area will receive from  
437 improvements proposed to be financed by assessments on the property.

438 (3) (a) If adequate protests have been filed, the governing body may not designate an  
439 assessment area as described in the notice under Section 11-42-202.

440 (b) If inadequate protests have been filed, the governing body may designate the  
441 described assessment area.

442 (c) If contestable protests have been filed, the governing body may not designate the  
443 described assessment area unless the governing body:

444 (i) (A) circulates a petition to designate the assessment area described in the notice  
445 under Section 11-42-202; and

446 (B) clearly indicates on the petition that it is a petition to designate the assessment area;

447 (ii) collects for the petition described in Subsection (3)(c)(i)(A):

448 (A) the signatures of owners of private real property that is located within the proposed  
449 assessment area;

450 (B) enough signatures to exceed the number of contestable protest signatures ~~H~~→ **received**  
450a **by the governing body protesting the described assessment area** ←~~H~~ by no less  
451 than 5% based on the same assessment method representation that was used to calculate the  
452 number of contestable protest signatures; and

453 (C) the necessary signatures described in Subsection (3)(c)(ii)(B) no later than 60 days  
454 after the day on which the public hearing described in Subsection (1)(a) is held;

455 (iii) submits the signatures on the petition to the county clerk, municipal clerk, or  
456 municipal recorder, respectively, for certification;

457 (iv) holds a public meeting after the county clerk, municipal clerk, or municipal  
458 recorder notifies the governing body that the clerk or recorder has certified the petition in  
459 accordance with Subsection (3)(e); and

460 (v) at the public meeting casts a unanimous vote to adopt a designation resolution or  
461 ordinance designating the assessment area.

462 (d) A property owner who signs the petition may withdraw the owner's signature from  
463 the petition at any time before the expiration of the 60-day period described in Subsection  
464 (3)(c)(ii)(C) by filing a written withdrawal with the county clerk, municipal clerk, or municipal  
465 recorder, respectively.

466 (e) No later than 30 days after receiving a petition described in Subsection (3)(c)(i)  
467 from a governing body for certification, a county clerk, municipal clerk, or municipal recorder  
468 shall:

469 (i) determine if the petition complies with the petition and signature requirements of  
470 Subsections (3)(c)(i) and (ii);

471 (ii) certify the petition if the petition is in compliance or reject the petition; and

472 (iii) notify the governing body in writing that the petition has been certified or rejected.

473 (f) If the county clerk, municipal clerk, or municipal recorder, respectively, fails to  
474 certify or reject a petition within 30 days after it is submitted by the governing body, the  
475 petition shall be considered to be rejected.

476 (4) (a) If the governing body adopts a designation resolution or ordinance designating  
477 an assessment area, the governing body shall, within 15 days after adopting the designation  
478 resolution or ordinance:

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

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

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

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

486 (b) A governing body's failure to comply with the requirements of Subsection (4)(a)  
487 does not invalidate the designation of an assessment area.

488 (5) After the adoption of a designation resolution or ordinance under Subsection (1)(a),  
489 the local entity may begin providing the specified improvements.

490 Section 5. Section 11-42-403 is amended to read:

491 **11-42-403. Board of equalization -- Hearings -- Corrections to proposed**  
492 **assessment list -- Report to governing body -- Appeal -- Board findings final -- Waiver of**



493 **objections.**

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

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

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

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

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

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

502 or

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

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

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

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

508 (3) (a) The board of equalization shall hold hearings on at least three consecutive days  
 509 for at least one hour per day between 9 a.m. and 9 p.m., as specified in the notice under Section  
 510 11-42-402.

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

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

515 (i) the direct [~~or indirect~~] benefits ~~H~~→ **, or, if the assessment is for economic promotion**  
 515a **activities, the direct or indirect benefits,** ←~~H~~ accruing to a tract, block, lot, or parcel of property in  
 516 the assessment area; or

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

518 (4) (a) After the hearings under Subsection (3) are completed, the board of equalization  
 519 shall:

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

521 (ii) make any corrections to the proposed assessment list that the board considers just  
 522 and equitable.

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

524 (i) eliminate one or more pieces of property from the assessment list; or  
 525 (ii) increase or decrease the amount of the assessment proposed to be levied against a  
 526 parcel of property.

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

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

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

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

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

536 (A) state:

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

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

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

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

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

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

547 (i) each parcel of property within the assessment area will be directly [~~or indirectly~~]  
 548 benefitted ~~Ĥ~~→ , **or, if the assessment is for economic promotion activities, directly or indirectly**  
 548a **benefitted,** ←Ĥ in an amount not less than the assessment to be levied against the property; and

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

552 (b) The board of equalization shall, within 10 days after submitting its report to the  
 553 governing body, mail a copy of the board's final report to each property owner who objected at  
 554 the board hearings to the assessment proposed to be levied against the property owner's

555 property at the property owner's mailing address.

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

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

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

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

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

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

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

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

577 Section 6. Section **11-42-406** is amended to read:

578 **11-42-406. Assessment for economic promotion activities -- Reporting.**

579 (1) (a) If the governing body of a local entity designates an assessment area in  
580 accordance with Part 2, Designating an Assessment Area, for economic promotion activities,  
581 the governing body:

582 (i) may levy an assessment to pay for economic promotion activities by adopting an  
583 assessment resolution or ordinance in accordance with Section [11-42-404](#); ~~and~~

584 (ii) subject to Subsection (1)(b), may levy an additional assessment for economic  
585 promotion activities for the designated assessment area described in Subsection (1)(a):

586 (A) by adopting an assessment resolution or an ordinance in accordance with Section  
587 11-42-404; and

588 (B) for a period of five years, beginning on the day on which the local entity adopts the  
589 initial assessment resolution or ordinance described in Subsection (1)(a)(i)[-]; ~~and~~

590 (iii) may not levy an assessment on a residential property for the economic promotion  
591 activities ~~;~~

592 ~~and~~ ~~(iv) may not use taxable value as the assessment method; and~~

593 ~~— (v) shall use an assessment method that fairly and equitably reflects the growth in~~  
594 ~~economic activity received by the benefitted property.]~~

595 (b) A governing body may not levy an additional assessment to pay for economic  
596 promotion activities after the five-year period described in Subsection (1)(a)(ii)(B) unless the  
597 governing body:

598 (i) designates a new assessment area in accordance with Part 2, Designating an  
599 Assessment Area; and

600 (ii) adopts a new assessment resolution or ordinance in accordance with Section  
601 11-42-404.

602 (2) If a local entity designates an assessment area for economic promotion activities,  
603 the local entity:

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

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

609 (c) in accordance with Subsection (3), shall publish a detailed report including the  
610 following:

611 (i) an account of money deposited into the assessment fund described in Section  
612 11-42-412;

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

614 (iii) a detailed account of whether each expenditure described in Subsection (2)(c)(ii)  
615 was made for economic promotion activities described in Subsection (2)(a) or for  
616 administrative costs described in Subsection (2)(b).

- 617 (3) A local entity shall publish a report required in Subsection (2)(c):
- 618 (a) on:
- 619 (i) if available, the local entity's public web site; and
- 620 (ii) if the local entity is not a county or municipality, on the public web site of any
- 621 county or municipality in which the local entity has jurisdiction;
- 622 (b) (i) within one year after the day on which the local entity adopts a new assessment
- 623 resolution or ordinance for economic promotion activities; and
- 624 (ii) each subsequent year that the economic promotion activities levy is assessed by
- 625 updating the information described in Subsection (2)(c); and
- 626 (c) for six months on a web site described in Subsection (3)(a) after the day on which
- 627 the report is initially published under Subsection (3)(b) or updated under Subsection (3)(b)(ii).

628 Section 7. Section 11-42-409 is amended to read:

629 **11-42-409. Assessment requirements.**

- 630 (1) (a) Each local entity that levies an assessment under this chapter shall levy the
- 631 assessment on each block, lot, tract, or parcel of property that [~~borders, is adjacent to, or~~]
- 632 benefits from an improvement:
- 633 (i) to the extent that the improvement directly [~~or indirectly~~] benefits the property; and
- 634 (ii) to whatever depth on the parcel of property that the governing body determines,
- 635 including the full depth.

636 (b) The validity of an otherwise valid assessment is not affected by the fact that the  
637 benefit to the property from the improvement  $\hat{H} \rightarrow [H] : [H]$

637a (i)  $\leftarrow \hat{H}$  does not increase the fair market value of the  
638 property  $\hat{H} \rightarrow [e] ; \text{or}$

638a (ii) in the case of an assessment for economic promotion activities, only indirectly  
638b benefits the property.  $\leftarrow \hat{H}$

639 [~~(i) is only indirect; or~~]  
640 [~~(ii) does not increase the fair market value of the property.~~]

641 (2) [~~The~~] Subject to Section 11-42-406, the assessment method a governing body uses  
642 to calculate an assessment may be according to frontage, area, taxable value, fair market value,  
643 lot, number of connections, equivalent residential unit, or any combination of these methods, as  
644 the governing body considers fair and equitable.

- 645 (3) In calculating assessments, a governing body may:
- 646 (a) use different methods for different improvements in an assessment area; and
- 647 (b) assess different amounts in different zones, even when using the same method, if

648 acquisition or construction costs differ from zone to zone.

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

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

654           (5) (a) Assessments shall be fair and equitable according to the benefit to the benefitted  
655 property from the improvement.

656           (b) To comply with Subsection (5)(a), a local entity may levy assessments within  
657 zones.

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

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**Legislative Review Note**  
**as of 2-4-14 11:49 AM**

**Office of Legislative Research and General Counsel**