

ASSESSMENT AREA AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: R. Curt Webb

Senate Sponsor: J. Stuart Adams

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 language related to an action to contest an assessment area or levy;
- ▶ amends language related to a resolution or ordinance designating an assessment area;
- ▶ requires a local entity to include certain information in a notice of a proposed assessment area designation;
- ▶ amends provisions related to a property owner's protest of an assessment area designation;
- ▶ amends provisions related to a public hearing on an assessment area;
- ▶ requires a governing body to renote an assessment area designation if the governing body makes changes to the proposed assessment area;
- ▶ 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;
- ▶ amends provisions governing a board of equalization hearing;
- ▶ prohibits a local entity that levies an assessment for economic promotion activities from levying residential property;

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- 33 ▶ amends the requirements of an assessment; and
- 34 ▶ makes technical corrections.

35 **Money Appropriated in this Bill:**

36 None

37 **Other Special Clauses:**

38 This bill provides an immediate effective date.

39 **Utah Code Sections Affected:**

40 AMENDS:

- 41 **11-42-102**, as last amended by Laws of Utah 2013, Chapter 246
- 42 **11-42-106**, as enacted by Laws of Utah 2007, Chapter 329
- 43 **11-42-201**, as last amended by Laws of Utah 2010, Chapter 238
- 44 **11-42-202**, as last amended by Laws of Utah 2013, Chapters 246 and 265
- 45 **11-42-203**, as last amended by Laws of Utah 2013, Chapter 265
- 46 **11-42-204**, as last amended by Laws of Utah 2013, Chapter 265
- 47 **11-42-206**, as last amended by Laws of Utah 2013, Chapter 265
- 48 **11-42-208**, as enacted by Laws of Utah 2007, Chapter 329
- 49 **11-42-401**, as last amended by Laws of Utah 2013, Chapter 265
- 50 **11-42-403**, as last amended by Laws of Utah 2009, Chapter 246
- 51 **11-42-406**, as last amended by Laws of Utah 2010, Chapter 238
- 52 **11-42-409**, as enacted by Laws of Utah 2007, Chapter 329

53 ENACTS:

54 **11-42-206.5**, Utah Code Annotated 1953



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

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

58 **11-42-102. Definitions.**

59 Except as provided in Section 11-42-206.5:

60 (1) "Adequate protests" means timely filed, written protests under Section 11-42-203
 61 that represent at least 50% of the frontage, area, taxable value, fair market value, lots, number
 62 of connections, or equivalent residential units of the property proposed to be assessed,
 63 according to the same assessment method by which the assessment is proposed to be levied,

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64 after eliminating:

65 (a) protests relating to:

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

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

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

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

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

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

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

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

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

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

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

87 (b) that equitably reflects:

88 (i) the direct benefit received from the improvement[:] or performance of operation and
89 maintenance; or

90 (ii) the direct or indirect benefit to property from economic promotion activities.

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

93 (8) "Assessment resolution" means a resolution adopted by a local entity under Section
94 11-42-404 that levies an assessment on benefitted property within an assessment area.

95 (9) "Benefitted property" means property within an assessment area that directly [~~or~~
96 ~~indirectly~~] benefits from improvements, operation and maintenance, or economic promotion
97 activities.

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

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

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

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

- 106 (i) commercial;
- 107 (ii) mining;
- 108 (iii) industrial;
- 109 (iv) manufacturing;
- 110 (v) governmental;
- 111 (vi) trade;
- 112 (vii) professional;
- 113 (viii) a private or public club;
- 114 (ix) a lodge;
- 115 (x) a business; or
- 116 (xi) a similar purpose.

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

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

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

123 (15) "Contract price" means:

- 124 (a) the cost of acquiring an improvement, if the improvement is acquired; or
- 125 (b) the amount payable to one or more contractors for the design, engineering,

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126 inspection, and construction of an improvement.

127 (16) "Designation ordinance" means an ordinance adopted by a local entity under
128 Section 11-42-206 or 11-42-206.5, as applicable, designating an assessment area.

129 (17) "Designation resolution" means a resolution adopted by a local entity under
130 Section 11-42-206 or 11-42-206.5, as applicable, designating an assessment area.

131 (18) "Direct benefit" or "directly benefits" means a particular and exclusive
132 enhancement to a distinct property.

133 [~~(18)~~] (19) "Economic promotion activities" means activities that promote economic
134 growth in a commercial area of a local entity, including:

- 135 (a) sponsoring festivals and markets;
- 136 (b) promoting business investment or activities;
- 137 (c) helping to coordinate public and private actions; and
- 138 (d) developing and issuing publications designed to improve the economic well-being
139 of the commercial area.

140 [~~(19)~~] (20) "Energy efficiency upgrade" means an improvement that is permanently
141 affixed to commercial or industrial real property that is designed to reduce energy
142 consumption, including:

- 143 (a) insulation in:
 - 144 (i) a wall, roof, floor, or foundation; or
 - 145 (ii) a heating and cooling distribution system;
- 146 (b) a window or door, including:
 - 147 (i) a storm window or door;
 - 148 (ii) a multiglazed window or door;
 - 149 (iii) a heat-absorbing window or door;
 - 150 (iv) a heat-reflective glazed and coated window or door;
 - 151 (v) additional window or door glazing;
 - 152 (vi) a window or door with reduced glass area; or
 - 153 (vii) other window or door modifications;
- 154 (c) an automatic energy control system;
- 155 (d) in a building or a central plant, a heating, ventilation, or air conditioning and
156 distribution system;

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- 157 (e) caulk or weatherstripping;
- 158 (f) a light fixture that does not increase the overall illumination of a building unless an
- 159 increase is necessary to conform with the applicable building code;
- 160 (g) an energy recovery system;
- 161 (h) a daylighting system;
- 162 (i) measures to reduce the consumption of water, through conservation or more
- 163 efficient use of water, including:
 - 164 (i) installation of low-flow toilets and showerheads;
 - 165 (ii) installation of timer or timing systems for a hot water heater; or
 - 166 (iii) installation of rain catchment systems; or
 - 167 (j) a modified, installed, or remodeled fixture that is approved as a utility cost-saving
 - 168 measure by the governing body of a local entity.

169 ~~[(20)]~~ (21) "Equivalent residential unit" means a dwelling, unit, or development that is

170 equal to a single-family residence in terms of the nature of its use or impact on an improvement

171 to be provided ~~[in the assessment area]~~.

- 172 ~~[(21)]~~ (22) "Governing body" means:
- 173 (a) for a county, city, or town, the legislative body of the county, city, or town;
 - 174 (b) for a local district, the board of trustees of the local district;
 - 175 (c) for a special service district:
 - 176 (i) the legislative body of the county, city, or town that established the special service
 - 177 district, if no administrative control board has been appointed under Section 17D-1-301; or
 - 178 (ii) the administrative control board of the special service district, if an administrative
 - 179 control board has been appointed under Section 17D-1-301; and
 - 180 (d) for the military installation development authority created in Section 63H-1-201,
 - 181 the authority board, as defined in Section 63H-1-102.

182 ~~[(22)]~~ (23) "Guaranty fund" means the fund established by a local entity under Section

183 11-42-701.

184 ~~[(23)]~~ (24) "Improved property" means property ~~[proposed to be assessed within an~~

185 ~~assessment area]~~ upon which a residential, commercial, or other building has been built.

- 186 ~~[(24)]~~ (25) "Improvement":
- 187 (a) (i) means a publicly owned infrastructure, system, or other facility, a publicly or

188 privately owned energy efficiency upgrade, or a publicly or privately owned renewable energy
189 system that:

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

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

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

195 (ii) includes [~~facilities in an assessment area, including~~] a private driveway, an
196 irrigation ditch, and a water turnout, that:

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

199 (B) are requested by a benefitted owner of property [~~owner~~] in the assessment area on
200 whose property [~~or for whose benefit~~] the infrastructure, system, or other facility is being
201 installed; [~~or~~] and

202 [~~(b) for a local district created to assess groundwater rights in accordance with Section~~
203 ~~17B-1-202, means a system or plan to regulate groundwater withdrawals within a specific~~
204 ~~groundwater basin in accordance with Sections 17B-1-202 and 73-5-15.]~~

205 (b) means a system or plan to regulate groundwater withdrawals.

206 [~~(25)~~] (26) "Improvement revenues":

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

209 (b) does not include revenue from assessments.

210 [~~(26)~~] (27) "Incidental refunding costs" means any [~~costs~~] reasonable cost of issuing
211 refunding assessment bonds and calling, retiring, or paying prior bonds, including:

212 (a) legal and accounting fees;

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

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

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

217 [~~(c) fees to be paid to the local entity to issue the refunding assessment bonds and to~~
218 ~~refund the outstanding prior bonds;~~]

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

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

224 ~~[(27)]~~ (28) "Installment payment date" means the date on which an installment
 225 payment of an assessment is payable.

226 ~~[(28)]~~ (29) "Interim warrant" means a warrant issued by a local entity under Section
 227 11-42-601.

228 ~~[(29)]~~ (30) "Jurisdictional boundaries" means:

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

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

231 ~~[(30)]~~ (31) "Local district" means a local district under Title 17B, Limited Purpose
 232 Local Government Entities - Local Districts.

233 ~~[(31)]~~ (32) "Local entity" means a county, city, town, special service district, local
 234 district, an interlocal entity as defined in Section 11-13-103, a military installation development
 235 authority created in Section 63H-1-201, or other political subdivision of the state.

236 ~~[(32)]~~ (33) "Local entity obligations" means assessment bonds, refunding assessment
 237 bonds, interim warrants, and bond anticipation notes issued by a local entity.

238 ~~[(33)]~~ (34) "Mailing address" means:

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

241 (b) if the property is improved property:

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

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

245 ~~[(34)]~~ (35) "Net improvement revenues" means all improvement revenues that a local
 246 entity has received since the last installment payment date, less all amounts payable by the local
 247 entity from those improvement revenues for operation and maintenance costs.

248 (36) "Offset" means an amount a local entity discounts an assessed property owner's
 249 assessment levy to reflect direct or indirect benefits received from improvements by the general

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250 public or a property that is not assessed.

251 [~~35~~] (37) "Operation and maintenance costs":

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

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

257 [~~36~~] (38) "Overhead costs" means the actual costs reasonably incurred or the
258 reasonably estimated costs to be incurred by a local entity in connection with an assessment
259 area for appraisals, legal fees, filing fees, financial advisory charges, underwriting fees,
260 placement fees, escrow, trustee, and paying agent fees, publishing and mailing costs, costs of
261 levying an assessment, recording costs, and all other incidental costs.

262 [~~37~~] (39) "Prior assessment ordinance" means the ordinance levying the assessments
263 from which the prior bonds are payable.

264 [~~38~~] (40) "Prior assessment resolution" means the resolution levying the assessments
265 from which the prior bonds are payable.

266 [~~39~~] (41) "Prior bonds" means the assessment bonds that are refunded in part or in
267 whole by refunding assessment bonds.

268 [~~40~~] (42) "Project engineer" means the surveyor or engineer employed by or the
269 private consulting engineer engaged by a local entity to perform the necessary engineering
270 services for and to supervise the construction or installation of the improvements.

271 [~~41~~] (43) "Property" includes real property and any interest in real property, including
272 water rights and leasehold rights.

273 [~~42~~] (44) "Property price" means the price at which a local entity purchases or
274 acquires by eminent domain property to make improvements in an assessment area.

275 [~~43~~] (45) "Provide" or "providing," with reference to an improvement, includes the
276 acquisition, construction, reconstruction, renovation, maintenance, repair, operation, and
277 expansion of an improvement.

278 [~~44~~] (46) "Public agency" means:

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

280 (b) a political subdivision of the state.

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281 [(45)] (47) "Reduced payment obligation" means the full obligation of an owner of
282 property within an assessment area to pay an assessment levied on the property after the
283 assessment has been reduced because of the issuance of refunding assessment bonds, as
284 provided in Section 11-42-608.

285 [(46)] (48) "Refunding assessment bonds" means assessment bonds that a local entity
286 issues under Section 11-42-607 to refund, in part or in whole, assessment bonds.

287 [(47)] (49) "Renewable energy system" means a product, a system, a device, or an
288 interacting group of devices that:

- 289 (a) is permanently affixed to commercial or industrial real property; and
- 290 (b) produces energy from renewable resources, including:
 - 291 (i) a photovoltaic system;
 - 292 (ii) a solar thermal system;
 - 293 (iii) a wind system;
 - 294 (iv) a geothermal system, including:
 - 295 (A) a generation system;
 - 296 (B) a direct-use system; or
 - 297 (C) a ground source heat pump system;
 - 298 (v) a microhydro system; or
 - 299 (vi) other renewable sources approved by the governing body of a local entity.

300 [(48)] (50) "Reserve fund" means a fund established by a local entity under Section
301 11-42-702.

302 [(49)] (51) "Service" means:

- 303 (a) water, sewer, storm drainage, garbage collection, library, recreation,
304 communications, or electric service;
- 305 (b) economic promotion activities; or
- 306 (c) any other service that a local entity is required or authorized to provide.

307 [(50)] (52) "Special service district" has the same meaning as defined in Section
308 17D-1-102.

309 [(51)] (53) "Unimproved property" means property upon which no residential,
310 commercial, or other building has been built.

311 [(52)] (54) "Voluntary assessment area" means an assessment area that contains only

312 property whose owners have voluntarily consented to an assessment.

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

314 **11-42-106. Action to contest assessment or proceeding -- Requirements --**

315 **Exclusive remedy -- Bonds and assessment incontestable -- Residual claims.**

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

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

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

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

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

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

327 (ii) assessment resolution or assessment ordinance [~~or, in the case of an amendment,~~
328 ~~the~~], if the challenge is to the levy or collection of an assessment; or

329 (iii) amended resolution or ordinance[-] in the case of an amendment.

330 (3) (a) An action under [~~this section~~] Subsection (1) is the exclusive remedy of a
331 person who [~~claims an error or irregularity in an assessment or in any proceeding to designate~~
332 ~~an assessment area or levy an assessment~~] challenges a bondholder's right to repayment.

333 (b) A court may not hear any complaint under Subsection (1) that a person was
334 authorized to make and capable of discovering but did not make in a protest under Section
335 11-42-203 or at a hearing under Section 11-42-204 unless the complaint is based on fraud or
336 material misrepresentation.

337 (4) An assessment or a proceeding to designate an assessment area or to levy an
338 assessment may not be declared invalid or set aside in part or in whole because of an error or
339 irregularity that does not go to the equity or justice of the assessment or proceeding.

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

341 (a) assessment bonds and refunding assessment bonds issued or to be issued with
342 respect to an assessment area and assessments levied on property in the assessment area

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343 become at that time incontestable against all persons who have not commenced an action and
 344 served a summons as provided in this section; and

345 (b) a suit to enjoin the issuance or payment of assessment bonds or refunding
 346 assessment bonds, the levy, collection, or enforcement of an assessment, or to attack or
 347 question in any way the legality of assessment bonds, refunding assessment bonds, or an
 348 assessment may not be commenced, and a court may not inquire into those matters in any way
 349 that would undermine the bondholder's right to repayment.

350 (6) In an action brought in accordance with this section:

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

354 (b) the action and decision of the governing body as to all actions taken by the
 355 governing body in relation to an action, matter, or thing provided in this chapter is prima facie
 356 evidence of its correctness in the absence of material misrepresentation, fraud, a violation of a
 357 constitutional right, inequity, or injustice.

358 (7) This section may not be interpreted to insulate a local entity from a claim:

359 (a) arising from facts and circumstances that occur after, or could not with reasonable
 360 diligence be discovered before, the period described in Subsection (2)(b); or

361 (b) of:

362 (i) misuse of assessment funds;

363 (ii) right of offset;

364 (iii) material misrepresentation;

365 (iv) fraud;

366 (v) inequity;

367 (vi) injustice; or

368 (vii) unconstitutional acts.

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

370 **11-42-201. Resolution or ordinance designating an assessment area -- Zones**
 371 **within an assessment area -- Preconditions to adoption of a resolution or an ordinance.**

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

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

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

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

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

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

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

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

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

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

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

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

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

394 **11-42-202. Requirements applicable to a notice of a proposed assessment area**
395 **designation -- Tentative assessment role.**

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

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

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

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

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

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

405 within the proposed assessment area;

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

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

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

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

413 (e) state that the local entity proposes to levy an assessment on benefitted property
414 within the assessment area to pay some or all of the cost of the improvements according to the
415 estimated direct benefits, or in the case of economic promotion activities, direct and indirect
416 benefits to the property from the improvements;

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

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

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

422 (g) state:

423 (i) the date described in Section 11-42-203 and the location at which protests against
424 designation of the proposed assessment area designation and apportionment of general public
425 benefits, designation and apportionment of unassessed properties that will receive a direct
426 benefit, or of the proposed improvements are required to be filed; [and]

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

430 (iii) in enlarged, boldface, and conspicuous type that:

431 (A) a property owner must protest the designation of the assessment area in writing if
432 the owner objects to being assessed for the proposed improvements; and

433 (B) the local entity may not assess an owner's property if the written protests represent
434 no less than 45% of the method described in Subsection (1)(g)(ii) or if written protests
435 represent no less than 35% of the method described in Subsection (1)(g)(ii) and are not

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436 successfully contested by the local entity;

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

438 (i) if the governing body elects to create and fund a reserve fund under Section

439 11-42-702, include a description of:

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

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

442 the bonds;

443 (j) if the governing body intends to designate a voluntary assessment area, include a

444 property owner consent form that:

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

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

447 property to receive from the improvements; and

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

449 to be submitted to the governing body;

450 (k) if the local entity intends to levy an assessment to pay operation and maintenance
451 costs or for economic promotion activities, include:

452 (i) a description of the operation and maintenance costs or economic promotion
453 activities to be paid by assessments and the initial estimated annual assessment to be levied;

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

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

456 reflect the costs of:

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

458 (B) current operation and maintenance costs;

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

460 assessment to be used for financing any improvement; and

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

462 levied for:

463 (A) operation and maintenance costs; or

464 (B) economic promotion activities; [~~and~~]

465 (l) if the governing body intends to divide the proposed assessment area into zones

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

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467 (m) (i) state the portion and value of the improvements that will benefit the general
 468 public; and

469 (ii) state each unassessed property that will receive a direct benefit; and

470 (n) state whether the local entity will finance the improvement with a bond and, if so,
 471 the maximum interest rate and term of financing for which the properties within the assessment
 472 area may be obligated.

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

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

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

479 (c) provisions for any improvements described in Subsection 11-42-102[(24)]
 480 (25)(a)(ii).

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

482 (a) (i) (A) be published in a newspaper of general circulation within the local entity's
 483 jurisdictional boundaries, once a week for four consecutive weeks, with the last publication at
 484 least five but not more than 20 days before the day of the hearing required in Section
 485 11-42-204; or

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

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

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

496 (4) In addition to the notice required under Subsection (1), a local entity shall publish a
 497 tentative assessment role based on the proposed assessment area, project budget, and offset.

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

499 **11-42-203. Protests.**

500 (1) An owner of property that [~~is proposed to be assessed within~~] the owner does not
501 want to be included in an assessment area [~~may~~] shall, within 60 days after the day of the
502 hearing described in Subsection 11-42-204(1), file a written protest against:

- 503 (a) the designation of the assessment area;
- 504 (b) the inclusion of the owner's property in the proposed assessment area;
- 505 (c) the proposed improvements to be acquired or constructed; [~~or~~]
- 506 (d) the direct benefit to the owner's property, or if the assessment is for economic
507 promotion activities, the direct or indirect benefit to the owner's property;
- 508 (e) the proposed offset and valuation of a benefit to the general public;
- 509 (f) the proposed offset and valuation of a direct benefit to unassessed properties; or
510 [~~(f)~~] (g) any other aspect of the proposed designation of an assessment area.

511 (2) Each protest under Subsection (1)(a) shall describe or otherwise identify the
512 property owned by the person filing the protest.

513 (3) An owner may withdraw a protest at any time before the expiration of the 60-day
514 period described in Subsection (1) by filing a written withdrawal with the governing body.

515 (4) If the governing body intends to assess property within the proposed assessment
516 area by type of improvement or by zone, and the governing body has clearly noticed its intent,
517 the governing body shall[;]:

- 518 (a) in determining whether adequate protests have been filed, aggregate the protests by
519 the type of improvement or by zone[-]; and
- 520 (b) apply to and calculate for each zone the threshold requirements of inadequate,
521 contestable, and adequate protest.

522 (5) The failure of an owner of property within the proposed assessment area to file a
523 timely written protest constitutes a waiver of any objection to:

- 524 (a) the designation of the assessment area;
- 525 (b) any improvement to be provided to property within the assessment area; [~~and~~]
- 526 (c) the inclusion of the owner's property within the assessment area[-];
- 527 (d) the fact, but not amount of, the direct benefit; and
- 528 (e) if the assessment is for economic promotion activities, the direct or indirect benefit

529 to the owner's property.

530 (6) The local entity may not attempt to solicit a property owner's withdrawal of a
531 written protest.

532 (7) The local entity shall post an accurate daily total and percentage of the written
533 protests it receives on the local entity's website or, if no website is available, at the local entity's
534 place of business.

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

536 **11-42-204. Hearing.**

537 (1) On the date and at the time and place specified in the notice under Section
538 11-42-202, the governing body shall hold a public hearing.

539 (2) (a) The governing body may continue the public hearing from time to time to a
540 fixed future date and time.

541 (b) The continuance of a public hearing does not restart or extend the protest period
542 described in Subsection 11-42-203(1).

543 (c) The local entity shall hold the final public hearing no less than five days before the
544 end of the protest period.

545 (3) At the public hearing, the governing body shall hear all:

546 (a) [~~hear all~~] objections to the designation of the proposed assessment area or the
547 improvements proposed to be provided in the assessment area; [~~and~~]

548 (b) objections to the direct or indirect benefits of the assessment area to property within
549 the assessment area;

550 (c) objections to the designation and proposed offset based on the proposed valuation
551 of benefits to:

552 (i) the general public; and

553 (ii) properties that are not assessed but are directly benefitted; and

554 [~~(b)~~] (d) [~~hear all~~] persons desiring to be heard.

555 (4) [~~The~~] (a) Based on the testimony received, the governing body may make changes
556 in:

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

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

559 (b) If a governing body makes a change under Subsection (4)(a), the governing body

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560 shall renotece the proposed assessment area in accordance with Section 11-42-202 to reflect the
561 change.

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

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

566 **11-42-206. Adoption of a resolution or an ordinance regarding a proposed**
567 **assessment area -- Designation of an assessment area may not occur if adequate protests**
568 **filed -- Recording of resolution or ordinance and notice of proposed assessment.**

569 (1) If a local entity sends a notice in accordance with Section 11-42-201 on or before
570 February 28, 2014, to designate an assessment area, the local entity is subject to the protest
571 requirements of this section.

572 ~~[(+)]~~ (2) (a) After holding a public hearing under Section 11-42-204 and considering
573 protests filed under Section 11-42-203, and subject to Subsection ~~[(+)]~~ (4), the governing body
574 shall:

575 (i) hold a public meeting to adopt a resolution or ordinance:

576 ~~[(+)]~~ (A) abandoning the proposal to designate an assessment area; or

577 ~~[(+)]~~ (B) designating an assessment area as described in the notice under Section
578 11-42-202; ~~or [with the changes made as authorized under Subsection 11-42-204(4).]~~

579 (ii) if the governing body decides to make a change authorized under Subsection
580 11-42-204(4), renotece the proposed assessment area in accordance with Section 11-42-202 to
581 reflect the change and reschedule the meeting in accordance with Subsection (2)(c)(ii).

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

583 (i) may not schedule the public meeting before the expiration of the 60-day protest
584 period or a period described in Subsection 11-42-204(4)(c); and

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

586 (c) If a local entity is required to give renotece under Subsection (2)(a)(ii):

587 (i) the period for filing protests under Section 11-42-203 is extended for 15 business
588 days after the day on which the local entity publishes the renotece; and

589 (ii) the local entity shall hold, after the expiration of the period described in Subsection
590 (2)(c)(i), a public meeting described in Subsection (2)(a)(i).

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591 ~~[(2)]~~ (3) If the notice under Section 11-42-202 indicates that the proposed assessment
592 area is a voluntary assessment area, the governing body shall:

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

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

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

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

600 ~~[(f)]~~ (ii) the amount of the proposed assessment to be levied on the property within the
601 voluntary assessment area; ~~[and]~~

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

604 (iv) the extent to which the improvements may be scaled to benefit only the assessed
605 properties.

606 ~~[(3)]~~ (4) If adequate protests have been filed, the governing body may not designate an
607 assessment area as described in the notice under Section 11-42-202.

608 ~~[(4)-(a)]~~ (5) If the governing body adopts a designation resolution or ordinance
609 designating an assessment area, the governing body shall, within 15 days after adopting the
610 designation resolution or ordinance:

611 ~~[(f)]~~ (a) record the original or certified copy of the designation resolution or ordinance
612 in the office of the recorder of the county in which property within the assessment area is
613 located; and

614 ~~[(ii)]~~ (b) file with the recorder of the county in which property within the assessment
615 area is located a notice of proposed assessment that:

616 ~~[(A)]~~ (i) states that the local entity has designated an assessment area; and

617 ~~[(B)]~~ (ii) lists, by legal description and tax identification number, the property proposed
618 to be assessed.

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

621 ~~[(5)]~~ (6) After the adoption of a designation resolution or ordinance under Subsection

622 (1)(a), the local entity may begin providing the specified improvements.

623 Section 8. Section 11-42-206.5 is enacted to read:

624 **11-42-206.5. Adoption of a resolution or ordinance regarding an assessment area**
625 **proposed after February 28, 2014 -- Designation of an assessment area may not occur if**
626 **adequate protests filed -- Recording of resolution or ordinance and notice of proposed**
627 **assessment.**

628 (1) (a) If a local entity sends a notice in accordance with Section 11-42-201 after
629 February 28, 2014, to designate an assessment area, the local entity is subject to the protest
630 requirements of this section.

631 (b) The defined terms of this section supersede the same term defined in Section
632 11-42-102 if applied to a local entity described in Subsection (1)(a).

633 (2) As used in this section:

634 (a) (i) "Adequate protests" means timely filed, written protests that represent no less
635 than 45% of the frontage, area, taxable value, fair market value, lots, number of connections, or
636 equivalent residential units of the property proposed to be assessed, according to the same
637 assessment method by which the assessment is proposed to be levied.

638 (ii) "Adequate protests" does not include written protests relating to:

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

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

642 (C) protests that have been withdrawn under Subsection 11-42-203(3).

643 (b) (i) "Contestable protests" means timely filed, written protests that represent no less
644 than 35% and less than 45% of the frontage, area, taxable value, fair market value, lots, number
645 of connections, or equivalent residential units of the property proposed to be assessed,
646 according to the same assessment method by which the assessment is proposed to be levied.

647 (ii) "Contestable protests" does not include written protests relating to:

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

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

651 (C) protests that have been withdrawn under Subsection 11-42-203(3).

652 (c) (i) "Inadequate protests" means timely filed, written protests that represent less than

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653 35% of the frontage, area, taxable value, fair market value, lots, number of connections, or
 654 equivalent residential units of the property proposed to be assessed, according to the same
 655 assessment method by which the assessment is proposed to be levied.

656 (ii) "Inadequate protests" does not include written protests relating to:

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

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

660 (C) protests that have been withdrawn under Subsection 11-42-203(3).

661 (3) (a) After holding a public hearing under Section 11-42-204 and considering protests
 662 filed under Section 11-42-203, and subject to Subsection (4), the governing body shall hold a
 663 public meeting to adopt a resolution or ordinance:

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

665 (B) designating an assessment area as described in the notice under Section 11-42-202;

666 or

667 (ii) if the governing body decides to make a change authorized under Subsection
 668 11-42-204(4), renote the proposed assessment area in accordance with Section 11-42-202 to
 669 reflect the change and reschedule the meeting in accordance with Subsection (3)(c)(ii).

670 (b) In accordance with Section 11-42-203, and after complying with applicable notice
 671 and protest requirements, the governing body:

672 (i) may not schedule the public meeting before the expiration of the 60-day protest
 673 period or a period described in Subsection 11-42-204(4)(c); and

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

675 (c) If a local entity is required to give renote under Subsection (3)(a)(ii):

676 (i) the period for filing protests under Section 11-42-203 is extended for 15 business
 677 days after the day on which the local entity publishes the renote; and

678 (ii) the local entity shall hold, after the expiration of the period described in Subsection
 679 (3)(c)(i), a public meeting described in Subsection (3)(a).

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

682 (a) delete from the proposed assessment area all property whose owners have not
 683 submitted an executed consent form consenting to inclusion of the owner's property in the

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684 proposed assessment area;

685 (b) delete all improvements intended to benefit the property of an owner who did not
686 consent to the assessment area; and

687 (c) determine whether to designate a voluntary assessment area, after considering:

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

690 (ii) the amount of the proposed assessment to be levied on the property within the
691 voluntary assessment area;

692 (iii) the extent to which the improvements may be scaled to benefit only the assessed
693 properties; and

694 (iv) the value of the benefits that property within the voluntary assessment area will
695 receive from improvements proposed to be financed by assessments on the property.

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

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

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

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

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

705 (ii) collects for the petition described in Subsection (5)(c)(i)(A):

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

708 (B) enough signatures to exceed the number of contestable protest signatures received
709 by the governing body protesting the described assessment area by no less than 5% based on

710 the same assessment method representation that was used to calculate the number of
711 contestable protest signatures; and

712 (C) the necessary signatures described in Subsection (5)(c)(ii)(B) no later than 60 days
713 after the day on which the public hearing described in Subsection (3)(a) is held;

714 (iii) submits the signatures on the petition to the county clerk, municipal clerk, or

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715 municipal recorder, respectively, for certification;

716 (iv) holds a public hearing after the county clerk, municipal clerk, or municipal
717 recorder notifies the governing body that the clerk or recorder has certified the petition in
718 accordance with Subsection (5)(e); and

719 (v) at the public hearing votes to adopt a designation resolution or ordinance
720 designating the assessment area.

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

725 (e) No later than 30 days after receiving a petition described in Subsection (5)(c)(i)
726 from a governing body for certification, a county clerk, municipal clerk, or municipal recorder
727 shall:

728 (i) determine if the petition complies with the petition and signature requirements of
729 Subsections (5)(c)(i) and (ii);

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

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

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

735 (6) If the governing body adopts a designation resolution or ordinance designating an
736 assessment area, the governing body shall, within 15 days after adopting the designation
737 resolution or ordinance:

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

740 (b) file with the recorder of the county in which property within the assessment area is
741 located a notice of proposed assessment that:

742 (i) states that the local entity has designated an assessment area; and

743 (ii) lists, by legal description and tax identification number, the property proposed to be
744 assessed.

745 (7) After the adoption of a designation resolution or ordinance under Subsection

746 (3)(a)(i)(B), the local entity may begin providing the specified improvements.

747 Section 9. Section **11-42-208** is amended to read:

748 **11-42-208. Recording notice of deletion if property is deleted from an assessment**
749 **area.**

750 If, after adoption of a designation resolution or ordinance under Section 11-42-206 or
751 11-42-206.5, as applicable, a local entity deletes property from the assessment area, the local
752 entity shall record a notice of deletion in a form that includes the legal description and tax
753 identification number of the property and otherwise complies with applicable recording
754 statutes.

755 Section 10. Section **11-42-401** is amended to read:

756 **11-42-401. Levying an assessment -- Prerequisites -- Assessment list.**

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

760 (b) If a local entity that is a municipality or county designates an assessment area in
761 accordance with this chapter, the municipality or county may levy an assessment and collect
762 the assessment in accordance with Subsection 11-42-202(1)(f)(i) or (ii).

763 (c) An assessment billed by a municipality or county in the same manner as a property
764 tax and included on a property tax notice in accordance with Subsection 11-42-202(1)(f)(ii) is
765 enforced in accordance with, constitutes a lien in accordance with, and is subject to other
766 penalty provisions in accordance with this chapter.

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

769 (a) the governing body shall:

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

771 (A) each parcel of property proposed to be assessed; and

772 (B) the amount of the assessment to be levied against the property;

773 (ii) appoint a board of equalization as provided in Section 11-42-403; and

774 (iii) give notice as provided in Section 11-42-402; and

775 (b) the board of equalization, appointed under Section 11-42-403, shall:

776 (i) hold hearings[;];

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777 (ii) determine if each assessment is reasonably related to the benefit conferred by the
778 assessment area and roughly proportionate to all benefitted properties inside and outside of the
779 assessment area;

780 (iii) assure that assessed properties are not assessed for benefits conferred outside of
781 the assessment area;

782 (iv) make any corrections it considers appropriate to an assessment[;]; and

783 (v) report its findings to the governing body as provided in Section 11-42-403.

784 (3) (a) The governing body of a local entity shall prepare the assessment list described
785 in Subsection (2)(a)(i) at any time after:

786 (i) the governing body has determined the estimated or actual operation and
787 maintenance costs, if the assessment is to pay operation and maintenance costs;

788 (ii) the governing body has determined the estimated or actual economic promotion
789 costs described in Section 11-42-206 or 11-42-206.5, as applicable, if the assessment is to pay
790 for economic promotion activities; or

791 (iii) for any other assessment, the governing body has determined:

792 (A) the estimated or actual acquisition and construction costs of all proposed
793 improvements within the assessment area, including overhead costs actually incurred and
794 reasonably authorized contingencies;

795 (B) the estimated or actual property price for all property to be acquired to provide the
796 proposed improvements; and

797 (C) the [~~reasonable~~] estimated cost of any work actually to be [~~done~~] performed by the
798 local entity.

799 (b) In addition to the requirements of Subsection (3)(a), the governing body of a local
800 entity shall prepare the assessment list described in Subsection (2)(a)(i) before:

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

802 (ii) the park maintenance has commenced, if the assessment is to pay for park
803 maintenance.

804 (4) A local entity may levy an assessment for some or all of the cost of improvements
805 within an assessment area, including payment of:

806 (a) operation and maintenance costs of improvements constructed within the
807 assessment area to the extent the improvements provide exclusive benefits to the properties

808 within the assessment area;

809 (b) (i) if an outside entity furnishes utility services or maintains utility improvements,
810 the actual cost that the local entity pays for utility services or for maintenance of
811 improvements; or

812 (ii) if the local entity itself furnishes utility service or maintains improvements, for the
813 [~~reasonable~~] actual cost of supplying the utility service or maintenance;

814 (c) the reasonable and actual cost of supplying labor, materials, or equipment in
815 connection with improvements; and

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

817 (ii) the reasonable and generally applicable costs[~~, as determined by the local entity~~
818 ~~governing body, if the local entity owns or supplies any sewer, storm drainage, water, gas,~~
819 ~~electric, or communications connections~~] of locally provided utilities.

820 (5) A local entity may not levy an assessment for an amount donated or contributed for
821 an improvement or part of an improvement or for anything other than costs for providing the
822 improvement actually incurred by the local entity.

823 (6) The validity of an otherwise valid assessment is not affected because the actual cost
824 of improvements exceeds the estimated cost.

825 (7) (a) Subject to Subsection (7)(b), an assessment levied to pay for operation and
826 maintenance costs may not be levied over a period of time exceeding five years beginning on
827 the day on which the local entity adopts the assessment ordinance or assessment resolution for
828 the operation and maintenance costs assessment.

829 (b) A local entity may levy an additional assessment described in Subsection (7)(a) in
830 the assessment area designated for the assessment described in Subsection (7)(a) if, after the
831 five-year period expires, the local entity:

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

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

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

836 **11-42-403. Board of equalization -- Hearings -- Corrections to proposed**
837 **assessment list -- Report to governing body -- Appeal -- Board findings final -- Waiver of**
838 **objections.**

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

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

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

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

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

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

847 or

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

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

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

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

853 (3) (a) The board of equalization shall hold hearings on at least three consecutive days
854 for at least one hour per day between 9 a.m. and 9 p.m., as specified in the notice under Section
855 11-42-402.

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

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

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

862 (ii) for economic promotion activities, the amount of direct or indirect benefits
863 accruing to a tract, block, lot, or parcel of property in the assessment area;

864 (iii) the adequacy and proportionality of any proposed offset; or

865 [~~(ii)~~] (iv) the amount of the proposed assessment against the tract, block, lot, or parcel.

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

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

869 (ii) make any corrections to the proposed assessment list [~~that the board considers just~~

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870 ~~and equitable]~~ to ensure the assessed property is treated fairly and is not unconstitutionally
871 burdened.

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

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

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

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

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

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

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

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

885 (A) state:

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

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

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

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

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

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

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

898 (ii) in the case of economic promotion activities, each parcel of property within the
899 assessment area will be directly or indirectly benefitted in an amount equal to or greater than
900 the assessment to be levied against the property; and

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901 ~~[(ii) except as provided in Subsection 11-42-409(6),]~~ (iii) no parcel of property [on the
902 assessment list] will bear more than its proportionate share of the cost of the improvements
903 benefitting the property.

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

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

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

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

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

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

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

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

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

929 (10) This section may not be interpreted to insulate a local entity from:

930 (a) a claim arising from facts and circumstances that occur after, or could not with
931 reasonable diligence be discovered before, the board of equalization appeal period expires; or

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- 932 (b) a claim of:
- 933 (i) misuse of assessment funds;
- 934 (ii) right of offset;
- 935 (iii) material misrepresentation;
- 936 (iv) fraud;
- 937 (v) inequity;
- 938 (vi) injustice; or
- 939 (vii) unconstitutional acts.

940 (11) A person may not commence an action or serve a summons relating to the action
 941 on a local entity more than four years after discovery of the facts and circumstances giving rise
 942 to a claim:

- 943 (a) arising from facts and circumstances that occur after or could not be discovered
 944 with reasonable diligence before the board of equalization appeal period;
- 945 (b) that the improvements:
 - 946 (i) indirectly benefit the general public; or
 - 947 (ii) directly benefit unassessed property;
 - 948 (c) of material misrepresentation, fraud, inequity, or injustice;
 - 949 (d) of unconstitutional acts; or
 - 950 (e) of misuse of assessment area funds.

951 Section 12. Section **11-42-406** is amended to read:

952 **11-42-406. Assessment for economic promotion activities -- Reporting.**

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

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

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

960 (A) by adopting an assessment resolution or an ordinance in accordance with Section
 961 11-42-404; and

962 (B) for a period of five years, beginning on the day on which the local entity adopts the

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963 initial assessment resolution or ordinance described in Subsection (1)(a)(i)[-];

964 (iii) may not levy an assessment on a residential property for the economic promotion
965 activities; and

966 (iv) shall use an assessment method that fairly and equitably reflects the expected
967 growth in economic activity that will be received by the benefitted property.

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

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

973 (ii) adopts a new assessment resolution or ordinance in accordance with Section
974 11-42-404.

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

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

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

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

984 (i) an account of money deposited into the assessment fund described in Section
985 11-42-412;

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

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

990 (3) A local entity shall publish a report required in Subsection (2)(c):

991 (a) on:

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

993 (ii) if the local entity is not a county or municipality, on the public web site of any

994 county or municipality in which the local entity has jurisdiction;

995 (b) (i) within one year after the day on which the local entity adopts a new assessment
996 resolution or ordinance for economic promotion activities; and

997 (ii) each subsequent year that the economic promotion activities levy is assessed by
998 updating the information described in Subsection (2)(c); and

999 (c) for six months on a web site described in Subsection (3)(a) after the day on which
1000 the report is initially published under Subsection (3)(b) or updated under Subsection (3)(b)(ii).

1001 Section 13. Section ~~11-42-409~~ is amended to read:

1002 **11-42-409. Assessment requirements.**

1003 (1) (a) Each local entity that levies an assessment under this chapter shall levy the
1004 assessment on each block, lot, tract, or parcel of property that [~~borders, is adjacent to, or~~]
1005 benefits from an improvement:

1006 (i) to the extent that the improvement directly [~~or indirectly~~] benefits the property; and

1007 (ii) to whatever depth on the parcel of property that the governing body determines,
1008 including the full depth.

1009 (b) The validity of an otherwise valid assessment is not affected by the fact that the
1010 benefit to the property from the improvement[:] does not increase the fair market value of the
1011 property.

1012 [~~(i) is only indirect, or~~]

1013 [~~(ii) does not increase the fair market value of the property.]~~

1014 (2) [~~The~~] Subject to Section 11-42-406, the assessment method a governing body uses
1015 to calculate an assessment may be according to frontage, area, taxable value, fair market value,
1016 lot, number of connections, equivalent residential unit, or any combination of these methods, as
1017 the governing body considers fair and equitable.

1018 (3) In calculating assessments, a governing body may:

1019 (a) use different methods for different improvements in an assessment area; and

1020 (b) assess different amounts in different zones, even when using the same method, if
1021 acquisition or construction costs differ from zone to zone.

1022 (4) (a) Each local entity shall make an allowance for each corner lot receiving the same
1023 improvement on both sides so that the property is not assessed at the full rate on both sides.

1024 (b) A local entity may allocate a corner lot allowance under Subsection (4)(a) to all

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1025 other benefitted property within the assessment area by increasing the assessment levied
1026 against the other property.

1027 (5) (a) Assessments shall be fair and equitable according to the exclusive benefit to the
1028 benefitted property from the improvement.

1029 (b) To comply with Subsection (5)(a), a local entity may levy assessments within
1030 zones.

1031 [~~(6) A local entity may levy an assessment that would otherwise violate a provision of
1032 this chapter if the owners of all property to be assessed enter into a written agreement with the
1033 local entity consenting to the assessment.]~~

1034 Section 14. **Effective date.**

1035 If approved by two-thirds of all the members elected to each house, this bill takes effect
1036 upon approval by the governor, or the day following the constitutional time limit of Utah
1037 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
1038 the date of veto override.

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