

Perceived Gaps or Deficiencies in the Assessment Area Act

An assessment area is a tool for delivering a service to areas within a political subdivision and collecting money (i.e. an assessment) for the service. The Utah Code identifies three services: improvements, operation and maintenance, and economic promotion activities. Any political subdivision (municipality, county, local district, special service district, interlocal entity, military installation development, etc.) may designate an assessment area.

The following is a list of questions addressing perceived gaps or deficiencies in Title 11, Chapter 42, Assessment Area Act, that have been raised in the 2013 and 2014 interims and general sessions. Interpretation of whether these are actual issues with the Utah Code may vary. This list is not exhaustive.

Direct and indirect benefits

Several provisions of the Assessment Area Act discuss providing, measuring, or accounting for the direct or indirect benefits of improvements, operation and maintenance, or economic promotion activities. How does a local entity measure the indirect benefits of an improvement, operation and maintenance, or economic promotion activities? Should “direct benefit” or “indirect benefit” be defined?

Just and equitable; Fair and equitable

The code references “just and equitable” and “fair and equitable.” Do these phrases need to be consistent or defined?

- The board of equalization is charged with making corrections to the assessment list that the board considers to be “just and equitable.” (§11-42-403(4)(a)(ii))
- “The assessment method a governing body uses to calculate an assessment may be according to frontage, area, taxable value, fair market value, lot, number of connections, equivalent residential unit, or any combination of these methods, as the governing body considers fair and equitable.” (§11-42-409(2))
- “Assessments shall be fair and equitable according to the benefit to the benefitted property from the improvement.” (§11-42-409(5))

Proportionate share

Does “proportionate share” need to be defined? Depending on the context, is it different than or tied to “fair and equitable”?

- The board of equalization is charged, after reviewing and correcting the assessment list, with reporting to the governing body that the board finds that “no parcel of property on the assessment list will bear more than its proportionate share of the cost of the improvements benefitting the property.” (§11-42-403(5)(a)(ii))
- If a local entity issues a refunding bond, the local entity is required to adopt an ordinance or resolution that allocates “the reductions ... so that the then unpaid assessments levied against benefitted property within the assessment area and the unpaid interest on those assessments receive a proportionate share of the reductions.” (§11-42-608(2)(b))

- “The local entity shall require that each reduction of installment payments be made so that the assessments levied against each assessed property receive a proportionate share of the reduction.” (§11-42-415(2)(c))

Economic promotion activities – Permitted time

There seems to be a perception that an assessment for economic promotion activities is limited to five years with the option to renew for another five years if the governing body redesignates the area and adopts a new levy resolution. The statute (provided below) is arguably more permissive, allowing the initial assessment to run for an unlimited time while an additional assessment is limited to five years *starting on the day of the initial assessment*. (Note that §11-42-404(1)(b)(ii) allows for more than one assessment levy at a time.) Is the statute clear? What should the policy be?

§11-42-406 Assessment for economic promotion activities

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

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

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

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

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

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

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

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

Boundaries of an assessment area

There is no limitation on the size of an assessment area other than the boundaries of the political subdivision. Should the size of an assessment area within a political subdivision be limited?

(Note: The Assessment Area Act currently allows the inclusion of property that the governing body does not intend to assess (§11-42-201).)

Adequate protests

Is the 50% adequate protests threshold appropriate?

Moratorium after adequate protests

Should there be a moratorium on creating an assessment area if adequate protests are filed? Would the moratorium include a prohibition on redrawing the boundaries of the failed proposed assessment area? (Note: There is a two-year moratorium on the creation of a local district in substantially the same area and providing the same service of a proposed local district in which adequate protests are filed. (§17B-1-213(3))

Notification of potential bond

When proposing the creation of an assessment area, a local entity is not required to give notice of whether the entity plans to issue a bond for the assessment or the proposed finance terms of that bond. (This is also not required for local districts or special service districts.) Should a local entity be required to notice the assessment area proposed bond and finance terms?

Assessment method

Should the law restrict or give more guidance as to which assessment method a local entity may use?

- “‘Assessment method’ means the method by which an assessment is levied against property, whether by frontage, area, taxable value, fair market value, lot, parcel, number of connections, equivalent residential unit, any combination of these methods, or any other method that equitably reflects the benefit received from the improvement.” (§11-42-102(6))
- “The assessment method a governing body uses to calculate an assessment may be according to frontage, area, taxable value, fair market value, lot, number of connections, equivalent residential unit, or any combination of these methods, as the governing body considers fair and equitable.” (§11-42-409(2))

Process for Designating an Assessment Area and Levying an Assessment

