

Part 1 General Provisions

11-42-101 Title.

This chapter is known as the "Assessment Area Act."

Enacted by Chapter 329, 2007 General Session

11-42-102 Definitions.

(1) As used in this chapter:

- (a) "Adequate protests" means, for all proposed assessment areas except sewer assessment areas, timely filed, written protests under Section 11-42-203 that represent at least 40% of the frontage, area, taxable value, fair market value, lots, number of connections, or equivalent residential units of the property proposed to be assessed, according to the same assessment method by which the assessment is proposed to be levied, after eliminating:
 - (i) protests relating to:
 - (A) property that has been deleted from a proposed assessment area; or
 - (B) an improvement that has been deleted from the proposed improvements to be provided to property within the proposed assessment area; and
 - (ii) protests that have been withdrawn under Subsection 11-42-203(3).
 - (b) "Adequate protests" means, for a proposed sewer assessment area, timely filed, written protests under Section 11-42-203 that represent at least 70% of the frontage, area, taxable value, fair market value, lots, number of connections, or equivalent residential units of the property proposed to be assessed, according to the same assessment method by which the assessment is proposed to be levied, after eliminating adequate protests under Subsection (1)(a).
- (2) "Assessment area" means an area, or, if more than one area is designated, the aggregate of all areas within a local entity's jurisdictional boundaries that is designated by a local entity under Part 2, Designating an Assessment Area, for the purpose of financing the costs of improvements, operation and maintenance, or economic promotion activities that benefit property within the area.
- (3) "Assessment bonds" means bonds that are:
 - (a) issued under Section 11-42-605; and
 - (b) payable in part or in whole from assessments levied in an assessment area, improvement revenues, and a guaranty fund or reserve fund.
- (4) "Assessment fund" means a special fund that a local entity establishes under Section 11-42-412.
- (5) "Assessment lien" means a lien on property within an assessment area that arises from the levy of an assessment, as provided in Section 11-42-501.
- (6) "Assessment method" means the method:
 - (a) by which an assessment is levied against benefitted 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; and
 - (b) that, when applied to a benefitted property, accounts for an assessment that meets the requirements of Section 11-42-409.
- (7) "Assessment ordinance" means an ordinance adopted by a local entity under Section 11-42-404 that levies an assessment on benefitted property within an assessment area.

- (8) "Assessment resolution" means a resolution adopted by a local entity under Section 11-42-404 that levies an assessment on benefitted property within an assessment area.
- (9) "Benefitted property" means property within an assessment area that directly or indirectly benefits from improvements, operation and maintenance, or economic promotion activities.
- (10) "Bond anticipation notes" means notes issued under Section 11-42-602 in anticipation of the issuance of assessment bonds.
- (11) "Bonds" means assessment bonds and refunding assessment bonds.
- (12) "Commercial area" means an area in which at least 75% of the property is devoted to the interchange of goods or commodities.
- (13)
 - (a) "Commercial or industrial real property" means real property used directly or indirectly or held for one of the following purposes or activities, regardless of whether the purpose or activity is for profit:
 - (i) commercial;
 - (ii) mining;
 - (iii) industrial;
 - (iv) manufacturing;
 - (v) governmental;
 - (vi) trade;
 - (vii) professional;
 - (viii) a private or public club;
 - (ix) a lodge;
 - (x) a business; or
 - (xi) a similar purpose.
 - (b) "Commercial or industrial real property" includes real property that:
 - (i) is used as or held for dwelling purposes; and
 - (ii) contains more than four rental units.
- (14) "Connection fee" means a fee charged by a local entity to pay for the costs of connecting property to a publicly owned sewer, storm drainage, water, gas, communications, or electrical system, whether or not improvements are installed on the property.
- (15) "Contract price" means:
 - (a) the cost of acquiring an improvement, if the improvement is acquired; or
 - (b) the amount payable to one or more contractors for the design, engineering, inspection, and construction of an improvement.
- (16) "Designation ordinance" means an ordinance adopted by a local entity under Section 11-42-206 designating an assessment area.
- (17) "Designation resolution" means a resolution adopted by a local entity under Section 11-42-206 designating an assessment area.
- (18) "Development authority" means:
 - (a) the Utah Inland Port Authority created in Section 11-58-201; or
 - (b) the military installation development authority created in Section 63H-1-201.
- (19) "Economic promotion activities" means activities that promote economic growth in a commercial area of a local entity, including:
 - (a) sponsoring festivals and markets;
 - (b) promoting business investment or activities;
 - (c) helping to coordinate public and private actions; and
 - (d) developing and issuing publications designed to improve the economic well-being of the commercial area.

- (20) "Environmental remediation activity" means a surface or subsurface enhancement, effort, cost, initial or ongoing maintenance expense, facility, installation, system, earth movement, or change to grade or elevation that improves the use, function, aesthetics, or environmental condition of publicly owned property.
- (21) "Equivalent residential unit" means a dwelling, unit, or development that is equal to a single-family residence in terms of the nature of its use or impact on an improvement to be provided in the assessment area.
- (22) "Governing body" means:
 - (a) for a county, city, or town, the legislative body of the county, city, or town;
 - (b) for a special district, the board of trustees of the special district;
 - (c) for a special service district:
 - (i) the legislative body of the county, city, or town that established the special service district, if no administrative control board has been appointed under Section 17D-1-301; or
 - (ii) the administrative control board of the special service district, if an administrative control board has been appointed under Section 17D-1-301;
 - (d) for the military installation development authority created in Section 63H-1-201, the board, as defined in Section 63H-1-102;
 - (e) for the Utah Inland Port Authority, created in Section 11-58-201, the board, as defined in Section 11-58-102; and
 - (f) for a public infrastructure district, the board of the public infrastructure district as defined in Section 17D-4-102.
- (23) "Guaranty fund" means the fund established by a local entity under Section 11-42-701.
- (24) "Improved property" means property upon which a residential, commercial, or other building has been built.
- (25) "Improvement":
 - (a)
 - (i) means a publicly owned infrastructure, facility, system, or environmental remediation activity that:
 - (A) a local entity is authorized to provide;
 - (B) the governing body of a local entity determines is necessary or convenient to enable the local entity to provide a service that the local entity is authorized to provide; or
 - (C) a local entity is requested to provide through an interlocal agreement in accordance with Chapter 13, Interlocal Cooperation Act; and
 - (ii) includes facilities in an assessment area, including a private driveway, an irrigation ditch, and a water turnout, that:
 - (A) can be conveniently installed at the same time as an infrastructure, system, or other facility described in Subsection (25)(a)(i); and
 - (B) are requested by a property owner on whose property or for whose benefit the infrastructure, system, or other facility is being installed; or
 - (b) for a special district created to assess groundwater rights in accordance with Section 17B-1-202, means a system or plan to regulate groundwater withdrawals within a specific groundwater basin in accordance with Sections 17B-1-202 and 73-5-15.
- (26) "Improvement revenues":
 - (a) means charges, fees, impact fees, or other revenues that a local entity receives from improvements; and
 - (b) does not include revenue from assessments.
- (27) "Incidental refunding costs" means any costs of issuing refunding assessment bonds and calling, retiring, or paying prior bonds, including:

- (a) legal and accounting fees;
 - (b) charges of financial advisors, escrow agents, certified public accountant verification entities, and trustees;
 - (c) underwriting discount costs, printing costs, the costs of giving notice;
 - (d) any premium necessary in the calling or retiring of prior bonds;
 - (e) fees to be paid to the local entity to issue the refunding assessment bonds and to refund the outstanding prior bonds;
 - (f) any other costs that the governing body determines are necessary and proper to incur in connection with the issuance of refunding assessment bonds; and
 - (g) any interest on the prior bonds that is required to be paid in connection with the issuance of the refunding assessment bonds.
- (28) "Installment payment date" means the date on which an installment payment of an assessment is payable.
- (29) "Interim warrant" means a warrant issued by a local entity under Section 11-42-601.
- (30) "Jurisdictional boundaries" means:
- (a) for a county, the boundaries of the unincorporated area of the county; and
 - (b) for each other local entity, the boundaries of the local entity.
- (31) "Local entity" means:
- (a) a county, city, town, special service district, or special district;
 - (b) an interlocal entity as defined in Section 11-13-103;
 - (c) the military installation development authority, created in Section 63H-1-201;
 - (d) a public infrastructure district under Title 17D, Chapter 4, Public Infrastructure District Act, including a public infrastructure district created by a development authority;
 - (e) the Utah Inland Port Authority, created in Section 11-58-201; or
 - (f) any other political subdivision of the state.
- (32) "Local entity obligations" means assessment bonds, refunding assessment bonds, interim warrants, and bond anticipation notes issued by a local entity.
- (33) "Mailing address" means:
- (a) a property owner's last-known address using the name and address appearing on the last completed real property assessment roll of the county in which the property is located; and
 - (b) if the property is improved property:
 - (i) the property's street number; or
 - (ii) the post office box, rural route number, or other mailing address of the property, if a street number has not been assigned.
- (34) "Net improvement revenues" means all improvement revenues that a local entity has received since the last installment payment date, less all amounts payable by the local entity from those improvement revenues for operation and maintenance costs.
- (35) "Operation and maintenance costs":
- (a) means the costs that a local entity incurs in operating and maintaining improvements in an assessment area, whether or not those improvements have been financed under this chapter; and
 - (b) includes service charges, administrative costs, ongoing maintenance charges, and tariffs or other charges for electrical, water, gas, or other utility usage.
- (36) "Overhead costs" means the actual costs incurred or the estimated costs to be incurred by a local entity in connection with an assessment area for appraisals, legal fees, filing fees, financial advisory charges, underwriting fees, placement fees, escrow, trustee, and paying agent fees, publishing and mailing costs, costs of levying an assessment, recording costs, and all other incidental costs.

- (37) "Prior assessment ordinance" means the ordinance levying the assessments from which the prior bonds are payable.
- (38) "Prior assessment resolution" means the resolution levying the assessments from which the prior bonds are payable.
- (39) "Prior bonds" means the assessment bonds that are refunded in part or in whole by refunding assessment bonds.
- (40) "Project engineer" means the surveyor or engineer employed by or the private consulting engineer engaged by a local entity to perform the necessary engineering services for and to supervise the construction or installation of the improvements.
- (41) "Property" includes real property and any interest in real property, including water rights and leasehold rights.
- (42) "Property price" means the price at which a local entity purchases or acquires by eminent domain property to make improvements in an assessment area.
- (43) "Provide" or "providing," with reference to an improvement, includes the acquisition, construction, reconstruction, renovation, maintenance, repair, operation, and expansion of an improvement.
- (44) "Public agency" means:
 - (a) the state or any agency, department, or division of the state; and
 - (b) a political subdivision of the state.
- (45) "Reduced payment obligation" means the full obligation of an owner of property within an assessment area to pay an assessment levied on the property after the assessment has been reduced because of the issuance of refunding assessment bonds, as provided in Section 11-42-608.
- (46) "Refunding assessment bonds" means assessment bonds that a local entity issues under Section 11-42-607 to refund, in part or in whole, assessment bonds.
- (47) "Reserve fund" means a fund established by a local entity under Section 11-42-702.
- (48) "Service" means:
 - (a) water, sewer, storm drainage, garbage collection, library, recreation, communications, or electric service;
 - (b) economic promotion activities; or
 - (c) any other service that a local entity is required or authorized to provide.
- (49)
 - (a) "Sewer assessment area" means an assessment area that has as the assessment area's primary purpose the financing and funding of public improvements to provide sewer service where there is, in the opinion of the local board of health, substantial evidence of septic system failure in the defined area due to inadequate soils, high water table, or other factors proven to cause failure.
 - (b) "Sewer assessment area" does not include property otherwise located within the assessment area:
 - (i) on which an approved conventional or advanced wastewater system has been installed during the previous five calendar years;
 - (ii) for which the local health department has inspected the system described in Subsection (49)(b)(i) to ensure that the system is functioning properly; and
 - (iii) for which the property owner opts out of the proposed assessment area for the earlier of a period of 10 calendar years or until failure of the system described in Subsection (49)(b)(i).
- (50) "Special district" means a special district under Title 17B, Limited Purpose Local Government Entities - Special Districts
- (51) "Special service district" means the same as that term is defined in Section 17D-1-102.

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

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

(54) "Voluntary assessment area" means an assessment area that contains only property whose owners have voluntarily consented to an assessment.

Amended by Chapter 16, 2023 General Session

11-42-103 Limit on effect of this chapter.

(1) Nothing in this chapter may be construed to authorize a local entity to provide an improvement or service that the local entity is not otherwise authorized to provide.

(2) Notwithstanding Subsection (1), a local entity may provide an environmental remediation activity that the local entity finds or determines to be in the public interest.

Amended by Chapter 470, 2017 General Session

11-42-104 Waiver by property owners -- Requirements.

(1) The owners of property to be assessed within an assessment area may waive:

(a) the prepayment period under Subsection 11-42-411(6);

(b) a procedure that a local entity is required to follow to:

(i) designate an assessment area; or

(ii) levy an assessment; or

(c) a period to contest a local entity action.

(2) Each waiver under this section shall:

(a) be in writing;

(b) be signed by all the owners of property to be assessed within the assessment area;

(c) describe the prepayment period, procedure, or contest period being waived;

(d) state that the owners waive the prepayment period, procedure, or contest period; and

(e) state that the owners consent to the local entity taking the required action to waive the prepayment period, procedure, or contest period.

Enacted by Chapter 329, 2007 General Session

11-42-105 No limitation on other local entity powers -- Conflict with other statutory provisions.

(1) This chapter may not be construed to limit a power that a local entity has under other applicable law to:

(a) make an improvement or provide a service;

(b) create a district;

(c) levy an assessment or tax; or

(d) issue bonds or refunding bonds.

(2) If there is a conflict between a provision of this chapter and any other statutory provision, the provision of this chapter governs.

Enacted by Chapter 329, 2007 General Session

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

- (1) A person who contests an assessment or any proceeding to designate an assessment area or levy an assessment may commence a civil action against the local entity to:
 - (a) set aside a proceeding to designate an assessment area; or
 - (b) enjoin the levy or collection of an assessment.
- (2)
 - (a) Each action under Subsection (1) shall be commenced in the district court with jurisdiction in the county in which the assessment area is located.
 - (b)
 - (i) Except as provided in Subsection (2)(b)(ii), an action under Subsection (1) may not be commenced against and a summons relating to the action may not be served on the local entity more than 60 days after the effective date of the:
 - (A) designation resolution or designation ordinance, if the challenge is to the designation of an assessment area;
 - (B) assessment resolution or ordinance, if the challenge is to an assessment; or
 - (C) amended resolution or ordinance, if the challenge is to an amendment.
 - (ii) The period for commencing an action and serving a summons under Subsection (2)(b)(i) is 30 days if the designation resolution, assessment resolution, or amended resolution was:
 - (A) adopted by a development authority or a public infrastructure district created by a development authority under Title 17D, Chapter 4, Public Infrastructure District Act; and
 - (B) all owners of property within the assessment area or proposed assessment area consent in writing to the designation resolution, assessment resolution, or amended resolution.
- (3)
 - (a) An action under Subsection (1) is the exclusive remedy of a person who:
 - (i) claims an error or irregularity in an assessment or in any proceeding to designate an assessment area or levy an assessment; or
 - (ii) challenges a bondholder's right to repayment.
 - (b) A court may not hear any complaint under Subsection (1) that a person was authorized to make but did not make in a protest under Section 11-42-203 or at a hearing under Section 11-42-204.
 - (c)
 - (i) If a person has not brought a claim for which the person was previously authorized to bring but is otherwise barred from making under Subsection (2)(b), the claim may not be brought later because of an amendment to the resolution or ordinance unless the claim arises from the amendment itself.
 - (ii) In an action brought pursuant to Subsection (1), a person may not contest a previous decision, proceeding, or determination for which the service deadline described in Subsection (2)(b) has expired by challenging a subsequent decision, proceeding, or determination.
- (4) An assessment or a proceeding to designate an assessment area or to levy an assessment may not be declared invalid or set aside in part or in whole because of an error or irregularity that does not go to the equity or justice of the proceeding or the assessment meeting the requirements of Section 11-42-409.
- (5) After the expiration of the period referred to in Subsection (2)(b):
 - (a) assessment bonds and refunding assessment bonds issued or to be issued with respect to an assessment area and assessments levied on property in the assessment area become at

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

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

- (6)
 - (a) This section may not be interpreted to insulate a local entity from a claim of misuse of assessment funds after the expiration of the period described in Subsection (2)(b).
 - (b)
 - (i) Except as provided in Subsection (6)(b)(ii), an action in the nature of mandamus is the sole form of relief available to a party challenging the misuse of assessment funds.
 - (ii) The limitation in Subsection (6)(b)(i) does not prohibit the filing of criminal charges against or the prosecution of a party for the misuse of assessment funds.

Amended by Chapter 314, 2021 General Session

Amended by Chapter 415, 2021 General Session

11-42-107 Accepting donation or contribution.

A local entity may accept any donation or contribution from any source for the payment or the making of an improvement in an assessment area.

Enacted by Chapter 329, 2007 General Session

11-42-108 Utility connections before paving or repaving is done -- Failure to make connection.

- (1) The governing body may require:
 - (a) that before paving or repaving is done within an assessment area, all water, gas, sewer, and underground electric and telecommunications connections be made under the regulations and at the distances from the street mains to the line of the property abutting on the street to be paved or repaved that the local entity prescribes by resolution or ordinance; and
 - (b) the water company owning the water pipe main, the gas company owning the gas pipe main, and the electric or telecommunications company owning the underground electric or telecommunications facilities to make the connections.
- (2) Upon the failure of a water company, gas company, or electric or telecommunications company to make a required connection:
 - (a) the local entity may cause the connection to be made; and
 - (b)
 - (i) the cost that the local entity incurs in making the connection shall be deducted from the amount of any debt the local entity owes to the company; and
 - (ii) the local entity may not pay a bill from the company until all the cost has been offset as provided in Subsection (2)(b)(i).

Enacted by Chapter 329, 2007 General Session

11-42-109 Severability.

A court's invalidation of any provision of this chapter may not be considered to affect the validity of any other provision of this chapter.

Enacted by Chapter 329, 2007 General Session