

Chapter 42 Assessment Area Act

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(ii) protests that have been withdrawn under Subsection 11-42-203(3).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

**Part 2
Designating an Assessment Area**

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

- (1)
- (a) Subject to the requirements of this part, a governing body of a local entity intending to levy an assessment on property to pay some or all of the cost of providing improvements benefitting the property, performing operation and maintenance benefitting the property, or conducting economic promotion activities benefitting the property shall adopt a resolution or ordinance designating an assessment area.
 - (b) A designation resolution or designation ordinance described in Subsection (1)(a) may divide the assessment area into multiple classifications to allow the governing body to:
 - (i) levy a different level of assessment; or
 - (ii) use a different assessment method in each classification to reflect more fairly the benefits that property within the different classifications is expected to receive because of the proposed improvement, operation and maintenance, or economic promotion activities.
 - (c) The boundaries of a proposed assessment area:
 - (i) may include property that is not intended to be assessed; and
 - (ii) except for an assessment area within a public infrastructure district created under Title 17D, Chapter 4, Public Infrastructure District Act, may not be coextensive or substantially coterminous with the boundaries of the local entity.
- (2) Before adopting a designation resolution or designation ordinance described in Subsection (1)
- (a), the governing body of the local entity shall:
 - (a) give notice as provided in Section 11-42-202;
 - (b) receive and consider all protests filed under Section 11-42-203; and
 - (c) hold a public hearing as provided in Section 11-42-204.

Amended by Chapter 314, 2021 General Session

11-42-202 Requirements applicable to a notice of a proposed assessment area designation -- Notice.

- (1) Each notice required under Subsection 11-42-201(2)(a) shall:
- (a) state that the local entity proposes to:
 - (i) designate one or more areas within the local entity's jurisdictional boundaries as an assessment area;
 - (ii) provide an improvement to property within the proposed assessment area; and

- (iii) finance some or all of the cost of improvements by an assessment on benefitted property within the assessment area;
- (b) describe the proposed assessment area by any reasonable method that allows an owner of property in the proposed assessment area to determine that the owner's property is within the proposed assessment area;
- (c) describe, in a general and reasonably accurate way, the improvements to be provided to the assessment area, including:
 - (i) the nature of the improvements; and
 - (ii) the location of the improvements, by reference to streets or portions or extensions of streets or by any other means that the governing body chooses that reasonably describes the general location of the improvements;
- (d) state the estimated cost of the improvements as determined by a project engineer;
- (e) for the notice mailed under Subsection (4), state the estimated total assessment specific to the benefitted property for which the notice is mailed;
- (f) state that the local entity proposes to levy an assessment on benefitted property within the assessment area to pay some or all of the cost of the improvements according to the estimated benefits to the property from the improvements;
- (g) if applicable, state that an unassessed benefitted government property will receive improvements for which the cost will be allocated proportionately to the remaining benefitted properties within the proposed assessment area and that a description of each unassessed benefitted government property is available for public review at the location or website described in Subsection (6);
- (h) state the assessment method by which the governing body proposes to calculate the proposed assessment, including, if the local entity is a municipality or county, whether the assessment will be collected:
 - (i) by directly billing a property owner; or
 - (ii) by inclusion on a property tax notice issued in accordance with Section 59-2-1317 and in compliance with Section 11-42-401;
- (i) state:
 - (i) the date described in Section 11-42-203 and the location at which protests against designation of the proposed assessment area or of the proposed improvements are required to be filed;
 - (ii) the method by which the governing body will determine the number of protests required to defeat the designation of the proposed assessment area or acquisition or construction of the proposed improvements; and
 - (iii) in large, boldface, and conspicuous type that a property owner must protest the designation of the assessment area in writing if the owner objects to the area designation or being assessed for the proposed improvements, operation and maintenance costs, or economic promotion activities;
- (j) state the date, time, and place of the public hearing required in Section 11-42-204;
- (k) if the governing body elects to create and fund a reserve fund under Section 11-42-702, include a description of:
 - (i) how the reserve fund will be funded and replenished; and
 - (ii) how remaining money in the reserve fund is to be disbursed upon full payment of the bonds;
- (l) if the governing body intends to designate a voluntary assessment area, include a property owner consent form that:
 - (i) estimates the total assessment to be levied against the particular parcel of property;

- (ii) describes any additional benefits that the governing body expects the assessed property to receive from the improvements;
 - (iii) designates the date and time by which the fully executed consent form is required to be submitted to the governing body; and
 - (iv) if the governing body intends to enforce an assessment lien on the property in accordance with Subsection 11-42-502.1(2)(a)(ii)(C):
 - (A) appoints a trustee that satisfies the requirements described in Section 57-1-21;
 - (B) gives the trustee the power of sale;
 - (C) is binding on the property owner and all successors; and
 - (D) explains that if an assessment or an installment of an assessment is not paid when due, the local entity may sell the property owner's property to satisfy the amount due plus interest, penalties, and costs, in the manner described in Title 57, Chapter 1, Conveyances;
 - (m) if the local entity intends to levy an assessment to pay operation and maintenance costs or for economic promotion activities, include:
 - (i) a description of the operation and maintenance costs or economic promotion activities to be paid by assessments and the initial estimated annual assessment to be levied;
 - (ii) a description of how the estimated assessment will be determined;
 - (iii) a description of how and when the governing body will adjust the assessment to reflect the costs of:
 - (A) in accordance with Section 11-42-406, current economic promotion activities; or
 - (B) current operation and maintenance costs;
 - (iv) a description of the method of assessment if different from the method of assessment to be used for financing any improvement; and
 - (v) a statement of the maximum number of years over which the assessment will be levied for:
 - (A) operation and maintenance costs; or
 - (B) economic promotion activities;
 - (n) if the governing body intends to divide the proposed assessment area into classifications under Subsection 11-42-201(1)(b), include a description of the proposed classifications;
 - (o) if applicable, state the portion and value of the improvement that will be increased in size or capacity to serve property outside of the assessment area and how the increases will be financed; and
 - (p) state whether the improvements will be financed with a bond and, if so, the currently estimated interest rate and term of financing, subject to Subsection (2), for which the benefitted properties within the assessment area may be obligated.
- (2) The estimated interest rate and term of financing in Subsection (1)(p) may not be interpreted as a limitation to the actual interest rate incurred or the actual term of financing as subject to the market rate at the time of the issuance of the bond.
- (3) A notice required under Subsection 11-42-201(2)(a) may contain other information that the governing body considers to be appropriate, including:
- (a) the amount or proportion of the cost of the improvement to be paid by the local entity or from sources other than an assessment;
 - (b) the estimated total amount of each type of assessment for the various improvements to be financed according to the method of assessment that the governing body chooses; and
 - (c) provisions for any improvements described in Subsection 11-42-102(25)(a)(ii).
- (4) Each notice required under Subsection 11-42-201(2)(a) shall be published for the governing body's jurisdiction, as a class B notice under Section 63G-30-102, for at least 20 days, but not more than 35 days, before the day of the hearing required in Section 11-42-204.

- (5)
 - (a) The local entity may record the version of the notice that is published or posted in accordance with Subsection (4) with the office of the county recorder, by legal description and tax identification number as identified in county records, against the property proposed to be assessed.
 - (b) The notice recorded under Subsection (5)(a) expires and is no longer valid one year after the day on which the local entity records the notice if the local entity has failed to adopt the designation ordinance or resolution under Section 11-42-201 designating the assessment area for which the notice was recorded.
- (6) A local entity shall make available on the local entity's website, or, if no website is available, at the local entity's place of business, the address and type of use of each unassessed benefitted government property described in Subsection (1)(g).
- (7) If a governing body fails to provide actual or constructive notice under this section, the local entity may not assess a levy against a benefitted property omitted from the notice unless:
 - (a) the property owner gives written consent;
 - (b) the property owner received notice under Subsection 11-42-401(2)(a)(iii) and did not object to the levy of the assessment before the final hearing of the board of equalization; or
 - (c) the benefitted property is conveyed to a subsequent purchaser and, before the date of conveyance, the requirements of Subsections 11-42-206(3)(a)(i) and (ii), or, if applicable, Subsection 11-42-207(1)(d)(i) are met.

Amended by Chapter 435, 2023 General Session

11-42-203 Protests.

- (1) An owner of property that is proposed to be assessed and who does not want the property to be included in an assessment area may, within 60 days after the day of the hearing described in Subsection 11-42-204(1), file a written protest:
 - (a) against:
 - (i) the designation of the assessment area;
 - (ii) the inclusion of the owner's property in the proposed assessment area;
 - (iii) the proposed improvements to be acquired or constructed; or
 - (iv) if applicable, the inclusion of an unassessed benefitted government property, the benefit for which the other assessed properties will collectively pay; or
 - (b) protesting:
 - (i) whether the assessment meets the requirements of Section 11-42-409; or
 - (ii) any other aspect of the proposed designation of an assessment area.
- (2) Each protest under Subsection (1) shall:
 - (a) describe or otherwise identify the property owned by the person filing the protest; and
 - (b) include the signature of the owner of the property.
- (3) An owner may withdraw a protest at any time before the expiration of the 60-day period described in Subsection (1) by filing a written withdrawal with the governing body.
- (4) If the governing body intends to assess property within the proposed assessment area by type of improvement or classification, as described in Section 11-42-201, and the governing body has clearly noticed its intent, the governing body shall:
 - (a) in determining whether adequate protests have been filed, aggregate the protests by the type of improvement or by classification; and
 - (b) apply to and calculate for each type of improvement or classification the threshold requirements of adequate protests.

- (5) The failure of an owner of property within the proposed assessment area to file a timely written protest constitutes a waiver of any objection to:
 - (a) the designation of the assessment area;
 - (b) any improvement to be provided to property within the assessment area;
 - (c) the inclusion of the owner's property within the assessment area;
 - (d) the fact, but not amount, of benefit to the owner's property; and
 - (e) the inclusion of an unassessed benefitted government property in the assessment area.
- (6) The local entity shall post the total and percentage of the written protests it has received on the local entity's website, or, if no website is available, at the local entity's place of business at least five days before the public meeting described in Section 11-42-206.

Amended by Chapter 396, 2015 General Session

11-42-204 Hearing.

- (1) On the date and at the time and place specified in the notice under Section 11-42-202, the governing body shall hold a public hearing.
- (2)
 - (a) The governing body:
 - (i) subject to Subsection (2)(a)(ii), may continue the public hearing from time to time to a fixed future date and time; and
 - (ii) may not hold a public hearing that is a continuance less than five days before the deadline for filing protests described in Section 11-42-203.
 - (b) The continuance of a public hearing does not restart or extend the protest period described in Subsection 11-42-203(1).
- (3) At the public hearing, the governing body shall hear all:
 - (a) objections to the designation of the proposed assessment area or the improvements proposed to be provided in the assessment area;
 - (b) objections to whether the assessment will meet the requirements of Section 11-42-409;
 - (c) objections to the inclusion within the assessment area of an unassessed benefitted government property, the benefit for which the other assessed properties will collectively pay; and
 - (d) persons desiring to be heard.

Amended by Chapter 396, 2015 General Session

11-42-205 Unimproved property.

- (1)
 - (a) Before a local entity may designate an assessment area in which more than 75% of the property proposed to be assessed consists of unimproved property, and designation of the assessment area would require that the local entity issue bonds, the local entity shall obtain:
 - (i) an appraisal:
 - (A) of the unimproved property;
 - (B) from an appraiser who is a member of the Appraisal Institute;
 - (C) addressed to the local entity or a financial institution; and
 - (D) verifying that the market value of the property, after completion of the proposed improvements, is at least three times the amount of the assessments proposed to be levied against the unimproved property; or

- (ii) the most recent taxable value of the unimproved property from the assessor of the county in which the unimproved property is located, verifying that the taxable value of the property, after completion of the proposed improvements, is at least three times the amount of the assessments proposed to be levied against the unimproved property.
- (b) If the owner of the unimproved property has entered into a construction loan acceptable to the local entity to finance the facilities to be constructed or installed on the unimproved property, the market value of the unimproved property, as determined under Subsection (1)(a)(i), may include, at the local entity's option:
 - (i) the principal amount of the construction loan; or
 - (ii) the value of the unimproved property with the facilities to be financed by the construction loan, as determined by an appraisal of:
 - (A) the unimproved property; and
 - (B) the facilities proposed to be constructed.
- (2) With respect to the designation of an assessment area described in Subsection (1)(a), the local entity may require:
 - (a) financial information acceptable to the governing body with respect to the owner's ability to pay the proposed assessments;
 - (b) a financial institution's commitment securing, to the governing body's satisfaction, the owners' obligation to pay the proposed assessments; or
 - (c) a development plan, approved by a qualified, independent third party, describing the plan of development and the financial feasibility of the plan, taking into account growth trends, absorption studies, and other demographic information applicable to the unimproved property.
- (3) Information that an owner provides to a local entity under Subsection (2)(a) is not a record for purposes of Title 63G, Chapter 2, Government Records Access and Management Act.

Amended by Chapter 388, 2011 General Session

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

- (1)
 - (a) After holding a public hearing under Section 11-42-204 and within 15 days after the day that the protest period expires in accordance with Subsection 11-42-203(1), the governing body shall:
 - (i) count the written protests filed or withdrawn in accordance with Section 11-42-203 and calculate whether adequate protests have been filed; and
 - (ii) hold a public meeting to announce the protest tally and whether adequate protests have been filed.
 - (b) If adequate protests are not filed, the governing body at the public meeting may adopt a resolution or ordinance:
 - (i) abandoning the proposal to designate an assessment area; or
 - (ii) designating an assessment area as described in the notice under Section 11-42-202 or with the changes made as authorized under Subsection (1)(d).
 - (c) If adequate protests are filed, the governing body at the public meeting:
 - (i) may not adopt a resolution or ordinance designating the assessment area; and
 - (ii) may adopt a resolution or ordinance to abandon the proposal to designate the assessment area.
 - (d)

- (i) In the absence of adequate protests upon the expiration of the protest period and subject to Subsection (1)(d)(ii), the governing body may make changes to:
 - (A) an improvement proposed to be provided to the proposed assessment area; or
 - (B) the area or areas proposed to be included within the proposed assessment area.
 - (ii) A governing body may not make a change in accordance with Subsection (1)(d)(i) if the change would result in:
 - (A) a change in the nature of an improvement or reduction in the estimated amount of benefit to a benefitted property, whether in size, quality, or otherwise, than that described in the notice under Subsection 11-42-202(1)(c);
 - (B) an estimated total assessment to any benefitted property within the proposed assessment area that exceeds the estimate stated in the notice under Subsection 11-42-202(1)(e) or 11-42-202(1)(l); or
 - (C) a financing term that extends beyond the estimated term of financing described in Subsection 11-42-202(1)(p).
- (2) If the notice under Section 11-42-202 indicates that the proposed assessment area is a voluntary assessment area, the governing body shall:
- (a) delete from the proposed assessment area all property whose owners have not submitted an executed consent form consenting to inclusion of the owner's property in the proposed assessment area;
 - (b) delete all improvements that solely benefit the property whose owners did not consent; and
 - (c) determine whether to designate a voluntary assessment area, after considering:
 - (i) the extent of the improvements required to benefit property owners who consented;
 - (ii) the amount of the proposed assessment to be levied on the property within the voluntary assessment area;
 - (iii) the value of the benefits that property within the voluntary assessment area will receive from improvements proposed to be financed by assessments on the property; and
 - (iv) the extent to which the improvements may be scaled to benefit only the assessed properties.
- (3)
- (a) If the governing body adopts a designation resolution or ordinance designating an assessment area, the governing body shall, within 15 days after adopting the designation resolution or ordinance:
 - (i) record the original or certified copy of the designation resolution or ordinance in the office of the recorder of the county in which property within the assessment area is located; and
 - (ii) file with the recorder of the county in which property within the assessment area is located a notice of proposed assessment that:
 - (A) states that the local entity has designated an assessment area; and
 - (B) lists, by legal description and tax identification number as identified on county records, the property proposed to be assessed.
 - (b) If a governing body fails to comply with the requirements of Subsection (3)(a):
 - (i) the failure does not invalidate the designation of an assessment area; and
 - (ii) the local entity may not assess a levy against a subsequent purchaser of a benefitted property that lacked recorded notice unless:
 - (A) the subsequent purchaser gives written consent;
 - (B) the subsequent purchaser has actual notice of the assessment levy; or
 - (C) the subsequent purchaser purchased the property after a corrected notice was filed under Subsection (3)(c).

- (c) The governing body may file a corrected notice under Subsection (3)(a)(i) or (ii) if it failed to comply with the date or other requirements for recording notice of the designation resolution or ordinance.
 - (d) If a governing body has filed a corrected notice under Subsection (3)(c), the local entity may not retroactively collect or adjust the amount of the levy to recapture lost funds for a levy that the local entity was prohibited from collecting, if applicable, under Subsection (3)(b).
 - (e) A local entity shall pay for a shortfall in assessment funds created under Subsection (3)(b) or (d) from the local entity's general fund and not by increasing or adjusting the assessment of any other property within the assessment area.
- (4) After the adoption of a designation resolution or ordinance under Subsection (1)(b)(ii), the local entity may begin providing the specified improvements.

Amended by Chapter 396, 2015 General Session

11-42-207 Adding property to an assessment area.

- (1) A local entity may add to a designated assessment area property to be benefitted and assessed if the governing body:
- (a) finds that the inclusion of the property will not adversely affect the owners of property already in the assessment area;
 - (b) obtains from each owner of property to be added and benefitted a written consent that contains:
 - (i) the owner's consent to:
 - (A) the owner's property being added to the assessment area; and
 - (B) the making of the proposed improvements with respect to the owner's property;
 - (ii) if the assessment area to which the local entity seeks to add property is a voluntary assessment area, the items described in Subsection 11-42-202(1)(l);
 - (iii) the legal description and tax identification number of the property to be added; and
 - (iv) the owner's waiver of any right to protest the creation of the assessment area;
 - (c) amends the designation resolution or ordinance to include the added property; and
 - (d) within 15 days after amending the designation resolution or ordinance:
 - (i) records in the office of the recorder of the county in which the added property is located the original or certified copy of the amended designation resolution or ordinance containing the legal description and tax identification number as identified on county records of each additional parcel of property added to the assessment area and proposed to be assessed; and
 - (ii) gives written notice to the property owner of the inclusion of the owner's property in the assessment area.
- (2)
- (a) If a governing body fails to comply with the requirements of Subsection (1)(d)(i):
 - (i) the failure does not invalidate the amended designation resolution or ordinance; and
 - (ii) the local entity may not assess a levy against a subsequent purchaser of a benefitted property that lacked recorded notice unless:
 - (A) the subsequent purchaser gives written consent;
 - (B) the subsequent purchaser has actual notice of the assessment levy; or
 - (C) the subsequent purchaser purchased the property after a corrected notice was filed under Subsection (2)(c).

- (b) The governing body may file a corrected notice under Subsection (1)(d)(i) if it failed to comply with the date or other requirements for recording notice of the amended designation resolution or ordinance.
 - (c) If a governing body has filed a corrected notice under Subsection (2)(b), the local entity may not retroactively collect or adjust the amount of the levy to recapture lost funds for a levy that the local entity was prohibited from collecting, if applicable, under Subsection (2)(a).
 - (d) A local entity shall pay for a shortfall in assessment funds created under Subsection (2)(a) or (c) from the local entity's general fund and not by increasing or adjusting the assessment of any other property within the assessment area.
- (3) Except as provided in this section, a local entity may not add to an assessment area property not included in a notice under Section 11-42-202, or provide for making improvements that are not stated in the notice, unless the local entity gives notice as provided in Section 11-42-202 and holds a hearing as required under Section 11-42-204 as to the added property or additional improvements.

Amended by Chapter 85, 2016 General Session

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

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

Enacted by Chapter 329, 2007 General Session

Part 3
Contracts for Improvements

11-42-301 Improvements made only under contract let to lowest responsive, responsible bidder -- Publishing notice -- Sealed bids -- Procedure -- Exceptions to contract requirement.

- (1) Except as otherwise provided in this section, a local entity may make improvements in an assessment area only under contract let to the lowest responsive, responsible bidder for the kind of service, material, or form of construction that the local entity's governing body determines in compliance with any applicable local entity ordinances.
- (2) A local entity may:
 - (a) divide improvements into parts;
 - (b)
 - (i) let separate contracts for each part; or
 - (ii) combine multiple parts into the same contract; and
 - (c) let a contract on a unit basis.
- (3)
 - (a) A local entity may not let a contract until after providing notice as provided in Subsection (3)(b), as a class A notice under Section 63G-30-102, for at least 15 days before the date specified for receipt of bids.

- (b) Each notice under Subsection (3)(a) shall notify contractors that the local entity will receive sealed bids at a specified time and place for the construction of the improvements.
 - (c) Notwithstanding a local entity's failure, through inadvertence or oversight, to publish the notice or to publish the notice within 15 days before the date specified for receipt of bids, the governing body may proceed to let a contract for the improvements if the local entity receives at least three sealed and bona fide bids from contractors by the time specified for the receipt of bids.
 - (d) A local entity may publish a notice required under this Subsection (3) at the same time as a notice under Section 11-42-202.
- (4)
- (a) A local entity may accept as a sealed bid a bid that is:
 - (i) manually sealed and submitted; or
 - (ii) electronically sealed and submitted.
 - (b) The governing body or project engineer shall, at the time specified in the notice under Subsection (3), open and examine the bids.
 - (c) In open session, the governing body:
 - (i) shall declare the bids; and
 - (ii) may reject any or all bids if the governing body considers the rejection to be for the public good.
 - (d) The local entity may award the contract to the lowest responsive, responsible bidder even if the price bid by that bidder exceeds the estimated costs as determined by the project engineer.
 - (e) A local entity may in any case:
 - (i) refuse to award a contract;
 - (ii) obtain new bids after giving a new notice under Subsection (3);
 - (iii) determine to abandon the assessment area; or
 - (iv) not make some of the improvements proposed to be made.
- (5) A local entity is not required to let a contract as provided in this section for:
- (a) an improvement or part of an improvement the cost of which or the making of which is donated or contributed;
 - (b) an improvement that consists of furnishing utility service or maintaining improvements;
 - (c) labor, materials, or equipment supplied by the local entity;
 - (d) the local entity's acquisition of completed or partially completed improvements in an assessment area;
 - (e) design, engineering, and inspection costs incurred with respect to the construction of improvements in an assessment area; or
 - (f) additional work performed in accordance with the terms of a contract duly let to the lowest responsive, responsible bidder.
- (6) A local entity may itself furnish utility service and maintain improvements within an assessment area.
- (7)
- (a) A local entity may acquire completed or partially completed improvements in an assessment area, but may not pay an amount for those improvements that exceeds their fair market value.
 - (b) Upon the local entity's payment for completed or partially completed improvements, title to the improvements shall be conveyed to the local entity or another public agency.
- (8) The provisions of Title 11, Chapter 39, Building Improvements and Public Works Projects, and Section 72-6-108 do not apply to improvements to be constructed in an assessment area.

Amended by Chapter 435, 2023 General Session

11-42-302 Contracts for work in an assessment area -- Sources of payment -- Payments as work progresses.

- (1) A contract for work in an assessment area or for the purchase of property required to make an improvement in an assessment area may require the contract obligation to be paid from proceeds from the sale of assessment bonds, interim warrants, or bond anticipation notes.
- (2)
 - (a) To the extent that a contract is not paid from the sources stated in Subsection (1), the local entity shall advance funds to pay the contract obligation from other legally available money, according to the requirements of the contract.
 - (b) A local entity may reimburse itself for an amount paid from its general fund or other funds under Subsection (2)(a) from:
 - (i) the proceeds from the sale of assessment bonds, interim warrants, or bond anticipation notes; or
 - (ii) assessments or improvement revenues that are not pledged for the payment of assessment bonds, interim warrants, or bond anticipation notes.
 - (c) A local entity may not reimburse itself for costs of making an improvement that are properly chargeable to the local entity or for which an assessment may not be levied.
- (3)
 - (a) A contract for work in an assessment area may provide for payments to the contractor as the work progresses.
 - (b) If a contract provides for periodic payments:
 - (i) periodic payments may not exceed 90% of the value of the work done to the date of the payment, as determined by estimates of the project engineer; and
 - (ii) a final payment may be made only after the contractor has completed the work and the local entity has accepted the work.
 - (c) If a local entity retains money payable to a contractor as the work progresses, the local entity shall retain or withhold and release the money as provided in Section 13-8-5.

Enacted by Chapter 329, 2007 General Session

**Part 4
Assessments**

11-42-401 Levying an assessment -- Prerequisites -- Assessment list -- Partial payment allocation.

- (1)
 - (a) If a local entity has designated an assessment area in accordance with Part 2, Designating an Assessment Area, the local entity may levy an assessment against property within that assessment area as provided in this part.
 - (b) If a local entity that is a municipality or county designates an assessment area in accordance with this chapter, the municipality or county may levy an assessment and collect the assessment in accordance with Subsection 11-42-202(1)(h)(i) or (ii).
 - (c) An assessment billed by a municipality or county in the same manner as a property tax and included on a property tax notice in accordance with Subsection 11-42-202(1)(h)(ii) is

enforced in accordance with, constitutes a lien in accordance with, and is subject to other penalty provisions in accordance with this chapter.

- (d) If a local entity includes an assessment on a property tax notice, the county treasurer shall on the property tax notice:
 - (i) clearly state that the assessment is for the improvement, operation and maintenance, or economic promotion activities provided by the local entity; and
 - (ii) itemize the assessment separate from any other tax, fee, charge, interest, or penalty that is included on the property tax notice in accordance with Section 59-2-1317.
- (2) Before a governing body may adopt a resolution or ordinance levying an assessment against property within an assessment area:
 - (a) the governing body shall:
 - (i) subject to Subsection (3), prepare an assessment list designating:
 - (A) each parcel of property proposed to be assessed; and
 - (B) the amount of the assessment to be levied against the property;
 - (ii) appoint a board of equalization as provided in Section 11-42-403; and
 - (iii) give notice as provided in Section 11-42-402; and
 - (b) the board of equalization, appointed under Section 11-42-403, shall:
 - (i) hold hearings;
 - (ii) determine if the assessment for each benefitted property meets the requirements of Section 11-42-409;
 - (iii) make necessary corrections so that assessed properties are not assessed for benefits conferred exclusively outside of the assessment area;
 - (iv) make necessary corrections so that the benefitted properties are not charged for an increase in size or capacity of an improvement where the increased size or capacity is to serve property outside of the assessment area;
 - (v) make any corrections it considers appropriate to an assessment; and
 - (vi) report its findings to the governing body as provided in Section 11-42-403.
- (3)
 - (a) The governing body of a local entity shall prepare the assessment list described in Subsection (2)(a)(i) at any time after:
 - (i) the governing body has determined the estimated or actual operation and maintenance costs, if the assessment is to pay operation and maintenance costs;
 - (ii) the governing body has determined the estimated or actual economic promotion costs described in Section 11-42-206, if the assessment is to pay for economic promotion activities; or
 - (iii) for any other assessment, the governing body has determined:
 - (A) the estimated or actual acquisition and construction costs of all proposed improvements within the assessment area, including overhead costs actually incurred and authorized reasonable contingencies;
 - (B) the estimated or actual property price for all property to be acquired to provide the proposed improvements; and
 - (C) the estimated reasonable cost of any work to be performed by the local entity.
 - (b) In addition to the requirements of Subsection (3)(a), the governing body of a local entity shall prepare the assessment list described in Subsection (2)(a)(i) before:
 - (i) the light service has commenced, if the assessment is to pay for light service; or
 - (ii) the park maintenance has commenced, if the assessment is to pay for park maintenance.
- (4) A local entity may levy an assessment for some or all of the cost of improvements within an assessment area, including payment of:

- (a) operation and maintenance costs of improvements constructed within the assessment area only to the extent the improvements provide benefits to the properties within the assessment area and in accordance with Section 11-42-409;
- (b)
 - (i) if an outside entity furnishes utility services or maintains utility improvements, the actual cost that the local entity pays for utility services or for maintenance of improvements; or
 - (ii) if the local entity itself furnishes utility service or maintains improvements, for the actual costs that are reasonable, including reasonable administrative costs or reasonable costs for reimbursement of actual costs incurred by the local entity, for supplying the utility service or maintenance;
- (c) the actual costs that are reasonable to supply labor, materials, or equipment in connection with improvements; and
- (d)
 - (i) the actual costs that are reasonable for valid connection fees; or
 - (ii) the reasonable and generally applicable costs of locally provided utilities.
- (5) A local entity may not levy an assessment for an amount donated or contributed for an improvement or part of an improvement or for anything other than the costs actually and reasonably incurred by the local entity in order to provide an improvement or conduct operation and maintenance or economic promotion activities.
- (6) The validity of an otherwise valid assessment is not affected because the actual and reasonable cost of improvements exceeds the estimated cost.
- (7)
 - (a) Subject to Subsection (7)(b), an assessment levied to pay for operation and maintenance costs may not be levied over a period of time exceeding five years beginning on the day on which the local entity adopts the assessment ordinance or assessment resolution for the operation and maintenance costs assessment.
 - (b) A local entity may levy an additional assessment described in Subsection (7)(a) in the assessment area designated for the assessment described in Subsection (7)(a) if, after the five-year period expires, the local entity:
 - (i) gives notice in accordance with Section 11-42-402 of the new five-year term of the assessment; and
 - (ii) complies with the applicable levy provisions of this part.

Amended by Chapter 353, 2016 General Session

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

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

- (1) state:
 - (a) that an assessment list is completed and available for examination at the offices of the local entity;
 - (b) the total estimated or actual cost of the improvements;
 - (c) the amount of the total estimated or actual cost of the proposed improvements to be paid by the local entity;
 - (d) the amount of the assessment to be levied against benefitted property within the assessment area;
 - (e) the assessment method used to calculate the proposed assessment;
 - (f) the unit cost used to calculate the assessments shown on the assessment list, based on the assessment method used to calculate the proposed assessment; and

- (g) the dates, times, and place of the board of equalization hearings under Subsection 11-42-401(2)(b)(i); and
- (2) for at least 20, but not more than 35, days before the day on which the first hearing of the board of equalization is held, be published for the local entity's jurisdiction, as a class B notice under Section 63G-30-102.

Amended by Chapter 435, 2023 General Session

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

- (1) After preparing an assessment list under Subsection 11-42-401(2)(a)(i), the governing body shall appoint a board of equalization.
- (2) Each board of equalization under this section shall, at the option of the governing body, consist of:
 - (a) three or more members of the governing body;
 - (b)
 - (i) two members of the governing body; and
 - (ii)
 - (A) a representative of the treasurer's office of the local entity; or
 - (B) a representative of the office of the local entity's engineer or the project engineer; or
 - (c)
 - (i)
 - (A) one member of the governing body; or
 - (B) a representative of the governing body, whether or not a member of the governing body, appointed by the governing body;
 - (ii) a representative of the treasurer's office of the local entity; and
 - (iii) a representative of the office of the local entity's engineer or the project engineer.
- (3)
 - (a) The board of equalization shall hold hearings on at least three consecutive days for at least one hour per day between 9 a.m. and 9 p.m., as specified in the notice under Section 11-42-402.
 - (b) The board of equalization may continue a hearing from time to time to a specific place and a specific hour and day until the board's work is completed.
 - (c) At each hearing, the board of equalization shall hear arguments from any person who claims to be aggrieved, including arguments relating to:
 - (i) the amount of benefits accruing to a tract, block, lot, or parcel of property in the assessment area; or
 - (ii) the amount of the proposed assessment against the tract, block, lot, or parcel.
- (4)
 - (a) After the hearings under Subsection (3) are completed, the board of equalization shall:
 - (i) consider all facts and arguments presented at the hearings; and
 - (ii) make any corrections to the proposed assessment list necessary to ensure that the assessment meets the requirements of Section 11-42-409.
 - (b) A correction under Subsection (4)(a)(ii) may:
 - (i) eliminate one or more pieces of property from the assessment list; or
 - (ii) increase or decrease the amount of the assessment proposed to be levied against a parcel of property.
 - (c)

- (i) If the board of equalization makes a correction under Subsection (4)(a)(ii) that results in an increase of a proposed assessment, the board shall, before approving a corrected assessment list:
 - (A) give notice as provided in Subsection (4)(c)(ii);
 - (B) hold a hearing at which the owner whose assessment is proposed to be increased may appear and object, in person or in writing, to the proposed increase; and
 - (C) after holding a hearing, make any further corrections that the board considers necessary to make the proposed increased assessment meet the requirements of Section 11-42-409.
- (ii) Each notice required under Subsection (4)(c)(i)(A) shall:
 - (A) state:
 - (I) that the property owner's assessment is proposed to be increased;
 - (II) the amount of the proposed increased assessment;
 - (III) that a hearing will be held at which the owner may appear and object to the increase; and
 - (IV) the date, time, and place of the hearing; and
 - (B) be mailed, at least 15 days before the date of the hearing, to each owner of property as to which the assessment is proposed to be increased at the property owner's mailing address.
- (5)
 - (a) After the board of equalization has held all hearings required by this section and has made all corrections the board considers necessary to comply with Section 11-42-409, the board shall report to the governing body its findings that:
 - (i) each assessed property within the assessment area will be assessed in a manner that meets the requirements of Section 11-42-409; and
 - (ii) except as provided in Subsection 11-42-409(5), no parcel of property on the assessment list will bear more than its equitable portion of the actual costs that are reasonable of the improvements benefitting the property in accordance with Section 11-42-409.
 - (b) The board of equalization shall, within 10 days after submitting its report to the governing body, mail a copy of the board's final report to each property owner who objected at the board hearings to the assessment proposed to be levied against the property owner's property at the property owner's mailing address.
- (6)
 - (a) If a board of equalization includes members other than the governing body of the local entity, a property owner may appeal a decision of the board to the governing body by filing with the governing body a written notice of appeal within 15 days after the board's final report is mailed to property owners under Subsection (5)(b).
 - (b) Except as provided in Subsection (6)(a), no appeal may be taken from the findings of a board of equalization.
- (7) The findings of a board of equalization are final:
 - (a) when approved by the governing body, if no appeal is allowed under Subsection (6); or
 - (b) after the time for appeal under Subsection (6) is passed, if an appeal is allowed under that subsection.
- (8)
 - (a) If a governing body has levied an assessment to pay operation and maintenance costs within an assessment area, the governing body may periodically appoint a new board of equalization to review assessments for operation and maintenance costs.
 - (b) Each board of equalization appointed under Subsection (8)(a) shall comply with the requirements of Subsections (3) through (6).

- (9)
 - (a) An owner who fails to make an objection setting forth all claims, in accordance with Subsection (9)(b), to the board of equalization waives all objections, except as provided in Subsection (10), to the levy.
 - (b) An owner may set forth a claim and object to a levy by:
 - (i) appearing before the board of equalization in person or through a designated agent; or
 - (ii) submitting the objection in writing if the objection is received by the board of equalization before:
 - (A) the first hearing as described in Subsection (3)(a); or
 - (B) if applicable to the owner, a subsequent hearing described in Subsection (4)(c)(i)(B).
- (10) The provisions of Subsection (9)(a) do not prohibit an owner's objection that the governing body failed to obtain jurisdiction to order that the improvements which the assessment is intended to pay be provided to the assessment area.
- (11)
 - (a) This section may not be interpreted to insulate a local entity from a claim of misuse of assessment funds.
 - (b)
 - (i) Except as provided in Subsection (11)(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 (11)(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 396, 2015 General Session

11-42-404 Adoption of a resolution or ordinance levying an assessment -- Notice of the adoption -- Effective date of resolution or ordinance -- Notice of assessment interest.

- (1)
 - (a) After receiving a final report from a board of equalization under Subsection 11-42-403(5) or, if applicable, after the time for filing an appeal under Subsection 11-42-403(6) has passed, the governing body may adopt a resolution or ordinance levying an assessment against benefitted property within the assessment area designated in accordance with Part 2, Designating an Assessment Area.
 - (b) Except as provided in Subsection (1)(c), a local entity may not levy more than one assessment under this chapter for an assessment area designated in accordance with Part 2, Designating an Assessment Area.
 - (c) A local entity may levy more than one assessment in an assessment area designated in accordance with Part 2, Designating an Assessment Area, if:
 - (i) the local entity has adopted a designation resolution or designation ordinance for each assessment in accordance with Section 11-42-201; and
 - (ii) the assessment is levied to pay:
 - (A) subject to Section 11-42-401, operation and maintenance costs;
 - (B) subject to Section 11-42-406, the costs of economic promotion activities; or
 - (C) the costs of environmental remediation activities.
 - (d) An assessment resolution or ordinance adopted under Subsection (1)(a):
 - (i) need not describe each tract, block, lot, part of block or lot, or parcel of property to be assessed;
 - (ii) need not include the legal description or tax identification number of the parcels of property assessed in the assessment area; and

- (iii) is adequate for purposes of identifying the property to be assessed within the assessment area if the assessment resolution or ordinance incorporates by reference the corrected assessment list that describes the property assessed by legal description and tax identification number.
- (2)
 - (a) A local entity that adopts an assessment resolution or ordinance shall give notice of the adoption for the local entity's jurisdiction, as a class A notice under Section 63G-30-102, for at least 21 days.
 - (b) No other publication or posting of the resolution or ordinance is required.
- (3) Notwithstanding any other statutory provision regarding the effective date of a resolution or ordinance, each assessment resolution or ordinance takes effect:
 - (a) on the date of publication or posting of the notice under Subsection (2); or
 - (b) at a later date provided in the resolution or ordinance.
- (4)
 - (a) The governing body of each local entity that has adopted an assessment resolution or ordinance under Subsection (1) shall, within five days after the day on which the 25-day prepayment period under Subsection 11-42-411(6) has passed, file a notice of assessment interest with the recorder of the county in which the assessed property is located.
 - (b) Each notice of assessment interest under Subsection (4)(a) shall:
 - (i) state that the local entity has an assessment interest in the assessed property;
 - (ii) if the assessment is to pay operation and maintenance costs or for economic promotion activities, state the maximum number of years over which an assessment will be payable; and
 - (iii) describe the property assessed by legal description and tax identification number.
 - (c) A local entity's failure to file a notice of assessment interest under this Subsection (4) has no affect on the validity of an assessment levied under an assessment resolution or ordinance adopted under Subsection (1).

Amended by Chapter 435, 2023 General Session

11-42-405 Limit on amount of assessment -- Costs required to be paid by the local entity.

- (1) An assessment levied within an assessment area may not, in the aggregate, exceed the sum of:
 - (a) the contract price or estimated contract price;
 - (b) the acquisition price of improvements;
 - (c) the reasonable cost of:
 - (i)
 - (A) utility services, maintenance, and operation, to the extent permitted by Subsection 11-42-401(4); and
 - (B) labor, materials, or equipment supplied by the local entity;
 - (ii) economic promotion activities; or
 - (iii) operation and maintenance costs;
 - (d) the price or estimated price of purchasing property;
 - (e) any connection fees;
 - (f) estimated interest on interim warrants and bond anticipation notes issued with respect to an assessment area;
 - (g) the capitalized interest on each assessment bond;
 - (h) overhead costs not to exceed 15% of the sum of Subsections (1)(a), (b), (c), and (e);

- (i) an amount for contingencies of not more than 10% of the sum of Subsections (1)(a) and (c), if the assessment is levied before construction of the improvements in the assessment area is completed;
 - (j) an amount sufficient to fund a reserve fund, if the governing body creates and funds a reserve fund as provided in Section 11-42-702;
 - (k) 1/2 the cost of grading changes as provided in Section 11-42-407; and
 - (l) incidental costs incurred by a property owner in order to satisfy the local entity's requirements for inclusion in a voluntary assessment area, if applicable.
- (2) Each local entity providing an improvement in an assessment area shall pay, from improvement revenues not pledged to the payment of bonds and from any other legally available money:
- (a) overhead costs for which an assessment cannot be levied;
 - (b) the costs of providing an improvement for which an assessment was not levied, if the assessment is levied before construction of the improvement in the assessment area is completed; and
 - (c) the acquisition and constructions costs of an improvement for the benefit of property against which an assessment may not be levied.

Amended by Chapter 246, 2013 General Session

11-42-406 Assessment for economic promotion activities -- Duration -- Reporting.

- (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) subject to Subsection (1)(a)(ii), 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) except as provided in Subsection (1)(b), may not levy the assessment for a period longer than five years.
 - (b) A governing body may levy additional assessments to pay for economic promotion activities after the five-year period described in Subsection (1)(a)(ii) if the governing body:
 - (i) designates a new assessment area in accordance with Part 2, Designating an Assessment Area;
 - (ii) adopts a new assessment resolution or ordinance in accordance with Section 11-42-404;
 - (iii) limits each additional assessment to a five-year period; and
 - (iv) complies with Subsections (1)(b)(i) through (iii) for each additional assessment.
- (2) If a local entity designates an assessment area for economic promotion activities, the local entity:
- (a) shall spend on economic promotion activities at least 70% of the money generated from an assessment levied in the assessment area and from improvement revenues;
 - (b) may not spend more than 30% of the money generated from the assessment levied in the assessment area and from improvement revenues on administrative costs, including salaries, benefits, rent, travel, and costs incidental to publications; and
 - (c) in accordance with Subsection (3), shall publish a detailed report including the following:
 - (i) an account of money deposited into the assessment fund described in Section 11-42-412;
 - (ii) an account of expenditures from the fund described in Section 11-42-412; and
 - (iii) a detailed account of whether each expenditure described in Subsection (2)(c)(ii) was made for economic promotion activities described in Subsection (2)(a) or for administrative costs described in Subsection (2)(b).

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

(a) on:

- (i) if available, the local entity's public web site; and
- (ii) if the local entity is not a county or municipality, on the public web site of any county or municipality in which the local entity has jurisdiction;

(b)

- (i) within one year after the day on which the local entity adopts a new assessment resolution or ordinance for economic promotion activities; and
- (ii) each subsequent year that the economic promotion activities levy is assessed by updating the information described in Subsection (2)(c); and

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

Amended by Chapter 396, 2015 General Session

11-42-407 Improvements that change the grade of an existing street, alley, or sidewalk -- Improvements that improve an intersection or spaces opposite an alley.

- (1) If an improvement in an assessment area involves changing the grade of an existing street, alley, or sidewalk, the local entity shall pay half of the cost of bringing the street, alley, or sidewalk to the established grade.
- (2) If an improvement in an assessment area improves an intersection of streets or spaces opposite an alley, the local entity may levy an assessment against the other properties to be assessed in the assessment area for the cost of the improvement.

Enacted by Chapter 329, 2007 General Session

11-42-408 Assessment against government land prohibited -- Exception.

- (1)
 - (a) Except as provided in Subsection (2), a local entity may not levy an assessment against property owned by the federal government or a public agency, even if the property benefits from the improvement.
 - (b) Notwithstanding Subsection (1)(a), a public agency may contract with a local entity:
 - (i) for the local entity to provide an improvement to property owned by the public agency; and
 - (ii) to pay for the improvement provided by the local entity.
 - (c) Nothing in this section may be construed to prevent a local entity from imposing on and collecting from a public agency, or a public agency from paying, a reasonable charge for a service rendered or material supplied by the local entity to the public agency, including a charge for water, sewer, or lighting service.
- (2) Notwithstanding Subsection (1):
 - (a) a local entity may continue to levy and enforce an assessment against property acquired by a public agency within an assessment area if the acquisition occurred after the assessment area was designated; and
 - (b) property that is subject to an assessment lien at the time it is acquired by a public agency continues to be subject to the lien and to enforcement of the lien if the assessment and interest on the assessment are not paid when due.

Amended by Chapter 470, 2017 General Session

11-42-409 Assessment requirements and prohibitions -- Economic promotion activities assessment requirements and prohibitions -- Allocation for unassessed benefitted government property.

- (1)
 - (a) Each local entity that levies an assessment under this chapter:
 - (i) except for an appropriate allocation for an unassessed benefitted government property, may not assess a property for more than the amount that the property benefits by the improvement, operation and maintenance, or economic promotion activities;
 - (ii) may levy an assessment only for the actual costs that are reasonable; and
 - (iii) shall levy an assessment on a benefitted property in an amount that reflects an equitable portion, subject to Subsection (1)(b), of the benefit the property will receive from an improvement, operation and maintenance, or economic promotion activities for which the assessment is levied.
 - (b) The local entity, in accounting for a property's benefit or portion of a benefit received from an improvement, operation and maintenance, or economic promotion activities, shall consider:
 - (i) any benefit that can be directly identified with the property; and
 - (ii) the property's roughly equivalent portion of the benefit that is collectively shared by all the assessed properties in the entire assessment area or classification.
 - (c) The validity of an otherwise valid assessment is not affected by the fact that the benefit to the property from the improvement does not increase the fair market value of the property.
- (2) Subject to Subsection (4), the assessment method a governing body uses to calculate an assessment may be according to frontage, area, taxable value, fair market value, lot, parcel, number of connections, equivalent residential unit, or any combination of these methods, or any other method as the governing body considers appropriate to comply with Subsections (1)(a) and (b).
- (3) A local entity that levies an assessment under this chapter for an improvement:
 - (a) shall:
 - (i)
 - (A) levy the assessment on each block, lot, tract, or parcel of property that benefits from the improvement; and
 - (B) to whatever depth, including full depth, on the parcel of property that the governing body determines but that still complies with Subsections (1)(a) and (b);
 - (ii) make an allowance for each corner lot receiving the same improvement on both sides so that the property is not assessed at the full rate on both sides; and
 - (iii) pay for any increase in size or capacity that serves property outside of the assessment area with funds other than those levied by an assessment;
 - (b) may:
 - (i) use different methods for different improvements in an assessment area;
 - (ii) assess different amounts in different classifications, even when using the same method, if acquisition or construction costs differ from classification to classification;
 - (iii) allocate a corner lot allowance under Subsection (3)(a)(ii) to all other benefitted property within the assessment area by increasing the assessment levied against the other assessed property in the same proportion as the improvement is assessed;
 - (iv) to comply with Subsection (1)(a), levy an assessment within classifications; and
 - (v) assess property to replace improvements that are approaching or have exceeded their useful life or to increase the level of service of an existing improvement; and
 - (c) may not:

- (i) consider the costs of the additional size or capacity of an improvement that will be increased in size or capacity to serve property outside of the assessment area when calculating an assessment or determining an assessment method; or
 - (ii) except for in a voluntary assessment area or as provided in Subsection (3)(b)(v), assess a property for an improvement that would duplicate or provide a reasonably similar service that is already provided to the property.
- (4) A local entity that levies an assessment under this chapter for economic promotion activities:
- (a) shall:
 - (i) subject to Section 11-42-408, levy the assessment on each benefitted property; and
 - (ii) subject to Subsection (4)(d), use an assessment method that, when applied to a benefitted property, meets the requirements of Subsection (1)(a);
 - (b) may:
 - (i) levy an assessment only on commercial or industrial real property; and
 - (ii) create classifications based on property use, or other distinguishing factors, to determine the estimated benefit to the assessed property;
 - (c) subject to Subsection (4)(d), may rely on, in addition to the assessment methods described in Subsection (2), estimated benefits from an increase in:
 - (i) office lease rates;
 - (ii) retail sales rates;
 - (iii) customer base;
 - (iv) public perception;
 - (v) hotel room rates and occupancy levels;
 - (vi) property values;
 - (vii) the commercial environment from enhanced services;
 - (viii) another articulable method of estimating benefits; or
 - (ix) a combination of the methods described in Subsections (4)(c)(i) through (viii); and
 - (d) may not use taxable value, fair market value, or any other assessment method based on the value of the property as the sole assessment method.
- (5) A local entity may levy an assessment that would otherwise violate a provision of this chapter if the owners of all property to be assessed voluntarily enter into a written agreement with the local entity consenting to the assessment.
- (6) A local entity may allocate the cost of a benefit received by an unassessed benefitted government property to all other benefitted property within the assessment area by increasing the assessment levied against the other assessed property in the same proportion as the improvement, operation and maintenance, or economic promotion activities are assessed.

Amended by Chapter 127, 2017 General Session

11-42-410 Amending an assessment resolution or ordinance.

- (1) A governing body may adopt a resolution or ordinance amending the original assessment resolution or ordinance adopted under Section 11-42-404 to:
- (a) correct a deficiency, omission, error, or mistake:
 - (i) with respect to:
 - (A) the total cost of an improvement;
 - (B) operation and maintenance costs; or
 - (C) the cost of economic promotion activities; or
 - (ii) that results in a tract, lot, block, or parcel not being fully assessed or assessed in an incorrect amount;

- (b) reallocate or adjust assessments under the original assessment resolution or ordinance for operation and maintenance costs or the costs of economic promotion activities;
 - (c) reallocate or adjust assessments under the original assessment resolution or ordinance; or
 - (d) reduce an assessment as a result of the issuance of refunding bonds.
- (2) If an amendment under Subsection (1)(a) or (c) results in an increase in an assessment for any property owner, the governing body shall comply with the notice requirements of Section 11-42-402, unless the owner waives notice as provided in Section 11-42-104.

Amended by Chapter 246, 2009 General Session

11-42-411 Installment payment of assessments.

- (1)
- (a) In an assessment resolution or ordinance, the governing body may, subject to Subsection (1)(b), provide that some or all of the assessment be paid in installments over a period:
 - (i) not to exceed 20 years from the effective date of the resolution or ordinance, except as provided in Subsection (1)(a)(ii); or
 - (ii) not to exceed 30 years from the effective date of the resolution, for a resolution adopted by:
 - (A) a development authority; or
 - (B) a public infrastructure district created by a development authority under Title 17D, Chapter 4, Public Infrastructure District Act.
 - (b) If an assessment resolution or ordinance provides that some or all of the assessment be paid in installments for a period exceeding 10 years from the effective date of the resolution or ordinance, the governing body:
 - (i) shall make a determination that:
 - (A) the improvement for which the assessment is made has a reasonable useful life for the full period during which installments are to be paid; or
 - (B) it would be in the best interests of the local entity and the property owners for installments to be paid for more than 10 years; and
 - (ii) may provide in the resolution or ordinance that no assessment is payable during some or all of the period ending three years after the effective date of the resolution or ordinance.
- (2) An assessment resolution or ordinance that provides for the assessment to be paid in installments may provide that the unpaid balance be paid over the period of time that installments are payable:
- (a) in substantially equal installments of principal; or
 - (b) in substantially equal installments of principal and interest.
- (3)
- (a) Each assessment resolution or ordinance that provides for the assessment to be paid in installments shall, subject to Subsections (3)(b) and (c), provide that the unpaid balance of the assessment bear interest at a fixed rate, variable rate, or a combination of fixed and variable rates, as determined by the governing body, from the effective date of the resolution or ordinance or another date specified in the resolution or ordinance.
 - (b) If the assessment is for operation and maintenance costs or for the costs of economic promotion activities:
 - (i) a local entity may charge interest only from the date each installment is due; and
 - (ii) the first installment of an assessment shall be due 15 days after the effective date of the assessment resolution or ordinance.
 - (c) If an assessment resolution or ordinance provides for the unpaid balance of the assessment to bear interest at a variable rate, the assessment resolution or ordinance shall specify:

- (i) the basis upon which the rate is to be determined from time to time;
 - (ii) the manner in which and schedule upon which the rate is to be adjusted; and
 - (iii) a maximum rate that the assessment may bear.
- (4) Interest payable on assessments may include:
- (a) interest on assessment bonds;
 - (b) ongoing local entity costs incurred for administration of the assessment area; and
 - (c) any costs incurred with respect to:
 - (i) securing a letter of credit or other instrument to secure payment or repurchase of bonds; or
 - (ii) retaining a marketing agent or an indexing agent.
- (5) Interest imposed in an assessment resolution or ordinance shall be paid in addition to the amount of each installment annually or at more frequent intervals as provided in the assessment resolution or ordinance.
- (6)
- (a) Except for an assessment for operation and maintenance costs or for the costs of economic promotion activities, a property owner may pay some or all of the entire assessment without interest if paid within 25 days after the assessment resolution or ordinance takes effect.
 - (b) After the 25-day period stated in Subsection (6)(a), a property owner may at any time prepay some or all of the assessment levied against the owner's property.
 - (c) A local entity may require a prepayment of an installment to include:
 - (i) an amount equal to the interest that would accrue on the assessment to the next date on which interest is payable on bonds issued in anticipation of the collection of the assessment; and
 - (ii) the amount necessary, in the governing body's opinion or the opinion of the officer designated by the governing body, to assure the availability of money to pay:
 - (A) interest that becomes due and payable on those bonds; and
 - (B) any premiums that become payable on bonds that are called in order to use the money from the prepaid assessment installment.

Amended by Chapter 314, 2021 General Session

Amended by Chapter 415, 2021 General Session

11-42-412 Assessment fund -- Uses of money in the fund -- Treasurer's duties with respect to the fund.

- (1) The governing body of each local entity that levies an assessment under this part on benefitted property within an assessment area shall establish an assessment fund.
- (2) The governing body shall:
- (a) deposit into the assessment fund all money paid to the local entity from assessments and interest on assessments; and
 - (b) deposit into a separate account in the assessment fund all money paid to the local entity from improvement revenues.
- (3) Money in an assessment fund may be expended only for paying:
- (a) the local entity's costs and expenses of making, operating, and maintaining improvements to the extent permitted under Section 11-42-415;
 - (b) operation and maintenance costs;
 - (c) economic promotion activities;
 - (d) local entity obligations; and
 - (e) costs that the local entity incurs with respect to:
 - (i) administration of the assessment area; or

- (ii) obtaining a letter of credit or other instrument or fund to secure the payment of assessment bonds.
- (4) The treasurer of the local entity:
 - (a) shall:
 - (i) subject to Subsection (4)(b)(i), be the custodian of the assessment fund;
 - (ii) keep the assessment fund intact and separate from all other local entity funds and money;
 - (iii) invest money in an assessment fund by following the procedures and requirements of Title 51, Chapter 7, State Money Management Act; and
 - (iv) keep on deposit in the assessment fund any interest received from the investment of money in the assessment fund and use the interest exclusively for the purposes for which the assessment fund was established; and
 - (b) may:
 - (i) arrange for the assessment fund to be held by a trustee bank on behalf of the local entity; and
 - (ii) pay money out of the assessment fund only for the purposes listed in Subsection (3).
- (5) When all local entity obligations have been paid or legally considered paid in full, the treasurer of the local entity shall transfer all money remaining in the assessment fund as provided in Section 11-42-414.

Enacted by Chapter 329, 2007 General Session

11-42-413 Surplus assessments -- Payment of bonds -- Rebate of assessment if improvements abandoned.

- (1) As used in this section:
 - (a) "Current owner" means the owner of property at the time a rebate under this section is paid.
 - (b) "Last-known address" means the last address of an owner of property within an assessment area according to the last completed real property assessment roll of the county in which the property is located.
 - (c) "Net assessment" means the amount of an assessment after subtracting:
 - (i) the amount required to pay for any improvements that have been made prior to their being abandoned; and
 - (ii) any damages or costs related to an abandonment of improvements.
- (2)
 - (a) If the total cost of completed and accepted improvements is less than the total amount of assessments levied for those improvements, the local entity shall place the surplus in the assessment fund.
 - (b) If a local entity issues assessment bonds before a surplus under Subsection (2)(a) is determined, the local entity shall hold the surplus in the assessment fund and use the surplus for the payment of the bonds, interest, and any penalties and costs.
- (3) If a local entity abandons improvements in an assessment area before the improvements have been started or, if started, before they have been completed and accepted but after an assessment has been levied, the local entity shall rebate the net assessment to the current owner.

Enacted by Chapter 329, 2007 General Session

11-42-414 Remaining interest and other money in assessment fund to be transferred to the guaranty fund or the local entity's general fund.

The treasurer of each local entity that collects interest from the investment of an assessment fund or that receives penalties, costs, and other amounts for the benefit and credit of an assessment that remain after all local entity obligations are paid in full and cancelled shall transfer the remaining amount to:

- (1) the guaranty fund, if required by bond covenants; or
- (2) the local entity's general fund.

Enacted by Chapter 329, 2007 General Session

11-42-415 Pledge and use of improvement revenues -- Reducing installment payments -- Notice -- Overpayment of installment.

- (1) A local entity may, by resolution adopted by the governing body, provide for the pledge and use of any improvement revenues to pay:
 - (a) some or all of the costs and expenses of making, operating, and maintaining improvements, to the extent permitted under this chapter; and
 - (b) some or all of the principal of and interest on assessment bonds, interim warrants, and bond anticipation notes issued against the assessment area to make improvements within the assessment area.
- (2)
 - (a) If the governing body adopts a resolution under Subsection (1), the local entity:
 - (i) may:
 - (A) provide for assessments to be levied in the full amount of the estimated cost of the improvements, as determined by a project engineer;
 - (B) agree to use installment payments from assessments to pay the costs of the improvements and to pay principal of and interest on any assessment bonds, interim warrants, and bond anticipation notes when due; and
 - (C) reduce installment payments, as provided in Subsection (2)(a)(ii), if the local entity receives net improvement revenues and pledges them to pay operation and maintenance costs of the improvements and to pay principal of and interest on assessment bonds, interim warrants, or bond anticipation notes; and
 - (ii) shall authorize a local entity official to:
 - (A) determine on each installment payment date the amount of net improvement revenues that the local entity has received since the last installment payment date; and
 - (B) reduce the amount of the installment payment due on the next succeeding installment payment date by an amount that is no greater than the amount of the net improvement revenues described in Subsection (2)(a)(ii)(A).
 - (b) A local entity may not reduce installment payments under Subsection (2)(a)(ii) if:
 - (i) the reduction exceeds the amount of net improvement revenues that have been pledged to pay:
 - (A) operation and maintenance costs of the improvements; and
 - (B) principal of and interest on assessment bonds, interim warrants, and bond anticipation notes; or
 - (ii) after the reduction, the sum of the assessment installment payments and the net improvement revenues are insufficient to pay:
 - (A) operation and maintenance costs of the improvements; and
 - (B) principal of and interest on assessment bonds, interim warrants, and bond anticipation notes.

- (c) 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.
 - (d) A reduction under Subsection (2)(a)(ii) does not apply to an assessment or interest on an assessment that has been paid.
- (3)
- (a) Not more than 14 days after making a determination under Subsection (2)(a)(ii) to reduce an installment payment, the local entity's governing body shall mail notice of the reduction to each owner of property within the assessment area at the property owner's mailing address.
 - (b) The governing body may include the notice required under Subsection (3)(a) with or in any other notice regarding the payment of assessments and interest on assessments that the governing body sends to owners.
- (4)
- (a) If an owner of assessed property pays more than the amount of the reduced installment payment on the installment payment date after a notice under Subsection (3) is mailed, the local entity may, by following the procedure under Subsection (3), provide additional notice to the owner that:
 - (i) the owner has overpaid the assessment installment payment; and
 - (ii) the local entity will:
 - (A) credit the amount of the overpayment against the next installment payment due; or
 - (B) if no further installment payment is due, refund the amount of the overpayment upon receipt of a written refund request from the owner.
 - (b) If a local entity receives an overpayment of an installment payment, it shall:
 - (i) credit the amount of the overpayment against the next installment payment due; or
 - (ii) refund the amount of the overpayment to the owner if:
 - (A) no further installment payment is due; and
 - (B) the owner submits a written request for a refund.
 - (c) A local entity is not required to pay interest on an overpayment that it holds.

Enacted by Chapter 329, 2007 General Session

11-42-416 Validation of prior assessment proceedings.

- (1) Subject to Subsection (2), all proceedings taken before April 30, 2007 related to the levy of assessments are validated, ratified, and confirmed, and the assessments are declared to be legal and valid assessments.
 - (2) Nothing in this section may be construed to affect the validity of an assessment whose legality is being contested on April 30, 2007.
- (3)
- (a) This chapter applies to all assessments levied after April 30, 2007, even though proceedings were taken before that date under provisions of the law then in effect but repealed or modified on or after that date.
 - (b) Proceedings taken as described in Subsection (3)(a) under the law in effect before April 30, 2007 are validated, ratified, and confirmed, except to the extent that those proceedings are the subject of an action pending on April 30, 2007 challenging the proceedings.

Enacted by Chapter 329, 2007 General Session

Part 5 Assessment Liens

11-42-501 Assessment constitutes a lien -- Characteristics of an assessment lien.

- (1) If the governing body of the local entity that adopts an assessment resolution or ordinance records the assessment resolution or ordinance and the notice of proposed assessment, in accordance with Section 11-42-206, in the office of the recorder of the county in which the assessed property is located, each assessment levied under this chapter, including any installment of an assessment, interest, and any penalties and costs of collection, constitutes a political subdivision lien, as that term is defined in Section 11-60-102, against the property assessed, in accordance with Title 11, Chapter 60, Political Subdivision Lien Authority, and subject to the provisions of this chapter, as of the effective date of the assessment resolution or ordinance.
- (2) A lien under this section:
 - (a) is superior to the lien of a trust deed, mortgage, mechanic's or materialman's lien, or other encumbrances;
 - (b) has the same priority as, but is separate and distinct from, a lien for general property taxes;
 - (c) applies without interruption, change in priority, or alteration in any manner to any reduced payment obligations; and
 - (d) continues until the assessments, reduced payment obligations, and any interest, penalties, and costs are paid, despite:
 - (i) a sale of the property for or on account of a delinquent general property tax, special tax, or other assessment; or
 - (ii) the issuance of a tax deed, an assignment of interest by the county, or a sheriff's certificate of sale or deed.

Amended by Chapter 197, 2018 General Session

11-42-502 Enforcement of an assessment lien -- Pre-May 10, 2016, procedure.

- (1) The provisions of this section apply to any property that is:
 - (a)
 - (i) located within the boundaries of an assessment area; and
 - (ii) the subject of a foreclosure procedure initiated before May 10, 2016, for an assessment or an installment of an assessment that is not paid when due; or
 - (b) located within the boundaries of an assessment area for which the local entity issued an assessment bond or a refunding assessment bond:
 - (i) before May 10, 2016;
 - (ii) that has not reached final maturity; and
 - (iii) that is not refinanced on or after May 10, 2016.
- (2)
 - (a) If an assessment or an installment of an assessment is not paid when due in a given year:
 - (i) subject to Subsection (2)(b):
 - (A) by September 15, the governing body of the local entity that levies the assessment shall certify any unpaid amount calculated as of the date of certification to the treasurer of the county in which the assessed property is located; and
 - (B) the county treasurer shall include the certified amount on the property tax notice required by Section 59-2-1317 for that year; and

- (ii) the local entity may sell the property on which the assessment has been levied for the amount due plus interest, penalties, and costs, in the manner provided:
 - (A) by resolution or ordinance of the local entity;
 - (B) in Title 59, Chapter 2, Part 13, Collection of Taxes, for the sale of property for delinquent general property taxes; or
 - (C) in Title 57, Chapter 1, Conveyances, as though the property were the subject of a trust deed in favor of the local entity.
- (b)
 - (i) The certification of the unpaid amount described in Subsection (2)(a)(i):
 - (A) has no effect on the amount due plus interest, penalties, and costs or other requirements of the assessment as described in the assessment resolution or ordinance; and
 - (B) is required to provide for the ability of the local entity to collect the delinquent assessment by the sale of property in a sale for delinquent general property taxes and tax notice charges, as that term is defined in Section 59-2-1301.5, in accordance with Title 59, Chapter 2, Part 13, Collection of Taxes.
 - (ii) A local entity's failure to certify an amount in accordance with Subsection (2)(a)(i) or a county treasurer's failure to include the certified amount on the property tax notice is not a defense to and does not delay, prohibit, or diminish a local entity's lien rights or authority to pursue any enforcement remedy, other than a delay in the local entity's ability to collect the delinquent assessment as described in Subsection (2)(b)(i)(B).
- (c) Nothing in Subsection (2)(a)(i) or in Title 11, Chapter 60, Political Subdivision Lien Authority, prohibits or diminishes a local entity's authority to pursue any remedy in Subsection (2)(a)(ii).
- (3) Except as otherwise provided in this chapter, each tax sale under Subsection (2)(a)(ii)(B) shall be governed by Title 59, Chapter 2, Part 13, Collection of Taxes, to the same extent as if the sale were for the sale of property for delinquent general property taxes.
- (4)
 - (a) In a foreclosure under Subsection (2)(a)(ii)(C):
 - (i) the local entity may bid at the sale;
 - (ii) the local entity's governing body shall designate a trustee satisfying the requirements of Section 57-1-21;
 - (iii) each trustee designated under Subsection (4)(a)(ii) has a power of sale with respect to the property that is the subject of the delinquent assessment lien;
 - (iv) the property that is the subject of the delinquent assessment lien is considered to have been conveyed to the trustee, in trust, for the sole purpose of permitting the trustee to exercise the trustee's power of sale under Subsection (4)(a)(iii);
 - (v) if no one bids at the sale and pays the local entity the amount due on the assessment, plus interest and costs, the property is considered sold to the local entity for those amounts; and
 - (vi) the local entity's chief financial officer may substitute and appoint one or more successor trustees, as provided in Section 57-1-22.
 - (b) The designation of a trustee under Subsection (4)(a)(ii) shall be disclosed in the notice of default that the trustee gives to commence the foreclosure, and need not be stated in a separate instrument.
- (5)
 - (a) The redemption of property that is the subject of a tax sale under Subsection (2)(a)(ii)(B) is governed by Title 59, Chapter 2, Part 13, Collection of Taxes.
 - (b) The redemption of property that is the subject of a foreclosure proceeding under Subsection (2)(a)(ii)(C) is governed by Title 57, Chapter 1, Conveyances.
- (6)

- (a) The remedies described in this part for the collection of an assessment and the enforcement of an assessment lien are cumulative.
- (b) The use of one or more of the remedies described in this part does not deprive the local entity of any other available remedy or means of collecting the assessment or enforcing the assessment lien.

Amended by Chapter 197, 2018 General Session

11-42-502.1 Enforcement of an assessment lien -- Post-May 10, 2016, procedure.

- (1)
 - (a) Except as provided in Subsection (1)(b), the provisions of this section apply to any property that is:
 - (i) located within the boundaries of an assessment area; and
 - (ii) the subject of a foreclosure procedure initiated on or after May 10, 2016, for an assessment or an installment of an assessment that is not paid when due.
 - (b) The provisions of this chapter do not apply to property described in Subsection 11-42-502(1)(b).
- (2)
 - (a) If an assessment or an installment of an assessment is not paid when due in a given year:
 - (i) subject to Subsection (2)(b):
 - (A) by September 15, the governing body of the local entity that levies the assessment shall certify any unpaid amount calculated as of the date of the certification to the treasurer of the county in which the assessed property is located; and
 - (B) the county treasurer shall include the certified amount on the property tax notice required by Section 59-2-1317 for that year; and
 - (ii) the local entity may sell the property on which the assessment has been levied for the amount due plus interest, penalties, and costs:
 - (A) in the manner provided in Title 59, Chapter 2, Part 13, Collection of Taxes, for the sale of property for delinquent general property taxes;
 - (B) by judicial foreclosure; or
 - (C) in the manner described in Title 57, Chapter 1, Conveyances, if the property is in a voluntary assessment area and the owner of record of the property executed a property owner's consent form described in Subsection 11-42-202(1)(l) that includes a provision described in Subsection 11-42-202(1)(l)(iv).
 - (b)
 - (i) The certification of the unpaid amount described in Subsection (2)(a)(i):
 - (A) has no effect on the amount due plus interest, penalties, and costs or other requirements of the assessment as described in the assessment resolution or ordinance; and
 - (B) is required to provide for the ability of the local entity to collect the delinquent assessment by the sale of property in a sale for delinquent general property taxes and tax notice charges, as that term is defined in Section 59-2-1301.5, in accordance with Title 59, Chapter 2, Part 13, Collection of Taxes.
 - (ii) A local entity's failure to certify an amount in accordance with Subsection (2)(a)(i) or a county treasurer's failure to include the certified amount on the property tax notice is not a defense to and does not delay, prohibit, or diminish a local entity's lien rights or authority to pursue any enforcement remedy, other than a delay in the local entity's ability to collect the delinquent assessment as described in Subsection (2)(b)(i)(B).

- (c) Nothing in Subsection (2)(a)(i) or in Title 11, Chapter 60, Political Subdivision Lien Authority, prohibits or diminishes a local entity's authority to pursue any remedy in Subsection (2)(a)(ii).
- (3) Except as otherwise provided in this chapter, each tax sale under Subsection (2)(a)(ii)(A) shall be governed by Title 59, Chapter 2, Part 13, Collection of Taxes, to the same extent as if the sale were for the sale of property for delinquent general property taxes.
- (4)
 - (a) The redemption of property that is the subject of a tax sale under Subsection (2)(a)(ii)(A) is governed by Title 59, Chapter 2, Part 13, Collection of Taxes.
 - (b) The redemption of property that is the subject of a judicial foreclosure proceeding under Subsection (2)(a)(ii)(B) is governed by Title 78B, Chapter 6, Part 9, Mortgage Foreclosure.
 - (c) The redemption of property that is the subject of a foreclosure proceeding under Subsection (2)(a)(ii)(C) is governed by Title 57, Chapter 1, Conveyances.
- (5)
 - (a) The remedies described in this part for the collection of an assessment and the enforcement of an assessment lien are cumulative.
 - (b) The use of one or more of the remedies described in this part does not deprive the local entity of any other available remedy or means of collecting the assessment or enforcing the assessment lien.

Amended by Chapter 282, 2020 General Session

**11-42-503 Local entity payments to avoid a default in local entity obligations --
Reimbursement of payments when property sold at tax or foreclosure sale.**

- (1) To avoid a default in the payment of outstanding local entity obligations, a local entity may pay:
 - (a) the delinquent amount due, plus interest, penalties, and costs;
 - (b) the amounts described in Subsection (1)(a) and the full balance of an assessment, if accelerated; or
 - (c) any part of an assessment or an installment of an assessment that becomes due during the redemption period.
- (2) A local entity may:
 - (a) pay the amounts under Subsection (1) from a guaranty fund or a reserve fund, or from any money legally available to the local entity; and
 - (b) charge the amounts paid against the delinquent property.
- (3)
 - (a) Upon the tax sale or foreclosure of the property charged as provided in Subsection (2):
 - (i) all amounts that the local entity paid shall be included in the sale price of the property recovered in the sale; and
 - (ii) the local entity's guaranty fund, reserve fund, or other source of money paid under Subsection (2)(a), as the case may be, shall be reimbursed for those amounts.
 - (b) If the property charged as provided in Subsection (2) is sold to the local entity at the tax sale or foreclosure and additional assessment installments become due, the local entity:
 - (i) may pay the additional installments from the guaranty fund or reserve fund, as the case may be, or from any legally available money;
 - (ii) shall recover, in a sale of the property, the amount of the installments paid; and
 - (iii) shall reimburse the guaranty fund or reserve fund when the property is sold.

Enacted by Chapter 329, 2007 General Session

11-42-504 Assessments on property that the local entity acquires at tax sale or foreclosure -- Transferring title of property in lieu of paying assessments -- Reimbursement.

- (1)
 - (a) Each local entity that purchases property at a tax sale or foreclosure under this part shall pay into the assessment fund all applicable annual installments of assessments and interest for as long as the local entity owns the property.
 - (b) A local entity may make payments required under this Subsection (1) from the guaranty fund or reserve fund.
- (2)
 - (a) In lieu of making payments under Subsection (1), a local entity may elect to transfer title of the property to the owners of all outstanding assessment bonds, refunding assessment bonds, interim warrants, or bond anticipation notes as payment in full for all delinquent assessments with respect to the property only if:
 - (i) the local entity and owners agree to the election to transfer; and
 - (ii) an indenture, private placement memo, or other document or contract memorializing the terms of debt explicitly discloses the terms of the agreement described in Subsection (2)(a)(i).
 - (b) If a local entity transfers title to property as provided in Subsection (2)(a) or sells property it has received from a tax sale or foreclosure, the selling price may not be less than the amount sufficient to reimburse the local entity for all amounts the local entity paid with respect to an assessment on the property, including an amount sufficient to reimburse the guaranty fund or reserve fund, as the case may be, for all amounts paid from the fund for delinquent assessments or installments of assessments relating to the property, plus interest, penalties, and costs.
 - (c) Each local entity that sells property it has received from a tax sale or foreclosure shall place the money it receives from the sale into the guaranty fund, reserve fund, or other local entity fund, as the case may be, to the extent of full reimbursement as required in this section.

Amended by Chapter 445, 2015 General Session

11-42-505 Default in the payment of an installment of an assessment -- Interest and costs -- Restoring the property owner to the right to pay installments.

- (1) If an assessment is payable in installments and a default occurs in the payment of an installment when due, the governing body may:
 - (a) declare the delinquent amount to be immediately due and subject to collection as provided in this chapter;
 - (b) accelerate payment of the total unpaid balance of the assessment and declare the whole of the unpaid principal and the interest then due to be immediately due and payable; and
 - (c) charge and collect all costs of collection, including attorney fees.
- (2) Interest shall accrue from the date of delinquency on all applicable amounts under Subsections (1)(a) and (b) until paid in full.
- (3) Any interest assessed for or collection costs charged under this section shall be:
 - (a) the same as apply to delinquent real property taxes for the year in which the balance of the fee or charge becomes delinquent; or
 - (b) as the governing body determines.
- (4) Notwithstanding Subsection (1), a property owner shall be restored to the right to pay an assessment in installments in the same manner as if no default had occurred if the owner pays

the amount of all unpaid installments that are past due, with interest, collection and foreclosure costs, and administrative, redemption, and other fees, including attorney fees, before:

- (a) the final date that payment may be legally made under a final sale or foreclosure of property to collect delinquent assessment installments, if collection is enforced under Title 59, Chapter 2, Part 13, Collection of Taxes; or
- (b) the end of the three-month reinstatement period provided by Section 57-1-31, if collection is enforced through the method of foreclosing trust deeds.

Enacted by Chapter 329, 2007 General Session

11-42-506 Release and discharge of assessment lien -- Notice of dissolution of assessment area.

- (1)
 - (a) Upon an assessment on a parcel of property having been paid in full, the local entity shall file, in the office of the recorder of the county in which the property is located, a release and discharge of the assessment lien on that property.
 - (b) Each release and discharge under Subsection (1)(a) shall:
 - (i) include a legal description of the affected property; and
 - (ii) comply with other applicable requirements for recording a document.
- (2)
 - (a) Upon all assessments levied within an assessment area having been paid in full, or upon payment in full having been provided for, the local entity shall file, in the office of the recorder of the county in which the property within the assessment area is located, a notice of the dissolution of the assessment area.
 - (b) Each notice under Subsection (2)(a) shall:
 - (i) include a legal description of the property assessed within the assessment area; and
 - (ii) comply with all other applicable requirements for recording a document.

Enacted by Chapter 329, 2007 General Session

Part 6
Interim Warrants, Bond Anticipation Notes,
Assessment Bonds, and Refunding Assessment Bonds

11-42-601 Interim warrants.

- (1) A local entity may issue interim warrants against an assessment area.
- (2) An interim warrant may be in any amount up to:
 - (a) as portions of the work on improvements in an assessment area are completed, 90% of the value of the completed work, as estimated by the local entity's project engineer;
 - (b) 100% of the value of the work completed, after completion of the work and acceptance of the work by the local entity's project engineer; and
 - (c) the price of property, the acquisition of which is required for an improvement.
- (3) The governing body may:
 - (a) issue interim warrants at not less than par value in a manner the governing body determines; and
 - (b) use the proceeds from the issuance of interim warrants to pay:

- (i) the contract price;
 - (ii) the property price; and
 - (iii) related costs, including overhead costs.
- (4)
- (a) Interim warrants shall bear interest from the date of their issuance until paid.
 - (b)
 - (i) The governing body shall:
 - (A) approve the interest rate applicable to interim warrants; and
 - (B) fix a maturity date for each interim warrant.
 - (ii) The interest rate applicable to interim warrants may be fixed or variable or a combination of fixed and variable.
 - (iii) If interim warrants carry a variable interest rate, the governing body shall specify the basis upon which the rate is to be determined, the manner in which the rate is to be adjusted, and a maximum interest rate.
 - (iv) A local entity may provide for interest on interim warrants to be paid semiannually, annually, or at maturity.
 - (v) If an interim warrant matures before the local entity has available sources of payment under Section 11-42-603, the local entity may authorize the issuance of a new interim warrant to pay the principal and interest on the maturing warrant.
 - (c) The local entity shall include interest accruing on interim warrants in the cost of improvements in the assessment area.
- (5) A local entity may purchase some or all of the interim warrants it has issued using the local entity's general fund money.

Enacted by Chapter 329, 2007 General Session

11-42-602 Bond anticipation notes.

- (1) A local entity may by resolution authorize the issuance of bond anticipation notes.
- (2) A local entity may use the proceeds from the issuance of bond anticipation notes to pay:
 - (a) the estimated acquisition and contract price;
 - (b) the property price;
 - (c) capitalized interest; and
 - (d) related costs, including overhead costs.
- (3) Each resolution authorizing the issuance of bond anticipation notes shall:
 - (a) describe the bonds in anticipation of which the bond anticipation notes are to be issued;
 - (b) specify the principal amount and maturity dates of the notes; and
 - (c) specify the interest rate applicable to the notes.
- (4)
 - (a) The interest rate on bond anticipation notes issued under this section may be fixed, variable, or a combination of fixed and variable, as determined by the governing body.
 - (b) If bond anticipation notes carry a variable interest rate, the governing body shall specify the basis upon which the rate is to be determined, the manner in which the rate is to be adjusted, and a maximum interest rate.
 - (c) A local entity may provide for interest on bond anticipation notes to be paid semiannually, annually, or at maturity.
- (5) A local entity may:
 - (a) issue and sell bond anticipation notes in a manner and at a price, either at, below, or above face value, as the governing body determines by resolution; and

- (b) make bond anticipation notes redeemable prior to maturity, at the governing body's option and in the manner and upon the terms fixed by the resolution authorizing their issuance.
- (6) Bond anticipation notes shall be executed, be in a form, and have details and terms as provided in the resolution authorizing their issuance.
- (7) A local entity may issue bond anticipation notes to refund bond anticipation notes previously issued by the local entity.
- (8) A local entity may include interest accruing on bond anticipation notes in the cost of improvements in an assessment area.

Amended by Chapter 246, 2009 General Session

11-42-603 Sources of payment for interim warrants and bond anticipation notes.

Each local entity that has issued interim warrants or bond anticipation notes shall pay the warrants or notes from:

- (1) proceeds from the sale of assessment bonds;
- (2) cash the local entity receives from the payment for improvements;
- (3) assessments;
- (4) improvement revenues that are not pledged to the payment of assessment bonds;
- (5) proceeds from the sale of interim warrants or bond anticipation notes; or
- (6) the local entity's guaranty fund or, if applicable, the reserve fund.

Amended by Chapter 246, 2009 General Session

11-42-604 Notice regarding resolution or ordinance authorizing interim warrants or bond anticipation notes -- Complaint contesting warrants or notes -- Prohibition against contesting warrants and notes.

- (1) A local entity may publish notice, as provided in Subsection (2), of a resolution or ordinance that the governing body has adopted authorizing the issuance of interim warrants or bond anticipation notes.
- (2)
 - (a) If a local entity chooses to publish notice under Subsection (1), the notice shall:
 - (i) be published:
 - (A) for the local entity, as a class A notice under Section 63G-30-102, for at least 30 days; and
 - (B) as required in Section 45-1-101; and
 - (ii) contain:
 - (A) the name of the issuer of the interim warrants or bond anticipation notes;
 - (B) the purpose of the issue;
 - (C) the maximum principal amount that may be issued;
 - (D) the maximum length of time over which the interim warrants or bond anticipation notes may mature;
 - (E) the maximum interest rate, if there is a maximum rate; and
 - (F) the times and place where a copy of the resolution or ordinance may be examined, as required under Subsection (2)(b).
 - (b) The local entity shall allow examination of the resolution or ordinance authorizing the issuance of the interim warrants or bond anticipation notes at its office during regular business hours.

- (3) Any person may, within 30 days after publication of a notice under Subsection (1), file a verified, written complaint in the district court of the county in which the person resides, contesting the regularity, formality, or legality of the interim warrants or bond anticipation notes issued by the local entity or the proceedings relating to the issuance of the interim warrants or bond anticipation notes.
- (4) After the 30-day period under Subsection (3), no person may contest the regularity, formality, or legality of the interim warrants or bond anticipation notes issued by a local entity under the resolution or ordinance that was the subject of the notice under Subsection (1), or the proceedings relating to the issuance of the interim warrants or bond anticipation notes.

Amended by Chapter 435, 2023 General Session

11-42-605 Local entity may authorize the issuance of assessment bonds -- Limit on amount of bonds -- Features of assessment bonds.

- (1) After the 25-day prepayment period under Subsection 11-42-411(6) has passed or, if the 25-day prepayment period is waived under Section 11-42-104, after the assessment resolution or ordinance takes effect, a local entity may authorize the issuance of bonds to pay the costs of improvements in an assessment area, and other related costs, against the funds that the local entity will receive because of an assessment in an assessment area.
- (2) A local entity may, by resolution or ordinance, delegate to one or more officers of the issuer the authority to:
 - (a) in accordance with and within the parameters set forth in the resolution or ordinance, approve the final interest rate or rates, price, principal amount, maturity or maturities, redemption features, and other terms of the bond; and
 - (b) approve and execute all documents relating to the issuance of a bond.
- (3) The aggregate principal amount of bonds authorized under Subsection (1) may not exceed the unpaid balance of assessments at the end of the 25-day prepayment period under Subsection 11-42-411(6).
- (4) Assessment bonds issued under this section:
 - (a) are fully negotiable for all purposes;
 - (b) shall mature at a time that does not exceed the period that installments of assessments in the assessment area are due and payable, plus one year;
 - (c) shall bear interest at the lowest rate or rates reasonably obtainable;
 - (d) may not be dated earlier than the effective date of the assessment ordinance;
 - (e) shall be payable at the place, shall be in the form, and shall be sold in the manner and with the details that are provided in the resolution authorizing the issuance of the bonds;
 - (f) shall be issued in registered form as provided in Title 15, Chapter 7, Registered Public Obligations Act; and
 - (g) provide that interest be paid semiannually, annually, or at another interval as specified by the governing body.
- (5)
 - (a) A local entity may:
 - (i)
 - (A) provide that assessment bonds be callable for redemption before maturity; and
 - (B) fix the terms and conditions of redemption, including the notice to be given and any premium to be paid;
 - (ii) subject to Subsection (5)(b), require assessment bonds to bear interest at a fixed or variable rate, or a combination of fixed and variable rates;

- (iii) specify terms and conditions under which:
 - (A) assessment bonds bearing interest at a variable interest rate may be converted to bear interest at a fixed interest rate; and
 - (B) the local entity agrees to repurchase the bonds;
 - (iv) engage a remarketing agent and indexing agent, subject to the terms and conditions that the governing body agrees to; and
 - (v) include all costs associated with assessment bonds, including any costs resulting from any of the actions the local entity is authorized to take under this section, in an assessment levied under Section 11-42-401.
- (b) If assessment bonds carry a variable interest rate, the local entity shall specify:
- (i) the basis upon which the variable rate is to be determined over the life of the bonds;
 - (ii) the manner in which and schedule upon which the rate is to be adjusted; and
 - (iii) a maximum rate that the bonds may carry.
- (6)
- (a) Nothing in this part may be construed to authorize the issuance of assessment bonds to pay for the cost of ordinary repairs to pavement, sewers, drains, curbing, gutters, or sidewalks.
 - (b) Notwithstanding Subsection (6)(a), a local entity may issue assessment bonds to pay for extraordinary repairs to pavement, sewers, drains, curbing, gutters, or sidewalk.
 - (c) A local entity's governing body may define by resolution or ordinance what constitutes ordinary repairs and extraordinary repairs for purposes of this Subsection (6).
 - (d) Nothing in this Subsection (6) may be construed to limit a local entity from levying an assessment within an assessment area to pay operation and maintenance costs as described in a notice under Section 11-42-402.
- (7) If a local entity has issued interim warrants under Section 11-42-601 or bond anticipation notes under Section 11-42-602 in anticipation of assessment bonds that the local entity issues under this part, the local entity shall provide for the retirement of the interim warrants or bond anticipation notes contemporaneously with the issuance of the assessment bonds.

Amended by Chapter 145, 2011 General Session

11-42-606 Assessment bonds are not a local entity's general obligation -- Liability and responsibility of a local entity that issues assessment bonds.

- (1) Assessment bonds are not a general obligation of the local entity that issues them.
- (2) A local entity that issues assessment bonds:
 - (a) may not be held liable for payment of the bonds except to the extent of:
 - (i) funds created and received from assessments against which the bonds are issued;
 - (ii) improvement revenues; and
 - (iii) the local entity's guaranty fund under Section 11-42-701 or, if applicable, reserve fund under Section 11-42-702; and
 - (b) is responsible for:
 - (i) the lawful levy of all assessments;
 - (ii) the collection and application of improvement revenues, as provided in this chapter;
 - (iii) the creation and maintenance of a guaranty fund or, if applicable, a reserve fund; and
 - (iv) the faithful accounting, collection, settlement, and payment of:
 - (A) assessments and improvement revenues; and
 - (B) money in a guaranty fund or, if applicable, a reserve fund.
- (3) If a local entity illegally assesses property that is exempt from assessment, the local entity:
 - (a) is liable to the holders of assessment bonds for the payment of the illegal assessment; and

- (b) shall pay the amount for which it is liable under Subsection (3)(a) from the local entity's general fund or other legally available money.

Enacted by Chapter 329, 2007 General Session

11-42-607 Refunding assessment bonds.

- (1) A local entity may, by a resolution adopted by the governing body, authorize the issuance of refunding assessment bonds as provided in this section, in whole or in part, whether at or before the maturity of the prior bonds, at stated maturity, upon redemption, or declaration of maturity.
- (2)
 - (a) Subject to Subsection (2)(b), the issuance of refunding assessment bonds is governed by Title 11, Chapter 27, Utah Refunding Bond Act.
 - (b) If there is a conflict between a provision of Title 11, Chapter 27, Utah Refunding Bond Act, and a provision of this part, the provision of this part governs.
- (3) In issuing refunding assessment bonds, the local entity shall require the refunding assessment bonds and interest on the bonds to be payable from and secured, to the extent the prior bonds were payable from and secured, by:
 - (a)
 - (i) the same assessments; or
 - (ii) the reduced assessments adopted by the governing body under Section 11-42-608;
 - (b) the guaranty fund or, if applicable, reserve fund; and
 - (c) improvement revenues.
- (4) Refunding assessment bonds:
 - (a) shall be payable solely from the sources described in Subsection (3);
 - (b) shall mature no later than the date that is one year after the final maturity of the prior bonds;
 - (c) may not mature at a time or bear interest at a rate that will cause the local entity to be unable to pay, from the sources listed in Subsection (3), the bonds when due;
 - (d) shall bear interest as the governing body determines, subject to the provisions of Section 11-42-605 relating to interest;
 - (e) may be issued to pay one or more issues of the local entity's prior bonds; and
 - (f) if issued to refund two or more issues of prior bonds, may be issued in one or more series.
- (5) A local entity may provide for the payment of incidental costs associated with refunding assessment bonds:
 - (a) by advancing money from the local entity's general fund or other fund, if the local entity's governing body:
 - (i) determines that the advance is in the best interests of the local entity and its citizens, including the owners of property within the assessment area; and
 - (ii) provides that the assessments, interest on assessments, and improvement revenue from which the prior bonds are payable not be reduced during the period necessary to provide funds from those sources to reimburse the local entity with interest at the same rate that applies to the assessments;
 - (b) from premiums that the local entity receives from the sale of refunding assessment bonds;
 - (c) from earnings on the investment of refunding assessment bonds pending their use to refund prior bonds;
 - (d) from any other sources legally available to the local entity for this purpose; or
 - (e) from any combination of Subsections (5)(a) through (d).

Enacted by Chapter 329, 2007 General Session

11-42-608 Reducing assessments after issuance of refunding assessment bonds.

- (1) Each local entity that issues refunding assessment bonds shall adopt a resolution or ordinance amending the assessment resolution or assessment ordinance previously adopted.
- (2) Each amending resolution or ordinance under Subsection (1) shall:
 - (a) reduce, as determined by the local entity's governing body:
 - (i) the assessments levied under the previous resolution or ordinance;
 - (ii) the interest payable on the assessments levied under the previous resolution or ordinance;or
 - (iii) both the assessments levied under the previous resolution or ordinance and the interest payable on those assessments;
 - (b) allocate the reductions under Subsection (2)(a) 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;
 - (c)
 - (i) state the amounts of the reduced payment obligation for each property assessed in the prior resolution or ordinance; or
 - (ii) incorporate by reference a revised assessment list approved by the governing body containing the reduced payment obligations; and
 - (d) state the effective date of any reduction in the assessment levied in the prior resolution or ordinance.
- (3) A resolution or ordinance under Subsection (2) is not required to describe each block, lot, part of block or lot, tract, or parcel of property assessed.
- (4) Each reduction under Subsection (2)(a) shall be the amount by which the principal or interest or both payable on the refunding assessment bonds, after accounting for incidental refunding costs associated with the refunding assessment bonds, is less than the amount of principal or interest or both payable on the prior bonds.
- (5) A reduction under Subsection (2)(a) does not apply to an assessment or interest paid before the reduction.
- (6) A resolution or ordinance under Subsection (2) may not become effective before the date when all principal, interest, any redemption premium on the prior bonds, and any advances made under Subsection 11-42-607(5)(a) are fully paid or legally considered to be paid.
- (7)
 - (a) At least 21 days before the first payment of a reduced assessment becomes due, each local entity shall provide notice of the reduced payment obligations resulting from adoption of a resolution or ordinance under Subsection (2) by mailing, postage prepaid, a notice to each owner of benefitted property within the assessment area at the owner's mailing address.
 - (b) Each notice under Subsection (7)(a) shall:
 - (i) identify the property subject to the assessment; and
 - (ii) state the amount of the reduced payment obligations that will be payable after the applicable date stated in the resolution or ordinance under Subsection (1).
 - (c) A notice under Subsection (7)(a) may:
 - (i) contain other information that the governing body considers appropriate; and
 - (ii) be included with any other notice regarding the payment of an assessment and interest that the local entity sends to property owners in the assessment area within the time and addressed as required under Subsection (7)(a).
 - (d) The validity of a resolution or ordinance under Subsection (1) is not affected by:

- (i) a local entity's failure to provide notice as required under this Subsection (7); or
- (ii) a defect in the content of the notice or the manner or time in which the notice was provided.
- (e) Whether or not notice under this Subsection (7) is properly given, no other notice is required to be given to owners of property within an assessment area in connection with the issuance of refunding assessment bonds.
- (8) Except for the amount of reduction to a prior assessment or interest on a prior assessment, neither the issuance of refunding assessment bonds nor the adoption of a resolution or ordinance under Subsection (1) affects:
 - (a) the validity or continued enforceability of a prior assessment or interest on the assessment; or
 - (b) the validity, enforceability, or priority of an assessment lien.
- (9) Each reduction of a prior assessment and the interest on the assessment shall continue to exist in favor of the refunding assessment bonds.
- (10) Even after payment in full of the prior bonds that are refunded by refunding assessment bonds, an assessment lien continues to exist to secure payment of the reduced payment obligations, the penalties and costs of collection of those obligations, and the refunding assessment bonds in the same manner, to the same extent, and with the same priority as the assessment lien.
- (11) A lien securing a reduced payment obligation from which refunding assessment bonds are payable and by which the bonds are secured is subordinate to an assessment lien securing the original or prior assessment and prior bonds until the prior bonds are paid in full or legally considered to be paid in full.
- (12) Unless prior bonds are paid in full simultaneously with the issuance of refunding assessment bonds, the local entity shall:
 - (a) irrevocably set aside the proceeds of the refunding assessment bonds in an escrow or other separate account; and
 - (b) pledge that account as security for the payment of the prior bonds, refunding assessment bonds, or both.
- (13) This part applies to all refunding assessment bonds:
 - (a) whether already issued or yet to be issued; and
 - (b) even though the prior bonds they refunded were issued under prior law, whether or not that law is currently in effect.

Enacted by Chapter 329, 2007 General Session

11-42-609 Validation of previously issued obligations.

- (1) Subject to Subsection (2):
 - (a) all local entity obligations issued by a local entity before April 30, 2007 are:
 - (i) validated, ratified, and confirmed; and
 - (ii) declared to constitute legally binding obligations in accordance with their terms; and
 - (b) all proceedings before April 30, 2007 related to the authorization and issuance of local entity obligations are validated, ratified, and confirmed.
- (2) Nothing in this section may be construed to affect the validity of local entity obligations, a guaranty fund, or a reserve fund whose legality is being contested on April 30, 2007.
- (3)
 - (a) This chapter applies to all local entity obligations issued after April 30, 2007, even though proceedings were taken before that date under provisions of the law then in effect but repealed or modified on or after that date.

- (b) Proceedings taken as described in Subsection (3)(a) under the law in effect before April 30, 2007 are validated, ratified, and confirmed, subject to question only as provided in Section 11-42-106.
- (4) The validity of local entity obligations issued before April 30, 2007 is not affected by changes to the law under which they were issued that become effective on or after April 30, 2007.

Enacted by Chapter 329, 2007 General Session

Part 7

Guaranty and Reserve Funds

11-42-701 Guaranty fund.

- (1) Except as provided in Section 11-42-702, each local entity that issues assessment bonds shall:
 - (a) create a guaranty fund, as provided in this section, to secure bonds, to the extent of the money in the fund; and
 - (b) fund the guaranty fund by:
 - (i) appropriations from the local entity's general fund;
 - (ii) a property tax levy of not to exceed .0002 per dollar of taxable value of taxable property within the local entity's jurisdictional boundaries;
 - (iii) issuing general obligation bonds; or
 - (iv) appropriations from other sources as determined by the local entity's governing body.
- (2) A tax levied by a local entity under Subsection (1)(b)(ii) to fund a guaranty fund is not included for purposes of calculating the maximum levy limitation applicable to the local entity.
- (3) A local entity may covenant for the benefit of bond holders that, as long as the bonds are outstanding and unpaid, the local entity will:
 - (a) create a guaranty fund as provided in this section;
 - (b)
 - (i) to the extent legally permissible and by any of the methods described in Subsection (1)(b), transfer each year to the guaranty fund an amount of money up to the amount the local entity would collect by levying a tax of .0002 per dollar of taxable value of taxable property within the local entity until the balance in the guaranty fund equals 10% of the amount of all outstanding bonds; and
 - (ii) in subsequent years transfer to the guaranty fund the amount necessary to replenish or maintain the guaranty fund at 10% of the amount of all outstanding bonds; and
 - (c) invest the funds on deposit in the guaranty fund as provided in Title 51, Chapter 7, State Money Management Act.
- (4) A local entity may create subaccounts within a guaranty fund for each issue of outstanding assessment bonds and refunding assessment bonds in a manner that the local entity's governing body considers appropriate to allocate among the bond issues the securities held in and interest earnings on the guaranty fund for purposes of complying with federal law.
- (5) A local entity may transfer to its general fund any money in its guaranty fund that exceeds 10% of the amount of all of the local entity's outstanding assessment bonds and refunding assessment bonds that are secured by the guaranty fund.
- (6) For purposes of Subsections (3)(b) and (5), refunding assessment bonds may not be considered outstanding until the principal of and interest and any redemption premiums on

the prior bonds that are refunded by the refunding assessment bonds are fully paid or legally considered to be paid.

Enacted by Chapter 329, 2007 General Session

11-42-702 Reserve fund.

- (1) In lieu of creating and funding a guaranty fund under Section 11-42-701 for an issue of assessment bonds or refunding assessment bonds, a local entity may establish a reserve fund to secure the issue.
- (2) If a local entity establishes a reserve fund under this section:
 - (a) the bonds secured by the reserve fund are not secured by a guaranty fund under Section 11-42-701;
 - (b) the local entity is not required to fund a guaranty fund under Section 11-42-701 for those bonds; and
 - (c) unless otherwise provided in this part or in the proceedings authorizing the issuance of bonds, the provisions of this part regarding a guaranty fund have no application to the bonds that are secured by the reserve fund.
- (3) Each local entity that establishes a reserve fund shall:
 - (a) fund and replenish the reserve fund in the amounts and manner provided in the proceedings authorizing the issuance of the bonds that are secured by the reserve fund; and
 - (b) invest the funds on deposit in the reserve fund as provided in Title 51, Chapter 7, State Money Management Act.
- (4)
 - (a) Subject to Subsection (4)(b), a local entity may replenish a reserve fund under this section by any of the methods described in Subsection 11-42-701(1)(b).
 - (b) The proceedings authorizing the issuance of assessment bonds or refunding assessment bonds shall provide that if a local entity uses any of the methods described in Subsection 11-42-701(1)(b) to replenish a reserve fund, the local entity shall be reimbursed, with interest at a rate that the local entity determines, with money that the local entity receives from foreclosing on delinquent property.
- (5) Upon the retirement of bonds secured by a reserve fund, the local entity shall:
 - (a) terminate the reserve fund; and
 - (b) disburse all remaining money in the fund as provided in the proceedings authorizing the issuance of the bonds.

Amended by Chapter 246, 2009 General Session

11-42-703 Payment from guaranty fund or reserve fund if insufficient funds available in the assessment fund -- Payment by warrant from guaranty fund or reserve fund -- Subrogation.

- (1) If a bond is presented to the local entity for payment at a time when there is insufficient money in the assessment fund to pay the amount due, the local entity shall pay the amount due from the guaranty fund or, if applicable, reserve fund.
- (2) If there is insufficient money in the guaranty fund or, if applicable, the reserve fund to pay the amount due under Subsection (1), the local entity may pay by a warrant drawn against the guaranty fund or, if applicable, reserve fund.
- (3) If a local entity pays from its guaranty fund or reserve fund any principal or interest owing under a bond:
 - (a) the local entity is subrogated to the rights of the bond holders; and

- (b) the proceeds from the bond shall become part of the guaranty fund or reserve fund, as the case may be.

Enacted by Chapter 329, 2007 General Session

11-42-704 Transfers from local entity funds to replenish guaranty fund or reserve fund.

If the guaranty fund or, if applicable, the reserve fund has insufficient money for the local entity to purchase property on which it bids at a sale under Part 5, Assessment Liens, for delinquent assessments, the local entity may transfer or appropriate money from its general fund or other available sources, as the governing body determines, to replenish the guaranty fund or reserve fund.

Enacted by Chapter 329, 2007 General Session

11-42-705 Warrants to meet guaranty fund and reserve fund liabilities -- Levy to pay warrants authorized -- Limit on the levy.

- (1) A local entity may issue warrants, bearing interest at a rate determined by the governing body, against a guaranty fund or reserve fund to meet any financial liabilities accruing against the fund.
- (2)
 - (a) If a local entity issues warrants under Subsection (1), the local entity shall, subject to Subsection (2)(b), include in its next annual tax levy an amount sufficient, with other guaranty fund or reserve fund resources, to pay all issued and outstanding warrants under Subsection (1) for all assessment areas within the local entity.
 - (b) A levy under Subsection (2)(a):
 - (i) may not exceed .0002 per dollar of taxable value of taxable property in the local entity; and
 - (ii) is exempt from the statutory limit applicable to the local entity's property tax levy.

Enacted by Chapter 329, 2007 General Session

11-42-706 Validation of prior guaranty fund or reserve fund proceedings.

- (1) Subject to Subsection (2), all proceedings before April 30, 2007 related to the creation, maintenance, and use of a guaranty fund or reserve fund are validated, ratified, and confirmed.
- (2) Nothing in this section may be construed to affect the validity of a guaranty fund or reserve fund whose legality is being contested on April 30, 2007.

Enacted by Chapter 329, 2007 General Session