

1 **REVISE UTILITY IMPROVEMENT**

2 **DISTRICTS**

3 2005 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: David Ure**

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7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions related to improvement districts for the conversion of  
10 overhead utilities to underground.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ modifies provisions related to how an assessment on property for the underground  
14 conversion of overhead utilities is to be calculated;

15 ▶ eliminates a requirement that real property owners petition for the creation of an  
16 improvement district and allows a county or municipal governing body to create a  
17 district by resolution without a petition, subject to protests;

18 ▶ modifies the requirements for notice of a proposed improvement district and  
19 assessment;

20 ▶ establishes a process for property owners to protest the creation of an improvement  
21 district and prohibits the creation of the district if adequate protests are filed; and

22 ▶ modifies provisions relating to the underground conversion of overhead facilities to  
23 include:

24 • a requirement that the governing body provide notice to property owners that  
25 underground service is available and of the requirement to convert the owner's  
26 existing electric and communications facilities to underground;

27 • the consequence of an owner's failure to convert overhead facilities to



28 underground; and

- 29 • the assessment of costs and expenses of the conversion against the property.

30 **Monies Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 None

34 **Utah Code Sections Affected:**

35 AMENDS:

36 **54-8-5**, as enacted by Chapter 157, Laws of Utah 1969

37 **54-8-6**, as enacted by Chapter 157, Laws of Utah 1969

38 **54-8-9**, as enacted by Chapter 157, Laws of Utah 1969

39 **54-8-11**, as enacted by Chapter 157, Laws of Utah 1969

40 **54-8-26**, as enacted by Chapter 157, Laws of Utah 1969



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

43 Section 1. Section **54-8-5** is amended to read:

44 **54-8-5. Apportionment of costs -- Assessment against benefited property -- Public**  
45 **lands not subject to assessment.**

46 [~~Whenever any improvement authorized to be made by any governing body by the~~  
47 ~~terms of this chapter is ordered, the governing body shall provide for the apportionment of the~~  
48 ~~cost and expenses thereof as in their judgment may be fair and equitable in consideration of the~~  
49 ~~benefits accruing to the abutting, adjoining, contiguous and adjacent lots and lands and to the~~  
50 ~~lots and lands otherwise benefited and included within the improvement district formed. Each~~  
51 ~~lot and parcel of the land shall be separately assessed for the cost and expenses thereof in~~  
52 ~~proportion to the number of square feet of such lands and lots abutting, adjoining, contiguous~~  
53 ~~and adjacent thereto or included in the improvement district, and in proportion to the benefits~~  
54 ~~derived to such property by said improvements.]~~

55 (1) If an improvement district is created as provided in this chapter, the governing body  
56 of the county or municipality that created the improvement district may levy an assessment on  
57 property within the district.

58 (2) (a) If an assessment is levied under this section, it shall be levied on all blocks, lots,

59 parts of blocks, and lots, tracts, or parcels of property bounding, abutting upon, or adjacent to  
60 the improvements or affected or specially benefited by the improvements to the extent of the  
61 benefits to the property because of the improvements.

62 (b) The benefits to the property may be indirect and need not actually increase the fair  
63 market value of the property.

64 (3) A governing body may levy an assessment under this section to the full depth of the  
65 property or to the depth determined by the governing body.

66 (4) Assessments under this section shall be equal and uniform according to the benefits  
67 received.

68 (5) (a) Assessments may be according to area, frontage, assessed value, taxable value,  
69 lot, number of connections, or any combination of these methods, as the governing body  
70 considers fair and equitable.

71 (b) Different improvements in an improvement district may be assessed according to  
72 different methods.

73 (c) The governing body shall make an allowance for corner lots so that they are not  
74 assessed at full rate on both sides adjacent to the street.

75 (6) The entire cost of the improvement may be assessed against the benefited property  
76 as [herein] provided in this section or, if money for paying part of such cost is available from  
77 any other source, the money so available may be so applied and the remaining cost so assessed  
78 against the benefited property.

79 (7) The cost and expenses to be assessed as [herein] provided [for] in this section shall  
80 include the contract price of the improvement, engineering and clerical services, advertising,  
81 cost of inspection, cost of collecting assessments, and interest upon bonds if issued, and for  
82 legal services for preparing proceedings and advising in regard thereto.

83 (8) Fee lands and property of public entities such as the federal government, the state  
84 [of Utah], or any county, city, or town [shall] may not be considered as lands or property  
85 benefited by any improvement district, and, unless such public entity within the boundaries of  
86 an improvement district consents in writing, filed before the governing body adopts the  
87 resolution provided for in Section 54-8-8, the lands and property of such public entity shall not  
88 be subject to assessment for the payment of any of the cost or expense of such improvement.

89 Section 2. Section **54-8-6** is amended to read:

90           **54-8-6. Creation of improvement district -- Petition by property owners --**  
91 **Resolution of governing body -- Utilities to submit reports.**

92           [~~Any~~] (1) (a) A governing body may [upon a petition signed by two-thirds of the  
93 owners of the real property and the owners of not less than two-thirds in value of the real  
94 property, as shown by the last assessment rolls, of any proposed district requesting the creation  
95 of an improvement district as provided for in this chapter,] pass a resolution at any regular or  
96 special meeting declaring that it finds that the improvement district proposed is in the public  
97 interest. [~~It must be determined~~]

98           (b) In order to pass a resolution under Subsection (1)(a), the governing body shall  
99 determine that the formation of the local improvement district for the purposes set out in this  
100 chapter will promote the public convenience, necessity, and welfare. [~~The resolution must~~]

101           (2) Each resolution adopted under Subsection (1) shall:

102           (a) state that the costs and expenses will be levied and assessed upon the property  
103 benefited [and further];

104           (b) request that each public utility corporation serving such area by overhead electric or  
105 communication facilities shall, within 120 days after the receipt of the resolution, make a study  
106 of the cost of conversion of its facilities in such area to underground service[. The report of  
107 said study shall be provided to the governing body and made available in its office to all  
108 owners of land within the proposed improvement district. The resolution of the governing body  
109 shall]; and

110           (c) require that the public utilities be provided with the name and address of the owner  
111 of each parcel or lot within the proposed improvement district, if known, and, if not known, the  
112 description of the property and [such] other matters [as may be] required by the public utility  
113 corporations in order to perform the work involved in the cost study. [The resolution shall  
114 further state the size and square feet of each lot or parcel within the proposed conversion  
115 service area.]

116           (3) Each public service corporation serving [such] the improvement district area by  
117 overhead electric or communication facilities shall[;];

118           (a) within [~~120~~] 90 days after receipt of the resolution, make a study of the costs of  
119 conversion of its facilities in [such] the district to underground service[;]; and [shall together]

120           (b) provide the governing body and make available to its office a [~~joint~~] report,

121 prepared jointly with each other public service corporation serving the improvement district  
 122 area by overhead electric or communication facilities, as to the results of the study.

123 (4) The governing body shall make each report under Subsection (3) available in its  
 124 office to each owner of land within the improvement district.

125 Section 3. Section **54-8-9** is amended to read:

126 **54-8-9. Public hearing -- Notice -- Contents.**

127 ~~[Following]~~ (1) After the passage of the resolution in Section 54-8-8, the governing  
 128 body shall cause notice of a public hearing on the proposed improvement to be given ~~[in the~~  
 129 ~~manner]~~ as provided in Section 54-8-10. ~~[Such]~~

130 (2) The notice required under Subsection (1) shall:

131 ~~[(1)]~~ (a) describe the boundaries or area of the district with sufficient particularity to  
 132 permit each owner of real property ~~[therein]~~ in the proposed district to ascertain that ~~[his]~~ the  
 133 owner's property lies in the district;

134 ~~[(2)]~~ (b) describe in a general way the proposed improvement, specifying the streets or  
 135 property along which it will be made and the nature of the benefits to the property within the  
 136 district;

137 ~~[(3)]~~ (c) state the estimated cost as determined from the costs and feasibility report and  
 138 including the contract price of the improvement and the cost of engineering and clerical  
 139 service, advertising, inspection, collection of assessments, interests upon bonds, if issued, and  
 140 for legal services for preparing proceedings and advising in regard ~~[thereto]~~ to them;

141 ~~[(4)]~~ (d) state that it is proposed to assess the real property in the district to pay all or a  
 142 designated portion of the cost of the improvement according to the ~~[square footage of and the~~  
 143 ~~benefits to be derived by each tract, block, lot and parcel of land within the district]~~ method  
 144 determined by the governing body under Section 54-8-5;

145 ~~[(5)]~~ (e) state the date, time, and place ~~[at which]~~ that the governing body will conduct  
 146 a public hearing upon the proposed improvement and on the question of benefits to be derived  
 147 by the real property in the district;

148 ~~[(6)]~~ (f) state that all interested persons will be heard and that any property owner will  
 149 be heard on the question of whether his property will be benefited by the proposed  
 150 improvement[-];

151 (g) designate the time within which and the place where protests may be filed and the

152 date, time, and place of a public hearing at which the governing body will consider protests;  
153 and

154 (h) state the method for determining the necessary number of protests required to be  
155 filed under Section 54-8-11.

156 Section 4. Section **54-8-11** is amended to read:

157 **54-8-11. Protests -- Hearings -- Representatives of utilities to be present --**  
158 **Changes in proposal -- Adoption or abandonment of project.**

159 (1) As used in this section, "adequate protests" means protests filed as provided in this  
160 section representing:

161 (a) if an assessment is proposed to be made according to frontage, 35% of the front  
162 footage of the property proposed to be assessed;

163 (b) if an assessment is proposed to be made according to area, 35% of the area of the  
164 property proposed to be assessed;

165 (c) if an assessment is proposed to be made according to assessed value, 35% of the  
166 assessed value of the property proposed to be assessed;

167 (d) if an assessment is proposed to be made according to taxable value, 35% of the  
168 taxable value of the property proposed to be assessed;

169 (e) if an assessment is proposed to be made according to lots, 35% of the lots proposed  
170 to be assessed; or

171 (f) if an assessment is proposed to be made according to the number of connections,  
172 35% of the number of connections to property proposed to be assessed.

173 (2) (a) On the date and at the time and place specified in the [aforesaid] notice under  
174 Section 54-8-9, the governing body shall in open and public session hear all objections to the  
175 creation of the proposed district, the making of the proposed improvements, and the benefits  
176 accruing to any tract, block, lot, or parcel of land [therein] in the proposed district.

177 (b) Representatives of the public utilities concerned shall be present at [all such  
178 hearings. Such hearings] each hearing under Subsection (2)(a).

179 (c) A hearing under Subsection (2)(a) may be adjourned from time to time to a fixed  
180 future time and place.

181 (d) If at any time during [the hearings] a hearing under Subsection (2)(a), it [shall  
182 appear] appears to the governing body that changes in the proposed improvements or the

183 proposed district should be made, which, after consultation with the public utilities concerned,  
 184 appear to affect either the cost or feasibility of the improvements, the hearing shall be  
 185 adjourned to a fixed future time and place and a new costs and feasibility report prepared on  
 186 the basis of the contemplated changes.

187 (3) After the hearing has been concluded and after all persons desiring to be heard have  
 188 been heard, the governing body:

189 (a) shall consider the arguments put forth [and];

190 (b) may make [such] changes in the area to be included in the district as it [may  
 191 consider] considers desirable or necessary[. However, no such changes shall be made unless], if  
 192 a costs and feasibility report has been prepared on the basis of [such] those changes[. After  
 193 such consideration and determination, the board]; and

194 (c) subject to Subsection (4), shall adopt a resolution either abandoning the district and  
 195 project or determining to proceed with the district and project, either as described in the notice  
 196 or with changes made as [above] authorized in this section.

197 (4) (a) A governing body may not create an improvement district under this chapter if  
 198 adequate protests are filed on or before the time specified in the notice under Subsection  
 199 54-8-9(2).

200 (b) In determining whether adequate protests are filed, a governing body may not  
 201 include a protest that:

202 (i) relates to property or an improvement that has been deleted from the proposed  
 203 district; or

204 (ii) is withdrawn in writing before the conclusion of the public hearing under  
 205 Subsection (2).

206 (c) If adequate protests are not filed, the governing body may create the improvement  
 207 district and begin making improvements.

208 Section 5. Section **54-8-26** is amended to read:

209 **54-8-26. Notice that service from underground facilities is available --**  
 210 **Consequences of failure to convert overhead facilities.**

211 ~~[The public utility performing the conversion shall, at the expense of the owner, convert~~  
 212 ~~to underground all electric and communication service facilities located upon any lot or parcel~~  
 213 ~~of land within the improvement district and not within the easement for distribution. This shall~~

214 include the digging and the back filling of a trench upon such lot or parcel unless the owner  
215 shall execute a written objection thereto and file the same with the clerk of the governing body  
216 not later than the date set for hearing objections to the improvement district as provided by law.  
217 Failure to file such written objection shall be taken]

218 (1) (a) If service from the underground utility is available to all or part of an  
219 improvement district area, the governing body of the county or municipality that created the  
220 district shall mail a notice to each owner of real property served from existing overhead  
221 facilities stating that:

222 (i) service from the underground facilities is available; and

223 (ii) each owner shall perform the necessary construction to convert the owner's existing  
224 overhead electric and communications to underground from the utility-provided service point  
225 to the service point on the owner's property.

226 (b) Each owner that converts overhead facilities to underground facilities shall comply  
227 with all applicable state and local laws, ordinances, rules, and regulations, and with all tariffs  
228 of the applicable utility.

229 (2) Failure to convert the overhead facilities to underground facilities within 60 days  
230 after the date of mailing the notice shall be considered as a consent and grant of easement to  
231 the ~~[utility]~~ county or municipality and ~~[shall be construed]~~ as express authority to the ~~[public~~  
232 ~~utility corporations]~~ county or municipality and ~~[their respective]~~ its officers, agents, and  
233 employees to enter upon ~~[such]~~ the lot or parcel for ~~[such]~~ the purpose~~[-, and through failure to~~  
234 ~~object, any right of protest or objection in respect of the doing of such work and the inclusion~~  
235 ~~of the costs thereof in said assessment shall be waived. If an owner does file such written~~  
236 ~~objection, he shall then be responsible for providing a trench which is in accordance with~~  
237 ~~applicable rules, regulations or tariffs from the owner's service entrance to a point designated~~  
238 ~~by the public utility and for back filling the trench following installation of the underground~~  
239 ~~service by the public utility involved]~~ of making the conversion.

240 ~~[The costs of any work done by the public utility corporation shall be included in the~~  
241 ~~assessment to be levied upon such lot or parcel unless the owner shall file a written objection~~  
242 ~~thereto with the clerk of the governing body not later than the date set for hearing objections to~~  
243 ~~the improvement district as provided by law. Should such an objection be filed, the owner~~  
244 ~~involved shall be billed by the public utility involved for such work as it accomplishes upon the~~



245 owner's property.]

246 (3) If the county or municipality converts the overhead facilities to underground  
247 facilities, all costs and expenses of the conversion, including the engineering, legal, advertising,  
248 and incidental expenses, shall be assessed against the property benefited and become a lien  
249 upon the property.

250 (4) The owner shall, at [his] the owner's expense, make all necessary changes in the  
251 service entrance equipment to accept underground service.

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**Legislative Review Note**  
as of 2-4-05 11:12 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

**Office of Legislative Research and General Counsel**

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**Fiscal Note**  
**Bill Number HB0118**

**Revise Utility Improvement Districts**

*10-Feb-05*

*1:22 PM*

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**State Impact**

No fiscal impact.

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**Individual and Business Impact**

Individual assessments could increase as a result of the passage of this bill.

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**Office of the Legislative Fiscal Analyst**