

1 **UTILITY IMPROVEMENT DISTRICTS**

2 **REVISIONS**

3 2006 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: David Ure**

6 Senate Sponsor: _____

7

8 **LONG TITLE**

9 **General Description:**

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

12 **Highlighted Provisions:**

13 This bill:

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

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

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

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

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

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



- 28 • the consequence of an owner's failure to convert overhead facilities to
- 29 underground; and
- 30 • the assessment of costs and expenses of the conversion against the property.

31 **Monies Appropriated in this Bill:**

32 None

33 **Other Special Clauses:**

34 None

35 **Utah Code Sections Affected:**

36 AMENDS:

37 **54-8-5**, as enacted by Chapter 157, Laws of Utah 1969

38 **54-8-6**, as enacted by Chapter 157, Laws of Utah 1969

39 **54-8-9**, as enacted by Chapter 157, Laws of Utah 1969

40 **54-8-11**, as enacted by Chapter 157, Laws of Utah 1969

41 **54-8-26**, as enacted by Chapter 157, Laws of Utah 1969



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

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

45 **54-8-5. Apportionment of costs -- Assessment against benefitted property --**

46 **Public lands not subject to assessment.**

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

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

59 (2) (a) If an assessment is levied under this section, it shall be levied on all blocks, lots,
60 parts of blocks, and lots, tracts, or parcels of property bounding, abutting upon, or adjacent to
61 the improvements or affected or specially benefitted by the improvements to the extent of the
62 benefits to the property because of the improvements.

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

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

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

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

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

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

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

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

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

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

91 **54-8-6. Creation of improvement district -- Petition by property owners --**

92 **Resolution of governing body -- Utilities to submit reports.**

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

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

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

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

105 (b) request that each public utility corporation serving such area by overhead electric or
106 communication facilities shall, within ~~[120]~~ 90 days after the receipt of the resolution, make a
107 study of the cost of conversion of its facilities in such area to underground service~~[-The report~~
108 ~~of said study shall be provided to the governing body and made available in its office to all~~
109 ~~owners of land within the proposed improvement district. The resolution of the governing body~~
110 ~~shall]; and~~

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

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

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

121 (b) provide the governing body and make available to its office a ~~[joint]~~ report,
 122 prepared jointly with each other public service corporation serving the improvement district
 123 area by overhead electric or communication facilities, as to the results of the study.

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

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

127 **54-8-9. Public hearing -- Notice -- Contents.**

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

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

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

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

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

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

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

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

152 (g) designate the time within which and the place where protests may be filed and the
153 date, time, and place of a public hearing at which the governing body will consider protests;
154 and

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

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

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

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

162 (a) if an assessment is proposed to be made according to frontage, 50% of the front
163 footage of the property proposed to be assessed;

164 (b) if an assessment is proposed to be made according to area, 50% of the area of the
165 property proposed to be assessed;

166 (c) if an assessment is proposed to be made according to assessed value, 50% of the
167 assessed value of the property proposed to be assessed;

168 (d) if an assessment is proposed to be made according to taxable value, 50% of the
169 taxable value of the property proposed to be assessed;

170 (e) if an assessment is proposed to be made according to lots, 50% of the lots proposed
171 to be assessed; or

172 (f) if an assessment is proposed to be made according to the number of connections,
173 50% of the number of connections to property proposed to be assessed.

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

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

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

182 (d) If at any time during [the hearings] a hearing under Subsection (2)(a), it [shall

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

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

190 (a) shall consider the arguments put forth ~~and~~;

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

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

198 (4) (a) A governing body may not create an improvement district under this chapter if
 199 adequate protests are filed on or before the time specified in the notice under Subsection
 200 54-8-9(2).

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

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

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

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

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

210 **54-8-26. Notice that service from underground facilities is available --**

211 **Consequences of failure to convert overhead facilities.**

212 ~~[The public utility performing the conversion shall, at the expense of the owner, convert~~
 213 ~~to underground all electric and communication service facilities located upon any lot or parcel~~

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

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

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

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

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

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

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

245 involved shall be billed by the public utility involved for such work as it accomplishes upon the
246 owner's property.]

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

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

Legislative Review Note

as of 5-27-05 8:50 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

Interim Committee Note

as of 12-15-05 10:32 AM

The Public Utilities and Technology Interim Committee recommended this bill.

Fiscal Note
Bill Number HB0006

Utility Improvement Districts Revisions

16-Jan-06

7:35 AM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst