

**Representative David Ure** proposes the following substitute bill:

**UTILITY IMPROVEMENT DISTRICTS**

**REVISIONS**

2006 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: David Ure**

Senate Sponsor: Beverly Ann Evans

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**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

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

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

▶ modifies provisions relating to the underground conversion of overhead utilities to include:

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

- the consequence of an owner's failure to convert overhead facilities to underground; and

- the assessment of costs and expenses of the conversion against the property;



- 26           ▶ modifies a provision relating to notice of the levy of an assessment for converting
- 27 overhead utility facilities to underground;
- 28           ▶ modifies the type of easement that is created upon the failure to convert overhead
- 29 utility facilities with the required time;
- 30           ▶ provides that a construction easement terminates once the conversion of overhead
- 31 utility facilities to underground is completed; and
- 32           ▶ makes technical changes.

33 **Monies Appropriated in this Bill:**

34           None

35 **Other Special Clauses:**

36           None

37 **Utah Code Sections Affected:**

38 AMENDS:

- 39           **54-8-5**, as enacted by Chapter 157, Laws of Utah 1969
- 40           **54-8-6**, as enacted by Chapter 157, Laws of Utah 1969
- 41           **54-8-9**, as enacted by Chapter 157, Laws of Utah 1969
- 42           **54-8-11**, as enacted by Chapter 157, Laws of Utah 1969
- 43           **54-8-19**, as enacted by Chapter 157, Laws of Utah 1969
- 44           **54-8-26**, as enacted by Chapter 157, Laws of Utah 1969



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

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

48           **54-8-5. Apportionment of costs -- Assessment against benefitted property --**

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

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

57 and adjacent thereto or included in the improvement district, and in proportion to the benefits  
58 derived to such property by said improvements.]

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

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

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

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

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

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

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

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

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

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

87 (8) Fee lands and property of public entities such as the federal government, the state

88 [of Utah], or any county, city, or town [shall] may not be considered as lands or property  
 89 benefitted by any improvement district, and, unless such public entity within the boundaries of  
 90 an improvement district consents in writing, filed before the governing body adopts the  
 91 resolution provided for in Section 54-8-8, the lands and property of such public entity shall not  
 92 be subject to assessment for the payment of any of the cost or expense of such improvement.

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

94 **54-8-6. Creation of improvement district -- Petition by property owners --**  
 95 **Resolution of governing body -- Utilities to submit reports.**

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

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

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

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

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

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

119 ~~service area.]~~

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

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

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

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

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

130 **54-8-9. Public hearing -- Notice -- Contents.**

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

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

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

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

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

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

149 [(5)] (e) state the date, time, and place [~~at which~~] that the governing body will conduct

150 a public hearing upon the proposed improvement and on the question of benefits to be derived  
151 by the real property in the district;

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

155 (g) designate the date, time, and place of a public hearing at which the governing body  
156 will consider objections to the creation of the proposed district and the making of the proposed  
157 improvements.

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

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

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

165 (b) Representatives of the public utilities concerned shall be present at [all such  
166 hearings. Such hearings] each hearing under Subsection (1)(a).

167 (c) A hearing under Subsection (1)(a) may be adjourned from time to time to a fixed  
168 future time and place.

169 (d) If at any time during [the hearings] a hearing under Subsection (1)(a), it [shall  
170 appear] appears to the governing body that changes in the proposed improvements or the  
171 proposed district should be made, which, after consultation with the public utilities concerned,  
172 appear to affect either the cost or feasibility of the improvements, the hearing shall be  
173 adjourned to a fixed future time and place and a new costs and feasibility report prepared on  
174 the basis of the contemplated changes.

175 (2) After the hearing has been concluded and after all persons desiring to be heard have  
176 been heard, the governing body;

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

178 (b) may make [such] changes in the area to be included in the district as it [may  
179 consider] considers desirable or necessary[-. However, no such changes shall be made unless], if  
180 a costs and feasibility report has been prepared on the basis of [such] those changes[-. After

181 ~~such consideration and determination, the board]; and~~

182 (c) shall adopt a resolution either abandoning the district and project or determining to  
183 proceed with the district and project, either as described in the notice or with changes made as  
184 ~~[above]~~ authorized in this section.

185 Section 5. Section **54-8-19** is amended to read:

186 **54-8-19. Assessments -- Right to levy against property -- Due date -- Notice --**  
187 **Payment in annual installments.**

188 (1) The governing body may levy the assessments under the assessment list in whole or  
189 in part at any time after the adoption of the assessment resolution, but if not levied as a whole,  
190 any partial levies shall be made on the basis of completed improvements and the property  
191 benefited ~~[thereby]~~ by the improvements.

192 (2) The amount of the assessment will become due and collectible immediately upon  
193 the levying of the assessment and, if it is not paid within ~~[thirty]~~ 30 days from the date of  
194 ~~[such]~~ the levy, it shall, at the expiration of ~~[such thirty]~~ the 30 days, commence to bear interest  
195 at a rate fixed by the governing body but not to exceed 7% per annum.

196 (3) (a) Notice shall be given in the same manner as provided in Section 54-8-16 ~~[and~~  
197 ~~shall]~~;

198 (b) The notice under Subsection (3)(a) shall:

199 (i) specify the date and amount of the levy affecting each tract, block, lot, or parcel, the  
200 date when interest will commence, the amount of such interest, and the period of years over  
201 which installment payments may be made~~[-If]~~;

202 (ii) identify the easement that may be acquired by Subsection 54-8-26(2); and

203 (iii) be recorded in the office of the recorder of the county in which the tract, block, lot,  
204 or parcel is located.

205 (4) (a) If the assessment is not paid within the ~~[thirty]~~ 30 days allowed, ~~[it will be~~  
206 ~~presumed that]~~ each owner [exercises] shall be presumed to exercise the right and option to pay  
207 the amount due in equal annual installments bearing interest at the rate specified in the notice  
208 and extending over the period of years, not exceeding ~~[twenty]~~ 20 specified in the notice.

209 (b) The first installment shall become due one year from the date when interest  
210 commenced, and one installment shall become due on the same day of the same month  
211 annually thereafter.

212 (c) Any assessment may be prepaid on any annual installment date without interest  
213 penalty provided the total balance of the assessment, including accrued interest, costs and  
214 penalties, be paid.

215 Section 6. Section **54-8-26** is amended to read:

216 **54-8-26. Notice that service from underground facilities is available --**  
217 **Consequences of failure to convert overhead facilities.**

218 [~~The public utility performing the conversion shall, at the expense of the owner, convert~~  
219 ~~to underground all electric and communication service facilities located upon any lot or parcel~~  
220 ~~of land within the improvement district and not within the easement for distribution. This shall~~  
221 ~~include the digging and the back filling of a trench upon such lot or parcel unless the owner~~  
222 ~~shall execute a written objection thereto and file the same with the clerk of the governing body~~  
223 ~~not later than the date set for hearing objections to the improvement district as provided by law.~~  
224 ~~Failure to file such written objection shall be taken]~~

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

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

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

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

236 (2) (a) Failure to convert the overhead facilities to underground facilities within 60  
237 days after the date of mailing the notice shall be considered as a consent to and grant of a  
238 construction easement to the [utility] county or municipality and [shall be construed] as express  
239 authority to the [public utility corporations] county or municipality and [their respective] its  
240 officers, agents, and employees to enter upon [such] the lot or parcel for [such] the purpose[;  
241 and through failure to object, any right of protest or objection in respect of the doing of such  
242 work and the inclusion of the costs thereof in said assessment shall be waived. If an owner does

243 ~~file such written objection, he shall then be responsible for providing a trench which is in~~  
244 ~~accordance with applicable rules, regulations or tariffs from the owner's service entrance to a~~  
245 ~~point designated by the public utility and for back filling the trench following installation of the~~  
246 ~~underground service by the public utility involved] of making the conversion.~~

247 ~~[The costs of any work done by the public utility corporation shall be included in the~~  
248 ~~assessment to be levied upon such lot or parcel unless the owner shall file a written objection~~  
249 ~~thereto with the clerk of the governing body not later than the date set for hearing objections to~~  
250 ~~the improvement district as provided by law. Should such an objection be filed, the owner~~  
251 ~~involved shall be billed by the public utility involved for such work as it accomplishes upon the~~  
252 ~~owner's property.]~~

253 (b) A construction easement under Subsection (2)(a) terminates upon completion of the  
254 conversion of overhead facilities to underground.

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

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