

SHARE ASSESSMENT ACT

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James R. Gowans

Senate Sponsor: Peter C. Knudson

LONG TITLE

General Description:

This bill modifies provisions for assessing corporate shares.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ describes how shares may be assessed;
- ▶ provides rules for assessing shares; and
- ▶ allows enforcement of assessments by various methods, including sale of shares

with unpaid assessments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

16-4-101, Utah Code Annotated 1953

16-4-102, Utah Code Annotated 1953

16-4-201, Utah Code Annotated 1953

16-4-202, Utah Code Annotated 1953

16-4-203, Utah Code Annotated 1953



- 28 **16-4-204**, Utah Code Annotated 1953
- 29 **16-4-205**, Utah Code Annotated 1953
- 30 **16-4-206**, Utah Code Annotated 1953
- 31 **16-4-301**, Utah Code Annotated 1953
- 32 **16-4-302**, Utah Code Annotated 1953
- 33 **16-4-303**, Utah Code Annotated 1953
- 34 **16-4-304**, Utah Code Annotated 1953
- 35 **16-4-305**, Utah Code Annotated 1953
- 36 **16-4-306**, Utah Code Annotated 1953
- 37 **16-4-307**, Utah Code Annotated 1953
- 38 **16-4-308**, Utah Code Annotated 1953
- 39 **16-4-309**, Utah Code Annotated 1953
- 40 **16-4-310**, Utah Code Annotated 1953
- 41 **16-4-311**, Utah Code Annotated 1953
- 42 **16-4-312**, Utah Code Annotated 1953

43 REPEALS:

- 44 **16-4-4**, as last amended by Chapter 29, Laws of Utah 1961
- 45 **16-4-5**, as last amended by Chapter 29, Laws of Utah 1961
- 46 **16-4-6**, as last amended by Chapter 29, Laws of Utah 1961
- 47 **16-4-7**, as last amended by Chapter 29, Laws of Utah 1961
- 48 **16-4-8**, as last amended by Chapter 29, Laws of Utah 1961
- 49 **16-4-9**, as last amended by Chapter 29, Laws of Utah 1961
- 50 **16-4-10**, as last amended by Chapter 29, Laws of Utah 1961
- 51 **16-4-12**, as last amended by Chapter 9, Laws of Utah 2001
- 52 **16-4-13**, Utah Code Annotated 1953
- 53 **16-4-14**, Utah Code Annotated 1953
- 54 **16-4-15**, as last amended by Chapter 29, Laws of Utah 1961
- 55 **16-4-16**, as last amended by Chapter 29, Laws of Utah 1961
- 56 **16-4-17**, as last amended by Chapter 29, Laws of Utah 1961
- 57 **16-4-18**, as last amended by Chapter 29, Laws of Utah 1961
- 58 **16-4-19**, as last amended by Chapter 6, Laws of Utah 1992, Third Special Session

- 90 (a) those shares were subject to assessment before May 1, 2007; and
- 91 (b) the assessment is not proscribed by the corporation's articles of incorporation.

92 Section 4. Section **16-4-202** is enacted to read:

93 **16-4-202. Procedure for assessment in absence of provisions in articles or bylaws.**

94 (1) An assessment shall be levied in the manner this chapter provides, unless other
95 commercially reasonable procedures are provided in the articles of incorporation or bylaws.

96 (2) Each assessment shall comply with the requirements of Section 16-4-203.

97 Section 5. Section **16-4-203** is enacted to read:

98 **16-4-203. Equitable assessment.**

99 (1) (a) Subject to Subsection (2), all shares subject to assessment shall be assessed
100 equitably.

101 (b) Different classes of shares, and shares with different rights or benefits, may be
102 subject to differing assessments.

103 (2) Shares may also be assessed on any basis required by:

104 (a) any existing or future contract between:

105 (i) the United States and a water company;

106 (ii) the United States and the shareholders of a water company; or

107 (iii) a water company and one or more shareholders of the water company; or

108 (b) any contract of subscription for shares in a water company contracting with the
109 United States.

110 (3) For purposes of Subsection (2), "contract" does not include the articles of
111 incorporation or the bylaws.

112 Section 6. Section **16-4-204** is enacted to read:

113 **16-4-204. Order levying assessment -- Contents.**

114 (1) An assessment may be levied by order of the board of directors.

115 (2) An order levying an assessment shall:

116 (a) specify the amount of the levy on each share;

117 (b) specify when, to whom, and where the assessment is payable; and

118 (c) identify the day on which an unpaid assessment becomes delinquent.

119 (3) The date on which an unpaid assessment is considered delinquent shall be at least
120 30 days after notice of assessment is given as provided in Section 16-4-206.

121 (4) If assessments are not levied on an equal basis for all shares, the order shall state
122 the equitable basis for the differing assessments.

123 Section 7. Section **16-4-205** is enacted to read:

124 **16-4-205. Notice of assessment -- Form and contents.**

125 When the board of directors levies an assessment, the secretary shall prepare a notice of
126 assessment, including:

127 (1) the name of the corporation;

128 (2) the location of the corporation's principal place of business;

129 (3) the date of the meeting at which the board of directors adopted the order levying the
130 assessment;

131 (4) a description of the class or classes of shares assessed, and the amount of
132 assessment per share;

133 (5) the time, place, and manner of payment;

134 (6) the day on which payment is considered delinquent;

135 (7) if assessments are not levied on an equal basis, a statement that the equitable basis
136 for the assessments is set forth in the order; and

137 (8) a general statement that the board of directors may elect various remedies to
138 enforce payment, including the auctioning of shares.

139 Section 8. Section **16-4-206** is enacted to read:

140 **16-4-206. Service and publication of notice of assessment.**

141 (1) The notice of assessment required by Section 16-4-205 shall be:

142 (a) personally served on each shareholder; or

143 (b) sent by first-class mail to each shareholder at the address shown on the
144 corporation's records.

145 (2) A shareholder is responsible for providing the shareholder's current mailing address
146 to the corporation for purposes of Subsection (1).

147 (3) (a) Except as provided in Subsection (3)(b), a notice of assessment shall be
148 published once a week for two weeks in a newspaper of general circulation in the location of
149 the corporation's principal place of business.

150 (b) A water company may elect not to publish notice under Subsection (3)(a).

151 Section 9. Section **16-4-301** is enacted to read:

Part 3. Enforcement**16-4-301. Enforcement of assessment.**

(1) Payment of a delinquent assessment may be enforced by a corporation in one or more of the following ways:

(a) imposition of a late charge, penalty, or interest;

(b) suspension of one or more benefits of share ownership, including the right to vote, to transfer shares, or to delivery of water in the case of a water company;

(c) sale at public auction of the shares on which payment is delinquent; and

(d) any other enforcement method specified in the corporation's articles of incorporation.

(2) In an enforcement action, the corporation may recover the delinquent assessment, any late charge, penalty, or interest, and all costs of collection, including attorney fees.

(3) (a) The board of directors shall follow enforcement procedures:

(i) as set forth in the articles of incorporation or bylaws; or

(ii) as determined by the board of directors in a manner consistent with the board of directors' fiduciary duty to shareholders.

(b) If the board of directors determines to sell shares at public auction, the board shall follow the procedures required by Sections 16-4-302 through 16-4-312.

Section 10. Section **16-4-302** is enacted to read:

16-4-302. Notice of sale -- Form.

Upon a determination by the board of directors to sell shares on which payment of an assessment is delinquent and the adoption of an order to sell the shares, the secretary shall prepare a notice of sale, including:

(1) the name of the corporation;

(2) the location of the corporation's principal place of business;

(3) the date on which the assessment order was adopted;

(4) a description of the shares on which an assessment is delinquent, including the name of any owner, certificate numbers if share certificates exist, and the number of shares represented by any certificate;

(5) a description of the amount due and payable with respect to each share on which an assessment is delinquent, including the assessment, any late charge, penalty, or interest, and the

183 estimated costs and expenses of collection;

184 (6) a statement of the date, time, and place of the sale of shares to pay the amount
185 payable if the amount is not paid before the identified date; and

186 (7) a statement that if shares are purchased at the auction by the corporation, or a
187 director or officer of the corporation for the benefit of the officer or director, the shares may be
188 redeemed by the shareholder for a period of 30 days after the day on which the shares are sold.

189 Section 11. Section **16-4-303** is enacted to read:

190 **16-4-303. Service and publication of notice of sale.**

191 (1) The notice of sale required by Section 16-4-302 shall be:

192 (a) personally served on each shareholder; or

193 (b) sent by first-class mail to each shareholder at the address shown on the
194 corporation's records.

195 (2) A shareholder is responsible for providing the shareholder's current mailing address
196 to the corporation for purposes of Subsection (1).

197 (3) The notice required by Subsection (1) shall be served or mailed at least 15 days, but
198 not more than 30 days before the day on which the sale is to occur.

199 (4) A notice of sale shall be published once a week for two weeks in a newspaper of
200 general circulation in the location of the corporation's principal place of business beginning at
201 least 15 days but no more than 45 days before the day on which the sale is to occur.

202 Section 12. Section **16-4-304** is enacted to read:

203 **16-4-304. Power of sale.**

204 The service or mailing and publication of the notice of sale required under Section
205 16-4-303 gives a corporation power to sell and convey all the shares described in the notice of
206 sale upon which any delinquent assessment or other amount remains unpaid at the time
207 appointed for the sale.

208 Section 13. Section **16-4-305** is enacted to read:

209 **16-4-305. Number of shares to be sold.**

210 (1) On the day, at the time and place appointed for a sale under this part, the secretary
211 or other officer shall sell at public auction to the highest bidder for cash the number of shares
212 necessary to pay all amounts due on an overdue assessment.

213 (2) Shares shall be sold in the smallest fraction as authorized in the articles of

214 incorporation or the bylaws.

215 (3) The public auction shall be conducted by open bid, sealed bid, or by other means
216 provided in the articles of incorporation or bylaws that reasonably protects the delinquent
217 shareholder's interest.

218 (4) Proceeds of a sale in excess of the assessment and other amounts due shall be
219 promptly paid to the shareholder whose shares were sold.

220 Section 14. Section **16-4-306** is enacted to read:

221 **16-4-306. Determining the highest bidder -- Transfer to highest bidder.**

222 (1) (a) The person offering at a sale to pay the highest amount for the smallest number
223 or fraction of shares, which may not be less than the delinquent assessment and all other
224 amounts payable, is the highest bidder.

225 (b) Whether the bid is for the smallest number or fraction of shares is determined by
226 the articles of incorporation.

227 (2) The shares purchased shall be transferred to the highest bidder on the share books
228 of the corporation upon payment of the bid amount.

229 Section 15. Section **16-4-307** is enacted to read:

230 **16-4-307. Purchase by corporation, officer, or director -- Redemption.**

231 (1) (a) If at the sale of shares, no bidder offers the amount of the delinquent assessment
232 and all other amounts payable, the shares may be bid on and purchased by the corporation
233 through the secretary, president, or any director for the amount of the delinquent assessment
234 and all other amounts payable.

235 (b) If a corporation purchases shares under Subsection (1), the delinquent assessment
236 and all other amounts payable shall be credited as paid in full on the books of the corporation.

237 (2) If purchased under Subsection (1), entry of the transfer of the shares to the
238 corporation shall be made on the corporation's books.

239 (3) Any shares acquired by a corporation under this section, or purchased by an officer
240 or director for the officer's or director's own benefit, are subject to redemption by the
241 shareholder for a period of 30 days following the day on which the shares are sold at auction.

242 (4) (a) Shares subject to redemption under Subsection (3) may be redeemed at a price
243 equal to the amount of the delinquent assessment and all other amounts payable on the day of
244 the sale, plus interest through the day on which the shares are redeemed.

245 (b) The amount of interest under Subsection (4)(a) is the amount determined under
246 Section 15-1-4.

247 Section 16. Section **16-4-308** is enacted to read:

248 **16-4-308. Status of shares purchased by corporation, officer, or director.**

249 (1) (a) Title to any shares purchased by a corporation under Section 16-4-307 vests in
250 the corporation upon expiration of the 30-day redemption period if the right of redemption is
251 not exercised.

252 (b) Shares purchased by a corporation under Section 16-4-307 are treated as treasury
253 shares and shall be held and disposed of in a manner expressly provided for in Title 16,
254 Chapter 10a, Utah Revised Business Corporation Act.

255 (c) Any shares held by a corporation under this section are not assessable.

256 (d) No dividends or distributions may be made on shares held by the corporation.

257 (2) (a) Title to any shares purchased by an officer or director of the corporation for the
258 officer's or director's own benefit vest in the officer or director upon expiration of the 30-day
259 redemption period if the right of redemption is not exercised.

260 (b) Shares purchased by an officer or director for the officer's or director's own benefit
261 are subject to all assessments levied by the corporation after the assessment that was the basis
262 for the sale at which the officer or director purchased the shares.

263 Section 17. Section **16-4-309** is enacted to read:

264 **16-4-309. Extension of time specified in notices.**

265 (1) The dates fixed in any notice of assessment or notice of sale may be extended for
266 up to six months by order of the board of directors entered on the corporation's records.

267 (2) No order extending the time for the performance of any act specified in any notice
268 under this chapter is effective unless notice of the extension is published and served in the
269 same manner as the original notice.

270 Section 18. Section **16-4-310** is enacted to read:

271 **16-4-310. Error or omission in proceedings -- Effect.**

272 (1) No assessment is invalidated by:

273 (a) a failure to serve, mail, or publish the notice of sale;

274 (b) the omission of any information required to be contained in the notice; or

275 (c) the nonperformance of any act otherwise required to be performed in connection

276 with the sale of shares to enforce payment of an assessment.

277 (2) No sale is valid unless proper notice is given and any material acts of
278 nonperformance are corrected.

279 Section 19. Section **16-4-311** is enacted to read:

280 **16-4-311. Action to recover shares sold -- Tender -- Limitation of action.**

281 (1) No action may be brought to recover shares sold for a delinquent assessment based
282 on irregularity or defect in the notice of sale or the sale unless the person bringing the action
283 first pays or tenders payment to the corporation or to the person holding the shares sold:

284 (a) the amount for which the shares were sold;

285 (b) the amount of all subsequent assessments levied on the shares; and

286 (c) interest on the amounts identified in Subsections (1)(a) and (b) from the time the
287 amounts were paid by the person purchasing the shares.

288 (2) No action may be brought to recover shares sold under this part more than six
289 months after the sale of the shares at auction.

290 Section 20. Section **16-4-312** is enacted to read:

291 **16-4-312. Affidavit and posting of notice -- Evidence.**

292 (1) An affidavit made by the secretary of a corporation of the mailing of a notice
293 required by this chapter is prima facie evidence of the existence and mailing of the notice.

294 (2) The publication of a notice under this chapter may be proved by the affidavit of the
295 printer foreman or principal clerk of the newspaper in which the notice was published.

296 (3) The affidavit of the secretary of the corporation or the auctioneer responsible for
297 selling shares is prima facie evidence of:

298 (a) the time and place of sale;

299 (b) the quantity and particular description of the shares sold;

300 (c) to whom and for what price the shares were sold; and

301 (d) the fact of the purchase money being paid.

302 (4) The affidavits referenced in this section shall be filed in the corporation's office.

303 (5) A copy of an affidavit referenced in this section is prima facie evidence of the facts
304 contained in the affidavit if the affidavit is certified by the secretary.

305 Section 21. **Repealer.**

306 This bill repeals:

- 307 Section 16-4-4, Assessments -- Provision by statute or in articles of incorporation
- 308 necessary.
- 309 Section 16-4-5, Procedure applicable in absence of provision in articles or bylaws.
- 310 Section 16-4-6, Limit on right to levy assessments.
- 311 Section 16-4-7, Equal assessments required.
- 312 Section 16-4-8, Order levying assessment -- Contents.
- 313 Section 16-4-9, Notice of order of assessment -- Form and contents.
- 314 Section 16-4-10, Service and publication of notice of order.
- 315 Section 16-4-12, Notice of delinquency -- Form.
- 316 Section 16-4-13, Delinquency notice -- Contents.
- 317 Section 16-4-14, Publication of notice of delinquency.
- 318 Section 16-4-15, Jurisdiction acquired by publication.
- 319 Section 16-4-16, Amount of stock to be sold.
- 320 Section 16-4-17, "Highest bidder" defined.
- 321 Section 16-4-18, Purchase by corporation.
- 322 Section 16-4-19, Status of stock purchased by corporation.
- 323 Section 16-4-20, Extension of time specified in notices.
- 324 Section 16-4-21, Errors or omissions in proceedings -- Effect.
- 325 Section 16-4-22, Actions to recover stock sold -- Tender -- Limitation of action.
- 326 Section 16-4-23, Affidavit of posting notice -- Who may make -- Evidence.
- 327 Section 16-4-24, Irrigation companies -- Assessments -- Other than pro rata basis.

Legislative Review Note
as of 11-16-06 1:25 PM

Office of Legislative Research and General Counsel

Legislative Committee Note
as of 12-19-06 7:07 AM

The Water Issues Task Force recommended this bill.

H.B. 53 - Share Assessment Act

Fiscal Note

2007 General Session
State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

1/2/2007, 2:10:49 PM, Lead Analyst: Eckersley, S.

Office of the Legislative Fiscal Analyst