

**ASSESSMENT AREA AMENDMENTS**

2009 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Fred R Hunsaker**

Senate Sponsor: Dennis E. Stowell

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**LONG TITLE**

**General Description:**

This bill modifies provisions relating to assessment areas.

**Highlighted Provisions:**

This bill:

- ▶ modifies definitions;
- ▶ authorizes other political subdivisions of the state, in addition to counties, cities, towns, special service districts, and local districts, to designate an assessment area and levy assessments;
- ▶ clarifies which improvements a notice of a proposed designation resolution or ordinance may make provision for;
- ▶ modifies which owners of property may file a protest to a proposed assessment area or assessment;
- ▶ modifies the conditions under which a local entity may designate an assessment area;
- ▶ modifies the conditions under which a local entity may add to a designated assessment area;
- ▶ modifies items that can be included in the levy of an assessment;
- ▶ modifies the possible makeup of a board of equalization for assessment purposes;
- ▶ specifies a time within which a board of equalization must mail a copy of the board's final report;
- ▶ allows a local entity to publish a summary of an adopted assessment resolution or ordinance rather than the resolution or ordinance itself;

- 30           ▶ modifies a provision relating to an amendment of an assessment resolution or
- 31 ordinance that results in an increase of an assessment;
- 32           ▶ includes capitalized interest in the items for which proceeds of bond anticipation
- 33 notes may be used;
- 34           ▶ authorizes a local entity to include interest accruing on bond anticipation notes in
- 35 the cost of improvements;
- 36           ▶ includes assessments in the list of items from which warrants or bond anticipation
- 37 notes are to be paid;
- 38           ▶ modifies a provision relating to how assessment bonds are to be issued;
- 39           ▶ includes interim warrants in a provision requiring the local entity to provide for the
- 40 retirement of the obligation; and
- 41           ▶ makes technical changes.

**42 Monies Appropriated in this Bill:**

43           None

**44 Other Special Clauses:**

45           None

**46 Utah Code Sections Affected:**

47 AMENDS:

48           **11-42-102**, as last amended by Laws of Utah 2008, Chapter 360

49           **11-42-202**, as enacted by Laws of Utah 2007, Chapter 329

50           **11-42-203**, as enacted by Laws of Utah 2007, Chapter 329

51           **11-42-205**, as last amended by Laws of Utah 2008, Chapter 382

52           **11-42-207**, as enacted by Laws of Utah 2007, Chapter 329

53           **11-42-301**, as enacted by Laws of Utah 2007, Chapter 329

54           **11-42-401**, as enacted by Laws of Utah 2007, Chapter 329

55           **11-42-403**, as enacted by Laws of Utah 2007, Chapter 329

56           **11-42-404**, as enacted by Laws of Utah 2007, Chapter 329

57           **11-42-410**, as enacted by Laws of Utah 2007, Chapter 329

- 58           **11-42-602**, as enacted by Laws of Utah 2007, Chapter 329
- 59           **11-42-603**, as enacted by Laws of Utah 2007, Chapter 329
- 60           **11-42-605**, as last amended by Laws of Utah 2008, Chapter 250
- 61           **11-42-702**, as enacted by Laws of Utah 2007, Chapter 329
- 62           **63G-2-103**, as last amended by Laws of Utah 2008, Chapter 155 and renumbered and
- 63 amended by Laws of Utah 2008, Chapter 382



64  
65 *Be it enacted by the Legislature of the state of Utah:*

66           Section 1. Section **11-42-102** is amended to read:

67           **11-42-102. Definitions.**

68           (1) "Adequate protests" means timely filed, written protests under Section 11-42-203  
69 that represent at least 50% of the frontage, area, taxable value, fair market value, lots, number  
70 of connections, or equivalent residential units of the property proposed to be assessed,  
71 according to the same assessment method by which the assessment is proposed to be levied,  
72 after eliminating:

73           (a) protests relating to:

- 74           (i) property that has been deleted from a proposed assessment area; or
- 75           (ii) an improvement that has been deleted from the proposed improvements to be  
76 provided to property within the proposed assessment area; and

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

78           (2) "Assessment area" means an area, or, if more than one area is designated, the  
79 aggregate of all areas within a local entity's jurisdictional boundaries that is designated by a  
80 local entity under Part 2, Designating an Assessment Area, for the purpose of financing the  
81 costs of improvements, operation and maintenance, or economic promotion activities that  
82 benefit property within the area.

83           (3) "Assessment bonds" means bonds that are:

- 84           (a) issued under Section 11-42-605; and
- 85           (b) payable in part or in whole from assessments levied in an assessment area,

86 improvement revenues, and a guaranty fund or reserve fund.

87 (4) "Assessment fund" means a special fund that a local entity establishes under  
88 Section 11-42-412.

89 (5) "Assessment lien" means a lien on property within an assessment area that arises  
90 from the levy of an assessment, as provided in Section 11-42-501.

91 (6) "Assessment method" means the method by which an assessment is levied against  
92 property, whether by frontage, area, taxable value, fair market value, lot, number of  
93 connections, equivalent residential unit, or any combination of these methods.

94 (7) "Assessment ordinance" means an ordinance adopted by a local entity under  
95 Section 11-42-404 that levies an assessment on benefitted property within an assessment area.

96 (8) "Assessment resolution" means a resolution adopted by a local entity under Section  
97 11-42-404 that levies an assessment on benefitted property within an assessment area.

98 (9) "Benefitted property" means property within an assessment area that directly or  
99 indirectly benefits from improvements, operation and maintenance, or economic promotion  
100 activities.

101 (10) "Bond anticipation notes" means notes issued under Section 11-42-602 in  
102 anticipation of the issuance of assessment bonds.

103 (11) "Bonds" means assessment bonds and refunding assessment bonds.

104 (12) "Commercial area" means an area in which at least 75% of the property is  
105 devoted to the interchange of goods or commodities.

106 (13) "Connection fee" means a fee charged by a local entity to pay for the costs of  
107 connecting property to a publicly owned sewer, storm drainage, water, gas,  
108 [~~telecommunications~~] communications, or electrical system, whether or not improvements are  
109 installed on the property.

110 (14) "Contract price" means:

111 (a) the cost of acquiring an improvement, if the improvement is acquired; or

112 (b) the amount payable to one or more contractors for the design, engineering,  
113 inspection, and construction of an improvement.

114 (15) "Designation ordinance" means an ordinance adopted by a local entity under  
115 Section 11-42-206 designating an assessment area.

116 (16) "Designation resolution" means a resolution adopted by a local entity under  
117 Section 11-42-206 designating an assessment area.

118 (17) "Economic promotion activities" means activities that promote economic growth  
119 in a commercial area of a local entity, including:

- 120 (a) sponsoring festivals and markets;
- 121 (b) promoting business investment or activities;
- 122 (c) helping to coordinate public and private actions; and
- 123 (d) developing and issuing publications designed to improve the economic well-being  
124 of the commercial area.

125 (18) "Equivalent residential unit" means a dwelling, unit, or development that is equal  
126 to a single-family residence in terms of the nature of its use or impact on an improvement to  
127 be provided in the assessment area.

128 (19) "Governing body" means:

- 129 (a) for a county, city, or town, the legislative body of the county, city, or town;
- 130 (b) for a local district, the board of trustees of the local district; and
- 131 (c) for a special service district:
  - 132 (i) the legislative body of the county, city, or town that established the special service  
133 district, if no administrative control board has been appointed under Section 17D-1-301; or
  - 134 (ii) the administrative control board of the special service district, if an administrative  
135 control board has been appointed under Section 17D-1-301.

136 (20) "Guaranty fund" means the fund established by a local entity under Section  
137 11-42-701.

138 (21) "Improved property" means property proposed to be assessed within an  
139 assessment area upon which a residential, commercial, or other building has been built.

140 (22) "Improvement":

141 (a) means any publicly owned infrastructure, system, or other facility that:

142           ~~[(a)]~~ (i) a local entity is authorized to provide; or  
143           ~~[(b)]~~ (ii) the governing body of a local entity determines is necessary or convenient to  
144 enable the local entity to provide a service that the local entity is authorized to provide[-]; and  
145           (b) includes facilities in an assessment area, including a private driveway, an irrigation  
146 ditch, and a water turnout, that:  
147           (i) can be conveniently installed at the same time as an infrastructure, system, or other  
148 facility described in Subsection (22)(a); and  
149           (ii) are requested by a property owner on whose property or for whose benefit the  
150 infrastructure, system, or other facility is being installed.  
151           (23) "Improvement revenues":  
152           (a) means charges, fees, impact fees, or other revenues that a local entity receives from  
153 improvements; and  
154           (b) does not include revenue from assessments.  
155           (24) "Incidental refunding costs" means any costs of issuing refunding assessment  
156 bonds and calling, retiring, or paying prior bonds, including:  
157           (a) legal and accounting fees;  
158           (b) charges of ~~[fiscal agents]~~ financial advisors, escrow agents, certified public  
159 accountant verification entities, and trustees;  
160           (c) underwriting discount costs, printing costs, the costs of giving notice;  
161           (d) any premium necessary in the calling or retiring of prior bonds;  
162           (e) fees to be paid to the local entity to issue the refunding assessment bonds and to  
163 refund the outstanding prior bonds;  
164           (f) any other costs that the governing body determines are necessary or desirable to  
165 incur in connection with the issuance of refunding assessment bonds; and  
166           (g) any interest on the prior bonds that is required to be paid in connection with the  
167 issuance of the refunding assessment bonds.  
168           (25) "Installment payment date" means the date on which an installment payment of  
169 an assessment is payable.

170 (26) "Interim warrant" means a warrant issued by a local entity under Section  
171 11-42-601.

172 (27) "Jurisdictional boundaries" means:

173 (a) for a county, the boundaries of the unincorporated area of the county; and

174 (b) for each other local entity, the boundaries of the local entity.

175 (28) "Local district" means a local district under Title 17B, Limited Purpose Local  
176 Government Entities - Local Districts.

177 (29) "Local entity" means a county, city, town, special service district, ~~[or]~~ local  
178 district, or other political subdivision of the state.

179 (30) "Local entity obligations" means assessment bonds, refunding assessment bonds,  
180 interim warrants, and bond anticipation notes issued by a local entity.

181 (31) "Mailing address" means:

182 (a) a property owner's last-known address using the name and address appearing on  
183 the last completed real property assessment roll of the county in which the property is located;  
184 and

185 (b) if the property is improved property:

186 (i) the property's street number; or

187 (ii) the post office box, rural route number, or other mailing address of the property, if  
188 a street number has not been assigned.

189 (32) "Net improvement revenues" means all improvement revenues that a local entity  
190 has received since the last installment payment date, less all amounts payable by the local  
191 entity from those improvement revenues for operation and maintenance costs.

192 (33) "Operation and maintenance costs":

193 (a) means the costs that a local entity incurs in operating and maintaining  
194 improvements in an assessment area, ~~[including]~~ whether or not those improvements have  
195 been financed under this chapter; and

196 (b) includes service charges, administrative costs, ongoing maintenance charges, and  
197 tariffs or other charges for electrical, water, gas, or other utility usage.

198           ~~[(34) "Optional facilities":]~~  
199           ~~[(a) means facilities in an assessment area that:]~~  
200           ~~[(i) can be conveniently installed at the same time as improvements in the assessment~~  
201 ~~area; and]~~

202           ~~[(ii) are requested by a property owner on whose property or for whose benefit the~~  
203 ~~improvements are being installed; and]~~

204           ~~[(b) includes private driveways, irrigation ditches, and water turnouts:]~~

205           ~~[(35)]~~ (34) "Overhead costs" means the actual costs incurred or the estimated costs to  
206 be incurred by a local entity in connection with an assessment area for appraisals, legal fees,  
207 filing fees, financial advisory charges, underwriting fees, placement fees, escrow, trustee, and  
208 paying agent fees, publishing and mailing costs, costs of levying an assessment, recording  
209 costs, and all other incidental costs.

210           ~~[(36)]~~ (35) "Prior bonds" means the assessment bonds that are refunded in part or in  
211 whole by refunding assessment bonds.

212           ~~[(37)]~~ (36) "Prior assessment ordinance" means the ordinance levying the assessments  
213 from which the prior bonds are payable.

214           ~~[(38)]~~ (37) "Prior assessment resolution" means the resolution levying the assessments  
215 from which the prior bonds are payable.

216           ~~[(39)]~~ (38) "Project engineer" means the surveyor or engineer employed by or private  
217 consulting engineer engaged by a local entity to perform the necessary engineering services for  
218 and to supervise the construction or installation of the improvements.

219           ~~[(40)]~~ (39) "Property" includes real property and any interest in real property,  
220 including water rights[;] and leasehold rights[; ~~and personal property related to the property~~].

221           ~~[(41)]~~ (40) "Property price" means the price at which a local entity purchases or  
222 acquires by eminent domain property to make improvements in an assessment area.

223           ~~[(42)]~~ (41) "Provide" or "providing," with reference to an improvement, includes the  
224 acquisition, construction, reconstruction, renovation, maintenance, repair, operation, and  
225 expansion of an improvement.



226 [(43)] (42) "Public agency" means:

227 (a) the state or any agency, department, or division of the state; and

228 (b) a political subdivision of the state.

229 [(44)] (43) "Reduced payment obligation" means the full obligation of an owner of  
230 property within an assessment area to pay an assessment levied on the property after the  
231 assessment has been reduced because of the issuance of refunding assessment bonds, as  
232 provided in Section 11-42-608.

233 [(45)] (44) "Refunding assessment bonds" means assessment bonds that a local entity  
234 issues under Section 11-42-607 to refund, in part or in whole, assessment bonds.

235 [(46)] (45) "Reserve fund" means a fund established by a local entity under Section  
236 11-42-702.

237 [(47)] (46) "Service" means:

238 (a) water, sewer, storm drainage, garbage collection, library, recreation,  
239 communications, or electric service[;];

240 (b) economic promotion activities[;]; or

241 (c) any other service that a local entity is required or authorized to provide.

242 [(48)] (47) "Special service district" has the same meaning as defined in Section  
243 17D-1-102.

244 [(49)] (48) "Unimproved property" means property upon which no residential,  
245 commercial, or other building has been built.

246 [(50)] (49) "Voluntary assessment area" means an assessment area that contains only  
247 property whose owners have voluntarily consented to an assessment.

248 Section 2. Section **11-42-202** is amended to read:

249 **11-42-202. Requirements applicable to a notice of a proposed assessment area**  
250 **designation.**

251 (1) Each notice required under Subsection 11-42-201(2)(a) shall:

252 (a) state that the local entity proposes to:

253 (i) designate one or more areas within the local entity's jurisdictional boundaries as an

254 assessment area;

255       (ii) provide an improvement to property within the proposed assessment area; and

256       (iii) finance some or all of the cost of improvements by an assessment on benefitted

257 property within the assessment area;

258       (b) describe the proposed assessment area by any reasonable method that allows an

259 owner of property in the proposed assessment area to determine that the owner's property is

260 within the proposed assessment area;

261       (c) describe, in a general way, the improvements to be provided to the assessment

262 area, including:

263       (i) the general nature of the improvements; and

264       (ii) the general location of the improvements, by reference to streets or portions or

265 extensions of streets or by any other means that the governing body chooses that reasonably

266 describes the general location of the improvements;

267       (d) a statement of the estimated cost of the improvements as determined by a project

268 engineer;

269       (e) a statement that the local entity proposes to levy an assessment on benefitted

270 property within the assessment area to pay some or all of the cost of the improvements

271 according to the estimated direct and indirect benefits to the property from the improvements;

272       (f) a statement of the assessment method by which the assessment is proposed to be

273 levied;

274       (g) a statement of the time within which and the location at which protests against

275 designation of the proposed assessment area or of the proposed improvements are required to

276 be filed and the method by which the number of protests required to defeat the designation of

277 the proposed assessment area or acquisition or construction of the proposed improvements are

278 to be determined;

279       (h) state the date, time, and place of the public hearing under Section 11-42-204;

280       (i) if the governing body elects to create and fund a reserve fund under Section

281 11-42-702, a description of how the reserve fund will be funded and replenished and how

282 remaining money in the reserve fund is to be disbursed upon full payment of the bonds;

283 (j) if the governing body intends to designate a voluntary assessment area, a property  
284 owner consent form that:

285 (i) estimates the total assessment to be levied against the particular parcel of property;

286 (ii) describes any additional benefits that the governing body expects the assessed  
287 property to receive from the improvements; and

288 (iii) designates the date and time by which the fully executed consent form is required  
289 to be submitted to the governing body;

290 (k) if the local entity intends to levy an assessment to pay operation and maintenance  
291 costs or for economic promotion activities:

292 (i) a description of the operation and maintenance costs or economic promotion  
293 activities to be paid by assessments and the initial estimated annual assessment to be levied;

294 (ii) a description of how the estimated assessment will be determined;

295 (iii) a description of how and when the governing body will adjust the assessment to  
296 reflect current operation and maintenance costs or the costs of current economic promotion  
297 activities;

298 (iv) a description of the method of assessment if different from the method of  
299 assessment to be used for financing any improvement; and

300 (v) a statement of the maximum number of years over which the assessment for  
301 operation and maintenance or economic promotion activities will be levied; and

302 (l) if the governing body intends to divide the proposed assessment area into zones  
303 under Subsection 11-42-201(1)(b), a description of the proposed zones.

304 (2) A notice required under Subsection 11-42-201(2)(a) may contain other information  
305 that the governing body considers to be appropriate, including:

306 (a) the amount or proportion of the cost of the improvement to be paid by the local  
307 entity or from sources other than an assessment;

308 (b) the estimated amount of each type of assessment for the various improvements to  
309 be financed according to the method of assessment that the governing body chooses; and

310 (c) provisions for any ~~optional~~ improvements described in Subsection  
311 11-42-102(22)(b).

312 (3) Each notice required under Subsection 11-42-201(2)(a) shall:

313 (a) (i) be published in a newspaper of general circulation within the local entity's  
314 jurisdictional boundaries, once a week for four consecutive weeks, with the last publication at  
315 least five but not more than 20 days before the deadline [~~under Section 11-42-203~~] for filing  
316 protests specified in the notice under Subsection (1)(g); or

317 (ii) if there is no newspaper of general circulation within the local entity's  
318 jurisdictional boundaries, be posted in at least three public places within the local entity's  
319 jurisdictional boundaries at least 20 but not more than 35 days before the deadline under  
320 Section 11-42-203 for filing protests; and

321 (b) be mailed, postage prepaid, within ten days after the first publication or posting of  
322 the notice under Subsection (3)(a) to each owner of property to be assessed within the  
323 proposed assessment area at the property owner's mailing address.

324 Section 3. Section **11-42-203** is amended to read:

325 **11-42-203. Protests.**

326 (1) An owner of property that is proposed to be ~~included~~ assessed within an  
327 assessment area may, within the time specified in the notice under Section 11-42-202, file a  
328 written protest against:

- 329 (a) the designation of the assessment area;
- 330 (b) the inclusion of the owner's property in the proposed assessment area;
- 331 (c) the proposed improvements to be acquired or constructed; or
- 332 (d) any other aspect of the proposed designation of an assessment area.

333 (2) Each protest under Subsection (1)(a) shall describe or otherwise identify the  
334 property owned by the person filing the protest.

335 (3) An owner may withdraw a protest at any time before the conclusion of the hearing  
336 under Section 11-42-204 by filing a written withdrawal with the governing body.

337 (4) If the governing body intends to assess property within the proposed assessment

338 area by type of improvement or by zone, the governing body shall, in determining whether  
339 adequate protests have been filed, aggregate the protests by the type of improvement or by  
340 zone.

341 (5) The failure of an owner of property within the proposed assessment area to file a  
342 timely written protest constitutes a waiver of any objection to:

- 343 (a) the designation of the assessment area;
- 344 (b) any improvement to be provided to property within the assessment area; and
- 345 (c) the inclusion of the owner's property within the assessment area.

346 Section 4. Section **11-42-205** is amended to read:

347 **11-42-205. Unimproved property.**

348 (1) ~~[A]~~ (a) Before a local entity may [not] designate an assessment area in which more  
349 than 75% of the property proposed to be assessed consists of unimproved property [unless],  
350 the local entity shall obtain:

- 351 ~~[(a) has obtained]~~ (i) an appraisal;
- 352 (A) of the unimproved property;
- 353 (B) from an appraiser who is a member of the Appraisal Institute[-];
- 354 (C) addressed to the local entity or a financial institution; and
- 355 (D) verifying that the market value of the property, after completion of the proposed  
356 improvements, is at least three times the amount of the [assessment] assessments proposed to  
357 be levied against the unimproved property; or

358 ~~[(b) has obtained from each owner of unimproved property:]~~  
 359 (ii) the most recent taxable value of the unimproved property from the assessor of the  
 360 county in which the unimproved property is located, verifying that the taxable value of the  
 361 property, after completion of the proposed improvements, is at least three times the amount of  
 362 the assessments proposed to be levied against the unimproved property.

363 (b) If the owner of the unimproved property has entered into a construction loan  
364 acceptable to the local entity to finance the facilities to be constructed or installed on the  
365 unimproved property, the market value of the unimproved property, as determined under

366 Subsection (1)(a)(i), may include, at the local entity's option:

367 (i) the principal amount of the construction loan; or

368 (ii) the value of the unimproved property with the facilities to be financed by the  
369 construction loan, as determined by an appraisal of:

370 (A) the unimproved property; and

371 (B) the facilities proposed to be constructed.

372 (2) With respect to the designation of an assessment area described in Subsection  
373 (1)(a), the local entity may require:

374 ~~[(i)]~~ (a) financial information acceptable to the governing body [~~demonstrating~~] with  
375 respect to the owner's ability to pay the proposed [~~assessment; or~~] assessments;

376 ~~[(ii)]~~ (b) a financial institution's commitment securing, to the governing body's  
377 satisfaction, the [~~owner's~~] owners' obligation to pay the proposed [~~assessment; and~~]  
378 assessments; or

379 ~~(c) [~~has prepared~~]~~ a development plan, approved by a qualified, independent third  
380 party, describing the plan of development and the financial feasibility of the plan, taking into  
381 account growth trends, absorption studies, and other demographic information applicable to  
382 the unimproved property.

383 ~~[(2)]~~ (3) Information that an owner provides to a local entity under Subsection  
384 ~~[(1)(b)(i)]~~ (2)(a) is not a record for purposes of Title 63G, Chapter 2, Government Records  
385 Access and Management Act.

386 Section 5. Section **11-42-207** is amended to read:

387 **11-42-207. Adding property to an assessment area.**

388 (1) A local entity may add to a designated assessment area property to be benefitted  
389 and assessed if~~[(a) construction of the improvements in the assessment area has not been~~  
390 ~~completed; and (b)]~~ the governing body:

391 ~~[(i)]~~ (a) finds that the inclusion of the property will not adversely affect the owners of  
392 property already in the assessment area;

393 ~~[(ii)]~~ (b) obtains from each owner of property to be added and benefitted a written

394 consent that contains:

395 ~~[(A)]~~ (i) the owner's consent to:

396 ~~[(F)]~~ (A) the owner's property being added to the assessment area; and

397 ~~[(H)]~~ (B) the making of the proposed improvements with respect to the owner's  
398 property;

399 ~~[(B)]~~ (ii) the legal description and tax identification number of the property to be  
400 added; and

401 ~~[(E)]~~ (iii) the owner's waiver of any right to protest the creation of the assessment area;

402 ~~[(iii)]~~ (c) amends the designation resolution or ordinance to include the added  
403 property; and

404 ~~[(iv)]~~ (d) within 15 days after amending the designation resolution or ordinance:

405 ~~[(A)]~~ (i) records in the office of the recorder of the county in which the added property  
406 is located the original or certified copy of the amended designation resolution or ordinance  
407 containing the legal description and tax identification number of each additional parcel of  
408 property added to the assessment area and proposed to be assessed; and

409 ~~[(B)]~~ (ii) gives written notice to the property owner of the inclusion of the owner's  
410 property in the assessment area.

411 (2) The failure of a local entity's governing body to comply with the requirement of  
412 Subsection (1)~~[(b)(iv)]~~(d) does not affect the validity of the amended designation resolution or  
413 ordinance.

414 (3) Except as provided in this section, a local entity may not add to an assessment area  
415 ~~[and]~~ property not included in a notice under Section 11-42-202, or provide for making  
416 improvements that are not stated in the notice, unless the local entity gives notice as provided  
417 in Section 11-42-202 and holds a hearing as required under Section 11-42-204 as to the added  
418 ~~[and]~~ property or additional improvements.

419 Section 6. Section **11-42-301** is amended to read:

420 **11-42-301. Improvements made only under contract let to lowest responsive,**  
421 **responsible bidder -- Publishing notice -- Sealed bids -- Procedure -- Exceptions to**

422 **contract requirement.**

423 (1) Except as otherwise provided in this section, a local entity may make  
424 improvements in an assessment area only under contract let to the lowest responsive,  
425 responsible bidder for the kind of service, material, or form of construction that the local  
426 entity's governing body determines in compliance with any applicable local entity ordinances.

427 (2) A local entity may:

- 428 (a) divide improvements into parts;
- 429 (b) (i) let separate contracts for each part; or
- 430 (ii) combine multiple parts into the same contract; and
- 431 (c) let a contract on a unit basis.

432 (3) (a) A local entity may not let a contract until after publishing notice as provided in  
433 Subsection (3)(b) at least one time in a newspaper of general circulation within the boundaries  
434 of the local entity at least 15 days before the date specified for receipt of bids.

435 (b) Each notice under Subsection (3)(a) shall notify contractors that the local entity  
436 will receive sealed bids at a specified time and place for the construction of the improvements.

437 (c) Notwithstanding a local entity's failure, through inadvertence or oversight, to  
438 publish the notice or to publish the notice within 15 days before the date specified for receipt  
439 of bids, the governing body may proceed to let a contract for the improvements if the local  
440 entity receives at least three sealed and bona fide bids from contractors by the time specified  
441 for the receipt of bids.

442 (d) A local entity may publish a notice required under this Subsection (3) at the same  
443 time as a notice under Section 11-42-202.

444 (4) (a) A local entity may accept as a sealed bid a bid that is:

- 445 (i) manually sealed and submitted; or
- 446 (ii) electronically sealed and submitted.

447 (b) The governing body or project engineer shall, at the time specified in the notice  
448 under Subsection (3), open and examine the bids.

449 (c) In open session, the governing body:



- 450 (i) shall declare the bids; and
- 451 (ii) may reject any or all bids if the governing body considers the rejection to be for  
452 the public good.
- 453 (d) The local entity may award the contract to the lowest responsive, responsible  
454 bidder even if the price bid by that bidder exceeds the estimated costs as determined by the  
455 project engineer.
- 456 (e) A local entity may in any case:
- 457 (i) refuse to award a contract;
- 458 (ii) obtain new bids after giving a new notice under Subsection (3);
- 459 (iii) determine to abandon the assessment area; or
- 460 (iv) not make some of the improvements proposed to be made.
- 461 (5) A local entity is not required to let a contract as provided in this section for:
- 462 (a) an improvement or part of an improvement the cost of which or the making of  
463 which is donated or contributed;
- 464 (b) an improvement that consists of furnishing utility service or maintaining  
465 improvements;
- 466 (c) labor, materials, or equipment supplied by the local entity;
- 467 (d) the local entity's acquisition of completed or partially completed improvements in  
468 an assessment area;
- 469 (e) design, engineering, and inspection costs incurred with respect to the construction  
470 of improvements in an assessment area; or
- 471 (f) additional work performed in accordance with the terms of a contract duly let to the  
472 lowest responsive, responsible bidder.
- 473 (6) A local entity may itself furnish utility service and maintain improvements within  
474 an assessment area.
- 475 (7) (a) A local entity may acquire completed or partially completed improvements in  
476 an assessment area, but may not pay an amount for those improvements that exceeds their fair  
477 market value.

478 (b) Upon the local entity's payment for completed or partially completed  
479 improvements, title to the improvements shall be conveyed to the local entity or another public  
480 agency.

481 (8) The provisions of Title 11, Chapter 39, Building Improvements and Public Works  
482 Projects, and Section 72-6-108 do not apply to improvements to be constructed in an  
483 assessment area.

484 Section 7. Section **11-42-401** is amended to read:

485 **11-42-401. Levying an assessment -- Prerequisites -- Assessment list.**

486 (1) A local entity may levy an assessment against property within an assessment area  
487 as provided in this part.

488 (2) Before a governing body may adopt a resolution or ordinance levying an  
489 assessment against property within an assessment area:

490 (a) the governing body shall:

491 (i) subject to Subsection (3), prepare an assessment list designating:

492 (A) each parcel of property proposed to be assessed; and

493 (B) the amount of the assessment to be levied against the property;

494 (ii) appoint a board of equalization as provided in Section 11-42-403; and

495 (iii) give notice as provided in Section 11-42-402; and

496 (b) the board of equalization, appointed under Section 11-42-403, shall hold hearings,  
497 make any corrections to assessments it considers appropriate, and report its findings to the  
498 governing body as provided in Section 11-42-403.

499 (3) An assessment list under Subsection (2)(a)(i) may be prepared at any time after:

500 (a) the estimated or actual operation and maintenance costs have been determined, if  
501 the assessment is to pay operation and maintenance costs;

502 (b) the light service has commenced, if the assessment is to pay for light service;

503 (c) the park maintenance has commenced, if the assessment is to pay for park  
504 maintenance;

505 (d) adoption of a resolution or ordinance under Section 11-42-206, if the assessment is

506 to pay for economic promotion activities; or

507 (e) for any other assessment, the governing body has determined:

508 (i) the estimated or actual acquisition and construction costs of all proposed  
509 improvements within the assessment area, including overhead costs and authorized  
510 contingencies;

511 (ii) the estimated or actual property price for all property to be acquired to provide the  
512 proposed improvements; and

513 (iii) the reasonable cost of any work to be done by the local entity.

514 (4) A local entity may levy an assessment for some or all of the cost of improvements  
515 within an assessment area, including payment of:

516 (a) operation and maintenance costs of improvements constructed within the  
517 assessment area;

518 (b) the actual cost that the local entity pays for utility services furnished or for  
519 maintenance of improvements provided by another or, if the local entity itself furnishes utility  
520 service or maintains improvements, for the reasonable cost of supplying the service or  
521 maintenance;

522 (c) the reasonable cost of supplying labor, materials, or equipment in connection with  
523 improvements; and

524 (d) the reasonable cost of connection fees or the cost of any sewer, storm drainage,  
525 water, gas, electric, or [~~telecommunications~~] communications connections if the local entity  
526 owns or supplies these services, to the depth that the local entity's governing body considers  
527 just and equitable.

528 (5) A local entity may not levy an assessment for an amount donated or contributed for  
529 an improvement or part of an improvement.

530 (6) The validity of an otherwise valid assessment is not affected because the actual  
531 cost of improvements exceeds the estimated cost.

532 (7) An assessment levied to pay for operation and maintenance costs may not be levied  
533 over a period of time exceeding the reasonable useful life of the facilities to be maintained by

534 the levy.

535 Section 8. Section **11-42-403** is amended to read:

536 **11-42-403. Board of equalization -- Hearings -- Corrections to proposed**  
537 **assessment list -- Report to governing body -- Appeal -- Board findings final -- Waiver of**  
538 **objections.**

539 (1) After preparing an assessment list under Subsection 11-42-401(2)(a)(i), the  
540 governing body shall appoint a board of equalization.

541 (2) Each board of equalization under this section shall, at the option of the governing  
542 body, consist of:

543 (a) three or more members of the governing body;

544 (b) (i) two members of the governing body; and

545 (ii) (A) a representative of the treasurer's office of the local entity; or

546 (B) a representative of the office of the local entity's engineer or the project engineer;

547 or

548 (c) (i) (A) one member of the governing body; or

549 (B) a representative of the governing body, whether or not a member of the governing  
550 body, appointed by the governing body;

551 (ii) a representative of the treasurer's office of the local entity; and

552 (iii) a representative of the office of the local entity's engineer or the project engineer.

553 (3) (a) The board of equalization shall hold hearings on at least three consecutive days  
554 for at least one hour per day between 9 a.m. and 9 p.m., as specified in the notice under  
555 Section 11-42-402.

556 (b) The board of equalization may continue a hearing from time to time to a specific  
557 place and a specific hour and day until the board's work is completed.

558 (c) At each hearing, the board of equalization shall hear arguments from any person  
559 who claims to be aggrieved, including arguments relating to:

560 (i) the direct or indirect benefits accruing to a tract, block, lot, or parcel of property in  
561 the assessment area; or

562 (ii) the amount of the proposed assessment against the tract, block, lot, or parcel.

563 (4) (a) After the hearings under Subsection (3) are completed, the board of  
564 equalization shall:

565 (i) consider all facts and arguments presented at the hearings; and

566 (ii) make any corrections to the proposed assessment list that the board considers just  
567 and equitable.

568 (b) A correction under Subsection (4)(a)(ii) may:

569 (i) eliminate one or more pieces of property from the assessment list; or

570 (ii) increase or decrease the amount of the assessment proposed to be levied against a  
571 parcel of property.

572 (c) (i) If the board of equalization makes a correction under Subsection (4)(a)(ii) that  
573 results in an increase of a proposed assessment, the board shall, before approving a corrected  
574 assessment list:

575 (A) give notice as provided in Subsection (4)(c)(ii);

576 (B) hold a hearing at which the owner whose assessment is proposed to be increased  
577 may appear and object to the proposed increase; and

578 (C) after holding a hearing, make any further corrections that the board considers just  
579 and equitable with respect to the proposed increased assessment.

580 (ii) Each notice required under Subsection (4)(c)(i)(A) shall:

581 (A) state:

582 (I) that the property owner's assessment is proposed to be increased;

583 (II) the amount of the proposed increased assessment;

584 (III) that a hearing will be held at which the owner may appear and object to the  
585 increase; and

586 (IV) the date, time, and place of the hearing; and

587 (B) be mailed, at least 15 days before the date of the hearing, to each owner of  
588 property as to which the assessment is proposed to be increased at the property owner's  
589 mailing address.

590 (5) (a) After the board of equalization has held all hearings required by this section  
591 and has made all corrections the board considers just and equitable, the board shall report to  
592 the governing body its findings that:

593 (i) each parcel of property within the assessment area will be directly or indirectly  
594 benefitted in an amount not less than the assessment to be levied against the property; and

595 (ii) except as provided in Subsection 11-42-409(6), no parcel of property on the  
596 assessment list will bear more than its proportionate share of the cost of the improvements  
597 benefitting the property.

598 (b) The board of equalization shall, within ten days after submitting its report to the  
599 governing body, mail a copy of the board's final report to each property owner who objected at  
600 the board hearings to the assessment proposed to be levied against the property owner's  
601 property at the property owner's mailing address.

602 (6) (a) If a board of equalization includes members other than the governing body of  
603 the local entity, a property owner may appeal a decision of the board to the governing body by  
604 filing with the governing body a written notice of appeal within 15 days after the board's final  
605 report is mailed to property owners under Subsection (5)(b).

606 (b) Except as provided in Subsection (6)(a), no appeal may be taken from the findings  
607 of a board of equalization.

608 (7) The findings of a board of equalization are final:

609 (a) when approved by the governing body, if no appeal is allowed under Subsection  
610 (6); or

611 (b) after the time for appeal under Subsection (6) is passed, if an appeal is allowed  
612 under that subsection.

613 (8) (a) If a governing body has levied an assessment to pay operation and maintenance  
614 costs within an assessment area, the governing body may periodically appoint a new board of  
615 equalization to review assessments for operation and maintenance costs.

616 (b) Each board of equalization appointed under Subsection (8)(a) shall comply with  
617 the requirements of Subsections (3) through (6).

618 (9) The failure of an owner of property within the assessment area to appear before the  
619 board of equalization to object to the levy of the assessment constitutes a waiver of all  
620 objections to the levy, except an objection that the governing body failed to obtain jurisdiction  
621 to order that the improvements which the assessment is intended to pay be provided to the  
622 assessment area.

623 Section 9. Section **11-42-404** is amended to read:

624 **11-42-404. Adoption of a resolution or ordinance levying an assessment -- Notice**  
625 **of the adoption -- Effective date of resolution or ordinance -- Notice of assessment**  
626 **interest.**

627 (1) (a) After receiving a final report from a board of equalization under Subsection  
628 11-42-403(5) or, if applicable, after the time for filing an appeal under Subsection  
629 11-42-403(6) has passed, the governing body may adopt a resolution or ordinance levying an  
630 assessment against benefitted property within the assessment area.

631 (b) Each local entity that levies an assessment under this chapter shall levy the  
632 assessment at one time only, unless the assessment is to pay operation and maintenance costs  
633 or the costs of economic promotion activities.

634 (c) An assessment resolution or ordinance adopted under Subsection (1)(a):

635 (i) need not describe each tract, block, lot, part of block or lot, or parcel of property to  
636 be assessed;

637 (ii) need not include the legal description or tax identification number of the parcels of  
638 property assessed in the assessment area; and

639 (iii) is adequate for purposes of identifying the property to be assessed within the  
640 assessment area if the assessment resolution or ordinance incorporates by reference the  
641 corrected assessment list that describes the property assessed by legal description and tax  
642 identification number.

643 (2) (a) Each local entity that adopts an assessment resolution or ordinance shall give  
644 notice of the adoption by:

645 (i) publishing a copy of the resolution or ordinance, or a summary of the resolution or

646 ordinance, once in a newspaper of general circulation within the local entity's jurisdictional  
647 boundaries; or

648 (ii) if there is no newspaper of general circulation with the local entity's jurisdictional  
649 boundaries, posting a copy of the resolution or ordinance in at least three public places within  
650 the local entity's jurisdictional boundaries for at least 21 days.

651 (b) No other publication or posting of the resolution or ordinance is required.

652 (3) Notwithstanding any other statutory provision regarding the effective date of a  
653 resolution or ordinance, each assessment resolution or ordinance takes effect:

654 (a) on the date of publication or posting of the notice under Subsection (2); or

655 (b) at a later date provided in the resolution or ordinance.

656 (4) (a) The governing body of each local entity that has adopted an assessment  
657 resolution or ordinance under Subsection (1) shall, within five days after the 25-day  
658 prepayment period under Subsection 11-42-411(6) has passed, file a notice of assessment  
659 interest with the recorder of the county in which the assessed property is located.

660 (b) Each notice of assessment interest under Subsection (4)(a) shall:

661 (i) state that the local entity has an assessment interest in the assessed property;

662 (ii) if the assessment is to pay operation and maintenance costs or for economic  
663 promotion activities, state the maximum number of years over which an assessment will be  
664 payable; and

665 (iii) describe the property assessed by legal description and tax identification number.

666 (c) A local entity's failure to file a notice of assessment interest under this Subsection  
667 (4) has no affect on the validity of an assessment levied under an assessment resolution or  
668 ordinance adopted under Subsection (1).

669 Section 10. Section **11-42-410** is amended to read:

670 **11-42-410. Amending an assessment resolution or ordinance.**

671 (1) A governing body may adopt a resolution or ordinance amending the original  
672 assessment resolution or ordinance adopted under Section 11-42-404 to:

673 (a) correct a deficiency, omission, error, or mistake:



- 674 (i) with respect to:
- 675 (A) the total cost of an improvement;
- 676 (B) operation and maintenance costs; or
- 677 (C) the cost of economic promotion activities; or
- 678 (ii) that results in a tract, lot, block, or parcel not being fully assessed or assessed in an
- 679 incorrect amount;
- 680 (b) reallocate or adjust assessments under the original assessment resolution or
- 681 ordinance for operation and maintenance costs or the costs of economic promotion activities;
- 682 (c) reallocate or adjust assessments under the original assessment resolution or
- 683 ordinance; or
- 684 (d) reduce an assessment as a result of the issuance of refunding bonds.
- 685 (2) If an amendment under Subsection (1)(a) or (c) results in an increase in an
- 686 assessment for any property owner, the governing body shall comply with the notice
- 687 requirements of Section 11-42-402, unless the owner waives notice as provided in Section
- 688 11-42-104.

689 Section 11. Section **11-42-602** is amended to read:

690 **11-42-602. Bond anticipation notes.**

- 691 (1) A local entity may by resolution authorize the issuance of bond anticipation notes.
- 692 (2) A local entity may use the proceeds from the issuance of bond anticipation notes to
- 693 pay:
- 694 (a) the estimated acquisition and contract price;
- 695 (b) the property price; [~~and~~]
- 696 (c) capitalized interest; and
- 697 [~~(e)~~] (d) related costs, including overhead costs.
- 698 (3) Each resolution authorizing the issuance of bond anticipation notes shall:
- 699 (a) describe the bonds in anticipation of which the bond anticipation notes are to be
- 700 issued;
- 701 (b) specify the principal amount and maturity dates of the notes; and

702 (c) specify the interest rate applicable to the notes.

703 (4) (a) The interest rate on bond anticipation notes issued under this section may be  
704 fixed, variable, or a combination of fixed and variable, as determined by the governing body.

705 (b) If bond anticipation notes carry a variable interest rate, the governing body shall  
706 specify the basis upon which the rate is to be determined, the manner in which the rate is to be  
707 adjusted, and a maximum interest rate.

708 (c) A local entity may provide for interest on bond anticipation notes to be paid  
709 semiannually, annually, or at maturity.

710 (5) A local entity may:

711 (a) issue and sell bond anticipation notes in a manner and at a price, either at, below,  
712 or above face value, as the governing body determines by resolution; and

713 (b) make bond anticipation notes redeemable prior to maturity, at the governing body's  
714 option and in the manner and upon the terms fixed by the resolution authorizing their  
715 issuance.

716 (6) Bond anticipation notes shall be executed, be in a form, and have details and terms  
717 as provided in the resolution authorizing their issuance.

718 (7) A local entity may issue bond anticipation notes to refund bond anticipation notes  
719 previously issued by the local entity.

720 (8) A local entity may include interest accruing on bond anticipation notes in the cost  
721 of improvements in an assessment area.

722 Section 12. Section **11-42-603** is amended to read:

723 **11-42-603. Sources of payment for interim warrants and bond anticipation**  
724 **notes.**

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

727 (1) proceeds from the sale of assessment bonds;

728 (2) cash the local entity receives from the payment for improvements;

729 (3) assessments;

730           ~~[(3)]~~ (4) improvement revenues that are not pledged to the payment of assessment  
731 bonds;

732           ~~[(4)]~~ (5) proceeds from the sale of interim warrants or bond anticipation notes; or  
733           ~~[(5)]~~ (6) the local entity's guaranty fund or, if applicable, the reserve fund.

734           Section 13. Section **11-42-605** is amended to read:

735           **11-42-605. Local entity may authorize the issuance of assessment bonds -- Limit**  
736 **on amount of bonds -- Features of assessment bonds.**

737           (1) After the 25-day prepayment period under Subsection 11-42-411(6) has passed or,  
738 if the 25-day prepayment period is waived under Section 11-42-104, after the assessment  
739 resolution or ordinance takes effect, a local entity may authorize the issuance of bonds to pay  
740 the costs of improvements in an assessment area, and other related costs, against the funds that  
741 the local entity will receive because of an assessment in an assessment area.

742           (2) The aggregate principal amount of bonds authorized under Subsection (1) may not  
743 exceed the unpaid balance of assessments at the end of the 25-day prepayment period under  
744 Subsection 11-42-411(6).

745           (3) Assessment bonds issued under this section:

746           (a) are fully negotiable for all purposes;

747           (b) shall mature at a time that does not exceed the period that installments of  
748 assessments in the assessment area are due and payable, plus one year;

749           (c) shall bear interest at the lowest rate or rates reasonably obtainable;

750           (d) may not be dated earlier than the effective date of the assessment ordinance;

751           (e) shall be payable at the place, shall be in the form, and shall be sold in the manner  
752 and with the details that are provided in the resolution authorizing the issuance of the bonds;

753           (f) shall be issued~~[, as the governing body determines: (i) in bearer form, with or~~  
754 ~~without interest coupons attached; or (ii)]~~ in registered form as provided in Title 15, Chapter

755 7, Registered Public Obligations Act; and

756           (g) provide that interest be paid semiannually, annually, or at another interval as  
757 specified by the governing body.

758 (4) (a) A local entity may:  
759 (i) (A) provide that assessment bonds be callable for redemption before maturity; and  
760 (B) fix the terms and conditions of redemption, including the notice to be given and  
761 any premium to be paid;  
762 (ii) subject to Subsection (4)(b), require assessment bonds to bear interest at a fixed or  
763 variable rate, or a combination of fixed and variable rates;  
764 (iii) specify terms and conditions under which:  
765 (A) assessment bonds bearing interest at a variable interest rate may be converted to  
766 bear interest at a fixed interest rate; and  
767 (B) the local entity agrees to repurchase the bonds; [~~and~~]  
768 (iv) engage a remarketing agent and indexing agent, subject to the terms and  
769 conditions that the governing body agrees to; and  
770 (v) include all costs associated with assessment bonds, including any costs resulting  
771 from any of the actions the local entity is authorized to take under this section, in an  
772 assessment levied under Section 11-42-401.  
773 (b) If assessment bonds carry a variable interest rate, the local entity shall specify:  
774 (i) the basis upon which the variable rate is to be determined over the life of the bonds;  
775 (ii) the manner in which and schedule upon which the rate is to be adjusted; and  
776 (iii) a maximum rate that the bonds may carry.  
777 (5) (a) Nothing in this part may be construed to authorize the issuance of assessment  
778 bonds to pay for the cost of ordinary repairs to pavement, sewers, drains, curbing, gutters, or  
779 sidewalks.  
780 (b) Notwithstanding Subsection (5)(a), a local entity may issue assessment bonds to  
781 pay for extraordinary repairs to pavement, sewers, drains, curbing, gutters, or sidewalk.  
782 (c) A local entity's governing body may define by resolution or ordinance what  
783 constitutes ordinary repairs and extraordinary repairs for purposes of this Subsection (5).  
784 (d) Nothing in this Subsection (5) may be construed to limit a local entity from  
785 levying an assessment within an assessment area to pay operation and maintenance costs as

786 described in a notice under Section 11-42-402.

787 (6) If a local entity has issued interim warrants under Section 11-42-601 or bond  
788 anticipation notes under Section 11-42-602 in anticipation of assessment bonds that the local  
789 entity issues under this part, the local entity shall provide for the retirement of the interim  
790 warrants or bond anticipation notes contemporaneously with the issuance of the assessment  
791 bonds.

792 Section 14. Section **11-42-702** is amended to read:

793 **11-42-702. Reserve fund.**

794 (1) In lieu of creating and funding a guaranty fund under Section 11-42-701 for an  
795 issue of assessment bonds or refunding assessment bonds, a local entity may establish a  
796 reserve fund to secure the issue.

797 (2) If a local entity establishes a reserve fund under this section:

798 (a) the bonds secured by the reserve fund are not secured by a guaranty fund under  
799 Section 11-42-701;

800 (b) the local entity is not required to fund a guaranty fund under Section 11-42-701 for  
801 those bonds; and

802 (c) unless otherwise provided in this part or in the proceedings authorizing the  
803 issuance of bonds, the provisions of this part regarding a guaranty fund have no application to  
804 the bonds that are secured by the reserve fund.

805 (3) Each local entity that establishes a reserve fund shall:

806 (a) fund and replenish the reserve fund in the amounts and manner provided in the  
807 proceedings authorizing the issuance of the bonds that are secured by the reserve fund; and

808 (b) invest the funds on deposit in the reserve fund as provided in Title 51, Chapter 7,  
809 State Money Management Act.

810 (4) (a) Subject to Subsection (4)(b), a local entity may replenish a reserve fund under  
811 this section by any of the methods described in Subsection 11-42-701(1)(b).

812 (b) The proceedings authorizing the issuance of assessment bonds or refunding  
813 assessment bonds shall provide that if a local entity uses any of the methods described in

814 Subsection 11-42-701(1)(b) to replenish a reserve fund, the local entity shall be reimbursed,  
815 with interest at a rate that the local entity determines, with money that the local entity receives  
816 from foreclosing on delinquent property.

817 (5) Upon the retirement of bonds secured by a reserve fund, the local entity shall:

818 (a) terminate the reserve fund; and

819 (b) disburse all remaining money in the fund as provided in the proceedings

820 authorizing the issuance of the bonds.

821 Section 15. Section **63G-2-103** is amended to read:

822 **63G-2-103. Definitions.**

823 As used in this chapter:

824 (1) "Audit" means:

825 (a) a systematic examination of financial, management, program, and related records

826 for the purpose of determining the fair presentation of financial statements, adequacy of

827 internal controls, or compliance with laws and regulations; or

828 (b) a systematic examination of program procedures and operations for the purpose of

829 determining their effectiveness, economy, efficiency, and compliance with statutes and

830 regulations.

831 (2) "Chronological logs" mean the regular and customary summary records of law

832 enforcement agencies and other public safety agencies that show:

833 (a) the time and general nature of police, fire, and paramedic calls made to the agency;

834 and

835 (b) any arrests or jail bookings made by the agency.

836 (3) "Classification," "classify," and their derivative forms mean determining whether a

837 record series, record, or information within a record is public, private, controlled, protected, or

838 exempt from disclosure under Subsection 63G-2-201(3)(b).

839 (4) (a) "Computer program" means:

840 (i) a series of instructions or statements that permit the functioning of a computer

841 system in a manner designed to provide storage, retrieval, and manipulation of data from the

842 computer system; and

843 (ii) any associated documentation and source material that explain how to operate the  
844 computer program.

845 (b) "Computer program" does not mean:

846 (i) the original data, including numbers, text, voice, graphics, and images;

847 (ii) analysis, compilation, and other manipulated forms of the original data produced  
848 by use of the program; or

849 (iii) the mathematical or statistical formulas, excluding the underlying mathematical  
850 algorithms contained in the program, that would be used if the manipulated forms of the  
851 original data were to be produced manually.

852 (5) (a) "Contractor" means:

853 (i) any person who contracts with a governmental entity to provide goods or services  
854 directly to a governmental entity; or

855 (ii) any private, nonprofit organization that receives funds from a governmental entity.

856 (b) "Contractor" does not mean a private provider.

857 (6) "Controlled record" means a record containing data on individuals that is  
858 controlled as provided by Section 63G-2-304.

859 (7) "Designation," "designate," and their derivative forms mean indicating, based on a  
860 governmental entity's familiarity with a record series or based on a governmental entity's  
861 review of a reasonable sample of a record series, the primary classification that a majority of  
862 records in a record series would be given if classified and the classification that other records  
863 typically present in the record series would be given if classified.

864 (8) "Elected official" means each person elected to a state office, county office,  
865 municipal office, school board or school district office, local district office, or special service  
866 district office, but does not include judges.

867 (9) "Explosive" means a chemical compound, device, or mixture:

868 (a) commonly used or intended for the purpose of producing an explosion; and

869 (b) that contains oxidizing or combustive units or other ingredients in proportions,

870 quantities, or packing so that:

871 (i) an ignition by fire, friction, concussion, percussion, or detonator of any part of the  
872 compound or mixture may cause a sudden generation of highly heated gases; and

873 (ii) the resultant gaseous pressures are capable of:

874 (A) producing destructive effects on contiguous objects; or

875 (B) causing death or serious bodily injury.

876 (10) "Government audit agency" means any governmental entity that conducts an  
877 audit.

878 (11) (a) "Governmental entity" means:

879 (i) executive department agencies of the state, the offices of the governor, lieutenant  
880 governor, state auditor, attorney general, and state treasurer, the Board of Pardons and Parole,  
881 the Board of Examiners, the National Guard, the Career Service Review Board, the State  
882 Board of Education, the State Board of Regents, and the State Archives;

883 (ii) the Office of the Legislative Auditor General, Office of the Legislative Fiscal  
884 Analyst, Office of Legislative Research and General Counsel, the Legislature, and legislative  
885 committees, except any political party, group, caucus, or rules or sifting committee of the  
886 Legislature;

887 (iii) courts, the Judicial Council, the Office of the Court Administrator, and similar  
888 administrative units in the judicial branch;

889 (iv) any state-funded institution of higher education or public education; or

890 (v) any political subdivision of the state, but, if a political subdivision has adopted an  
891 ordinance or a policy relating to information practices pursuant to Section 63G-2-701, this  
892 chapter shall apply to the political subdivision to the extent specified in Section 63G-2-701 or  
893 as specified in any other section of this chapter that specifically refers to political subdivisions.

894 (b) "Governmental entity" also means every office, agency, board, bureau, committee,  
895 department, advisory board, or commission of an entity listed in Subsection (11)(a) that is  
896 funded or established by the government to carry out the public's business.

897 (12) "Gross compensation" means every form of remuneration payable for a given



898 period to an individual for services provided including salaries, commissions, vacation pay,  
899 severance pay, bonuses, and any board, rent, housing, lodging, payments in kind, and any  
900 similar benefit received from the individual's employer.

901 (13) "Individual" means a human being.

902 (14) (a) "Initial contact report" means an initial written or recorded report, however  
903 titled, prepared by peace officers engaged in public patrol or response duties describing  
904 official actions initially taken in response to either a public complaint about or the discovery  
905 of an apparent violation of law, which report may describe:

906 (i) the date, time, location, and nature of the complaint, the incident, or offense;

907 (ii) names of victims;

908 (iii) the nature or general scope of the agency's initial actions taken in response to the  
909 incident;

910 (iv) the general nature of any injuries or estimate of damages sustained in the incident;

911 (v) the name, address, and other identifying information about any person arrested or  
912 charged in connection with the incident; or

913 (vi) the identity of the public safety personnel, except undercover personnel, or  
914 prosecuting attorney involved in responding to the initial incident.

915 (b) Initial contact reports do not include follow-up or investigative reports prepared  
916 after the initial contact report. However, if the information specified in Subsection (14)(a)  
917 appears in follow-up or investigative reports, it may only be treated confidentially if it is  
918 private, controlled, protected, or exempt from disclosure under Subsection 63G-2-201(3)(b).

919 (15) "Legislative body" means the Legislature.

920 (16) "Notice of compliance" means a statement confirming that a governmental entity  
921 has complied with a records committee order.

922 (17) "Person" means:

923 (a) an individual;

924 (b) a nonprofit or profit corporation;

925 (c) a partnership;

926 (d) a sole proprietorship;

927 (e) other type of business organization; or

928 (f) any combination acting in concert with one another.

929 (18) "Private provider" means any person who contracts with a governmental entity to  
930 provide services directly to the public.

931 (19) "Private record" means a record containing data on individuals that is private as  
932 provided by Section 63G-2-302.

933 (20) "Protected record" means a record that is classified protected as provided by  
934 Section 63G-2-305.

935 (21) "Public record" means a record that is not private, controlled, or protected and  
936 that is not exempt from disclosure as provided in Subsection 63G-2-201(3)(b).

937 (22) (a) "Record" means a book, letter, document, paper, map, plan, photograph, film,  
938 card, tape, recording, electronic data, or other documentary material regardless of physical  
939 form or characteristics:

940 (i) that is prepared, owned, received, or retained by a governmental entity or political  
941 subdivision; and

942 (ii) where all of the information in the original is reproducible by photocopy or other  
943 mechanical or electronic means.

944 (b) "Record" does not mean:

945 (i) a personal note or personal communication prepared or received by an employee or  
946 officer of a governmental entity in the employee's or officer's private capacity;

947 (ii) a temporary draft or similar material prepared for the originator's personal use or  
948 prepared by the originator for the personal use of an individual for whom the originator is  
949 working;

950 (iii) material that is legally owned by an individual in the individual's private capacity;

951 (iv) material to which access is limited by the laws of copyright or patent unless the  
952 copyright or patent is owned by a governmental entity or political subdivision;

953 (v) proprietary software;

- 954           (vi) junk mail or a commercial publication received by a governmental entity or an  
955 official or employee of a governmental entity;
- 956           (vii) a book that is cataloged, indexed, or inventoried and contained in the collections  
957 of a library open to the public;
- 958           (viii) material that is cataloged, indexed, or inventoried and contained in the  
959 collections of a library open to the public, regardless of physical form or characteristics of the  
960 material;
- 961           (ix) a daily calendar or other personal note prepared by the originator for the  
962 originator's personal use or for the personal use of an individual for whom the originator is  
963 working;
- 964           (x) a computer program that is developed or purchased by or for any governmental  
965 entity for its own use;
- 966           (xi) a note or internal memorandum prepared as part of the deliberative process by:
- 967           (A) a member of the judiciary;
- 968           (B) an administrative law judge;
- 969           (C) a member of the Board of Pardons and Parole; or
- 970           (D) a member of any other body charged by law with performing a quasi-judicial  
971 function;
- 972           (xii) a telephone number or similar code used to access a mobile communication  
973 device that is used by an employee or officer of a governmental entity, provided that the  
974 employee or officer of the governmental entity has designated at least one business telephone  
975 number that is a public record as provided in Section 63G-2-301; [~~or~~]
- 976           (xiii) information provided by the Public Employees' Benefit and Insurance Program,  
977 created in Section 49-20-103, to a county to enable the county to calculate the amount to be  
978 paid to a health care provider under Subsection 17-50-319(2)(b)(ii)[~~]; or~~
- 979           (xiv) information that an owner of unimproved property provides to a local entity as  
980 provided in Section 11-42-205.
- 981           (23) "Record series" means a group of records that may be treated as a unit for

982 purposes of designation, description, management, or disposition.

983 (24) "Records committee" means the State Records Committee created in Section  
984 63G-2-501.

985 (25) "Records officer" means the individual appointed by the chief administrative  
986 officer of each governmental entity, or the political subdivision to work with state archives in  
987 the care, maintenance, scheduling, designation, classification, disposal, and preservation of  
988 records.

989 (26) "Schedule," "scheduling," and their derivative forms mean the process of  
990 specifying the length of time each record series should be retained by a governmental entity  
991 for administrative, legal, fiscal, or historical purposes and when each record series should be  
992 transferred to the state archives or destroyed.

993 (27) "Sponsored research" means research, training, and other sponsored activities as  
994 defined by the federal Executive Office of the President, Office of Management and Budget:

995 (a) conducted:

996 (i) by an institution within the state system of higher education defined in Section  
997 53B-1-102; and

998 (ii) through an office responsible for sponsored projects or programs; and

999 (b) funded or otherwise supported by an external:

1000 (i) person that is not created or controlled by the institution within the state system of  
1001 higher education; or

1002 (ii) federal, state, or local governmental entity.

1003 (28) "State archives" means the Division of Archives and Records Service created in  
1004 Section 63A-12-101.

1005 (29) "State archivist" means the director of the state archives.

1006 (30) "Summary data" means statistical records and compilations that contain data  
1007 derived from private, controlled, or protected information but that do not disclose private,  
1008 controlled, or protected information.