

1 ASSESSMENT AREA AMENDMENTS

2 2010 GENERAL SESSION

3 STATE OF UTAH

4 Chief Sponsor: Gage Froerer

5 Senate Sponsor: Wayne L. Niederhauser

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7 LONG TITLE

8 General Description:

9 This bill amends provisions of the Assessment Area Act.

10 Highlighted Provisions:

11 This bill:

- 12 ▶ requires that a governing body adopt a resolution or ordinance designating an
- 13 assessment area before the governing body may levy an assessment;
- 14 ▶ amends notice requirements;
- 15 ▶ amends the requirements for preparing an assessment list;
- 16 ▶ clarifies when a governing body may levy more than one assessment in a
- 17 designated assessment area to pay for operation and maintenance costs or economic
- 18 promotion activities;
- 19 ▶ creates reporting requirements for an assessment levied to pay for economic
- 20 promotion activities; and
- 21 ▶ makes technical corrections.

22 Monies Appropriated in this Bill:

23 None

24 Other Special Clauses:

25 None

26 Utah Code Sections Affected:

27 AMENDS:

28 11-42-201, as enacted by Laws of Utah 2007, Chapter 329

29 11-42-202, as last amended by Laws of Utah 2009, Chapters 246 and 388

- 30 11-42-401, as last amended by Laws of Utah 2009, Chapter 246
- 31 11-42-402, as last amended by Laws of Utah 2009, Chapter 388
- 32 11-42-404, as last amended by Laws of Utah 2009, Chapters 246 and 388
- 33 11-42-406, as enacted by Laws of Utah 2007, Chapter 329

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

36 Section 1. Section 11-42-201 is amended to read:

37 **11-42-201. Resolution or ordinance designating an assessment area -- Zones**  
38 **within an assessment area -- Preconditions to adoption of a resolution or ordinance.**

39 (1) (a) Subject to the requirements of this part, a governing body of a local entity  
40 intending to levy an assessment on property to pay some or all of the cost of providing  
41 improvements benefitting the property, performing operation and maintenance benefitting the  
42 property, or conducting economic promotion activities benefitting the property [~~may~~] shall  
43 adopt a resolution or ordinance designating an assessment area.

44 (b) A designation resolution or designation ordinance described in Subsection (1)(a)  
45 may divide the assessment area into zones to allow the governing body to:

46 (i) levy a different level of assessment; or [~~to~~]

47 (ii) use a different assessment method in each zone to reflect more fairly the benefits  
48 that property within the different zones is expected to receive because of the proposed  
49 improvement, operation and maintenance, or economic promotion activities.

50 (c) The boundaries of a proposed assessment area may include property that is not  
51 intended to be assessed.

52 (2) Before adopting a designation resolution or designation ordinance described in  
53 Subsection (1)(a), the governing body of the local entity shall:

54 (a) give notice as provided in Section 11-42-202;

55 (b) receive and consider all protests filed under Section 11-42-203; and

56 (c) hold a public hearing as provided in Section 11-42-204.

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

58           **11-42-202. Requirements applicable to a notice of a proposed assessment area**  
59 **designation.**

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

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

62           (i) designate one or more areas within the local entity's jurisdictional boundaries as an  
63 assessment area;

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

65           (iii) finance some or all of the cost of improvements by an assessment on benefitted  
66 property within the assessment area;

67           (b) describe the proposed assessment area by any reasonable method that allows an  
68 owner of property in the proposed assessment area to determine that the owner's property is  
69 within the proposed assessment area;

70           (c) describe, in a general way, the improvements to be provided to the assessment  
71 area, including:

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

73           (ii) the general location of the improvements, by reference to streets or portions or  
74 extensions of streets or by any other means that the governing body chooses that reasonably  
75 describes the general location of the improvements;

76           (d) ~~[a statement of]~~ state the estimated cost of the improvements as determined by a  
77 project engineer;

78           (e) ~~[a statement]~~ state that the local entity proposes to levy an assessment on benefitted  
79 property within the assessment area to pay some or all of the cost of the improvements  
80 according to the estimated direct and indirect benefits to the property from the improvements;

81           (f) ~~[a statement of]~~ state the assessment method by which the governing body proposes  
82 to levy the assessment ~~[is proposed to be levied]~~;

83           (g) ~~[a statement of]~~ state:

84           (i) the time within which and the location at which protests against designation of the  
85 proposed assessment area or of the proposed improvements are required to be filed; and

86           (ii) the method by which the governing body will determine the number of protests  
87 required to defeat the designation of the proposed assessment area or acquisition or  
88 construction of the proposed improvements [~~are to be determined~~];

89           (h) state the date, time, and place of the public hearing [~~under~~] required in Section  
90 11-42-204;

91           (i) if the governing body elects to create and fund a reserve fund under Section  
92 11-42-702, include a description of:

93           (i) how the reserve fund will be funded and replenished; and

94           (ii) how remaining money in the reserve fund is to be disbursed upon full payment of  
95 the bonds;

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

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

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

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

103           (k) if the local entity intends to levy an assessment to pay operation and maintenance  
104 costs or for economic promotion activities, include:

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

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

108           (iii) a description of how and when the governing body will adjust the assessment to  
109 reflect [~~current operation and maintenance costs or~~] the costs of:

110           (A) in accordance with Section 11-42-406, current economic promotion activities; or

111           (B) current operation and maintenance costs;

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

114 (v) a statement of the maximum number of years over which the assessment will be  
115 levied for;

116 (A) operation and maintenance costs; or

117 (B) economic promotion activities [~~will be levied~~]; and

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

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

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

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

126 (c) provisions for any improvements described in Subsection 11-42-102(22)(b).

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

128 (a) (i) (A) be published in a newspaper of general circulation within the local entity's  
129 jurisdictional boundaries, once a week for four consecutive weeks, with the last publication at  
130 least five but not more than 20 days before the deadline for filing protests specified in the  
131 notice under Subsection (1)(g); or

132 (B) if there is no newspaper of general circulation within the local entity's  
133 jurisdictional boundaries, be posted in at least three public places within the local entity's  
134 jurisdictional boundaries at least 20 but not more than 35 days before the deadline [~~under~~  
135 ~~Section 11-42-203~~] for filing protests specified in the notice under Subsection (1)(g); and

136 (ii) be published [~~in accordance with Section 45-1-101~~] on the Utah Public Notice  
137 Website described in Section 63F-1-701 for four weeks before the deadline [~~under Section~~  
138 ~~11-42-203~~] for filing protests specified in the notice under Subsection (1)(g); and

139 (b) be mailed, postage prepaid, within 10 days after the first publication or posting of  
140 the notice under Subsection (3)(a) to each owner of property to be assessed within the  
141 proposed assessment area at the property owner's mailing address.

142 Section 3. Section 11-42-401 is amended to read:

143 **11-42-401. Levying an assessment -- Prerequisites -- Assessment list.**

144 (1) ~~[A]~~ If a local entity has designated an assessment area in accordance with Part 2,  
145 Designating an Assessment Area, the local entity may levy an assessment against property  
146 within ~~an~~ that assessment area as provided in this part.

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

149 (a) the governing body shall:

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

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

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

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

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

155 (b) the board of equalization, appointed under Section 11-42-403, shall hold hearings,  
156 make any corrections ~~[to assessments it considers appropriate]~~ it considers appropriate to an  
157 assessment, and report its findings to the governing body as provided in Section 11-42-403.

158 (3) ~~[An]~~ (a) The governing body of a local entity shall prepare the assessment list  
159 [under] described in Subsection (2)(a)(i) ~~[may be prepared]~~ at any time after:

160 ~~[(a)]~~ (i) the governing body has determined the estimated or actual operation and  
161 maintenance costs ~~[have been determined]~~, if the assessment is to pay operation and  
162 maintenance costs;

163 ~~[(b) the light service has commenced, if the assessment is to pay for light service;]~~

164 ~~[(c) the park maintenance has commenced, if the assessment is to pay for park~~  
165 ~~maintenance;]~~

166 ~~[(d) adoption of a resolution or ordinance under]~~

167 (ii) the governing body has determined the estimated or actual economic promotion  
168 costs described in Section 11-42-206, if the assessment is to pay for economic promotion  
169 activities; or

170           ~~[(e)]~~ (iii) for any other assessment, the governing body has determined:  
171           ~~[(f)]~~ (A) the estimated or actual acquisition and construction costs of all proposed  
172 improvements within the assessment area, including overhead costs and authorized  
173 contingencies;  
174           ~~[(g)]~~ (B) the estimated or actual property price for all property to be acquired to  
175 provide the proposed improvements; and  
176           ~~[(h)]~~ (C) the reasonable cost of any work to be done by the local entity.  
177           (b) In addition to the requirements of Subsection (3)(a), the governing body of a local  
178 entity shall prepare the assessment list described in Subsection (2)(a)(i) before:  
179           (i) the light service has commenced, if the assessment is to pay for light service; or  
180           (ii) the park maintenance has commenced, if the assessment is to pay for park  
181 maintenance.  
182           (4) A local entity may levy an assessment for some or all of the cost of improvements  
183 within an assessment area, including payment of:  
184           (a) operation and maintenance costs of improvements constructed within the  
185 assessment area;  
186           (b) (i) if an outside entity furnishes utility services or maintains utility improvements,  
187 the actual cost that the local entity pays for utility services ~~[furnished]~~ or for maintenance of  
188 improvements ~~[provided by another or,]; or~~  
189           (ii) if the local entity itself furnishes utility service or maintains improvements, for the  
190 reasonable cost of supplying the utility service or maintenance;  
191           (c) the reasonable cost of supplying labor, materials, or equipment in connection with  
192 improvements; and  
193           (d) (i) the reasonable cost of connection fees; or ~~[the cost of]~~  
194           (ii) the reasonable costs, as determined by the local entity governing body, if the local  
195 entity owns or supplies any sewer, storm drainage, water, gas, electric, or communications  
196 connections ~~[if the local entity owns or supplies these services, to the depth that the local~~  
197 entity's governing body considers just and equitable].

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

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

202 (7) ~~Am~~ Subject to Subsection (7)(b), an assessment levied to pay for operation and  
203 maintenance costs may not be levied over a period of time exceeding [the reasonable useful  
204 life of the facilities to be maintained by the levy] five years beginning on the day on which the  
205 local entity adopts the assessment ordinance or assessment resolution for the operation and  
206 maintenance costs assessment.

207 (b) A local entity may levy an additional assessment described in Subsection (7)(a) in  
208 the assessment area designated for the assessment described in Subsection (7)(a) if, after the  
209 five-year period expires, the local entity complies with the provisions of this part.

210 Section 4. Section **11-42-402** is amended to read:

211 **11-42-402. Notice of assessment and board of equalization hearing.**

212 Each notice required under Subsection 11-42-401(2)(a)(iii) shall:

213 (1) state:

214 (a) that an assessment list is completed and available for examination at the offices of  
215 the local entity;

216 (b) the total estimated or actual cost of the improvements;

217 (c) the amount of the total estimated or actual cost of the proposed improvements to be  
218 paid by the local entity;

219 (d) the amount of the assessment to be levied against benefitted property within the  
220 assessment area;

221 (e) the assessment method used to calculate the proposed assessment;

222 (f) the unit cost used to calculate the assessments shown on the assessment list, based  
223 on the assessment method used to calculate the proposed assessment; and

224 (g) the dates, times, and place of the board of equalization hearings under Subsection  
225 11-42-401(2)(b);



226 (2) (a) beginning at least 20 but not more than 35 days before the day on which the  
227 first hearing of the board of equalization is held:

228 [~~(a)~~] (i) be published at least once in a newspaper of general circulation within the  
229 local entity's jurisdictional boundaries; or

230 (ii) if there is no newspaper of general circulation within the local entity's  
231 jurisdictional boundaries, be posted in at least three public places within the local entity's  
232 jurisdictional boundaries; and

233 (b) be published [~~in accordance with Section 45-1-101~~] on the Utah Public Notice  
234 Website created in Section 63F-1-701 for 35 days immediately before the day on which the  
235 first hearing of the board of equalization is held; and

236 (3) be mailed, postage prepaid, within 10 days after the first publication or posting of  
237 the notice under Subsection (2) to each owner of property to be assessed within the proposed  
238 assessment area at the property owner's mailing address.

239 Section 5. Section **11-42-404** is amended to read:

240 **11-42-404. Adoption of a resolution or ordinance levying an assessment -- Notice**  
241 **of the adoption -- Effective date of resolution or ordinance -- Notice of assessment**  
242 **interest.**

243 (1) (a) After receiving a final report from a board of equalization under Subsection  
244 11-42-403(5) or, if applicable, after the time for filing an appeal under Subsection  
245 11-42-403(6) has passed, the governing body may adopt a resolution or ordinance levying an  
246 assessment against benefitted property within the assessment area designated in accordance  
247 with Part 2, Designating an Assessment Area.

248 [~~(b) Each local entity that levies an assessment under this chapter shall levy the~~  
249 ~~assessment at one time only, unless the assessment is to pay operation and maintenance costs~~  
250 ~~or the costs of economic promotion activities.]~~

251 (b) (i) Except as provided in Subsection (1)(b)(ii), a local entity may not levy more  
252 than one assessment under this chapter for an assessment area designated in accordance with  
253 Part 2, Designating an Assessment Area.

254           (ii) A local entity may levy more than one assessment in an assessment area  
255 designated in accordance with Part 2, Designating an Assessment Area, if:  
256           (A) the local entity has adopted a designation resolution or designation ordinance for  
257 each assessment in accordance with Section 11-42-201; and  
258           (B) the assessment is levied to pay:  
259           (I) subject to Section 11-42-401, operation and maintenance costs; or  
260           (II) subject to Section 11-42-406, the costs of economic promotion activities.  
261           (c) An assessment resolution or ordinance adopted under Subsection (1)(a):  
262           (i) need not describe each tract, block, lot, part of block or lot, or parcel of property to  
263 be assessed;  
264           (ii) need not include the legal description or tax identification number of the parcels of  
265 property assessed in the assessment area; and  
266           (iii) is adequate for purposes of identifying the property to be assessed within the  
267 assessment area if the assessment resolution or ordinance incorporates by reference the  
268 corrected assessment list that describes the property assessed by legal description and tax  
269 identification number.  
270           (2) [~~(a) Each~~] (a) A local entity that adopts an assessment resolution or ordinance  
271 shall give notice of the adoption by:  
272           (i) (A) publishing a copy of the resolution or ordinance, or a summary of the resolution  
273 or ordinance, once in a newspaper of general circulation within the local entity's jurisdictional  
274 boundaries; or  
275           (B) if there is no newspaper of general circulation with the local entity's jurisdictional  
276 boundaries as described in Subsection (2)(a)(i)[~~(A)~~], posting a copy of the resolution or  
277 ordinance in at least three public places within the local entity's jurisdictional boundaries for at  
278 least 21 days; and  
279           (ii) publishing, in accordance with Section 45-1-101, a copy of the resolution or  
280 ordinance for at least 21 days.  
281           (b) No other publication or posting of the resolution or ordinance is required.

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

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

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

286 (4) (a) The governing body of each local entity that has adopted an assessment  
287 resolution or ordinance under Subsection (1) shall, within five days after the day on which the  
288 25-day prepayment period under Subsection 11-42-411(6) has passed, file a notice of  
289 assessment interest with the recorder of the county in which the assessed property is located.

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

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

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

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

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

299 Section 6. Section **11-42-406** is amended to read:

300 **11-42-406. Assessment for economic promotion activities -- Reporting.**

301 ~~[(1) An assessment levied to pay for economic promotion activities may not extend for~~  
302 ~~more than five years after the date of the notice under Section 11-42-402.]~~

303 (1) (a) If the governing body of a local entity designates an assessment area in  
304 accordance with Part 2, Designating an Assessment Area, for economic promotion activities,  
305 the governing body:

306 (i) may levy an assessment to pay for economic promotion activities by adopting an  
307 assessment resolution or ordinance in accordance with Section 11-42-404; and

308 (ii) subject to Subsection (1)(b), may levy an additional assessment for economic  
309 promotion activities for the designated assessment area described in Subsection (1)(a):

310 (A) by adopting an assessment resolution or an ordinance in accordance with Section  
311 11-42-404; and

312 (B) for a period of five years, beginning on the day on which the local entity adopts  
313 the initial assessment resolution or ordinance described in Subsection (1)(a)(i).

314 (b) A governing body may not levy an additional assessment to pay for economic  
315 promotion activities after the five-year period described in Subsection (1)(a)(ii)(B) unless the  
316 governing body:

317 (i) designates a new assessment area in accordance with Part 2, Designating an  
318 Assessment Area; and

319 (ii) adopts a new assessment resolution or ordinance in accordance with Section  
320 11-42-404.

321 (2) If a local entity designates an assessment area for economic promotion activities,  
322 the local entity:

323 (a) shall spend on economic promotion activities at least 70% of the money generated  
324 from an assessment levied in the assessment area and from improvement revenues; ~~and~~

325 (b) may not spend more than 30% of ~~[that money]~~ the money generated from the  
326 assessment levied in the assessment area and from improvement revenues on administrative  
327 costs, including salaries, benefits, rent, travel, and costs incidental to publications[-]; and

328 (c) in accordance with Subsection (3), shall publish a detailed report including the  
329 following:

330 (i) an account of monies deposited into the assessment fund described in Section  
331 11-42-412;

332 (ii) an account of expenditures from the fund described in Section 11-42-412; and

333 (iii) a detailed account of whether each expenditure described in Subsection (2)(c)(ii)  
334 was made for economic promotion activities described in Subsection (2)(a) or for  
335 administrative costs described in Subsection (2)(b).

336 (3) A local entity shall publish a report required in Subsection (2)(c):

337 (a) on:

338           (i) if available, the local entity's public web site; and  
339           (ii) if the local entity is not a county or municipality, on the public web site of any  
340 county or municipality in which the local entity has jurisdiction;  
341           (b) (i) within one year after the day on which the local entity adopts a new assessment  
342 resolution or ordinance for economic promotion activities; and  
343           (ii) each subsequent year that the economic promotion activities levy is assessed by  
344 updating the information described in Subsection (2)(c); and  
345           (c) for six months on a web site described in Subsection (3)(a) after the day on which  
346 the report is initially published under Subsection (3)(b) or updated under Subsection (3)(b)(ii).