

Representative Gage Froerer proposes the following substitute bill:

ASSESSMENT AREA AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gage Froerer

Senate Sponsor: Wayne L. Niederhauser

LONG TITLE

General Description:

This bill amends provisions of the Assessment Area Act.

Highlighted Provisions:

This bill:

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

Monies Appropriated in this Bill:

None

Other Special Clauses:

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



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 area,
71 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(2)(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 jurisdictional
133 boundaries, be posted in at least three public places within the local entity's jurisdictional
134 boundaries at least 20 but not more than 35 days before the deadline [~~under Section 11-42-203~~]
135 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 proposed
141 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) [~~Am~~] (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 [(+) (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 [(+) (B) the estimated or actual property price for all property to be acquired to
175 provide the proposed improvements; and
176 [(+) (C) the reasonable cost of any work to be done by the local entity.
177 (b) The governing body of a local entity shall prepare the assessment list described in
178 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 just and equitable costs, as determined by the local entity governing body, if the
195 local entity owns or supplies any sewer, storm drainage, water, gas, electric, or
196 communications connections [~~if the local entity owns or supplies these services, to the depth~~
197 ~~that the local 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 cost
201 of improvements exceeds the estimated cost.

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

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

206 **11-42-402. Notice of assessment and board of equalization hearing.**

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

208 (1) state:

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

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

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

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

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

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

219 (g) the dates, times, and place of the board of equalization hearings under Subsection
220 11-42-401(2)(b);

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

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

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

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

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

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

235 **11-42-404. Adoption of a resolution or ordinance levying an assessment -- Notice**
236 **of the adoption -- Effective date of resolution or ordinance -- Notice of assessment**
237 **interest.**

238 (1) (a) After receiving a final report from a board of equalization under Subsection
239 11-42-403(5) or, if applicable, after the time for filing an appeal under Subsection
240 11-42-403(6) has passed, the governing body may adopt a resolution or ordinance levying an
241 assessment against benefitted property within the assessment area designated in accordance
242 with Part 2, Designating an Assessment Area.

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

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

249 (ii) A local entity may levy more than one assessment in an assessment area designated
250 in accordance with Part 2, Designating an Assessment Area, if:

251 (A) the local entity has adopted a designation resolution or designation ordinance for
252 each assessment in accordance with Section 11-42-201; and

253 (B) the assessment is levied to pay:

254 (I) operation and maintenance costs; or

255 (II) subject to Section 11-42-406, the costs of economic promotion activities.

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

257 (i) ~~[need not]~~ may describe each tract, block, lot, part of block or lot, or parcel of
258 property to be assessed;

259 (ii) ~~[need not]~~ may include the legal description or tax identification number of the
260 parcels of property assessed in the assessment area; and

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

265 (2) ~~[(a) Each]~~ A local entity that adopts an assessment resolution or ordinance shall
266 give notice of the adoption by:

267 (a) (i) [(A)] publishing a copy of the resolution or ordinance, or a summary of the
268 resolution or ordinance, once in a newspaper of general circulation within the local entity's
269 jurisdictional boundaries; or

270 ~~[(B)]~~ (ii) if there is no newspaper of general circulation with the local entity's
271 jurisdictional boundaries as described in Subsection (2)(a)(i)~~[(A)]~~, posting a copy of the
272 resolution or ordinance in at least three public places within the local entity's jurisdictional
273 boundaries for at least 21 days; and

274 [(i)] (b) publishing, in accordance with Section 45-1-101, a copy of the resolution or
275 ordinance for at least 21 days.

276 [~~(b) No other publication or posting of the resolution or ordinance is required.~~]

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

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

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

281 (4) (a) The governing body of each local entity that has adopted an assessment
282 resolution or ordinance under Subsection (1) shall, within five days after the day on which the
283 25-day prepayment period under Subsection 11-42-411(6) has passed, file a notice of
284 assessment interest with the county recorder [~~of the county~~] in which the assessed property is
285 located.

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

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

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

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

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

295 Section 6. Section ~~11-42-406~~ is amended to read:

296 **11-42-406. Assessment for economic promotion activities -- Reporting.**

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

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

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

304 (ii) subject to Subsection (1)(b), may levy an additional assessment for economic

305 promotion activities for the designated assessment area described in Subsection (1)(a):
306 (A) by adopting an assessment resolution or an ordinance in accordance with Section
307 11-42-404; and
308 (B) for a period of five years, beginning on the day on which the local entity adopts the
309 initial assessment resolution or ordinance described in Subsection (1)(a)(i).
310 (b) A governing body may not levy an additional assessment to pay for economic
311 promotion activities after the five-year period described in Subsection (1)(a)(ii)(B) unless the
312 governing body:
313 (i) designates a new assessment area in accordance with Part 2, Designating an
314 Assessment Area; and
315 (ii) adopts a new assessment resolution or ordinance in accordance with Section
316 11-42-404.
317 (2) If a local entity designates an assessment area for economic promotion activities,
318 the local entity:
319 (a) shall spend on economic promotion activities at least 70% of the money generated
320 from an assessment levied in the assessment area and from improvement revenues; ~~and~~
321 (b) may not spend more than 30% of ~~[that money]~~ the money generated from the
322 assessment levied in the assessment area and from improvement revenues on administrative
323 costs, including salaries, benefits, rent, travel, and costs incidental to publications[-]; and
324 (c) in accordance with Subsection (3), shall publish a detailed report including the
325 following:
326 (i) an account of monies deposited into the assessment fund described in Section
327 11-42-412;
328 (ii) an account of expenditures from the fund described in Section 11-42-412; and
329 (iii) a detailed account of whether each expenditure described in Subsection (2)(c)(ii)
330 was made for economic promotion activities described in Subsection (2)(a) or for
331 administrative costs described in Subsection (2)(b).
332 (3) A local entity shall publish a report required in Subsection (2)(c) on:
333 (a) if available, the local entity's public web site; and
334 (b) if the local entity is not a county or municipality, on the public web site of any
335 county or municipality in which the local entity has jurisdiction.