

ASSESSMENT AREA AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne L. Niederhauser

House Sponsor: Michael T. Morley

LONG TITLE

General Description:

This bill defines terms and amends provisions relating to an assessment area that consists of unimproved property.

Highlighted Provisions:

This bill:

- ▶ defines terms; and
- ▶ amends provisions relating to an assessment area consisting of unimproved property.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

11-42-102, as last amended by Laws of Utah 2009, Chapters 92 and 246

11-42-205, as last amended by Laws of Utah 2009, Chapter 246

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

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

11-42-102. Definitions.



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

33 (a) protests relating to:

34 (i) property that has been deleted from a proposed assessment area; or

35 (ii) an improvement that has been deleted from the proposed improvements to be
36 provided to property within the proposed assessment area; and

37 (b) protests that have been withdrawn under Subsection 11-42-203(3).

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

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

44 (a) issued under Section 11-42-605; and

45 (b) payable in part or in whole from assessments levied in an assessment area,
46 improvement revenues, and a guaranty fund or reserve fund.

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

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

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

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

56 (8) "Assessment resolution" means a resolution adopted by a local entity under Section
57 11-42-404 that levies an assessment on benefitted property within an assessment area.

58 (9) "Benefitted property" means property within an assessment area that directly or

59 indirectly benefits from improvements, operation and maintenance, or economic promotion
60 activities.

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

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

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

66 (13) "Connection fee" means a fee charged by a local entity to pay for the costs of
67 connecting property to a publicly owned sewer, storm drainage, water, gas, communications, or
68 electrical system, whether or not improvements are installed on the property.

69 (14) "Contract price" means:

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

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

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

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

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

79 (a) sponsoring festivals and markets;

80 (b) promoting business investment or activities;

81 (c) helping to coordinate public and private actions; and

82 (d) developing and issuing publications designed to improve the economic well-being
83 of the commercial area.

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

87 (19) "Governing body" means:

88 (a) for a county, city, or town, the legislative body of the county, city, or town;

89 (b) for a local district, the board of trustees of the local district;

90 (c) for a special service district:

91 (i) the legislative body of the county, city, or town that established the special service
92 district, if no administrative control board has been appointed under Section 17D-1-301; or

93 (ii) the administrative control board of the special service district, if an administrative
94 control board has been appointed under Section 17D-1-301; and

95 (d) for the military installation development authority created in Section 63H-1-201,
96 the authority board, as defined in Section 63H-1-102.

97 (20) "Guaranty fund" means the fund established by a local entity under Section
98 11-42-701.

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

101 (22) "Improvement":

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

103 (i) a local entity is authorized to provide; or

104 (ii) the governing body of a local entity determines is necessary or convenient to enable
105 the local entity to provide a service that the local entity is authorized to provide; and

106 (b) includes facilities in an assessment area, including a private driveway, an irrigation
107 ditch, and a water turnout, that:

108 (i) can be conveniently installed at the same time as an infrastructure, system, or other
109 facility described in Subsection (22)(a); and

110 (ii) are requested by a property owner on whose property or for whose benefit the
111 infrastructure, system, or other facility is being installed.

112 (23) "Improvement revenues":

113 (a) means charges, fees, impact fees, or other revenues that a local entity receives from
114 improvements; and

115 (b) does not include revenue from assessments.

116 (24) "Incidental refunding costs" means any costs of issuing refunding assessment
117 bonds and calling, retiring, or paying prior bonds, including:

118 (a) legal and accounting fees;

119 (b) charges of financial advisors, escrow agents, certified public accountant verification
120 entities, and trustees;

- 121 (c) underwriting discount costs, printing costs, the costs of giving notice;
- 122 (d) any premium necessary in the calling or retiring of prior bonds;
- 123 (e) fees to be paid to the local entity to issue the refunding assessment bonds and to
124 refund the outstanding prior bonds;
- 125 (f) any other costs that the governing body determines are necessary or desirable to
126 incur in connection with the issuance of refunding assessment bonds; and
- 127 (g) any interest on the prior bonds that is required to be paid in connection with the
128 issuance of the refunding assessment bonds.
- 129 (25) "Installment payment date" means the date on which an installment payment of an
130 assessment is payable.
- 131 (26) "Interim warrant" means a warrant issued by a local entity under Section
132 11-42-601.
- 133 (27) "Jurisdictional boundaries" means:
 - 134 (a) for a county, the boundaries of the unincorporated area of the county; and
 - 135 (b) for each other local entity, the boundaries of the local entity.
- 136 (28) "Local district" means a local district under Title 17B, Limited Purpose Local
137 Government Entities - Local Districts.
- 138 (29) "Local entity" means a county, city, town, special service district, local district,
139 military installation development authority created in Section 63H-1-201, or other political
140 subdivision of the state.
- 141 (30) "Local entity obligations" means assessment bonds, refunding assessment bonds,
142 interim warrants, and bond anticipation notes issued by a local entity.
- 143 (31) "Mailing address" means:
 - 144 (a) a property owner's last-known address using the name and address appearing on the
145 last completed real property assessment roll of the county in which the property is located; and
 - 146 (b) if the property is improved property:
 - 147 (i) the property's street number; or
 - 148 (ii) the post office box, rural route number, or other mailing address of the property, if
149 a street number has not been assigned.
- 150 (32) "Net improvement revenues" means all improvement revenues that a local entity
151 has received since the last installment payment date, less all amounts payable by the local entity

152 from those improvement revenues for operation and maintenance costs.

153 (33) "Operation and maintenance costs":

154 (a) means the costs that a local entity incurs in operating and maintaining
155 improvements in an assessment area, whether or not those improvements have been financed
156 under this chapter; and

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

159 (34) "Overhead costs" means the actual costs incurred or the estimated costs to be
160 incurred by a local entity in connection with an assessment area for appraisals, legal fees, filing
161 fees, financial advisory charges, underwriting fees, placement fees, escrow, trustee, and paying
162 agent fees, publishing and mailing costs, costs of levying an assessment, recording costs, and
163 all other incidental costs.

164 (35) "Prior bonds" means the assessment bonds that are refunded in part or in whole by
165 refunding assessment bonds.

166 (36) "Prior assessment ordinance" means the ordinance levying the assessments from
167 which the prior bonds are payable.

168 (37) "Prior assessment resolution" means the resolution levying the assessments from
169 which the prior bonds are payable.

170 (38) "Project engineer" means the surveyor or engineer employed by or private
171 consulting engineer engaged by a local entity to perform the necessary engineering services for
172 and to supervise the construction or installation of the improvements.

173 (39) "Property" includes real property and any interest in real property, including water
174 rights and leasehold rights.

175 (40) "Property price" means the price at which a local entity purchases or acquires by
176 eminent domain property to make improvements in an assessment area.

177 (41) "Provide" or "providing," with reference to an improvement, includes the
178 acquisition, construction, reconstruction, renovation, maintenance, repair, operation, and
179 expansion of an improvement.

180 (42) "Public agency" means:

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

182 (b) a political subdivision of the state.

183 (43) "Reduced payment obligation" means the full obligation of an owner of property
184 within an assessment area to pay an assessment levied on the property after the assessment has
185 been reduced because of the issuance of refunding assessment bonds, as provided in Section
186 11-42-608.

187 (44) "Refunding assessment bonds" means assessment bonds that a local entity issues
188 under Section 11-42-607 to refund, in part or in whole, assessment bonds.

189 (45) "Reserve fund" means a fund established by a local entity under Section
190 11-42-702.

191 (46) "Service" means:

192 (a) water, sewer, storm drainage, garbage collection, library, recreation,
193 communications, or electric service;

194 (b) economic promotion activities; or

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

196 (47) "Special service district" has the same meaning as defined in Section 17D-1-102.

197 (48) "Unimproved property" means property upon which no residential, commercial, or
198 other building has been built.

199 (49) "Voluntary assessment area" means an assessment area that contains only property
200 whose owners have voluntarily consented to an assessment.

201 Section 2. Section **11-42-205** is amended to read:

202 **11-42-205. Unimproved property.**

203 (1) (a) Before a local entity may designate an assessment area in which more than 75%
204 of the property proposed to be assessed consists of unimproved property, and designation of the
205 assessment area would require that the local entity obtain a bond, the local entity shall obtain:

206 (i) an appraisal:

207 (A) of the unimproved property;

208 (B) from an appraiser who is a member of the Appraisal Institute;

209 (C) addressed to the local entity or a financial institution; and

210 (D) verifying that the market value of the property, after completion of the proposed
211 improvements, is at least three times the amount of the assessments proposed to be levied
212 against the unimproved property; or

213 (ii) the most recent taxable value of the unimproved property from the assessor of the

214 county in which the unimproved property is located, verifying that the taxable value of the
215 property, after completion of the proposed improvements, is at least three times the amount of
216 the assessments proposed to be levied against the unimproved property.

217 (b) If the owner of the unimproved property has entered into a construction loan
218 acceptable to the local entity to finance the facilities to be constructed or installed on the
219 unimproved property, the market value of the unimproved property, as determined under
220 Subsection (1)(a)(i), may include, at the local entity's option:

221 (i) the principal amount of the construction loan; or
222 (ii) the value of the unimproved property with the facilities to be financed by the
223 construction loan, as determined by an appraisal of:

224 (A) the unimproved property; and
225 (B) the facilities proposed to be constructed.

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

228 (a) financial information acceptable to the governing body with respect to the owner's
229 ability to pay the proposed assessments;

230 (b) a financial institution's commitment securing, to the governing body's satisfaction,
231 the owners' obligation to pay the proposed assessments; or

232 (c) a development plan, approved by a qualified, independent third party, describing
233 the plan of development and the financial feasibility of the plan, taking into account growth
234 trends, absorption studies, and other demographic information applicable to the unimproved
235 property.

236 (3) Information that an owner provides to a local entity under Subsection (2)(a) is not a
237 record for purposes of Title 63G, Chapter 2, Government Records Access and Management
238 Act.

Legislative Review Note
as of **2-4-11 3:40 PM**

Office of Legislative Research and General Counsel