

**ASSESSMENT AREA ACT MODIFICATIONS**

2015 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: R. Curt Webb**

Senate Sponsor: J. Stuart Adams

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**LONG TITLE**

**General Description:**

This bill amends provisions related to the designation of an assessment area and the levy of an assessment.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ amends provisions related to an action to contest an assessment;
- ▶ allows a local entity to divide an assessment area into classifications;
- ▶ prohibits an assessment area that is coextensive or substantially coterminous with the boundaries of a local entity;
- ▶ amends notice requirements for designation of an assessment area;
- ▶ amends provisions related to a protest filed against the designation of an assessment area;
- ▶ amends provisions related to a public hearing on a proposed assessment area;
- ▶ amends provisions related to a public meeting held to designate an assessment area;
- ▶ enacts language requiring notice for a subsequent purchaser;
- ▶ amends provisions related to an assessment levy;
- ▶ amends provisions related to a board of equalization;
- ▶ amends provisions related to an assessment for economic promotion activities;
- ▶ prohibits a local entity from levying an assessment unless certain criteria are met;



- 28           ▶ requires a local entity to pay for any increase in an improvement size or capacity for
- 29 service to properties outside of an assessment area with funds other than those
- 30 levied by the assessment;
- 31           ▶ authorizes a local entity to proportionally assess benefitted properties for an
- 32 unassessed benefitted government property; and
- 33           ▶ makes technical corrections.

34 **Money Appropriated in this Bill:**

35           None

36 **Other Special Clauses:**

37           None

38 **Utah Code Sections Affected:**

39 AMENDS:

- 40           11-42-102, as last amended by Laws of Utah 2013, Chapter 246
- 41           11-42-106, as enacted by Laws of Utah 2007, Chapter 329
- 42           11-42-201, as last amended by Laws of Utah 2010, Chapter 238
- 43           11-42-202, as last amended by Laws of Utah 2013, Chapters 246 and 265
- 44           11-42-203, as last amended by Laws of Utah 2013, Chapter 265
- 45           11-42-204, as last amended by Laws of Utah 2013, Chapter 265
- 46           11-42-206, as last amended by Laws of Utah 2013, Chapter 265
- 47           11-42-207, as last amended by Laws of Utah 2009, Chapter 246
- 48           11-42-401, as last amended by Laws of Utah 2013, Chapter 265
- 49           11-42-402, as last amended by Laws of Utah 2010, Chapters 90 and 238
- 50           11-42-403, as last amended by Laws of Utah 2009, Chapter 246
- 51           11-42-406, as last amended by Laws of Utah 2010, Chapter 238
- 52           11-42-409, as enacted by Laws of Utah 2007, Chapter 329

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

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

56           **11-42-102. Definitions.**

57           (1) "Adequate protests" means timely filed, written protests under Section 11-42-203  
58 that represent at least [~~50%~~] 40% of the frontage, area, taxable value, fair market value, lots,

59 number of connections, or equivalent residential units of the property proposed to be assessed,  
60 according to the same assessment method by which the assessment is proposed to be levied,  
61 after eliminating:

62 (a) protests relating to:

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

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

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

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

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

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

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

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

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

80 (6) "Assessment method" means the method:

81 (a) by which an assessment is levied against benefitted property, whether by frontage,  
82 area, taxable value, fair market value, lot, parcel, number of connections, equivalent residential  
83 unit, any combination of these methods, or any other method [~~that equitably reflects the benefit~~  
84 ~~received from the improvement.~~]; and

85 (b) that, when applied to a benefitted property, accounts for an assessment that meets  
86 the requirements of Section 11-42-409.

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

89 (8) "Assessment resolution" means a resolution adopted by a local entity under Section

90 11-42-404 that levies an assessment on benefitted property within an assessment area.

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

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

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

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

99 (13) (a) "Commercial or industrial real property" means real property used directly or  
100 indirectly or held for one of the following purposes or activities, regardless of whether the  
101 purpose or activity is for profit:

102 (i) commercial;

103 (ii) mining;

104 (iii) industrial;

105 (iv) manufacturing;

106 (v) governmental;

107 (vi) trade;

108 (vii) professional;

109 (viii) a private or public club;

110 (ix) a lodge;

111 (x) a business; or

112 (xi) a similar purpose.

113 (b) "Commercial or industrial real property" includes real property that:

114 (i) is used as or held for dwelling purposes; and

115 (ii) contains more than four [~~or more~~] rental units.

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

119 (15) "Contract price" means:

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

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

123 (16) "Designation ordinance" means an ordinance adopted by a local entity under  
124 Section 11-42-206 designating an assessment area.

125 (17) "Designation resolution" means a resolution adopted by a local entity under  
126 Section 11-42-206 designating an assessment area.

127 (18) "Economic promotion activities" means activities that promote economic growth  
128 in a commercial area of a local entity, including:

- 129 (a) sponsoring festivals and markets;
- 130 (b) promoting business investment or activities;
- 131 (c) helping to coordinate public and private actions; and
- 132 (d) developing and issuing publications designed to improve the economic well-being  
133 of the commercial area.

134 (19) "Energy efficiency upgrade" means an improvement that is permanently affixed to  
135 commercial or industrial real property that is designed to reduce energy consumption,  
136 including:

- 137 (a) insulation in:
  - 138 (i) a wall, roof, floor, or foundation; or
  - 139 (ii) a heating and cooling distribution system;
- 140 (b) a window or door, including:
  - 141 (i) a storm window or door;
  - 142 (ii) a multiglazed window or door;
  - 143 (iii) a heat-absorbing window or door;
  - 144 (iv) a heat-reflective glazed and coated window or door;
  - 145 (v) additional window or door glazing;
  - 146 (vi) a window or door with reduced glass area; or
  - 147 (vii) other window or door modifications;
- 148 (c) an automatic energy control system;
- 149 (d) in a building or a central plant, a heating, ventilation, or air conditioning and  
150 distribution system;
- 151 (e) caulk or weatherstripping;

152 (f) a light fixture that does not increase the overall illumination of a building unless an  
153 increase is necessary to conform with the applicable building code;

154 (g) an energy recovery system;

155 (h) a daylighting system;

156 (i) measures to reduce the consumption of water, through conservation or more  
157 efficient use of water, including:

158 (i) installation of low-flow toilets and showerheads;

159 (ii) installation of timer or timing systems for a hot water heater; or

160 (iii) installation of rain catchment systems; or

161 (j) a modified, installed, or remodeled fixture that is approved as a utility cost-saving  
162 measure by the governing body of a local entity.

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

166 (21) "Governing body" means:

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

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

169 (c) for a special service district:

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

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

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

176 (22) "Guaranty fund" means the fund established by a local entity under Section  
177 11-42-701.

178 (23) "Improved property" means property [~~proposed to be assessed within an~~  
179 ~~assessment area~~] upon which a residential, commercial, or other building has been built.

180 (24) "Improvement":

181 (a) (i) means a publicly owned infrastructure, system, or other facility, a publicly or  
182 privately owned energy efficiency upgrade, or a publicly or privately owned renewable energy

183 system that:

184 (A) a local entity is authorized to provide;

185 (B) the governing body of a local entity determines is necessary or convenient to  
186 enable the local entity to provide a service that the local entity is authorized to provide; or

187 (C) a local entity is requested to provide through an interlocal agreement in accordance  
188 with Title 11, Chapter 13, Interlocal Cooperation Act; and

189 (ii) includes facilities in an assessment area, including a private driveway, an irrigation  
190 ditch, and a water turnout, that:

191 (A) can be conveniently installed at the same time as an infrastructure, system, or other  
192 facility described in Subsection (24)(a)(i); and

193 (B) are requested by a property owner on whose property or for whose benefit the  
194 infrastructure, system, or other facility is being installed; or

195 (b) for a local district created to assess groundwater rights in accordance with Section  
196 [17B-1-202](#), means a system or plan to regulate groundwater withdrawals within a specific  
197 groundwater basin in accordance with Sections [17B-1-202](#) and [73-5-15](#).

198 (25) "Improvement revenues":

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

201 (b) does not include revenue from assessments.

202 (26) "Incidental refunding costs" means any costs of issuing refunding assessment  
203 bonds and calling, retiring, or paying prior bonds, including:

204 (a) legal and accounting fees;

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

207 (c) underwriting discount costs, printing costs, the costs of giving notice;

208 (d) any premium necessary in the calling or retiring of prior bonds;

209 (e) fees to be paid to the local entity to issue the refunding assessment bonds and to  
210 refund the outstanding prior bonds;

211 (f) any other costs that the governing body determines are necessary [~~or desirable~~] and  
212 proper to incur in connection with the issuance of refunding assessment bonds; and

213 (g) any interest on the prior bonds that is required to be paid in connection with the

214 issuance of the refunding assessment bonds.

215 (27) "Installment payment date" means the date on which an installment payment of an  
216 assessment is payable.

217 (28) "Interim warrant" means a warrant issued by a local entity under Section  
218 11-42-601.

219 (29) "Jurisdictional boundaries" means:

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

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

222 (30) "Local district" means a local district under Title 17B, Limited Purpose Local  
223 Government Entities - Local Districts.

224 (31) "Local entity" means a county, city, town, special service district, local district, an  
225 interlocal entity as defined in Section 11-13-103, a military installation development authority  
226 created in Section 63H-1-201, or other political subdivision of the state.

227 (32) "Local entity obligations" means assessment bonds, refunding assessment bonds,  
228 interim warrants, and bond anticipation notes issued by a local entity.

229 (33) "Mailing address" means:

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

232 (b) if the property is improved property:

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

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

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

239 (35) "Operation and maintenance costs":

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

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



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

250 (37) "Prior assessment ordinance" means the ordinance levying the assessments from  
251 which the prior bonds are payable.

252 (38) "Prior assessment resolution" means the resolution levying the assessments from  
253 which the prior bonds are payable.

254 (39) "Prior bonds" means the assessment bonds that are refunded in part or in whole by  
255 refunding assessment bonds.

256 (40) "Project engineer" means the surveyor or engineer employed by or the private  
257 consulting engineer engaged by a local entity to perform the necessary engineering services for  
258 and to supervise the construction or installation of the improvements.

259 (41) "Property" includes real property and any interest in real property, including water  
260 rights and leasehold rights.

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

263 (43) "Provide" or "providing," with reference to an improvement, includes the  
264 acquisition, construction, reconstruction, renovation, maintenance, repair, operation, and  
265 expansion of an improvement.

266 (44) "Public agency" means:

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

268 (b) a political subdivision of the state.

269 (45) "Reduced payment obligation" means the full obligation of an owner of property  
270 within an assessment area to pay an assessment levied on the property after the assessment has  
271 been reduced because of the issuance of refunding assessment bonds, as provided in Section  
272 [11-42-608](#).

273 (46) "Refunding assessment bonds" means assessment bonds that a local entity issues  
274 under Section [11-42-607](#) to refund, in part or in whole, assessment bonds.

275 (47) "Renewable energy system" means a product, a system, a device, or an interacting

276 group of devices that:

277 (a) is permanently affixed to commercial or industrial real property; and

278 (b) produces energy from renewable resources, including:

279 (i) a photovoltaic system;

280 (ii) a solar thermal system;

281 (iii) a wind system;

282 (iv) a geothermal system, including:

283 (A) a generation system;

284 (B) a direct-use system; or

285 (C) a ground source heat pump system;

286 (v) a microhydro system; or

287 (vi) other renewable sources approved by the governing body of a local entity.

288 (48) "Reserve fund" means a fund established by a local entity under Section

289 [11-42-702](#).

290 (49) "Service" means:

291 (a) water, sewer, storm drainage, garbage collection, library, recreation,

292 communications, or electric service;

293 (b) economic promotion activities; or

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

295 (50) "Special service district" has the same meaning as defined in Section [17D-1-102](#).

296 (51) "Unassessed benefitted government property" means property that a local entity

297 may not assess in accordance with Section [11-42-408](#) but is benefitted by an improvement,

298 operation and maintenance, or economic promotion activities.

299 [~~51~~] (52) "Unimproved property" means property upon which no residential,

300 commercial, or other building has been built.

301 [~~52~~] (53) "Voluntary assessment area" means an assessment area that contains only

302 property whose owners have voluntarily consented to an assessment.

303 Section 2. Section **11-42-106** is amended to read:

304 **11-42-106. Action to contest assessment or proceeding -- Requirements --**

305 **Exclusive remedy -- Bonds and assessment incontestable.**

306 (1) A person who contests an assessment or any proceeding to designate an assessment

307 area or levy an assessment may commence a civil action against the local entity to:

308 (a) set aside a proceeding to designate an assessment area; or

309 (b) enjoin the levy or collection of an assessment.

310 (2) (a) Each action under Subsection (1) shall be commenced in the district court with  
311 jurisdiction in the county in which the assessment area is located.

312 (b) An action under Subsection (1) may not be commenced against and a summons  
313 relating to the action may not be served on the local entity more than ~~[30]~~ 60 days after the  
314 effective date of the:

315 (i) designation resolution or designation ordinance, if the challenge is to the  
316 designation of an assessment area;

317 (ii) assessment resolution or ordinance [or, in the case of an amendment, the], if the  
318 challenge is to an assessment; or

319 (iii) amended resolution or ordinance, if the challenge is to an amendment.

320 (3) (a) An action under ~~[this section]~~ Subsection (1) is the exclusive remedy of a  
321 person who:

322 (i) claims an error or irregularity in an assessment or in any proceeding to designate an  
323 assessment area or levy an assessment[-]; or

324 (ii) challenges a bondholder's right to repayment.

325 (b) A court may not hear any complaint under Subsection (1) that a person was  
326 authorized to make but did not make in a protest under Section [11-42-203](#) or at a hearing under  
327 Section [11-42-204](#).

328 (c) If a person has not brought a claim for which the person was previously authorized  
329 to bring but is otherwise barred from making under Subsection (2)(b), the claim may not be  
330 brought later because of an amendment to the resolution or ordinance unless the claim arises  
331 from the amendment itself.

332 (4) An assessment or a proceeding to designate an assessment area or to levy an  
333 assessment may not be declared invalid or set aside in part or in whole because of an error or  
334 irregularity that does not go to the equity or justice of the proceeding or the assessment [or  
335 proceeding] meeting the requirements of Section [11-42-409](#).

336 (5) After the expiration of the ~~[30-day]~~ 60-day period referred to in Subsection (2)(b):

337 (a) assessment bonds and refunding assessment bonds issued or to be issued with

338 respect to an assessment area and assessments levied on property in the assessment area  
339 become at that time incontestable against all persons who have not commenced an action and  
340 served a summons as provided in this section; and

341 (b) a suit to enjoin the issuance or payment of assessment bonds or refunding  
342 assessment bonds, the levy, collection, or enforcement of an assessment, or to attack or  
343 question in any way the legality of assessment bonds, refunding assessment bonds, or an  
344 assessment may not be commenced, and a court may not inquire into those matters.

345 (6) (a) This section may not be interpreted to insulate a local entity from a claim of  
346 misuse of assessment funds after the expiration of the 60-day period described in Subsection  
347 (2)(b).

348 (b) (i) Except as provided in Subsection (6)(b)(ii), an action in the nature of mandamus  
349 is the sole form of relief available to a party challenging the misuse of assessment funds.

350 (ii) The limitation in Subsection (6)(b)(i) does not prohibit a person from filing  
351 criminal charges against or the prosecution of a party for the misuse of assessment funds.

352 Section 3. Section **11-42-201** is amended to read:

353 **11-42-201. Resolution or ordinance designating an assessment area --**  
354 **Classifications within an assessment area -- Preconditions to adoption of a resolution or**  
355 **ordinance.**

356 (1) (a) Subject to the requirements of this part, a governing body of a local entity  
357 intending to levy an assessment on property to pay some or all of the cost of providing  
358 improvements benefitting the property, performing operation and maintenance benefitting the  
359 property, or conducting economic promotion activities benefitting the property shall adopt a  
360 resolution or ordinance designating an assessment area.

361 (b) A designation resolution or designation ordinance described in Subsection (1)(a)  
362 may divide the assessment area into [~~zones~~] multiple classifications to allow the governing  
363 body to:

364 (i) levy a different level of assessment; or

365 (ii) use a different assessment method in each [~~zone~~] classification to reflect more  
366 fairly the benefits that property within the different [~~zones~~] classifications is expected to  
367 receive because of the proposed improvement, operation and maintenance, or economic  
368 promotion activities.

- 369 (c) The boundaries of a proposed assessment area;
- 370 (i) may include property that is not intended to be assessed[-]; and
- 371 (ii) may not be coextensive or substantially coterminous with the boundaries of the
- 372 local entity.
- 373 (2) Before adopting a designation resolution or designation ordinance described in
- 374 Subsection (1)(a), the governing body of the local entity shall:
- 375 (a) give notice as provided in Section 11-42-202;
- 376 (b) receive and consider all protests filed under Section 11-42-203; and
- 377 (c) hold a public hearing as provided in Section 11-42-204.
- 378 Section 4. Section 11-42-202 is amended to read:
- 379 **11-42-202. Requirements applicable to a notice of a proposed assessment area**
- 380 **designation.**
- 381 (1) Each notice required under Subsection 11-42-201(2)(a) shall:
- 382 (a) state that the local entity proposes to:
- 383 (i) designate one or more areas within the local entity's jurisdictional boundaries as an
- 384 assessment area;
- 385 (ii) provide an improvement to property within the proposed assessment area; and
- 386 (iii) finance some or all of the cost of improvements by an assessment on benefitted
- 387 property within the assessment area;
- 388 (b) describe the proposed assessment area by any reasonable method that allows an
- 389 owner of property in the proposed assessment area to determine that the owner's property is
- 390 within the proposed assessment area;
- 391 (c) describe~~[- in a general way,]~~ the improvements to be provided to the assessment
- 392 area, including:
- 393 (i) the ~~[general]~~ nature of the improvements; and
- 394 (ii) the ~~[general]~~ location of the improvements, by reference to streets or portions or
- 395 extensions of streets or by any other means that the governing body chooses that reasonably
- 396 describes the general location of the improvements;
- 397 (d) state the estimated cost of the improvements as determined by a project engineer;
- 398 (e) for the version of notice mailed in accordance with Subsection (4)(b), state the
- 399 estimated annual assessment specific to the benefitted property for which the notice is mailed;

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

403           (g) if applicable, state that an unassessed benefitted government property will receive  
404 improvements for which the cost will be allocated proportionately to the remaining benefitted  
405 properties within the proposed assessment area and that a description of each unassessed  
406 benefitted government property is available for public review at the location or website  
407 described in Subsection (5);

408           ~~[(f)]~~ (h) state the assessment method by which the governing body proposes to levy the  
409 assessment, including, if the local entity is a municipality or county, whether the assessment  
410 will be collected:

411           (i) by directly billing a property owner; or

412           (ii) by inclusion on a property tax notice issued in accordance with Section 59-2-1317;

413           ~~[(g)]~~ (i) state:

414           (i) the date described in Section 11-42-203 and the location at which protests against  
415 designation of the proposed assessment area or of the proposed improvements are required to  
416 be filed; ~~[and]~~

417           (ii) the method by which the governing body will determine the number of protests  
418 required to defeat the designation of the proposed assessment area or acquisition or  
419 construction of the proposed improvements; and

420           (iii) in large, boldface, and conspicuous type that a property owner must protest the  
421 designation of the assessment area in writing if the owner objects to the area designation or  
422 being assessed for the proposed improvements, operation and maintenance costs, or economic  
423 promotion activities;

424           ~~[(h)]~~ (j) state the date, time, and place of the public hearing required in Section  
425 11-42-204;

426           ~~[(i)]~~ (k) if the governing body elects to create and fund a reserve fund under Section  
427 11-42-702, include a description of:

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

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

431            [(j)] (l) if the governing body intends to designate a voluntary assessment area, include  
 432 a property owner consent form that:

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

434            (ii) describes any additional benefits that the governing body expects the assessed

435 property to receive from the improvements; and

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

438            [(k)] (m) if the local entity intends to levy an assessment to pay operation and

439 maintenance costs or for economic promotion activities, include:

440            (i) a description of the operation and maintenance costs or economic promotion

441 activities to be paid by assessments and the initial estimated annual assessment to be levied;

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

443            (iii) a description of how and when the governing body will adjust the assessment to  
 444 reflect the costs of:

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

446            (B) current operation and maintenance costs;

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

449            (v) a statement of the maximum number of years over which the assessment will be  
 450 levied for:

451            (A) operation and maintenance costs; or

452            (B) economic promotion activities; [~~and~~]

453            [(t)] (n) if the governing body intends to divide the proposed assessment area into

454 [~~zones~~] classifications under Subsection 11-42-201(1)(b), include a description of the proposed

455 [~~zones~~] classifications;

456            (o) if applicable, state the portion and value of the improvement that will be increased

457 in size or capacity to serve property outside of the assessment area and how the increases will

458 be financed; and

459            (p) state whether the local entity will finance the improvements with a bond and, if so,

460 the currently estimated interest rate and term of financing, subject to Subsection (2), for which

461 the benefitted properties within the assessment area may be obligated.

462           (2) The estimated interest rate and term of financing in Subsection (1)(p) may not be  
463 interpreted as a limitation to the actual interest rate incurred or the actual term of financing as  
464 subject to the market rate at the time of the issuance of the bond.

465           ~~[(2)]~~ (3) A notice required under Subsection 11-42-201(2)(a) may contain other  
466 information that the governing body considers to be appropriate, including:

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

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

471           (c) provisions for any improvements described in Subsection 11-42-102(24)(a)(ii).

472           ~~[(3)]~~ (4) Each notice required under Subsection 11-42-201(2)(a) shall:

473           (a) (i) (A) be published in a newspaper of general circulation within the local entity's  
474 jurisdictional boundaries, once a week for four consecutive weeks, with the last publication at  
475 least five but not more than 20 days before the day of the hearing required in Section  
476 11-42-204; or

477           (B) if there is no newspaper of general circulation within the local entity's jurisdictional  
478 boundaries, be posted in at least three public places within the local entity's jurisdictional  
479 boundaries at least 20 but not more than 35 days before the day of the hearing required in  
480 Section 11-42-204; and

481           (ii) be published on the Utah Public Notice Website described in Section 63F-1-701 for  
482 four weeks before the deadline for filing protests specified in the notice under Subsection  
483 (1)~~[(g)]~~(i); and

484           (b) be mailed, postage prepaid, within 10 days after the first publication or posting of  
485 the notice under Subsection ~~[(3)]~~ (4)(a) to each owner of property to be assessed within the  
486 proposed assessment area at the property owner's mailing address.

487           (5) A local entity shall make available on the local entity's website, or, if no website is  
488 available, at the local entity's place of business, the address and type of use of each unassessed  
489 benefitted government property described in Subsection (1)(g).

490           Section 5. Section 11-42-203 is amended to read:

491           **11-42-203. Protests.**

492           (1) An owner of property that is proposed to be assessed ~~[within]~~ and who does not



493 want the property to be included in an assessment area may, within 60 days after the day of the  
 494 hearing described in Subsection 11-42-204(1), file a written protest:

495 (a) against:

496 ~~[(a)]~~ (i) the designation of the assessment area;

497 ~~[(b)]~~ (ii) the inclusion of the owner's property in the proposed assessment area;

498 ~~[(c)]~~ (iii) the proposed improvements to be acquired or constructed; or

499 (iv) if applicable, the inclusion of an unassessed benefitted government property, the  
 500 benefit for which the other assessed properties will collectively pay; or

501 ~~[(d)]~~ (b) protesting:

502 (i) whether the assessment meets the requirements of Section 11-42-409; or

503 (ii) any other aspect of the proposed designation of an assessment area.

504 (2) Each protest under ~~[Subsection (1)(a)]~~ Subsection (1) shall:

505 (a) describe or otherwise identify the property owned by the person filing the protest[-];

506 and

507 (b) include the signature of the owner of the property.

508 (3) An owner may withdraw a protest at any time before the expiration of the 60-day  
 509 period described in Subsection (1) by filing a written withdrawal with the governing body.

510 (4) If the governing body intends to assess property within the proposed assessment  
 511 area by type of improvement or ~~[by zone,]~~ classification, as described in Section 11-42-201,  
 512 and the governing body has clearly noticed its intent, the governing body shall[-];

513 (a) in determining whether adequate protests have been filed, aggregate the protests by  
 514 the type of improvement or by ~~[zone,]~~ classification; and

515 (b) apply to and calculate for each type of improvement or classification the threshold  
 516 requirements of adequate protests.

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

519 (a) the designation of the assessment area;

520 (b) any improvement to be provided to property within the assessment area; ~~[and]~~

521 (c) the inclusion of the owner's property within the assessment area[-];

522 (d) the fact, but not amount, of benefit to the owner's property; and

523 (e) the inclusion of an unassessed benefitted government property in the assessment

524 area.

525 (6) The local entity shall post the total and percentage of the written protests it receives  
 526 on the local entity's website, or, if no website is available, at the local entity's place of business  
 527 at least five days before the public meeting described in Section [11-42-206](#).

528 Section 6. Section **11-42-204** is amended to read:

529 **11-42-204. Hearing.**

530 (1) On the date and at the time and place specified in the notice under Section  
 531 [11-42-202](#), the governing body shall hold a public hearing.

532 (2) (a) The governing body:

533 (i) subject to Subsection (2)(a)(ii), may continue the public hearing from time to time  
 534 to a fixed future date and time[-]; and

535 (ii) may not hold a public hearing that is a continuance less than five days before the  
 536 deadline for filing protests described in Section [11-42-203](#).

537 (b) The continuance of a public hearing does not restart or extend the protest period  
 538 described in Subsection [11-42-203](#)(1).

539 (3) At the public hearing, the governing body shall[-(a)] hear all:

540 (a) objections to the designation of the proposed assessment area or the improvements  
 541 proposed to be provided in the assessment area; [and]

542 (b) objections to whether the assessment will meet the requirements of Section  
 543 [11-42-409](#);

544 (c) objections to the inclusion within the assessment area of an unassessed benefitted  
 545 government property, the benefit for which the other assessed properties will collectively pay;  
 546 and

547 ~~[(b) hear all]~~ (d) persons desiring to be heard.

548 ~~[(4) The governing body may make changes in:]~~

549 ~~[(a) improvements proposed to be provided to the proposed assessment area; or]~~

550 ~~[(b) the area or areas proposed to be included within the proposed assessment area.]~~

551 Section 7. Section **11-42-206** is amended to read:

552 **11-42-206. Public meeting -- Adoption of a resolution or ordinance regarding a**  
 553 **proposed assessment area -- Designation prohibited if adequate protests filed --**  
 554 **Recording of resolution or ordinance and notice of proposed assessment.**

555 (1) (a) After holding a public hearing under Section 11-42-204 and [~~considering~~  
 556 ~~protests filed under Section 11-42-203, and subject to Subsection (3), the governing body shall~~  
 557 ~~hold a public meeting to adopt a resolution or ordinance:]~~ within 15 days after the day that the  
 558 protest period expires in accordance with Subsection 11-42-203(1), the governing body shall:

559 (i) count the written protests filed or withdrawn in accordance with Section 11-42-203  
 560 and calculate whether adequate protests have been filed; and

561 (ii) hold a public meeting to announce the protest tally and whether adequate protests  
 562 have been filed.

563 (b) If adequate protests are not filed, the governing body at the public meeting may  
 564 adopt a resolution or ordinance:

565 (i) abandoning the proposal to designate an assessment area; or

566 (ii) designating an assessment area as described in the notice under Section 11-42-202

567 [~~or with the changes made as authorized under Subsection 11-42-204(4)].~~

568 [~~(b) In accordance with Section 11-42-203, the governing body:]~~

569 [~~(i) may not schedule the public meeting before the expiration of the 60-day protest~~  
 570 ~~period; and]~~

571 [~~(ii) shall consider and report on any timely filed protests.]~~

572 (c) If adequate protests are filed, the governing body at the public meeting:

573 (i) may not adopt a resolution or ordinance designating the assessment area; and

574 (ii) may adopt a resolution or ordinance to abandon the proposal to designate the  
 575 assessment area.

576 (2) If the notice under Section 11-42-202 indicates that the proposed assessment area is  
 577 a voluntary assessment area, the governing body shall:

578 (a) delete from the proposed assessment area all property whose owners have not  
 579 submitted an executed consent form consenting to inclusion of the owner's property in the  
 580 proposed assessment area; [and]

581 (b) delete all improvements intended to benefit the property whose owners did not  
 582 consent; and

583 [~~(b)~~] (c) determine whether to designate a voluntary assessment area, after considering:

584 (i) the extent of the improvements required to benefit property owners who consented;

585 [~~(i)~~] (ii) the amount of the proposed assessment to be levied on the property within the

586 voluntary assessment area; ~~and~~

587 ~~[(ii)]~~ (iii) the value of the benefits that property within the voluntary assessment area  
588 will receive from improvements proposed to be financed by assessments on the property~~[:]; and~~

589 ~~[(3) If adequate protests have been filed, the governing body may not designate an  
590 assessment area as described in the notice under Section 11-42-202.]~~

591 (iv) the extent to which the improvements may be scaled to benefit only the assessed  
592 properties.

593 ~~[(4)]~~ (3) (a) If the governing body adopts a designation resolution or ordinance  
594 designating an assessment area, the governing body shall, within 15 days after adopting the  
595 designation resolution or ordinance:

596 (i) record the original or certified copy of the designation resolution or ordinance in the  
597 office of the recorder of the county in which property within the assessment area is located; and

598 (ii) file with the recorder of the county in which property within the assessment area is  
599 located a notice of proposed assessment that:

600 (A) states that the local entity has designated an assessment area; and

601 (B) lists, by legal description and tax identification number, the property proposed to  
602 be assessed.

603 ~~[(b) A governing body's failure to comply with the requirements of Subsection (4) (a)  
604 does not invalidate the designation of an assessment area.]~~

605 (b) If a governing body fails to provide actual or constructive notice under Section  
606 11-42-202 and comply with the requirements of Subsections (3)(a)(i) and (3)(a)(ii), including  
607 failing to identify each assessed property by legal description and tax identification number:

608 (i) the local entity may not assess a levy against the property unless the property owner  
609 gives written consent; and

610 (ii) the governing body may file a corrected notice under Subsection (3)(a)(ii).

611 (c) If the governing body files a corrected notice under Subsection (3)(b)(ii), the local  
612 entity may not levy an assessment against the property if a subsequent purchaser of the  
613 property, if any, purchased the property during the time in which an incorrect notice or no  
614 notice was filed unless the local entity can prove that the subsequent purchaser had actual  
615 notice of the assessment levy.

616 (d) If a governing body has filed a corrected notice under Subsection (3)(b)(ii) prior to

617 a purchaser subsequent to the purchaser described in Subsection (3)(c) purchasing the property,  
618 the local entity:

619 (i) may levy an assessment against the property; and

620 (ii) may not retroactively collect or adjust the amount of the levy to recapture lost funds

621 for a levy that the local entity was prohibited from collecting, if applicable, under Subsection  
622 (3)(c).

623 (e) A local entity shall pay for a shortfall in assessment funds created under Subsection

624 (3)(b), (c), or (d) from the local entity's general fund and not by increasing or adjusting the

625 assessment of any other property within the assessment area.

626 [~~5~~] (4) After the adoption of a designation resolution or ordinance under Subsection

627 (1)[~~a~~](b)(ii), the local entity may begin providing the specified improvements.

628 Section 8. Section **11-42-207** is amended to read:

629 **11-42-207. Adding property to an assessment area.**

630 (1) A local entity may add to a designated assessment area property to be benefitted

631 and assessed if the governing body:

632 (a) finds that the inclusion of the property will not adversely affect the owners of

633 property already in the assessment area;

634 (b) obtains from each owner of property to be added and benefitted a written consent

635 that contains:

636 (i) the owner's consent to:

637 (A) the owner's property being added to the assessment area; and

638 (B) the making of the proposed improvements with respect to the owner's property;

639 (ii) the legal description and tax identification number of the property to be added; and

640 (iii) the owner's waiver of any right to protest the creation of the assessment area;

641 (c) amends the designation resolution or ordinance to include the added property; and

642 (d) within 15 days after amending the designation resolution or ordinance:

643 (i) records in the office of the recorder of the county in which the added property is

644 located the original or certified copy of the amended designation resolution or ordinance

645 containing the legal description and tax identification number of each additional parcel of

646 property added to the assessment area and proposed to be assessed; and

647 (ii) gives written notice to the property owner of the inclusion of the owner's property

648 in the assessment area.

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

652 (2) (a) If a governing body fails to comply with the requirements of Subsections (1)(b),  
653 (c), or (d), including failing to identify each additional parcel of property added to the  
654 assessment area by legal description and tax identification number:

655 (i) the local entity may not assess a levy against the property unless the property owner  
656 gives written consent as described in Subsection (1)(b)(i); and

657 (ii) the governing body may file a corrected notice under Subsection (1)(d)(i).

658 (b) If the governing body files a corrected notice under Subsection (2)(a)(ii), the local  
659 entity may not levy an assessment against the property if a subsequent purchaser of the  
660 property, if any, purchased the property during the time in which an incorrect notice or no  
661 notice was filed unless the local entity can prove that the subsequent purchaser had actual  
662 notice of the assessment levy.

663 (c) If a governing body has filed a corrected notice under Subsection (2)(a)(ii) prior to a  
664 purchaser subsequent to the purchaser described in Subsection (2)(b) purchasing the property,  
665 the local entity:

666 (i) may levy an assessment against the property; and

667 (ii) may not retroactively collect or adjust the amount of the levy to recapture lost funds  
668 for a levy that the local entity was prohibited from collecting, if applicable, under Subsection  
669 (2)(d).

670 (d) A local entity shall pay for a shortfall in assessment funds created under Subsection  
671 (2)(b), (c), or (d) from the local entity's general fund and not by increasing or adjusting the  
672 assessment of any other property within the assessment area.

673 (3) Except as provided in this section, a local entity may not add to an assessment area  
674 property not included in a notice under Section 11-42-202, or provide for making  
675 improvements that are not stated in the notice, unless the local entity gives notice as provided  
676 in Section 11-42-202 and holds a hearing as required under Section 11-42-204 as to the added  
677 property or additional improvements.

678 Section 9. Section 11-42-401 is amended to read:

679 **11-42-401. Levying an assessment -- Prerequisites -- Assessment list.**

680 (1) (a) If a local entity has designated an assessment area in accordance with Part 2,  
681 Designating an Assessment Area, the local entity may levy an assessment against property  
682 within that assessment area as provided in this part.

683 (b) If a local entity that is a municipality or county designates an assessment area in  
684 accordance with this chapter, the municipality or county may levy an assessment and collect  
685 the assessment in accordance with Subsection 11-42-202(1)(~~f~~)(h)(i) or (ii).

686 (c) An assessment billed by a municipality or county in the same manner as a property  
687 tax and included on a property tax notice in accordance with Subsection  
688 11-42-202(1)(~~f~~)(h)(ii) is enforced in accordance with, constitutes a lien in accordance with,  
689 and is subject to other penalty provisions in accordance with this chapter.

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

692 (a) the governing body shall:

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

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

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

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

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

698 (b) the board of equalization, appointed under Section 11-42-403, shall:

699 (i) hold hearings<sup>[5]</sup>;

700 (ii) determine if the assessment for each benefitted property meets the requirements of  
701 Section 11-42-409;

702 (iii) make necessary corrections so that assessed properties are not assessed for benefits  
703 conferred exclusively outside of the assessment area;

704 (iv) make necessary corrections so that the benefitted properties are not charged for an  
705 increase in size or capacity of an improvement where the increased size or capacity is to serve  
706 property outside of the assessment area;

707 (v) make any corrections it considers appropriate to an assessment<sup>[5]</sup>; and

708 (vi) report its findings to the governing body as provided in Section 11-42-403.

709 (3) (a) The governing body of a local entity shall prepare the assessment list described

710 in Subsection (2)(a)(i) at any time after:

711 (i) the governing body has determined the estimated or actual operation and  
712 maintenance costs, if the assessment is to pay operation and maintenance costs;

713 (ii) the governing body has determined the estimated or actual economic promotion  
714 costs described in Section [11-42-206](#), if the assessment is to pay for economic promotion  
715 activities; or

716 (iii) for any other assessment, the governing body has determined:

717 (A) the estimated or actual acquisition and construction costs of all proposed  
718 improvements within the assessment area, including overhead costs actually incurred and  
719 authorized reasonable contingencies;

720 (B) the estimated or actual property price for all property to be acquired to provide the  
721 proposed improvements; and

722 (C) the ~~[reasonable]~~ estimated cost of any work to be ~~[done]~~ performed by the local  
723 entity.

724 (b) In addition to the requirements of Subsection (3)(a), the governing body of a local  
725 entity shall prepare the assessment list described in Subsection (2)(a)(i) before:

726 (i) the light service has commenced, if the assessment is to pay for light service; or

727 (ii) the park maintenance has commenced, if the assessment is to pay for park  
728 maintenance.

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

731 (a) operation and maintenance costs of improvements constructed within the  
732 assessment area only to the extent the improvements provide benefits to the properties within  
733 the assessment area in accordance with Section [11-42-409](#);

734 (b) (i) if an outside entity furnishes utility services or maintains utility improvements,  
735 the actual cost that the local entity pays for utility services or for maintenance of  
736 improvements; or

737 (ii) if the local entity itself furnishes utility service or maintains improvements, for the  
738 ~~[reasonable cost of]~~ actual costs that are reasonable, including reasonable administrative costs  
739 or reasonable costs for reimbursement of actual costs incurred by the local entity, for supplying  
740 the utility service or maintenance;



741 (c) the ~~[reasonable cost of supplying]~~ actual costs that are reasonable to supply labor,  
742 materials, or equipment in connection with improvements; and

743 (d) (i) the actual costs that are reasonable ~~[cost of]~~ for valid connection fees; or

744 (ii) the reasonable ~~[costs, as determined by the local entity governing body, if the local~~  
745 ~~entity owns or supplies any sewer, storm drainage, water, gas, electric, or communications~~  
746 ~~connections]~~ and generally applicable costs of locally provided utilities.

747 (5) A local entity may not levy an assessment for an amount donated or contributed for  
748 an improvement or part of an improvement or for anything other than the costs actually and  
749 reasonably incurred by the local entity in order to provide an improvement or conduct  
750 operation and maintenance or economic promotion activities.

751 (6) The validity of an otherwise valid assessment is not affected because the actual and  
752 reasonable cost of improvements exceeds the estimated cost.

753 (7) (a) Subject to Subsection (7)(b), an assessment levied to pay for operation and  
754 maintenance costs may not be levied over a period of time exceeding five years beginning on  
755 the day on which the local entity adopts the assessment ordinance or assessment resolution for  
756 the operation and maintenance costs assessment.

757 (b) A local entity may levy an additional assessment described in Subsection (7)(a) in  
758 the assessment area designated for the assessment described in Subsection (7)(a) if, after the  
759 five-year period expires, the local entity:

760 (i) gives notice in accordance with Section 11-42-402 of the new five-year term of the  
761 assessment; and

762 (ii) complies with the applicable levy provisions of this part.

763 Section 10. Section 11-42-402 is amended to read:

764 **11-42-402. Notice of assessment and board of equalization hearing.**

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

766 (1) state:

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

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

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

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

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

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

777 (g) the dates, times, and place of the board of equalization hearings under Subsection  
778 11-42-401(2)(b)(i);

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

781 (i) be published at least once in a newspaper of general circulation within the local  
782 entity's jurisdictional boundaries; or

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

786 (b) be published on the Utah Public Notice Website created in Section 63F-1-701 for  
787 35 days immediately before the day on which the first hearing of the board of equalization is  
788 held; and

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

792 Section 11. Section 11-42-403 is amended to read:

793 **11-42-403. Board of equalization -- Hearings -- Corrections to proposed**  
794 **assessment list -- Report to governing body -- Appeal -- Board findings final -- Waiver of**  
795 **objections.**

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

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

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

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

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

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

804 or

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

806 (B) a representative of the governing body, whether or not a member of the governing

807 body, appointed by the governing body;

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

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

810 (3) (a) The board of equalization shall hold hearings on at least three consecutive days

811 for at least one hour per day between 9 a.m. and 9 p.m., as specified in the notice under Section

812 [11-42-402](#).

813 (b) The board of equalization may continue a hearing from time to time to a specific

814 place and a specific hour and day until the board's work is completed.

815 (c) At each hearing, the board of equalization shall hear arguments from any person

816 who claims to be aggrieved, including arguments relating to:

817 (i) the [~~direct or indirect~~] amount of benefits accruing to a tract, block, lot, or parcel of

818 property in the assessment area; or

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

820 (4) (a) After the hearings under Subsection (3) are completed, the board of equalization

821 shall:

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

823 (ii) make any corrections to the proposed assessment list [~~that the board considers just~~

824 ~~and equitable~~] necessary to ensure that the assessment meets the requirements of Section

825 [11-42-409](#).

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

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

828 (ii) increase or decrease the amount of the assessment proposed to be levied against a

829 parcel of property.

830 (c) (i) If the board of equalization makes a correction under Subsection (4)(a)(ii) that

831 results in an increase of a proposed assessment, the board shall, before approving a corrected

832 assessment list:

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

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

836 (C) after holding a hearing, make any further corrections that the board considers [~~just~~  
837 ~~and equitable with respect to~~] necessary to make the proposed increased assessment meet the  
838 requirements of Section 11-42-409.

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

840 (A) state:

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

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

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

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

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

848 (5) (a) After the board of equalization has held all hearings required by this section and  
849 has made all corrections the board considers [~~just and equitable~~] necessary to comply with  
850 Section 11-42-409, the board shall report to the governing body its findings that:

851 (i) each [~~parcel of~~] assessed property within the assessment area will be [~~directly or~~  
852 ~~indirectly benefitted in an amount not less than the assessment to be levied against the~~  
853 ~~property~~] assessed in a manner that meets the requirements of Section 11-42-409; and

854 (ii) except as provided in Subsection 11-42-409[~~(6)~~](5), no parcel of property on the  
855 assessment list will bear more than its [~~proportionate share~~] equitable portion of the [~~cost~~]  
856 actual costs that are reasonable of the improvements benefitting the property in accordance  
857 with Subsection 11-42-409(1)(a).

858 (b) The board of equalization shall, within 10 days after submitting its report to the  
859 governing body, mail a copy of the board's final report to each property owner who objected at  
860 the board hearings to the assessment proposed to be levied against the property owner's  
861 property at the property owner's mailing address.

862 (6) (a) If a board of equalization includes members other than the governing body of  
863 the local entity, a property owner may appeal a decision of the board to the governing body by  
864 filing with the governing body a written notice of appeal within 15 days after the board's final

865 report is mailed to property owners under Subsection (5)(b).

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

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

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

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

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

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

878 (9) The failure of an owner of property within the assessment area to appear before the  
879 board of equalization to object or submit in writing before the final hearing of the board an  
880 objection to the levy of the assessment constitutes a waiver of all objections to the levy, except  
881 an objection that the governing body failed to obtain jurisdiction to order that the  
882 improvements which the assessment is intended to pay be provided to the assessment area.

883 (10) (a) This section may not be interpreted to insulate a local entity from a claim of  
884 misuse of assessment funds.

885 (b) (i) Except as provided in Subsection (10)(b)(ii), an action in the nature of  
886 mandamus is the sole form of relief available to a party challenging the misuse of assessment  
887 funds.

888 (ii) The limitation in Subsection (10)(b)(i) does not prohibit a person from filing  
889 criminal charges against or the prosecution of a party for the misuse of assessment funds.

890 Section 12. Section 11-42-406 is amended to read:

891 **11-42-406. Assessment for economic promotion activities -- Duration --**  
892 **Reporting.**

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

896 (i) subject to Subsection (1)(a)(ii), may levy an assessment to pay for economic  
897 promotion activities by adopting an assessment resolution or ordinance in accordance with  
898 Section [11-42-404](#); and

899 [~~(ii) subject to Subsection (1)(b), may levy an additional assessment for economic  
900 promotion activities for the designated assessment area described in Subsection (1)(a):]~~

901 [~~(A) by adopting an assessment resolution or an ordinance in accordance with Section  
902 [11-42-404](#); and]~~

903 [~~(B) for a period of five years, beginning on the day on which the local entity adopts  
904 the initial assessment resolution or ordinance described in Subsection (1)(a)(i):]~~

905 (ii) except as provided in Subsection (1)(b), may not levy the assessment for a period  
906 longer than five years.

907 (b) A governing body may ~~[not]~~ levy ~~[an]~~ additional ~~[assessment]~~ assessments to pay  
908 for economic promotion activities after the five-year period described in Subsection  
909 (1)(a)(ii)~~[(B) unless]~~ if the governing body:

910 (i) designates a new assessment area in accordance with Part 2, Designating an  
911 Assessment Area; ~~[and]~~

912 (ii) adopts a new assessment resolution or ordinance in accordance with Section  
913 [11-42-404](#)~~[-];~~

914 (iii) limits each additional assessment to a five-year period; and

915 (iv) complies with Subsections (1)(b)(i) through (iii) for each additional assessment.

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

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

920 (b) may not spend more than 30% of the money generated from the assessment levied  
921 in the assessment area and from improvement revenues on administrative costs, including  
922 salaries, benefits, rent, travel, and costs incidental to publications; and

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

925 (i) an account of money deposited into the assessment fund described in Section  
926 [11-42-412](#);

927 (ii) an account of expenditures from the fund described in Section 11-42-412; and  
 928 (iii) a detailed account of whether each expenditure described in Subsection (2)(c)(ii)  
 929 was made for economic promotion activities described in Subsection (2)(a) or for  
 930 administrative costs described in Subsection (2)(b).

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

932 (a) on:

933 (i) if available, the local entity's public web site; and

934 (ii) if the local entity is not a county or municipality, on the public web site of any  
 935 county or municipality in which the local entity has jurisdiction;

936 (b) (i) within one year after the day on which the local entity adopts a new assessment  
 937 resolution or ordinance for economic promotion activities; and

938 (ii) each subsequent year that the economic promotion activities levy is assessed by  
 939 updating the information described in Subsection (2)(c); and

940 (c) for six months on a web site described in Subsection (3)(a) after the day on which  
 941 the report is initially published under Subsection (3)(b) or updated under Subsection (3)(b)(ii).

942 Section 13. Section 11-42-409 is amended to read:

943 **11-42-409. Assessment requirements and prohibitions -- Economic promotion**  
 944 **activities assessment requirements and prohibitions -- Allocation for unassessed**  
 945 **benefitted government property.**

946 (1) (a) Each local entity that levies an assessment under this chapter [~~shall levy the~~  
 947 ~~assessment on each block, lot, tract, or parcel of property that borders, is adjacent to, or~~  
 948 ~~benefits from an improvement~~]:

949 [~~(i) to the extent that the improvement directly or indirectly benefits the property; and]~~

950 [~~(ii) to whatever depth on the parcel of property that the governing body determines,~~  
 951 ~~including the full depth.~~]

952 (i) may not assess a property that does not receive a benefit;

953 (ii) may levy an assessment only for the actual costs that are reasonable; and

954 (iii) shall levy an assessment on a property in an amount that reflects an equitable  
 955 portion, subject to Subsection (1)(b), of the benefit the property will receive from an  
 956 improvement, operation and maintenance, or economic promotion activities for which the  
 957 assessment is levied.

958 (b) The local entity, in accounting for a property's portion of a benefit received from an  
959 improvement, operation and maintenance, or economic promotion activities, shall consider:

960 (i) any benefit that can be directly identified with the property; and

961 (ii) the property's roughly equivalent portion of the benefit that is collectively shared by  
962 all the assessed properties in the entire assessment area or classification.

963 ~~[(b)]~~ (c) The validity of an otherwise valid assessment is not affected by the fact that  
964 the benefit to the property from the improvement~~[(i) is only indirect, or (ii)]~~ does not increase  
965 the fair market value of the property.

966 (2) The assessment method a governing body uses to calculate an assessment may be  
967 according to frontage, area, taxable value, fair market value, lot, parcel, number of connections,  
968 equivalent residential unit, or any combination of these methods, or any other method as the  
969 governing body considers ~~[fair and equitable]~~ appropriate to comply with Subsection (1)(a).

970 ~~[(3) In calculating assessments, a governing body may:]~~

971 (3) A local entity that levies an assessment under this chapter for an improvement:

972 (a) shall:

973 (i) (A) levy the assessment on each block, lot, tract, or parcel of property that benefits  
974 from the improvement; and

975 (B) to whatever depth, including full depth, on the parcel of property that the governing  
976 body determines but that still complies with Subsection (1)(a);

977 (ii) make an allowance for each corner lot receiving the same improvement on both  
978 sides so that the property is not assessed at the full rate on both sides; and

979 (iii) pay for any increase in size or capacity that serves property outside of the  
980 assessment area with funds other than those levied by an assessment;

981 (b) may:

982 ~~[(a)]~~ (i) use different methods for different improvements in an assessment area; ~~[and]~~

983 ~~[(b)]~~ (ii) assess different amounts in different ~~[zones]~~ classifications, even when using  
984 the same method, if acquisition or construction costs differ from ~~[zone to zone:]~~ classification  
985 to classification;

986 ~~[(4) (a) Each local entity shall make an allowance for each corner lot receiving the~~  
987 ~~same improvement on both sides so that the property is not assessed at the full rate on both~~  
988 ~~sides.]~~



989 ~~[(b) A local entity may]~~

990 ~~(iii) allocate a corner lot allowance under Subsection [(4)(a)] (3)(a)(ii) to all other~~  
991 ~~benefitted property within the assessment area by increasing the assessment levied against the~~  
992 ~~other assessed property[-] in the same proportion as the improvement assessed;~~

993 ~~[(5)(a) Assessments shall be fair and equitable according to the benefit to the~~  
994 ~~benefitted property from the improvement.]~~

995 ~~[(b) To] (iv) to comply with Subsection [(5)] (1)(a), [a local entity may levy~~  
996 ~~assessments within zones:] levy an assessment within classifications; and~~

997 ~~(v) assess property to replace improvements that are approaching or have exceeded~~  
998 ~~their useful life or to increase the level of service of an existing improvement; and~~

999 ~~(c) may not:~~

1000 ~~(i) consider the costs of the additional size or capacity of an improvement that will be~~  
1001 ~~increased in size or capacity to serve property outside of the assessment area when calculating~~  
1002 ~~an assessment or determining an assessment method; or~~

1003 ~~(ii) except for in a voluntary assessment area and as provided in Subsection (3)(b)(v),~~  
1004 ~~assess a property for an improvement that would duplicate or provide a reasonably similar~~  
1005 ~~service that is already provided to the property.~~

1006 ~~(4) A local entity that levies an assessment under this chapter for economic promotion~~  
1007 ~~activities:~~

1008 ~~(a) may:~~

1009 ~~(i) levy an assessment only on commercial or industrial real property; and~~

1010 ~~(ii) create classifications based on property use, or other distinguishing factors, to~~  
1011 ~~determine the estimated benefit to the assessed property;~~

1012 ~~(b) may rely on, in addition to the assessment methods described in Subsection (2),~~  
1013 ~~estimated benefits from an increase in:~~

1014 ~~(i) office lease rates;~~

1015 ~~(ii) retail sales rates;~~

1016 ~~(iii) customer base;~~

1017 ~~(iv) public perception;~~

1018 ~~(v) hotel room rates and occupancy levels;~~

1019 ~~(vi) property values;~~

1020           (vii) the commercial environment from enhanced services;  
1021           (viii) another articulable method of estimating benefits; or  
1022           (ix) a combination of the methods described in Subsections (4)(b)(i) through (viii);  
1023           (c) subject to Subsection (4)(d), shall use an assessment method that, when applied to a  
1024 benefitted property, meets the requirements of Subsection (1)(a); and  
1025           (d) may not use taxable value, fair market value, or any other assessment method based  
1026 on the value of the property as the sole assessment method.  
1027           ~~[(6)]~~ (5) A local entity may levy an assessment that would otherwise violate a  
1028 provision of this chapter if the owners of all property to be assessed enter into a written  
1029 agreement with the local entity consenting to the assessment.  
1030           (6) A local entity may allocate the cost of a benefit received by an unassessed  
1031 benefitted government property to all other benefitted property within the assessment area by  
1032 increasing the assessment levied against the other assessed property in the same proportion as  
1033 the improvement, operation and maintenance, or economic promotion activities are assessed.

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**Legislative Review Note**  
**as of 1-27-15 1:26 PM**

**Office of Legislative Research and General Counsel**