

HB0190S01 compared with HB0190

~~deleted text~~ shows text that was in HB0190 but was deleted in HB0190S01.

inserted text shows text that was not in HB0190 but was inserted into HB0190S01.

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Representative R. Curt Webb proposes the following substitute bill:

ASSESSMENT AREA ACT MODIFICATIONS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: R. Curt Webb

Senate Sponsor: _____

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

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

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 2013, Chapter 246

11-42-106, as enacted by Laws of Utah 2007, Chapter 329

11-42-201, as last amended by Laws of Utah 2010, Chapter 238

11-42-202, as last amended by Laws of Utah 2013, Chapters 246 and 265

11-42-203, as last amended by Laws of Utah 2013, Chapter 265

11-42-204, as last amended by Laws of Utah 2013, Chapter 265

11-42-206, as last amended by Laws of Utah 2013, Chapter 265

11-42-207, as last amended by Laws of Utah 2009, Chapter 246

11-42-401, as last amended by Laws of Utah 2013, Chapter 265

11-42-402, as last amended by Laws of Utah 2010, Chapters 90 and 238

11-42-403, as last amended by Laws of Utah 2009, Chapter 246

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11-42-406, as last amended by Laws of Utah 2010, Chapter 238

11-42-409, as enacted by Laws of Utah 2007, Chapter 329

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.

(1) "Adequate protests" means timely filed, written protests under Section 11-42-203 that represent at least [~~50%~~] 40% of the frontage, area, taxable value, fair market value, lots, number of connections, or equivalent residential units of the property proposed to be assessed, according to the same assessment method by which the assessment is proposed to be levied, after eliminating:

(a) protests relating to:

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

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

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

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

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

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

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

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

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

(6) "Assessment method" means the method:

(a) by which an assessment is levied against benefitted property, whether by frontage,

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area, taxable value, fair market value, lot, parcel, number of connections, equivalent residential unit, any combination of these methods, or any other method [~~that equitably reflects the benefit received from the improvement.~~]; and

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

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

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

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

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

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

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

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

- (i) commercial;
- (ii) mining;
- (iii) industrial;
- (iv) manufacturing;
- (v) governmental;
- (vi) trade;
- (vii) professional;
- (viii) a private or public club;
- (ix) a lodge;
- (x) a business; or
- (xi) a similar purpose.

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

- (i) is used as or held for dwelling purposes; and
- (ii) contains more than four [~~or more~~] rental units.

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

(15) "Contract price" means:

- (a) the cost of acquiring an improvement, if the improvement is acquired; or
- (b) the amount payable to one or more contractors for the design, engineering, inspection, and construction of an improvement.

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

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

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

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

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

- (a) insulation in:
 - (i) a wall, roof, floor, or foundation; or
 - (ii) a heating and cooling distribution system;
- (b) a window or door, including:
 - (i) a storm window or door;
 - (ii) a multiglazed window or door;
 - (iii) a heat-absorbing window or door;

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- (iv) a heat-reflective glazed and coated window or door;
- (v) additional window or door glazing;
- (vi) a window or door with reduced glass area; or
- (vii) other window or door modifications;
- (c) an automatic energy control system;
- (d) in a building or a central plant, a heating, ventilation, or air conditioning and distribution system;
- (e) caulk or weatherstripping;
- (f) a light fixture that does not increase the overall illumination of a building unless an increase is necessary to conform with the applicable building code;
- (g) an energy recovery system;
- (h) a daylighting system;
- (i) measures to reduce the consumption of water, through conservation or more efficient use of water, including:
 - (i) installation of low-flow toilets and showerheads;
 - (ii) installation of timer or timing systems for a hot water heater; or
 - (iii) installation of rain catchment systems; or
 - (j) a modified, installed, or remodeled fixture that is approved as a utility cost-saving measure by the governing body of a local entity.

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

- (21) "Governing body" means:
- (a) for a county, city, or town, the legislative body of the county, city, or town;
 - (b) for a local district, the board of trustees of the local district;
 - (c) for a special service district:
 - (i) the legislative body of the county, city, or town that established the special service district, if no administrative control board has been appointed under Section 17D-1-301; or
 - (ii) the administrative control board of the special service district, if an administrative control board has been appointed under Section 17D-1-301; and
 - (d) for the military installation development authority created in Section 63H-1-201,

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the authority board, as defined in Section 63H-1-102.

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

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

(24) "Improvement":

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

(A) a local entity is authorized to provide;

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

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

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

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

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

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

(25) "Improvement revenues":

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

(b) does not include revenue from assessments.

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

(a) legal and accounting fees;

(b) charges of financial advisors, escrow agents, certified public accountant verification

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entities, and trustees;

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

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

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

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

(g) any interest on the prior bonds that is required to be paid in connection with the issuance of the refunding assessment bonds.

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

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

(29) "Jurisdictional boundaries" means:

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

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

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

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

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

(33) "Mailing address" means:

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

(b) if the property is improved property:

(i) the property's street number; or

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

(34) "Net improvement revenues" means all improvement revenues that a local entity

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has received since the last installment payment date, less all amounts payable by the local entity from those improvement revenues for operation and maintenance costs.

(35) "Operation and maintenance costs":

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

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

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

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

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

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

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

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

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

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

(44) "Public agency" means:

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

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(b) a political subdivision of the state.

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

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

(47) "Renewable energy system" means a product, a system, a device, or an interacting group of devices that:

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

(b) produces energy from renewable resources, including:

(i) a photovoltaic system;

(ii) a solar thermal system;

(iii) a wind system;

(iv) a geothermal system, including:

(A) a generation system;

(B) a direct-use system; or

(C) a ground source heat pump system;

(v) a microhydro system; or

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

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

(49) "Service" means:

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

(b) economic promotion activities; or

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

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

(51) "Unassessed benefitted government property" means property that a local entity may not assess in accordance with Section 11-42-408 but is benefitted by an improvement, operation and maintenance, or economic promotion activities.

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~~[(51)]~~ (52) "Unimproved property" means property upon which no residential, commercial, or other building has been built.

~~[(52)]~~ (53) "Voluntary assessment area" means an assessment area that contains only property whose owners have voluntarily consented to an assessment.

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

**11-42-106. Action to contest assessment or proceeding -- Requirements --
Exclusive remedy -- Bonds and assessment incontestable.**

(1) A person who contests an assessment or any proceeding to designate an assessment area or levy an assessment may commence a civil action against the local entity to:

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

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

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

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

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

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

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

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

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

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

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

(c) If a person has not brought a claim for which the person was previously authorized to bring but is otherwise barred from making under Subsection (2)(b), the claim may not be

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brought later because of an amendment to the resolution or ordinance unless the claim arises from the amendment itself.

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

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

(a) assessment bonds and refunding assessment bonds issued or to be issued with respect to an assessment area and assessments levied on property in the assessment area become at that time incontestable against all persons who have not commenced an action and served a summons as provided in this section; and

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

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

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

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

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

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

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

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

(i) levy a different level of assessment; or

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

(c) The boundaries of a proposed assessment area:

(i) may include property that is not intended to be assessed[-]; and

(ii) may not be coextensive or substantially coterminous with the boundaries of the local entity.

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

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

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

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

Section 4. Section **11-42-202** is amended to read:

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

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

(a) state that the local entity proposes to:

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

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

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

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

(c) describe ~~the~~, in a [general] reasonably accurate way, ~~the~~ the improvements to be

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provided to the assessment area, including:

(i) the ~~[general]~~ nature of the improvements; and

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

(d) state the estimated cost of the improvements as determined by a project engineer;

(e) for the version of notice mailed in accordance with Subsection (4)(b), state the estimated annual assessment specific to the benefitted property for which the notice is mailed;

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

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

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

(i) by directly billing a property owner; or

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

~~[(g)]~~ (i) state:

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

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

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

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promotion activities:

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) current operation and maintenance costs;

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

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

(A) operation and maintenance costs; or

(B) economic promotion activities; ~~and~~

~~(l)~~ (n) if the governing body intends to divide the proposed assessment area into

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

(o) if applicable, state the portion and value of the improvement that will be increased in size or capacity to serve property outside of the assessment area and how the increases will be financed; and

(p) state whether the ~~{local entity will finance the }~~improvements will be financed with a bond and, if so, the currently estimated interest rate and term of financing, subject to Subsection (2), for which the benefitted properties within the assessment area may be obligated.

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

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

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

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

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

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

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

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

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

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

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

(6) If a governing body fails to provide actual or constructive notice under this section, the local entity may not assess a levy against a benefitted property omitted from the notice unless:

(a) the property owner gives written consent;

(b) the property owner received notice under Subsection 11-42-401(2)(a)(iii) and did not object to the levy of the assessment before the final hearing of the board of equalization; or

(c) the benefitted property is conveyed to a subsequent purchaser and, before the date of conveyance, the requirements of Subsections 11-42-206(3)(a)(i) and (ii), or, if applicable, Subsection 11-42-206(3) are met.

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

11-42-203. Protests.

(1) An owner of property that is proposed to be assessed [~~within~~] and who does not want the property to be included in an assessment area may, within 60 days after the day of the hearing described in Subsection 11-42-204(1), file a written protest:

(a) against:

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

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

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

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

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

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

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

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

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

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and

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

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

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

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

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

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

(a) the designation of the assessment area;

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

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

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

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

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

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

11-42-204. Hearing.

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

(2) (a) The governing body:

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

(ii) may not hold a public hearing that is a continuance less than five days before the

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deadline for filing protests described in Section 11-42-203.

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

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

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

(b) objections to whether the assessment will meet the requirements of Section 11-42-409;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) delete all improvements ~~intended to~~ that solely benefit the property whose owners did not consent; and

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

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

~~[(i)] (ii) the amount of the proposed assessment to be levied on the property within the voluntary assessment area; ~~and]~~~~

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

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

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

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

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

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

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

(B) lists, by legal description and tax identification number as identified on county records, the property proposed to be assessed.

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

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

~~—— (i):~~

~~(i) the failure does not invalidate the designation of an assessment area; and~~

~~(ii) the local entity may not assess a levy against the property unless the property owner; a subsequent purchaser of a benefitted property that lacked recorded notice unless:~~

~~(A) the subsequent purchaser gives written consent; and~~

~~—— (ii) the~~

~~(B) the subsequent purchaser has actual notice of the assessment levy; or~~

~~(C) the subsequent purchaser purchased the property after a corrected notice was filed under Subsection (3)(c).~~

~~(c) The governing body may file a corrected notice under Subsection (3)(a)(ii):~~

~~—— (c) If the governing body files a corrected notice under Subsection (3)(b)(ii), the local entity may not levy an assessment against the property if a subsequent purchaser of the property, if any, purchased the property during the time in which an incorrect notice or no notice was filed unless the local entity can prove that the subsequent purchaser had actual notice of the assessment levy; i) or (ii) if it failed to comply with the date or other requirements for recording notice of the designation resolution or ordinance.~~

~~(d) If a governing body has filed a corrected notice under Subsection (3)(b)(ii) prior to a purchaser subsequent to the purchaser described in Subsection (3)(c) purchasing the property, the local entity:~~

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

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~~(ii)~~ may not retroactively collect or adjust the amount of the levy to recapture lost funds for a levy that the local entity was prohibited from collecting, if applicable, under Subsection (3)~~(c)~~(b).

(e) A local entity shall pay for a shortfall in assessment funds created under Subsection (3)~~(b)~~~~(c)~~ or (d) from the local entity's general fund and not by increasing or adjusting the assessment of any other property within the assessment area.

~~(5)~~ (4) After the adoption of a designation resolution or ordinance under Subsection (1)~~(a)~~(b)(ii), the local entity may begin providing the specified improvements.

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

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

(1) A local entity may add to a designated assessment area property to be benefitted and assessed if the governing body:

(a) finds that the inclusion of the property will not adversely affect the owners of property already in the assessment area;

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

(i) the owner's consent to:

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

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

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

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

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

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

(i) records in the office of the recorder of the county in which the added property is located the original or certified copy of the amended designation resolution or ordinance containing the legal description and tax identification number as identified on county records of each additional parcel of property added to the assessment area and proposed to be assessed; and

(ii) gives written notice to the property owner of the inclusion of the owner's property in the assessment area.

~~(2)~~ The failure of a local entity's governing body to comply with the requirement of

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Subsection (1)(d) does not affect the validity of the amended designation resolution or ordinance.]

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

~~—— (i) Subsection (1)(d)(i):~~

(i) the failure does not invalidate the amended designation resolution or ordinance; and

(ii) the local entity may not assess a levy against ~~{the property unless the property owner}~~ a subsequent purchaser of a benefitted property that lacked recorded notice unless:

(A) the subsequent purchaser gives written consent ~~{as described in Subsection (1)(b)(i); and~~

~~—— (ii) the};~~

(B) the subsequent purchaser has actual notice of the assessment levy; or

(C) the subsequent purchaser purchased the property after a corrected notice was filed under Subsection (2)(c).

(b) The governing body may file a corrected notice under Subsection (1)(d)(i) ~~{~~

~~—— (b) If the governing body files a corrected notice under Subsection (2)(a)(ii), the local entity may not levy an assessment against the property if a subsequent purchaser of the property, if any, purchased the property during the time in which an incorrect notice or no notice was filed unless the local entity can prove that the subsequent purchaser had actual} if it failed to comply with the date or other requirements for recording notice of the ~~{assessment levy}~~ amended designation resolution or ordinance.~~

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

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

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

(d) A local entity shall pay for a shortfall in assessment funds created under Subsection (2) ~~{(b) a}~~ ~~{(c)}~~ or ~~{(d) c}~~ from the local entity's general fund and not by increasing or

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adjusting the assessment of any other property within the assessment area.

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

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

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

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

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

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

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

(a) the governing body shall:

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

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

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

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

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

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

(i) hold hearings[;];

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

(iii) make necessary corrections so that assessed properties are not assessed for benefits

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conferred exclusively outside of the assessment area:

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

(v) make any corrections it considers appropriate to an assessment[~~7~~]; and

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

(3) (a) The governing body of a local entity shall prepare the assessment list described in Subsection (2)(a)(i) at any time after:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) state:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) three or more members of the governing body;
- (b) (i) two members of the governing body; and
- (ii) (A) a representative of the treasurer's office of the local entity; or
- (B) a representative of the office of the local entity's engineer or the project engineer;

or

- (c) (i) (A) one member of the governing body; or
- (B) a representative of the governing body, whether or not a member of the governing body, appointed by the governing body;
- (ii) a representative of the treasurer's office of the local entity; and
- (iii) a representative of the office of the local entity's engineer or the project engineer.

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

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

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

- (i) the [~~direct or indirect~~] amount of benefits accruing to a tract, block, lot, or parcel of property in the assessment area; or
- (ii) the amount of the proposed assessment against the tract, block, lot, or parcel.

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

- (i) consider all facts and arguments presented at the hearings; and
- (ii) make any corrections to the proposed assessment list [~~that the board considers just and equitable~~] necessary to ensure that the assessment meets the requirements of Section 11-42-409.

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

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(i) eliminate one or more pieces of property from the assessment list; or
(ii) increase or decrease the amount of the assessment proposed to be levied against a parcel of property.

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

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

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

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

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

(A) state:

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

(II) the amount of the proposed increased assessment;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) The limitation in Subsection (10)(b)(i) does not prohibit ~~fa person from~~ the filing

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of criminal charges against or the prosecution of a party for the misuse of assessment funds.

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

11-42-406. Assessment for economic promotion activities -- Duration --

Reporting.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) on:

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

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

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

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

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

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

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

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

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

~~[(ii) to whatever depth on the parcel of property that the governing body determines;~~

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~~including the full depth.]~~

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

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

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

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

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

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

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

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

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

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

(a) shall:

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

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

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

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

(b) may:

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

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

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

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

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

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

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

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

(c) may not:

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

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

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

(a) may:

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

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

(b) may rely on, in addition to the assessment methods described in Subsection (2),

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estimated benefits from an increase in:

- (i) office lease rates;
- (ii) retail sales rates;
- (iii) customer base;
- (iv) public perception;
- (v) hotel room rates and occupancy levels;
- (vi) property values;
- (vii) the commercial environment from enhanced services;
- (viii) another articulable method of estimating benefits; or
- (ix) a combination of the methods described in Subsections (4)(b)(i) through (viii);

(c) subject to Subsection (4)(d), shall use an assessment method that, when applied to a benefitted property, meets the requirements of Subsection (1)(a); and

(d) may not use taxable value, fair market value, or any other assessment method based on the value of the property as the sole assessment method.

~~[(6)]~~ (5) A local entity may levy an assessment that would otherwise violate a provision of this chapter if the owners of all property to be assessed enter into a written agreement with the local entity consenting to the assessment.

(6) A local entity may allocate the cost of a benefit received by an unassessed benefitted government property to all other benefitted property within the assessment area by increasing the assessment levied against the other assessed property in the same proportion as 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}~~