

1 ASSESSMENT AREA ACT AMENDMENTS

2 2017 GENERAL SESSION

3 STATE OF UTAH

4 Chief Sponsor: R. Curt Webb

5 Senate Sponsor: Daniel W. Thatcher

7 LONG TITLE

8 General Description:

9 This bill modifies provisions of the Assessment Area Act.

10 Highlighted Provisions:

11 This bill:

- 12 ▶ clarifies the required contents of a notice of a proposed assessment area designation;
- 13 ▶ provides that a local entity that levies an assessment for economic promotion
- 14 activities shall assess each benefitted property; and
- 15 ▶ makes technical and conforming changes.

16 Money Appropriated in this Bill:

17 None

18 Other Special Clauses:

19 None

20 Utah Code Sections Affected:

21 AMENDS:

22 [11-42-202](#), as last amended by Laws of Utah 2016, Chapters 85 and 371

23 [11-42-409](#), as last amended by Laws of Utah 2015, Chapter 396

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

26 Section 1. Section **11-42-202** is amended to read:

27 **11-42-202. Requirements applicable to a notice of a proposed assessment area**
28 **designation.**

29 (1) Each notice required under Subsection [11-42-201\(2\)\(a\)](#) shall:

- 30 (a) state that the local entity proposes to:
- 31 (i) designate one or more areas within the local entity's jurisdictional boundaries as an
32 assessment area;
- 33 (ii) provide an improvement to property within the proposed assessment area; and
- 34 (iii) finance some or all of the cost of improvements by an assessment on benefitted
35 property within the assessment area;
- 36 (b) describe the proposed assessment area by any reasonable method that allows an
37 owner of property in the proposed assessment area to determine that the owner's property is
38 within the proposed assessment area;
- 39 (c) describe, in a general and reasonably accurate way, the improvements to be
40 provided to the assessment area, including:
- 41 (i) the nature of the improvements; and
- 42 (ii) the location of the improvements, by reference to streets or portions or extensions
43 of streets or by any other means that the governing body chooses that reasonably describes the
44 general location of the improvements;
- 45 (d) state the estimated cost of the improvements as determined by a project engineer;
- 46 (e) for the version of notice mailed in accordance with Subsection (4)(b), state the
47 estimated total assessment specific to the benefitted property for which the notice is mailed;
- 48 (f) state that the local entity proposes to levy an assessment on benefitted property
49 within the assessment area to pay some or all of the cost of the improvements according to the
50 estimated benefits to the property from the improvements;
- 51 (g) if applicable, state that an unassessed benefitted government property will receive
52 improvements for which the cost will be allocated proportionately to the remaining benefitted
53 properties within the proposed assessment area and that a description of each unassessed
54 benefitted government property is available for public review at the location or website
55 described in Subsection (6);
- 56 (h) state the assessment method by which the governing body proposes to [~~levy the~~
57 calculate the proposed assessment, including, if the local entity is a municipality or county,

58 whether the assessment will be collected:

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

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

61 and in compliance with Section 11-42-401;

62 (i) state:

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

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

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

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

74 (k) if the governing body elects to create and fund a reserve fund under Section
75 11-42-702, include a description of:

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

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

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

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

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

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

86 (iv) if the governing body intends to enforce an assessment lien on the property in
87 accordance with Subsection 11-42-502.1(2)(c):

88 (A) appoints a trustee that satisfies the requirements described in Section 57-1-21;

89 (B) gives the trustee the power of sale; and

90 (C) explains that if an assessment or an installment of an assessment is not paid when
91 due, the local entity may sell the property owner's property to satisfy the amount due plus
92 interest, penalties, and costs, in the manner described in Title 57, Chapter 1, Conveyances;

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

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

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

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

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

101 (B) current operation and maintenance costs;

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

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

106 (A) operation and maintenance costs; or

107 (B) economic promotion activities;

108 (n) if the governing body intends to divide the proposed assessment area into
109 classifications under Subsection 11-42-201(1)(b), include a description of the proposed
110 classifications;

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

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

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

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

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

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

126 (c) provisions for any improvements described in Subsection 11-42-102(26)(a)(ii).

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

128 (a) (i) (A) be published in a newspaper of general circulation within the local entity's
129 jurisdictional boundaries, once a week for four consecutive weeks, with the last publication at
130 least five but not more than 20 days before the day of the hearing required in Section
131 11-42-204; or

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

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

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

142 (5) (a) The local entity may record the version of the notice that is published or posted
143 in accordance with Subsection (4)(a) with the office of the county recorder, by legal description
144 and tax identification number as identified in county records, against the property proposed to
145 be assessed.

146 (b) The notice recorded under Subsection (5)(a) expires and is no longer valid one year
147 after the day on which the local entity records the notice if the local entity has failed to adopt
148 the designation ordinance or resolution under Section 11-42-201 designating the assessment
149 area for which the notice was recorded.

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

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

156 (a) the property owner gives written consent;

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

159 (c) the benefitted property is conveyed to a subsequent purchaser and, before the date
160 of conveyance, the requirements of Subsections 11-42-206(3)(a)(i) and (ii), or, if applicable,
161 Subsection 11-42-207(1)(d)(i) are met.

162 Section 2. Section 11-42-409 is amended to read:

163 **11-42-409. Assessment requirements and prohibitions -- Economic promotion**
164 **activities assessment requirements and prohibitions -- Allocation for unassessed**
165 **benefitted government property.**

166 (1) (a) Each local entity that levies an assessment under this chapter:

167 (i) except for an appropriate allocation for an unassessed benefitted government
168 property, may not assess a property for more than the amount that the property benefits by the
169 improvement, operation and maintenance, or economic promotion activities;

170 (ii) may levy an assessment only for the actual costs that are reasonable; and
171 (iii) shall levy an assessment on a benefitted property in an amount that reflects an
172 equitable portion, subject to Subsection (1)(b), of the benefit the property will receive from an
173 improvement, operation and maintenance, or economic promotion activities for which the
174 assessment is levied.

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

178 (i) any benefit that can be directly identified with the property; and
179 (ii) the property's roughly equivalent portion of the benefit that is collectively shared by
180 all the assessed properties in the entire assessment area or classification.

181 (c) The validity of an otherwise valid assessment is not affected by the fact that the
182 benefit to the property from the improvement does not increase the fair market value of the
183 property.

184 (2) ~~[The]~~ Subject to Subsection (4), the assessment method a governing body uses to
185 calculate an assessment may be according to frontage, area, taxable value, fair market value,
186 lot, parcel, number of connections, equivalent residential unit, or any combination of these
187 methods, or any other method as the governing body considers appropriate to comply with
188 Subsections (1)(a) and (b).

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

190 (a) shall:

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

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

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

197 (iii) pay for any increase in size or capacity that serves property outside of the

198 assessment area with funds other than those levied by an assessment;

199 (b) may:

200 (i) use different methods for different improvements in an assessment area;

201 (ii) assess different amounts in different classifications, even when using the same
202 method, if acquisition or construction costs differ from classification to classification;

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

206 (iv) to comply with Subsection (1)(a), levy an assessment within classifications; and

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

209 (c) may not:

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

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

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

218 (a) shall:

219 (i) subject to Section [11-42-408](#), levy the assessment on each benefitted property; and

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

222 [~~a~~] (b) may:

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

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

226 ~~[(b)]~~ (c) subject to Subsection (4)(d), may rely on, in addition to the assessment
227 methods described in Subsection (2), estimated benefits from an increase in:

- 228 (i) office lease rates;
- 229 (ii) retail sales rates;
- 230 (iii) customer base;
- 231 (iv) public perception;
- 232 (v) hotel room rates and occupancy levels;
- 233 (vi) property values;
- 234 (vii) the commercial environment from enhanced services;
- 235 (viii) another articulable method of estimating benefits; or
- 236 (ix) a combination of the methods described in Subsections (4)~~[(b)]~~(c)(i) through (viii);

237 and

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

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

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

245 (6) A local entity may allocate the cost of a benefit received by an unassessed
246 benefitted government property to all other benefitted property within the assessment area by
247 increasing the assessment levied against the other assessed property in the same proportion as
248 the improvement, operation and maintenance, or economic promotion activities are assessed.