

ASSESSMENT AREA ACT AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: R. Curt Webb

Senate Sponsor: Daniel W. Thatcher

LONG TITLE

Committee Note:

The Political Subdivisions Interim Committee recommended this bill.

General Description:

This bill modifies provisions of the Assessment Area Act.

Highlighted Provisions:

This bill:

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

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

11-42-202, as last amended by Laws of Utah 2016, Chapters 85 and 371

11-42-409, as last amended by Laws of Utah 2015, Chapter 396

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



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

29 **11-42-202. Requirements applicable to a notice of a proposed assessment area**
30 **designation.**

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

32 (a) state that the local entity proposes to:

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

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

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

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

41 (c) describe, in a general and reasonably accurate way, the improvements to be
42 provided to the assessment area, including:

43 (i) the nature of the improvements; and

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

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

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

50 (f) state that the local entity proposes to levy an assessment on benefitted property
51 within the assessment area to pay some or all of the cost of the improvements according to the
52 estimated benefits to the property from the improvements;

53 (g) if applicable, state that an unassessed benefitted government property will receive
54 improvements for which the cost will be allocated proportionately to the remaining benefitted
55 properties within the proposed assessment area and that a description of each unassessed
56 benefitted government property is available for public review at the location or website
57 described in Subsection (6);

58 (h) state the assessment method by which the governing body proposes to [~~levy the~~]

59 calculate the proposed assessment, including, if the local entity is a municipality or county,
60 whether the assessment will be collected:

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

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

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

64 (i) state:

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

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

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

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

76 (k) if the governing body elects to create and fund a reserve fund under Section

77 11-42-702, include a description of:

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

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

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

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

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

85 property to receive from the improvements;

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

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

- 90 (A) appoints a trustee that satisfies the requirements described in Section 57-1-21;
- 91 (B) gives the trustee the power of sale; and
- 92 (C) explains that if an assessment or an installment of an assessment is not paid when
93 due, the local entity may sell the property owner's property to satisfy the amount due plus
94 interest, penalties, and costs, in the manner described in Title 57, Chapter 1, Conveyances;
- 95 (m) if the local entity intends to levy an assessment to pay operation and maintenance
96 costs or for economic promotion activities, include:
 - 97 (i) a description of the operation and maintenance costs or economic promotion
98 activities to be paid by assessments and the initial estimated annual assessment to be levied;
 - 99 (ii) a description of how the estimated assessment will be determined;
 - 100 (iii) a description of how and when the governing body will adjust the assessment to
101 reflect the costs of:
 - 102 (A) in accordance with Section 11-42-406, current economic promotion activities; or
 - 103 (B) current operation and maintenance costs;
 - 104 (iv) a description of the method of assessment if different from the method of
105 assessment to be used for financing any improvement; and
 - 106 (v) a statement of the maximum number of years over which the assessment will be
107 levied for:
 - 108 (A) operation and maintenance costs; or
 - 109 (B) economic promotion activities;
 - 110 (n) if the governing body intends to divide the proposed assessment area into
111 classifications under Subsection 11-42-201(1)(b), include a description of the proposed
112 classifications;
 - 113 (o) if applicable, state the portion and value of the improvement that will be increased
114 in size or capacity to serve property outside of the assessment area and how the increases will
115 be financed; and
 - 116 (p) state whether the improvements will be financed with a bond and, if so, the
117 currently estimated interest rate and term of financing, subject to Subsection (2), for which the
118 benefitted properties within the assessment area may be obligated.
 - 119 (2) The estimated interest rate and term of financing in Subsection (1)(p) may not be
120 interpreted as a limitation to the actual interest rate incurred or the actual term of financing as

121 subject to the market rate at the time of the issuance of the bond.

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

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

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

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

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

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

133 11-42-204; or

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

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

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

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

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

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

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

158 (a) the property owner gives written consent;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

192 (a) shall:

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

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

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

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

201 (b) may:

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

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

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

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

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

211 (c) may not:

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

214 an assessment or determining an assessment method; or

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

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

220 (a) shall:

221 (i) levy the assessment on each benefitted property; and

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

224 ~~(a)~~ (b) may:

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

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

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

230 (i) office lease rates;

231 (ii) retail sales rates;

232 (iii) customer base;

233 (iv) public perception;

234 (v) hotel room rates and occupancy levels;

235 (vi) property values;

236 (vii) the commercial environment from enhanced services;

237 (viii) another articulable method of estimating benefits; or

238 (ix) a combination of the methods described in Subsections (4)~~(b)~~(c)(i) through (viii);

239 and

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

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

244 (5) A local entity may levy an assessment that would otherwise violate a provision of

245 this chapter if the owners of all property to be assessed voluntarily enter into a written
246 agreement with the local entity consenting to the assessment.

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

Legislative Review Note
Office of Legislative Research and General Counsel