

**PUBLIC IMPROVEMENTS TO PROVIDE SEWER SERVICES**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Logan Wilde**

Senate Sponsor: Jerry W. Stevenson

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**LONG TITLE**

**General Description:**

This bill amends the process for protesting the designation of a sewer assessment area.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ amends a definition relating to the number of protests required to prevent the designation of a sewer assessment area; and
- ▶ makes technical and conforming changes.

**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 2017, Chapter 470

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*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) As used in this chapter:



28           (a) "Adequate protests" means, for all proposed assessment areas except sewer  
29 assessment areas, timely filed, written protests under Section 11-42-203 that represent at least  
30 40% of the frontage, area, taxable value, fair market value, lots, number of connections, or  
31 equivalent residential units of the property proposed to be assessed, according to the same  
32 assessment method by which the assessment is proposed to be levied, after eliminating:

- 33           ~~[(a)]~~ (i) protests relating to:  
34           ~~[(i)]~~ (A) property that has been deleted from a proposed assessment area; or  
35           ~~[(ii)]~~ (B) an improvement that has been deleted from the proposed improvements to be  
36 provided to property within the proposed assessment area; and  
37           ~~[(b)]~~ (ii) protests that have been withdrawn under Subsection 11-42-203(3).

38           (b) "Adequate protests" means, for a proposed sewer assessment area, timely filed,  
39 written protests under Section 11-42-203 that represent at least 70% of the frontage, area,  
40 taxable value, fair market value, lots, number of connections, or equivalent residential units of  
41 the property proposed to be assessed, according to the same assessment method by which the  
42 assessment is proposed to be levied, after eliminating adequate protests under Subsection  
43 (1)(a).

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

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

- 50           (a) issued under Section 11-42-605; and  
51           (b) payable in part or in whole from assessments levied in an assessment area,  
52 improvement revenues, and a guaranty fund or reserve fund.

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

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

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

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

59 area, taxable value, fair market value, lot, parcel, number of connections, equivalent residential  
60 unit, any combination of these methods, or any other method; and

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

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

65 (8) "Assessment resolution" means a resolution adopted by a local entity under Section  
66 11-42-404 that levies an assessment on benefitted property within an assessment area.

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

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

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

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

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

- 78 (i) commercial;
- 79 (ii) mining;
- 80 (iii) industrial;
- 81 (iv) manufacturing;
- 82 (v) governmental;
- 83 (vi) trade;
- 84 (vii) professional;
- 85 (viii) a private or public club;
- 86 (ix) a lodge;
- 87 (x) a business; or
- 88 (xi) a similar purpose.

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

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

91 (ii) contains more than four rental units.

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

95 (15) "Contract price" means:

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

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

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

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

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

105 (a) sponsoring festivals and markets;

106 (b) promoting business investment or activities;

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

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

110 (19) "Environmental remediation activity" means a surface or subsurface enhancement,  
111 effort, cost, initial or ongoing maintenance expense, facility, installation, system, earth  
112 movement, or change to grade or elevation that improves the use, function, aesthetics, or  
113 environmental condition of publicly owned property.

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

117 (21) "Governing body" means:

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

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

120 (c) for a special service district:

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

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

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

127 (22) "Guaranty fund" means the fund established by a local entity under Section  
128 11-42-701.

129 (23) "Improved property" means property upon which a residential, commercial, or  
130 other building has been built.

131 (24) "Improvement":

132 (a) (i) means a publicly owned infrastructure, system, or environmental remediation  
133 activity that:

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

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

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

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

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

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

145 (b) for a local district created to assess groundwater rights in accordance with Section  
146 17B-1-202, means a system or plan to regulate groundwater withdrawals within a specific  
147 groundwater basin in accordance with Sections 17B-1-202 and 73-5-15.

148 (25) "Improvement revenues":

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

151 (b) does not include revenue from assessments.

- 152 (26) "Incidental refunding costs" means any costs of issuing refunding assessment  
153 bonds and calling, retiring, or paying prior bonds, including:
- 154 (a) legal and accounting fees;
  - 155 (b) charges of financial advisors, escrow agents, certified public accountant verification  
156 entities, and trustees;
  - 157 (c) underwriting discount costs, printing costs, the costs of giving notice;
  - 158 (d) any premium necessary in the calling or retiring of prior bonds;
  - 159 (e) fees to be paid to the local entity to issue the refunding assessment bonds and to  
160 refund the outstanding prior bonds;
  - 161 (f) any other costs that the governing body determines are necessary and proper to incur  
162 in connection with the issuance of refunding assessment bonds; and
  - 163 (g) any interest on the prior bonds that is required to be paid in connection with the  
164 issuance of the refunding assessment bonds.
- 165 (27) "Installment payment date" means the date on which an installment payment of an  
166 assessment is payable.
- 167 (28) "Interim warrant" means a warrant issued by a local entity under Section  
168 [11-42-601](#).
- 169 (29) "Jurisdictional boundaries" means:
- 170 (a) for a county, the boundaries of the unincorporated area of the county; and
  - 171 (b) for each other local entity, the boundaries of the local entity.
- 172 (30) "Local district" means a local district under Title 17B, Limited Purpose Local  
173 Government Entities - Local Districts.
- 174 (31) "Local entity" means a county, city, town, special service district, local district, an  
175 interlocal entity as defined in Section [11-13-103](#), a military installation development authority  
176 created in Section [63H-1-201](#), or other political subdivision of the state.
- 177 (32) "Local entity obligations" means assessment bonds, refunding assessment bonds,  
178 interim warrants, and bond anticipation notes issued by a local entity.
- 179 (33) "Mailing address" means:
- 180 (a) a property owner's last-known address using the name and address appearing on the  
181 last completed real property assessment roll of the county in which the property is located; and
  - 182 (b) if the property is improved property:

183 (i) the property's street number; or  
184 (ii) the post office box, rural route number, or other mailing address of the property, if  
185 a street number has not been assigned.

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

189 (35) "Operation and maintenance costs":

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

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

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

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

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

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

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

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

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

213 (43) "Provide" or "providing," with reference to an improvement, includes the

214 acquisition, construction, reconstruction, renovation, maintenance, repair, operation, and  
215 expansion of an improvement.

216 (44) "Public agency" means:

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

218 (b) a political subdivision of the state.

219 (45) "Reduced payment obligation" means the full obligation of an owner of property  
220 within an assessment area to pay an assessment levied on the property after the assessment has  
221 been reduced because of the issuance of refunding assessment bonds, as provided in Section  
222 [11-42-608](#).

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

225 (47) "Reserve fund" means a fund established by a local entity under Section  
226 [11-42-702](#).

227 (48) "Service" means:

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

230 (b) economic promotion activities; or

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

232 (49) (a) "Sewer assessment area" means an assessment area that has as the assessment  
233 area's primary purpose the financing and funding of public improvements to provide sewer  
234 service where there is, in the opinion of the local board of health, substantial evidence of septic  
235 system failure in the defined area due to inadequate soils, high water table, or other factors  
236 proven to cause failure.

237 (b) "Sewer assessment area" does not include property otherwise located within the  
238 assessment area:

239 (i) on which an approved conventional or advanced wastewater system has been  
240 installed during the previous five calendar years;

241 (ii) for which the local health department has inspected the system described in  
242 Subsection (49)(b)(i) to ensure that the system is functioning properly; and

243 (iii) for which the property owner opts out of the proposed assessment area for the  
244 earlier of a period of 10 calendar years or until failure of the system described in Subsection



245 (49)(b)(i).

246 [~~(49)~~] (50) "Special service district" means the same as that term is defined in Section  
247 17D-1-102.

248 [~~(50)~~] (51) "Unassessed benefitted government property" means property that a local  
249 entity may not assess in accordance with Section 11-42-408 but is benefitted by an  
250 improvement, operation and maintenance, or economic promotion activities.

251 [~~(51)~~] (52) "Unimproved property" means property upon which no residential,  
252 commercial, or other building has been built.

253 [~~(52)~~] (53) "Voluntary assessment area" means an assessment area that contains only  
254 property whose owners have voluntarily consented to an assessment.