

**ASSESSMENTS AREA AMENDMENTS**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Wayne L. Niederhauser**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill amends provisions related to an assessment area notice, a right to protest an assessment area, and enacts language related to levying and collecting a property tax.

**Highlighted Provisions:**

This bill:

- ▶ amends definitions;
- ▶ amends the requirements of a notice of a proposed assessment area designation;
- ▶ enacts language related to a waiver of a right to protest;
- ▶ authorizes a municipality or county to levy an assessment against property by levying and collecting a property tax; 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 2011, Chapters 68 and 388

**11-42-202**, as last amended by Laws of Utah 2011, Chapter 68

**11-42-203**, as last amended by Laws of Utah 2009, Chapter 246



28           **11-42-401**, as last amended by Laws of Utah 2010, Chapter 238



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

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

32           **11-42-102. Definitions.**

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

38           (a) protests relating to:

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

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

42           (b) protests that have been withdrawn under Subsection 11-42-203(3).

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

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

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

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

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

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

56           (6) "Assessment method" means the method by which an assessment is levied against  
57 property, whether by frontage, area, taxable value, fair market value, lot, parcel, number of  
58 connections, equivalent residential unit, any combination of these methods, or any other

59 method that equitably reflects the benefit received from the improvement.

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

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

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

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

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

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

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

75 (14) "Contract price" means:

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

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

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

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

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

85 (a) sponsoring festivals and markets;

86 (b) promoting business investment or activities;

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

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

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

93 (19) "Governing body" means:

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

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

96 (c) for a special service district:

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

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

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

103 (20) "Guaranty fund" means the fund established by a local entity under Section  
104 11-42-701.

105 (21) "Improved property" means property proposed to be assessed within an  
106 assessment area upon which a residential, commercial, or other building has been built.

107 (22) "Improvement":

108 (a) (i) means any publicly owned infrastructure, system, or other facility that:

109 (A) a local entity is authorized to provide; or

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

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

114 (A) can be conveniently installed at the same time as an infrastructure, system, or other  
115 facility described in Subsection (22)(a)(i); and

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

118 (b) any privately owned infrastructure, system, or other facility that:

119 (i) the governing body of a local entity determines would be in the interest of the  
120 general public to assess; and

121 (ii) the owners of property for whose benefit an assessment would be levied request an  
122 assessment for, whether or not those improvements have been financed under this chapter; or

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

126 (23) "Improvement revenues":

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

129 (b) does not include revenue from assessments.

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

132 (a) legal and accounting fees;

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

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

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

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

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

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

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

145 (26) "Interim warrant" means a warrant issued by a local entity under Section  
146 11-42-601.

147 (27) "Jurisdictional boundaries" means:

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

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

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

152 (29) "Local entity" means a county, city, town, special service district, local district,  
153 military installation development authority created in Section 63H-1-201, or other political  
154 subdivision of the state.

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

157 (31) "Mailing address" means:

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

160 (b) if the property is improved property:

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

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

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

167 (33) "Operation and maintenance costs":

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

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

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

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

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

182 (37) "Prior assessment resolution" means the resolution levying the assessments from

183 which the prior bonds are payable.

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

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

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

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

194 (42) "Public agency" means:

- 195 (a) the state or any agency, department, or division of the state; and
- 196 (b) a political subdivision of the state.

197 (43) "Reduced payment obligation" means the full obligation of an owner of property  
198 within an assessment area to pay an assessment levied on the property after the assessment has  
199 been reduced because of the issuance of refunding assessment bonds, as provided in Section  
200 11-42-608.

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

203 (45) "Reserve fund" means a fund established by a local entity under Section  
204 11-42-702.

205 (46) "Service" means:

- 206 (a) water, sewer, storm drainage, garbage collection, library, recreation,  
207 communications, or electric service;
- 208 (b) economic promotion activities; or
- 209 (c) any other service that a local entity is required or authorized to provide.

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

211 (48) "Unimproved property" means property upon which no residential, commercial, or  
212 other building has been built.

213 (49) "Voluntary assessment area" means an assessment area that contains only property

214 whose owners have voluntarily consented to an assessment.

215 Section 2. Section **11-42-202** is amended to read:

216 **11-42-202. Requirements applicable to a notice of a proposed assessment area**  
217 **designation.**

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

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

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

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

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

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

228 (c) describe, in a general way, the improvements to be provided to the assessment area,  
229 including:

230 (i) the general nature of the improvements; and

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

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

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

238 (f) (i) state the assessment method by which the governing body proposes to levy the  
239 assessment; and

240 (ii) if the local entity is a municipality or county, state whether the assessment will be  
241 collected as a fee or levied as a property tax in accordance with Section 11-42-401;

242 (g) state:

243 (i) the time within which and the location at which protests against designation of the  
244 proposed assessment area or of the proposed improvements are required to be filed; and



- 245 (ii) the method by which the governing body will determine the number of protests
- 246 required to defeat the designation of the proposed assessment area or acquisition or
- 247 construction of the proposed improvements;
- 248 (h) state the date, time, and place of the public hearing required in Section 11-42-204;
- 249 (i) if the governing body elects to create and fund a reserve fund under Section
- 250 11-42-702, include a description of:
- 251 (i) how the reserve fund will be funded and replenished; and
- 252 (ii) how remaining money in the reserve fund is to be disbursed upon full payment of
- 253 the bonds;
- 254 (j) if the governing body intends to designate a voluntary assessment area, include a
- 255 property owner consent form that:
- 256 (i) estimates the total assessment to be levied against the particular parcel of property;
- 257 (ii) describes any additional benefits that the governing body expects the assessed
- 258 property to receive from the improvements; and
- 259 (iii) designates the date and time by which the fully executed consent form is required
- 260 to be submitted to the governing body;
- 261 (k) if the local entity intends to levy an assessment to pay operation and maintenance
- 262 costs or for economic promotion activities, include:
- 263 (i) a description of the operation and maintenance costs or economic promotion
- 264 activities to be paid by assessments and the initial estimated annual assessment to be levied;
- 265 (ii) a description of how the estimated assessment will be determined;
- 266 (iii) a description of how and when the governing body will adjust the assessment to
- 267 reflect the costs of:
- 268 (A) in accordance with Section 11-42-406, current economic promotion activities; or
- 269 (B) current operation and maintenance costs;
- 270 (iv) a description of the method of assessment if different from the method of
- 271 assessment to be used for financing any improvement; and
- 272 (v) a statement of the maximum number of years over which the assessment will be
- 273 levied for:
- 274 (A) operation and maintenance costs; or
- 275 (B) economic promotion activities; and

276 (1) if the governing body intends to divide the proposed assessment area into zones  
277 under Subsection 11-42-201(1)(b), include a description of the proposed zones.

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

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

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

284 (c) provisions for any improvements described in Subsection 11-42-102(2)(a)(ii).

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

286 (a) (i) (A) be published in a newspaper of general circulation within the local entity's  
287 jurisdictional boundaries, once a week for four consecutive weeks, with the last publication at  
288 least five but not more than 20 days before the deadline for filing protests specified in the  
289 notice under Subsection (1)(g); or

290 (B) if there is no newspaper of general circulation within the local entity's jurisdictional  
291 boundaries, be posted in at least three public places within the local entity's jurisdictional  
292 boundaries at least 20 but not more than 35 days before the deadline for filing protests  
293 specified in the notice under Subsection (1)(g); and

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

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

300 Section 3. Section **11-42-203** is amended to read:

301 **11-42-203. Protests -- Waiver of right to protest.**

302 (1) ~~[Am]~~ Except as provided in Subsection (6), an owner of property that is proposed to  
303 be assessed within an assessment area may, within the time specified in the notice under  
304 Section 11-42-202, file a written protest against:

305 (a) the designation of the assessment area;

306 (b) the inclusion of the owner's property in the proposed assessment area;

307 (c) the proposed improvements to be acquired or constructed; or  
308 (d) any other aspect of the proposed designation of an assessment area.

309 (2) Each protest under Subsection (1)(a) shall describe or otherwise identify the  
310 property owned by the person filing the protest.

311 (3) An owner may withdraw a protest at any time before the conclusion of the hearing  
312 under Section 11-42-204 by filing a written withdrawal with the governing body.

313 (4) If the governing body intends to assess property within the proposed assessment  
314 area by type of improvement or by zone, the governing body shall, in determining whether  
315 adequate protests have been filed, aggregate the protests by the type of improvement or by  
316 zone.

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

319 (a) the designation of the assessment area;  
320 (b) any improvement to be provided to property within the assessment area; and  
321 (c) the inclusion of the owner's property within the assessment area.

322 (6) (a) As used in this Subsection (6):

323 (i) "Governing documents" has the same meaning as Section 57-8a-102.  
324 (ii) "Association" has the same meaning as Section 57-8a-102.

325 (b) In accordance with Subsection (6)(c), a person who records a declaration of  
326 covenants, conditions, and restrictions establishing an association in accordance with Title 57,  
327 Chapter 8a, Community Association Act, may, in accordance with Subsection (6)(b), waive the  
328 right to file a written protest as described in Subsection (1) of:

329 (i) the person; or  
330 (ii) a successor in interest of a plat described in governing documents recorded by the  
331 person.

332 (c) (i) If a person waives a right described in Subsection (6)(b), the person shall waive  
333 the right by recording a statement in the governing documents indicating that the person is  
334 waiving:

335 (A) the person's right to file a written protest; or  
336 (B) in accordance with Subsection (6)(c)(ii), a successor's in interest right to file a  
337 written protest.

338 (ii) If a person waives the right of a successor in interest to file a written protest in  
339 accordance with Subsection (6)(c)(i)(B), the person shall indicate the waiver on each plat  
340 recorded by the person in the governing documents.

341 Section 4. Section **11-42-401** is amended to read:

342 **11-42-401. Levying an assessment -- Prerequisites -- Assessment list.**

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

346 (b) (i) If a municipality or county has designated an assessment area in accordance with  
347 Part 2, Designating an Assessment Area, the municipality or county may levy an assessment  
348 against property by levying and collecting a property tax.

349 (ii) A municipal or county governing body that levies and collects a property tax  
350 described in Subsection (1)(b) shall levy and collect the tax according to the provisions of Title  
351 59, Chapter 2, Property Tax Act.

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

354 (a) the governing body shall:

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

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

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

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

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

360 (b) the board of equalization, appointed under Section 11-42-403, shall hold hearings,  
361 make any corrections it considers appropriate to an assessment, and report its findings to the  
362 governing body as provided in Section 11-42-403.

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

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

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

369 activities; or

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

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

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

376 (C) the reasonable cost of any work to be done by the local entity.

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

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

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

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

384 (a) operation and maintenance costs of improvements constructed within the  
385 assessment area;

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

389 (ii) if the local entity itself furnishes utility service or maintains improvements, for the  
390 reasonable cost of supplying the utility service or maintenance;

391 (c) the reasonable cost of supplying labor, materials, or equipment in connection with  
392 improvements; and

393 (d) (i) the reasonable cost of connection fees; or

394 (ii) the reasonable costs, as determined by the local entity governing body, if the local  
395 entity owns or supplies any sewer, storm drainage, water, gas, electric, or communications  
396 connections.

397 (5) A local entity may not levy an assessment for an amount donated or contributed for  
398 an improvement or part of an improvement.

399 (6) The validity of an otherwise valid assessment is not affected because the actual cost

400 of improvements exceeds the estimated cost.

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

405           (b) A local entity may levy an additional assessment described in Subsection (7)(a) in  
406 the assessment area designated for the assessment described in Subsection (7)(a) if, after the  
407 five-year period expires, the local entity complies with the provisions of this part.

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**Legislative Review Note**  
as of **2-10-12 7:56 AM**

**Office of Legislative Research and General Counsel**