

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

ASSESSMENT AREA ACT AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne L. Niederhauser

House Sponsor: _____

LONG TITLE

General Description:

This bill authorizes a local entity to designate a voluntary assessment area for an energy efficiency upgrade or a renewable energy system.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ amends provisions relating to the authority of public agencies or interlocal entities to issue bonds;
- ▶ prohibits a local entity from designating a voluntary assessment area or issuing an assessment bond for an energy efficiency upgrade or a renewable energy system after June 1, 2011;
- ▶ requires the Government Operations and Political Subdivisions Interim Committee to study assessments for energy efficiency upgrades or renewable energy systems during the 2010 Interim;
- ▶ requires a local entity to submit a funding proposal to a financial advisory panel before designating a voluntary assessment area for an energy efficiency upgrade or a renewable energy system;
- ▶ authorizes a local entity to designate a voluntary assessment area for an energy efficiency upgrade or a renewable energy system;
- ▶ authorizes a local entity to provide to an owner of property to be assessed for an



- 28 energy efficiency upgrade or a renewable energy system a list of service providers;
- 29 ▶ amends provisions relating to an assessment limit;
- 30 ▶ amends provisions relating to an installment payment of an assessment; and
- 31 ▶ makes technical corrections.

32 **Monies Appropriated in this Bill:**

33 None

34 **Other Special Clauses:**

35 None

36 **Utah Code Sections Affected:**

37 AMENDS:

- 38 **11-13-218**, as renumbered and amended by Laws of Utah 2002, Chapter 286
- 39 **11-42-102**, as last amended by Laws of Utah 2009, Chapters 92 and 246
- 40 **11-42-103**, as enacted by Laws of Utah 2007, Chapter 329
- 41 **11-42-201**, as enacted by Laws of Utah 2007, Chapter 329
- 42 **11-42-202**, as last amended by Laws of Utah 2009, Chapters 246 and 388
- 43 **11-42-301**, as last amended by Laws of Utah 2009, Chapters 246 and 388
- 44 **11-42-405**, as enacted by Laws of Utah 2007, Chapter 329
- 45 **11-42-411**, as last amended by Laws of Utah 2008, Chapter 250
- 46 **17B-1-202**, as last amended by Laws of Utah 2009, Chapter 218
- 47 **17D-1-201**, as last amended by Laws of Utah 2009, First Special Session, Chapter 4
- 48 **63H-1-201**, as last amended by Laws of Utah 2009, Chapters 92 and 397

49 ENACTS:

- 50 **10-8-85.4**, Utah Code Annotated 1953
- 51 **17-50-331**, Utah Code Annotated 1953



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

54 Section 1. Section **10-8-85.4** is enacted to read:

55 **10-8-85.4. Energy efficiency upgrade or renewable energy system.**

56 A municipality may provide for or finance an energy efficiency upgrade or a renewable
57 energy system as defined in Section 11-42-102, respectively, in a designated voluntary
58 assessment area in accordance with Title 11, Chapter 42, Assessment Area Act.

59 Section 2. Section 11-13-218 is amended to read:

60 **11-13-218. Authority of public agencies or interlocal entities to issue bonds.**

61 (1) A public agency may, in the same manner as it may issue bonds for its individual
62 acquisition of a facility or improvement or for constructing, improving, or extending a facility
63 or improvement, issue bonds to:

64 (a) acquire an interest in a jointly owned facility or improvement, a combination of a
65 jointly owned facility or improvement, or any other facility or improvement; or

66 (b) pay all or part of the cost of constructing, improving, or extending a jointly owned
67 facility or improvement, a combination of a jointly owned facility or improvement, or any other
68 facility or improvement.

69 (2) (a) An interlocal entity may issue bonds or notes under a resolution, trust indenture,
70 or other security instrument for the purpose of:

71 (i) financing its facilities or improvements[?]; or

72 (ii) providing for or financing an energy efficiency upgrade or a renewable energy
73 system under Title 11, Chapter 42, Assessment Area Act.

74 (b) The bonds or notes may be sold at public or private sale, mature at such times and
75 bear interest at such rates, and have such other terms and security as the entity determines.

76 (c) Such bonds are not a debt of any public agency that is a party to the agreement.

77 (3) Bonds and notes issued under this chapter are declared to be negotiable instruments
78 and their form and substance need not comply with the Uniform Commercial Code.

79 Section 3. Section 11-42-102 is amended to read:

80 **11-42-102. Definitions.**

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

86 (a) protests relating to:

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

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

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

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

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

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

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

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

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

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

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

109 (8) "Assessment resolution" means a resolution adopted by a local entity under Section
110 11-42-404 that levies an assessment on benefitted property within an assessment area.

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

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

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

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

119 (13) "Connection fee" means a fee charged by a local entity to pay for the costs of
120 connecting property to a publicly owned sewer, storm drainage, water, gas, communications, or

121 electrical system, whether or not improvements are installed on the property.

122 (14) "Contract price" means:

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

124 (b) the amount payable to one or more contractors for the design, engineering,

125 inspection, and construction of an improvement.

126 (15) "Designation ordinance" means an ordinance adopted by a local entity under

127 Section 11-42-206 designating an assessment area.

128 (16) "Designation resolution" means a resolution adopted by a local entity under

129 Section 11-42-206 designating an assessment area.

130 (17) "Economic promotion activities" means activities that promote economic growth

131 in a commercial area of a local entity, including:

132 (a) sponsoring festivals and markets;

133 (b) promoting business investment or activities;

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

135 (d) developing and issuing publications designed to improve the economic well-being

136 of the commercial area.

137 (18) "Energy efficiency upgrade" means real property or a real property fixture that is
138 designed to reduce energy consumption in a residential or a commercial building, including:

139 (a) insulation in:

140 (i) a wall, a roof, a floor, or a foundation; or

141 (ii) a heating and cooling distribution system;

142 (b) a window or door, including:

143 (i) a storm window or door;

144 (ii) a multiglazed window or door;

145 (iii) a heat-absorbing window or door;

146 (iv) a heat-reflective glazed and coated window or door;

147 (v) additional window or door glazing;

148 (vi) a window or door with reduced glass area; or

149 (vii) other window or door modifications;

150 (c) an automatic energy control system;

151 (d) in a building or a central plant, a heating, ventilation, or air conditioning and

152 distribution system;

153 (e) caulk or a weatherstrip;

154 (f) a light fixture that does not increase the overall illumination of a building unless an
155 increase is necessary to conform with the applicable building code;

156 (g) an energy recovery system;

157 (h) a daylighting system; or

158 (i) any modified, installed, or remodeled fixture that is approved as a utility
159 cost-savings measure by the governing body of a local entity.

160 ~~[(18)]~~ (19) "Equivalent residential unit" means a dwelling, unit, or development that is
161 equal to a single-family residence in terms of the nature of its use or impact on an improvement
162 to be provided in the assessment area.

163 ~~[(19)]~~ (20) "Governing body" means:

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

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

166 (c) for a special service district:

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

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

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

173 ~~[(20)]~~ (21) "Guaranty fund" means the fund established by a local entity under Section
174 11-42-701.

175 ~~[(21)]~~ (22) "Improved property" means property proposed to be assessed within an
176 assessment area upon which a residential, commercial, or other building has been built.

177 ~~[(22)]~~ (23) "Improvement":

178 (a) (i) means ~~[any]~~;

179 (A) a publicly owned infrastructure, system, or other facility ~~[that:];~~

180 (B) a publicly or privately owned energy efficiency upgrade; or

181 (C) a publicly or privately owned renewable energy system; and

182 ~~[(i)]~~ (ii) that:

183 (A) a local entity is authorized to provide; [or]

184 (B) a local entity is requested to provide through an interlocal agreement under Title
185 11, Chapter 13, Interlocal Cooperation Act; or

186 [(ii)] (C) the governing body of a local entity determines is necessary or convenient to
187 enable the local entity to provide a service that the local entity is authorized to provide; and

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

190 (i) can be conveniently installed at the same time as an infrastructure, system, or other
191 facility described in Subsection [(22)(a)] (23)(a)(i); and

192 (ii) are requested by a property owner on whose property or for whose benefit the
193 infrastructure, system, or other facility is being installed.

194 [(23)] (24) "Improvement revenues":

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

197 (b) does not include revenue from assessments.

198 [(24)] (25) "Incidental refunding costs" means any costs of issuing refunding
199 assessment bonds and calling, retiring, or paying prior bonds, including:

200 (a) legal and accounting fees;

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

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

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

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

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

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

211 [(25)] (26) "Installment payment date" means the date on which an installment
212 payment of an assessment is payable.

213 [(26)] (27) "Interim warrant" means a warrant issued by a local entity under Section

214 11-42-601.

215 [~~27~~] (28) "Jurisdictional boundaries" means:

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

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

218 [~~28~~] (29) "Local district" means a local district under Title 17B, Limited Purpose
219 Local Government Entities - Local Districts.

220 [~~29~~] (30) "Local entity" means a county, city, town, special service district, local
221 district, military installation development authority created in Section 63H-1-201, an interlocal
222 entity as defined in Section 11-13-103, or other political subdivision of the state.

223 [~~30~~] (31) "Local entity obligations" means assessment bonds, refunding assessment
224 bonds, interim warrants, and bond anticipation notes issued by a local entity.

225 [~~31~~] (32) "Mailing address" means:

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

228 (b) if the property is improved property:

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

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

232 [~~32~~] (33) "Net improvement revenues" means all improvement revenues that a local
233 entity has received since the last installment payment date, less all amounts payable by the local
234 entity from those improvement revenues for operation and maintenance costs.

235 [~~33~~] (34) "Operation and maintenance costs":

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

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

241 [~~34~~] (35) "Overhead costs" means the actual costs incurred or the estimated costs to
242 be incurred by a local entity in connection with an assessment area for appraisals, legal fees,
243 filing fees, financial advisory charges, underwriting fees, placement fees, escrow, trustee, and
244 paying agent fees, publishing and mailing costs, costs of levying an assessment, recording

245 costs, and all other incidental costs.

246 [~~(35)~~] (36) "Prior bonds" means the assessment bonds that are refunded in part or in
247 whole by refunding assessment bonds.

248 [~~(36)~~] (37) "Prior assessment ordinance" means the ordinance levying the assessments
249 from which the prior bonds are payable.

250 [~~(37)~~] (38) "Prior assessment resolution" means the resolution levying the assessments
251 from which the prior bonds are payable.

252 [~~(38)~~] (39) "Project engineer" means the surveyor or engineer employed by or private
253 consulting engineer engaged by a local entity to perform the necessary engineering services for
254 and to supervise the construction or installation of the improvements.

255 [~~(39)~~] (40) "Property" includes real property and any interest in real property, including
256 water rights and leasehold rights.

257 [~~(40)~~] (41) "Property price" means the price at which a local entity purchases or
258 acquires by eminent domain property to make improvements in an assessment area.

259 [~~(41)~~] (42) "Provide" or "providing," with reference to an improvement, includes the
260 acquisition, construction, reconstruction, renovation, maintenance, repair, operation, and
261 expansion of an improvement.

262 [~~(42)~~] (43) "Public agency" means:

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

265 [~~(43)~~] (44) "Reduced payment obligation" means the full obligation of an owner of
266 property within an assessment area to pay an assessment levied on the property after the
267 assessment has been reduced because of the issuance of refunding assessment bonds, as
268 provided in Section 11-42-608.

269 [~~(44)~~] (45) "Refunding assessment bonds" means assessment bonds that a local entity
270 issues under Section 11-42-607 to refund, in part or in whole, assessment bonds.

271 (46) "Renewable energy system" means real property or a real property fixture that is a
272 product, a system, a device, or an interacting group of devices in a residential or commercial
273 building that produces energy from renewable resources, including:

- 274 (a) a photovoltaic system;
- 275 (b) a solar thermal system;

- 276 (c) a wind system;
- 277 (d) a biomass system;
- 278 (e) a geothermal system, including:
- 279 (i) a generation system;
- 280 (ii) a direct-use system; or
- 281 (iii) a ground source heat pump system;
- 282 (f) a micro-hydro system; or
- 283 (g) other renewable sources approved in the local entity's designation resolution or
- 284 designation ordinance.

285 [~~45~~] (47) "Reserve fund" means a fund established by a local entity under Section
 286 11-42-702.

287 [~~46~~] (48) "Service" means:

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

292 [~~47~~] (49) "Special service district" has the same meaning as defined in Section
 293 17D-1-102.

294 [~~48~~] (50) "Unimproved property" means property upon which no residential,
 295 commercial, or other building has been built.

296 [~~49~~] (51) "Voluntary assessment area" means an assessment area that contains only
 297 property whose owners have voluntarily consented to an assessment.

298 Section 4. Section **11-42-103** is amended to read:

299 **11-42-103. Limit on effect of this chapter.**

300 (1) Nothing in this chapter may be construed to authorize a local entity to provide an
 301 improvement or service that the local entity is not otherwise authorized to provide.

302 (2) (a) Except as provided in Subsection (2)(b), a local entity may, before June 1, 2011,
 303 provide for or finance an energy efficiency upgrade or a renewable energy system under this
 304 title.

305 (b) On or after June 1, 2011, a local entity may not:

- 306 (i) designate a voluntary assessment area for an energy efficiency upgrade or a

307 renewable energy system; or

308 (ii) issue an assessment bond for an energy efficiency upgrade or a renewable energy
309 system.

310 (c) The Government Operations and Political Subdivisions Interim Committee shall,
311 during the 2010 Interim:

312 (i) study assessments for energy efficiency upgrades and assessments for renewable
313 energy systems;

314 (ii) recommend whether legislation should be drafted to modify the provisions of
315 Subsection (2)(b); and

316 (iii) prepare any legislation that the Government Operations and Political Subdivisions
317 Interim Committee recommends in accordance with Subsection (2)(c)(ii) for consideration by
318 the Legislature during the 2011 General Session.

319 Section 5. Section 11-42-201 is amended to read:

320 **11-42-201. Resolution or ordinance designating an assessment area -- Zones**
321 **within an assessment area -- Preconditions to adoption of a resolution or ordinance --**
322 **Voluntary assessment area for energy efficiency upgrade or renewable energy system.**

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

328 (b) A designation resolution or ordinance may divide the assessment area into zones to
329 allow the governing body to levy a different level of assessment or to use a different
330 assessment method in each zone to reflect more fairly the benefits that property within the
331 different zones is expected to receive because of the proposed improvement, operation and
332 maintenance, or economic promotion activities.

333 (c) The boundaries of a proposed assessment area may include property that is not
334 intended to be assessed.

335 (2) (a) Before adopting a designation resolution or ordinance, the governing body of
336 the local entity shall:

337 [~~a~~] (i) give notice as provided in Section 11-42-202;

338 ~~[(b)]~~ (ii) receive and consider all protests filed under Section 11-42-203; and
339 ~~[(c)]~~ (iii) hold a public hearing as provided in Section 11-42-204.
340 (b) (i) In addition to the requirements in Subsection (2)(a), before adopting a
341 designation resolution or ordinance designating a voluntary assessment area for an energy
342 efficiency upgrade or a renewable energy system, a local entity shall submit a funding proposal
343 described in Subsection (2)(b)(ii) to the financial advisory panel described in Subsection
344 (2)(b)(iii).
345 (ii) The funding proposal shall include:
346 (A) the assessment method;
347 (B) a description of the anticipated assessment area;
348 (C) an estimate of the number of property owners in the assessment;
349 (D) the estimated total contract price for the energy efficiency upgrade or renewable
350 energy system;
351 (E) the estimated local entity obligations for the proposed assessment;
352 (F) the estimated incidental refunding costs, if any; and
353 (G) the estimated overhead costs.
354 (iii) (A) There is created in this Subsection (2)(b)(iii)(A) a financial advisory panel.
355 (B) The financial advisory panel:
356 (I) is advisory only; and
357 (II) shall have seven members as follows:
358 (Aa) one member appointed by the governor;
359 (Bb) one member appointed by the president of the Senate;
360 (Cc) one member appointed by the speaker of the House;
361 (Dd) one member representing the interests of Utah bankers;
362 (Ee) one member representing the interests of Utah credit unions;
363 (Ff) one member representing the local entity proposing the voluntary assessment area
364 described in Subsection (2)(b)(i); and
365 (Gg) one member representing a committee charged with reviewing the local entity's
366 debt.
367 (3) An assessment area designated to levy an assessment for an energy efficiency
368 upgrade or a renewable energy system shall be a voluntary assessment area.

369 Section 6. Section **11-42-202** is amended to read:

370 **11-42-202. Requirements applicable to a notice of a proposed assessment area**
371 **designation.**

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

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

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

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

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

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

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

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

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

388 (d) a statement of the estimated cost of the improvements as determined by a project
389 engineer;

390 (e) a statement that the local entity proposes to levy an assessment on benefitted
391 property within the assessment area to pay some or all of the cost of the improvements
392 according to the estimated direct and indirect benefits to the property from the improvements;

393 (f) a statement of the assessment method by which the assessment is proposed to be
394 levied;

395 (g) a statement of the time within which and the location at which protests against
396 designation of the proposed assessment area or of the proposed improvements are required to
397 be filed and the method by which the number of protests required to defeat the designation of
398 the proposed assessment area or acquisition or construction of the proposed improvements are
399 to be determined;

400 (h) state the date, time, and place of the public hearing under Section 11-42-204;

401 (i) if the governing body elects to create and fund a reserve fund under Section
402 11-42-702, a description of how the reserve fund will be funded and replenished and how
403 remaining money in the reserve fund is to be disbursed upon full payment of the bonds;

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

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

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

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

411 (k) if the local entity intends to levy an assessment to pay operation and maintenance
412 costs or for economic promotion activities:

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

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

416 (iii) a description of how and when the governing body will adjust the assessment to
417 reflect current operation and maintenance costs or the costs of current economic promotion
418 activities;

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

421 (v) a statement of the maximum number of years over which the assessment for
422 operation and maintenance or economic promotion activities will be levied; and

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

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

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

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

431 (c) provisions for any improvements described in Subsection 11-42-102[(22)(b)]
432 (23)(b).

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

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

438 (B) if there is no newspaper of general circulation within the local entity's jurisdictional
439 boundaries, be posted in at least three public places within the local entity's jurisdictional
440 boundaries at least 20 but not more than 35 days before the deadline under Section 11-42-203
441 for filing protests; and

442 (ii) be published in accordance with Section 45-1-101 for four weeks before the
443 deadline under Section 11-42-203 for filing protests; and

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

447 Section 7. Section **11-42-301** is amended to read:

448 **11-42-301. Improvements made only under contract let to lowest responsive,**
449 **responsible bidder -- Publishing notice -- Sealed bids -- Procedure -- Exceptions to**
450 **contract requirement.**

451 (1) Except as otherwise provided in this section, a local entity may make improvements
452 in an assessment area only under contract let to the lowest responsive, responsible bidder for
453 the kind of service, material, or form of construction that the local entity's governing body
454 determines in compliance with any applicable local entity ordinances.

455 (2) A local entity may:

456 (a) divide improvements into parts;

457 (b) (i) let separate contracts for each part; or

458 (ii) combine multiple parts into the same contract; and

459 (c) let a contract on a unit basis.

460 (3) (a) A local entity may not let a contract until after publishing notice as provided in
461 Subsection (3)(b):

462 (i) at least one time in a newspaper of general circulation within the boundaries of the
463 local entity at least 15 days before the date specified for receipt of bids; and

464 (ii) in accordance with Section 45-1-101, at least 15 days before the date specified for
465 receipt of bids.

466 (b) Each notice under Subsection (3)(a) shall notify contractors that the local entity will
467 receive sealed bids at a specified time and place for the construction of the improvements.

468 (c) Notwithstanding a local entity's failure, through inadvertence or oversight, to
469 publish the notice or to publish the notice within 15 days before the date specified for receipt of
470 bids, the governing body may proceed to let a contract for the improvements if the local entity
471 receives at least three sealed and bona fide bids from contractors by the time specified for the
472 receipt of bids.

473 (d) A local entity may publish a notice required under this Subsection (3) at the same
474 time as a notice under Section 11-42-202.

475 (4) (a) A local entity may accept as a sealed bid a bid that is:

476 (i) manually sealed and submitted; or

477 (ii) electronically sealed and submitted.

478 (b) The governing body or project engineer shall, at the time specified in the notice
479 under Subsection (3), open and examine the bids.

480 (c) In open session, the governing body:

481 (i) shall declare the bids; and

482 (ii) may reject any or all bids if the governing body considers the rejection to be for the
483 public good.

484 (d) The local entity may award the contract to the lowest responsive, responsible bidder
485 even if the price bid by that bidder exceeds the estimated costs as determined by the project
486 engineer.

487 (e) A local entity may in any case:

488 (i) refuse to award a contract;

489 (ii) obtain new bids after giving a new notice under Subsection (3);

490 (iii) determine to abandon the assessment area; or

491 (iv) not make some of the improvements proposed to be made.

492 (5) A local entity is not required to let a contract as provided in this section for:

493 (a) an improvement or part of an improvement the cost of which or the making of
494 which is donated or contributed;

495 (b) an improvement that consists of furnishing utility service or maintaining
496 improvements;

497 (c) labor, materials, or equipment supplied by the local entity;

498 (d) the local entity's acquisition of completed or partially completed improvements in
499 an assessment area;

500 (e) design, engineering, and inspection costs incurred with respect to the construction
501 of improvements in an assessment area; or

502 (f) additional work performed in accordance with the terms of a contract duly let to the
503 lowest responsive, responsible bidder.

504 (6) A local entity may itself furnish utility service and maintain improvements within
505 an assessment area.

506 (7) (a) A local entity may acquire completed or partially completed improvements in an
507 assessment area, but may not pay an amount for those improvements that exceeds their fair
508 market value.

509 (b) Upon the local entity's payment for completed or partially completed
510 improvements, title to the improvements shall be conveyed to the local entity or another public
511 agency.

512 (8) The provisions of Title 11, Chapter 39, Building Improvements and Public Works
513 Projects, and Section 72-6-108 do not apply to improvements to be constructed in an
514 assessment area.

515 (9) (a) Except as provided in Subsection (9)(b) and notwithstanding any other statutory
516 requirement to the contrary, this section does not apply to a voluntary assessment area
517 designated for the purpose of levying an assessment for an energy efficiency upgrade or a
518 renewable energy system.

519 (b) (i) A local entity that designates a voluntary assessment area described in
520 Subsection (9)(a) shall provide to each owner of property to be assessed a list of service
521 providers authorized by the local entity to provide the energy efficiency upgrade or renewable
522 energy system.

523 (ii) A property owner described in Subsection (9)(b)(i) shall select a service provider

524 from the list described in Subsection (9)(b)(i) to provide the energy efficiency upgrade or
525 renewable energy system pertaining to the owner's property.

526 Section 8. Section **11-42-405** is amended to read:

527 **11-42-405. Limit on amount of assessment -- Costs required to be paid by the**
528 **local entity.**

529 (1) An assessment levied within an assessment area may not, in the aggregate, exceed
530 the sum of:

531 (a) the contract price or estimated contract price;

532 (b) the acquisition price of improvements;

533 (c) the reasonable cost of:

534 (i) (A) utility services, maintenance, and operation, to the extent permitted by
535 Subsection 11-42-401(4); and

536 (B) labor, materials, or equipment supplied by the local entity;

537 (ii) economic promotion activities; or

538 (iii) operation and maintenance costs;

539 (d) the price or estimated price of purchasing property;

540 (e) any connection fees;

541 (f) (i) the capitalized interest on assessment bonds; and

542 (ii) the estimated interest on interim warrants and bond anticipation notes issued with
543 respect to an assessment area;

544 (g) overhead costs not to exceed 15% of the sum of Subsections (1)(a), (b), (c), and (e);

545 (h) an amount for contingencies of not more than 10% of the sum of Subsections (1)(a)
546 and (c), if the assessment is levied before construction of the improvements in the assessment
547 area is completed;

548 (i) an amount sufficient to fund a reserve fund, if the governing body creates and funds
549 a reserve fund as provided in Section 11-42-702; and

550 (j) [~~1/2~~] one-half the cost of grading changes as provided in Section 11-42-407.

551 (2) Each local entity providing an improvement in an assessment area shall pay, from
552 improvement revenues not pledged to the payment of bonds and from any other legally
553 available money:

554 (a) overhead costs for which an assessment cannot be levied;

555 (b) the costs of providing an improvement for which an assessment was not levied, if
556 the assessment is levied before construction of the improvement in the assessment area is
557 completed; and

558 (c) the acquisition and constructions costs of an improvement for the benefit of
559 property against which an assessment may not be levied.

560 Section 9. Section **11-42-411** is amended to read:

561 **11-42-411. Installment payment of assessments.**

562 (1) (a) In an assessment resolution or ordinance, the governing body may, subject to
563 Subsection (1)(b), provide that some or all of the assessment be paid in installments over a
564 period not to exceed 20 years from the effective date of the resolution or ordinance.

565 (b) If an assessment resolution or ordinance provides that some or all of the assessment
566 be paid in installments for a period exceeding 10 years from the effective date of the resolution
567 or ordinance, the governing body:

568 (i) shall make a determination that:

569 (A) the improvement for which the assessment is made has a reasonable useful life for
570 the full period during which installments are to be paid; or

571 (B) it would be in the best interests of the local entity and the property owners for
572 installments to be paid for more than 10 years; and

573 (ii) may provide in the resolution or ordinance that no assessment is payable during
574 some or all of the period ending three years after the effective date of the resolution or
575 ordinance.

576 (2) An assessment resolution or ordinance that provides for the assessment to be paid
577 in installments may provide that the unpaid balance be paid over the period of time that
578 installments are payable:

579 (a) in substantially equal installments of principal; ~~[or]~~

580 (b) in substantially equal installments of principal and interest[-]; or

581 (c) for an assessment levied for an energy efficiency upgrade or a renewable energy
582 system, in accordance with the assessment resolution or ordinance.

583 (3) (a) Each assessment resolution or ordinance that provides for the assessment to be
584 paid in installments shall, subject to Subsections (3)(b) and (c), provide that the unpaid balance
585 of the assessment bear interest at a fixed rate, variable rate, or a combination of fixed and

586 variable rates, as determined by the governing body, from the effective date of the resolution or
587 ordinance or another date specified in the resolution or ordinance.

588 (b) If the assessment is for operation and maintenance costs or for the costs of
589 economic promotion activities:

590 (i) a local entity may charge interest only from the date each installment is due; and

591 (ii) the first installment of an assessment shall be due 15 days after the effective date of
592 the assessment resolution or ordinance.

593 (c) If an assessment resolution or ordinance provides for the unpaid balance of the
594 assessment to bear interest at a variable rate, the assessment resolution or ordinance shall
595 specify:

596 (i) the basis upon which the rate is to be determined from time to time;

597 (ii) the manner in which and schedule upon which the rate is to be adjusted; and

598 (iii) a maximum rate that the assessment may bear.

599 (4) Interest payable on assessments may include:

600 (a) interest on assessment bonds;

601 (b) ongoing local entity costs incurred for administration of the assessment area; and

602 (c) any costs incurred with respect to:

603 (i) securing a letter of credit or other instrument to secure payment or repurchase of
604 bonds; or

605 (ii) retaining a marketing agent or an indexing agent.

606 (5) Interest imposed in an assessment resolution or ordinance shall be paid in addition
607 to the amount of each installment annually or at more frequent intervals as provided in the
608 assessment resolution or ordinance.

609 (6) (a) Except for an assessment for operation and maintenance costs or for the costs of
610 economic promotion activities, a property owner may pay some or all of the entire assessment
611 without interest if paid within 25 days after the assessment resolution or ordinance takes effect.

612 (b) After the 25-day period stated in Subsection (6)(a), a property owner may at any
613 time prepay some or all of the assessment levied against the owner's property.

614 (c) A local entity may require a prepayment of an installment to include:

615 (i) an amount equal to the interest that would accrue on the assessment to the next date
616 on which interest is payable on bonds issued in anticipation of the collection of the assessment;

617 and

618 (ii) the amount necessary, in the governing body's opinion or the opinion of the officer
619 designated by the governing body, to assure the availability of money to pay:

620 (A) interest that becomes due and payable on those bonds; and

621 (B) any premiums that become payable on bonds that are called in order to use the
622 money from the prepaid assessment installment.

623 Section 10. Section **17-50-331** is enacted to read:

624 **17-50-331. Energy efficiency upgrade or renewable energy system.**

625 A county may provide or finance an energy efficiency upgrade or a renewable energy
626 system as defined in Section 11-42-102, respectively, in a designated voluntary assessment area
627 in accordance with Title 11, Chapter 42, Assessment Area Act.

628 Section 11. Section **17B-1-202** is amended to read:

629 **17B-1-202. Local district may be created -- Services that may be provided --**
630 **Limitations.**

631 (1) (a) A local district may be created as provided in this part to provide within its
632 boundaries service consisting of:

633 (i) the operation of an airport;

634 (ii) the operation of a cemetery;

635 (iii) fire protection, paramedic, and emergency services;

636 (iv) garbage collection and disposal;

637 (v) health care, including health department or hospital service;

638 (vi) the operation of a library;

639 (vii) abatement or control of mosquitos and other insects;

640 (viii) the operation of parks or recreation facilities or services;

641 (ix) the operation of a sewage system;

642 (x) street lighting;

643 (xi) the construction and maintenance of curb, gutter, and sidewalk;

644 (xii) transportation, including public transit and providing streets and roads;

645 (xiii) the operation of a system, or one or more components of a system, for the

646 collection, storage, retention, control, conservation, treatment, supplying, distribution, or

647 reclamation of water, including storm, flood, sewage, irrigation, and culinary water, whether

648 the system is operated on a wholesale or retail level or both;

649 (xiv) law enforcement service; ~~[or]~~

650 (xv) subject to Subsection (1)(b), the underground installation of an electric utility line
651 or the conversion to underground of an existing electric utility line~~[-]; or~~

652 (xvi) the providing for, or financing of, an energy efficiency upgrade or a renewable
653 energy system under Title 11, Chapter 42, Assessment Area Act.

654 (b) Each local district that provides the service of the underground installation of an
655 electric utility line or the conversion to underground of an existing electric utility line shall, in
656 installing or converting the line, provide advance notice to and coordinate with the utility that
657 owns the line.

658 (2) For purposes of this section:

659 (a) "Operation" means all activities involved in providing the indicated service
660 including acquisition and ownership of property reasonably necessary to provide the indicated
661 service and acquisition, construction, and maintenance of facilities and equipment reasonably
662 necessary to provide the indicated service.

663 (b) "System" means the aggregate of interrelated components that combine together to
664 provide the indicated service including, for a sewage system, collection and treatment.

665 (3) (a) A local district may not be created to provide and may not after its creation
666 provide more than four of the services listed in Subsection (1).

667 (b) Subsection (3)(a) may not be construed to prohibit a local district from providing
668 more than four services if, before April 30, 2007, the local district was authorized to provide
669 those services.

670 (4) (a) Except as provided in Subsection (4)(b), a local district may not be created to
671 provide and may not after its creation provide to an area the same service already being
672 provided to that area by another political subdivision, unless the other political subdivision
673 gives its written consent.

674 (b) For purposes of Subsection (4)(a), a local district does not provide the same service
675 as another political subdivision if it operates a component of a system that is different from a
676 component operated by another political subdivision but within the same:

677 (i) sewage system; or

678 (ii) water system.

679 (5) (a) Except for a local district in the creation of which an election is not required
680 under Subsection 17B-1-214(3)(c), the area of a local district may include all or part of the
681 unincorporated area of one or more counties and all or part of one or more municipalities.

682 (b) The area of a local district need not be contiguous.

683 (6) For a local district created before May 5, 2008, the authority to provide fire
684 protection service also includes the authority to provide:

685 (a) paramedic service; and

686 (b) emergency service, including hazardous materials response service.

687 Section 12. Section **17D-1-201** is amended to read:

688 **17D-1-201. Services that a special service district may be created to provide.**

689 As provided in this part, a county or municipality may create a special service district to
690 provide any combination of the following services:

691 (1) water;

692 (2) sewerage;

693 (3) drainage;

694 (4) flood control;

695 (5) garbage collection and disposal;

696 (6) health care;

697 (7) transportation, including the receipt of federal secure rural school funds under
698 Section 51-9-603 for the purposes of constructing, improving, repairing, or maintaining public
699 roads;

700 (8) recreation;

701 (9) fire protection, including:

702 (a) emergency medical services, ambulance services, and search and rescue services, if
703 fire protection service is also provided;

704 (b) Firewise Communities programs and the development of community wildfire
705 protection plans; and

706 (c) the receipt of federal secure rural school funds as provided under Section 51-9-603
707 for the purposes of carrying out Firewise Communities programs, developing community
708 wildfire protection plans, and performing emergency services, including firefighting on federal
709 land and other services authorized under this Subsection (9);

710 (10) providing, operating, and maintaining correctional and rehabilitative facilities and
711 programs for municipal, state, and other detainees and prisoners;

712 (11) street lighting;

713 (12) consolidated 911 and emergency dispatch;

714 (13) animal shelter and control;

715 (14) receiving federal mineral lease funds under Title 59, Chapter 21, Mineral Lease
716 Funds, and expending those funds to provide construction and maintenance of public facilities,
717 traditional governmental services, and planning, as a means for mitigating impacts from
718 extractive mineral industries; [~~and~~]

719 (15) the providing for, or financing of, an energy efficiency upgrade or a renewable
720 energy system under Title 11, Chapter 42, Assessment Area Act; and

721 (16) in a county of the first class, extended police protection.

722 Section 13. Section **63H-1-201** is amended to read:

723 **63H-1-201. Creation of military installation development authority -- Status and**
724 **powers of authority -- Limitation.**

725 (1) There is created a military installation development authority.

726 (2) The authority is:

727 (a) an independent, nonprofit, separate body corporate and politic, with perpetual
728 succession and statewide jurisdiction, whose purpose is to facilitate the development of
729 military land in a project area;

730 (b) a political subdivision of the state; and

731 (c) a public corporation, as defined in Section 63E-1-102.

732 (3) The authority may:

733 (a) facilitate the development of military land within one or more project areas, as
734 provided in this chapter;

735 (b) sue and be sued;

736 (c) enter into contracts generally;

737 (d) buy, obtain an option upon, or otherwise acquire any interest in real or personal
738 property:

739 (i) on military land; or

740 (ii) outside military land for publicly owned infrastructure and improvements, if the

741 board considers the purchase, option, or other interest acquisition to be necessary for fulfilling
742 the authority's development objectives;

743 (e) sell, convey, grant, dispose of by gift, or otherwise dispose of any interest in real or
744 personal property;

745 (f) enter into a lease agreement on real or personal property, either as lessee or lessor:

746 (i) on military land; or

747 (ii) outside military land, if the board considers the lease to be necessary for fulfilling
748 the authority's development objectives;

749 (g) provide for the development of land within a project area under one or more
750 contracts;

751 (h) exercise powers and perform functions under a contract, as authorized in the
752 contract;

753 (i) exercise exclusive police power within a project area to the same extent as though
754 the authority were a municipality, including the collection of regulatory fees;

755 (j) receive tax increment and other taxes and fees as provided in this chapter;

756 (k) accept financial or other assistance from any public or private source for the
757 authority's activities, powers, and duties, and expend any funds so received for any of the
758 purposes of this chapter;

759 (l) borrow money or accept financial or other assistance from the federal government, a
760 public entity, or any other source for any of the purposes of this chapter and comply with any
761 conditions of the loan or assistance;

762 (m) issue bonds to finance the undertaking of any development objectives of the
763 authority, including bonds under Title 11, Chapter 17, Utah Industrial Facilities and
764 Development Act, and bonds under Title 11, Chapter 42, Assessment Area Act;

765 (n) hire employees, including contract employees;

766 (o) transact other business and exercise all other powers provided for in this chapter;

767 (p) enter into a development agreement with a developer of military land within a
768 project area;

769 (q) enter into an agreement with a political subdivision of the state under which the
770 political subdivision provides one or more municipal services within a project area;

771 (r) enter into an agreement with a private contractor to provide one or more municipal

772 services within a project area; [~~and~~]

773 (s) provide for or finance an energy efficiency upgrade or a renewable energy system
774 under Title 11, Chapter 42, Assessment Area Act; and

775 (t) exercise powers and perform functions that the authority is authorized by statute to
776 exercise or perform.

777 (4) The authority may not itself provide law enforcement service or fire protection
778 service within a project area but may enter into an agreement for one or both of those services,
779 as provided in Subsection (3)(q).

Legislative Review Note
as of **2-15-10 3:28 PM**

Office of Legislative Research and General Counsel

S.B. 194 - Assessment Area Act Amendments

Fiscal Note

2010 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Individuals and businesses with property in an assessment area will be affected by the bill's provisions. Local governments choosing to provide the service are reimbursed from those individuals and businesses making the upgrades.
