

AREA ASSESSMENT AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kevin T. Van Tassell

House Sponsor: _____

LONG TITLE

General Description:

This bill amends the process for protesting the designation of an 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 2016, Chapter 371

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) (a) "Adequate protests" means, for all proposed assessment areas except sewer



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

32 ~~[(a)]~~ (i) protests relating to:

33 ~~[(i)]~~ (A) property that has been deleted from a proposed assessment area; or

34 ~~[(ii)]~~ (B) an improvement that has been deleted from the proposed improvements to be
 35 provided to property within the proposed assessment area; and

36 ~~[(b)]~~ (ii) protests that have been withdrawn under Subsection 11-42-203(3).

37 (b) "Adequate protests" means, for a proposed sewer assessment area, timely filed
 38 written protests under Section 11-42-203 that represent at least ~~50%~~ 50% of the frontage,
 38a area,

39 taxable value, fair market value, lots, number of connections, or equivalent residential units of
 40 the property proposed to be assessed, according to the same assessment method by which the
 41 assessment is proposed to be levied, after eliminating adequate protests under Subsections
 42 (1)(a)(i) and (ii).

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:

57 (a) by which an assessment is levied against benefitted property, whether by frontage,
 58 area, taxable value, fair market value, lot, parcel, number of connections, equivalent residential

59 unit, any combination of these methods, or any other method; and

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

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

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

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

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

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

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

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

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

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

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

90 (ii) contains more than four rental units.

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

94 (15) "Contract price" means:

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

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

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

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

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

104 (a) sponsoring festivals and markets;

105 (b) promoting business investment or activities;

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

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

109 (19) "Electric vehicle charging infrastructure" means equipment that is:

110 (a) permanently affixed to commercial or industrial real property; and

111 (b) designed to deliver electric energy to a qualifying electric vehicle or a qualifying
112 plug-in hybrid vehicle as those terms are defined in Subsection 59-7-605(1).

113 (20) "Energy efficiency upgrade" means an improvement that is permanently affixed to
114 commercial or industrial real property that is designed to reduce energy consumption,
115 including:

116 (a) insulation in:

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

118 (ii) a heating and cooling distribution system;

119 (b) a window or door, including:

120 (i) a storm window or door;

- 121 (ii) a multiglazed window or door;
- 122 (iii) a heat-absorbing window or door;
- 123 (iv) a heat-reflective glazed and coated window or door;
- 124 (v) additional window or door glazing;
- 125 (vi) a window or door with reduced glass area; or
- 126 (vii) other window or door modifications;
- 127 (c) an automatic energy control system;
- 128 (d) in a building or a central plant, a heating, ventilation, or air conditioning and
- 129 distribution system;
- 130 (e) caulk or weatherstripping;
- 131 (f) a light fixture that does not increase the overall illumination of a building unless an
- 132 increase is necessary to conform with the applicable building code;
- 133 (g) an energy recovery system;
- 134 (h) a daylighting system;
- 135 (i) measures to reduce the consumption of water, through conservation or more
- 136 efficient use of water, including:
 - 137 (i) installation of low-flow toilets and showerheads;
 - 138 (ii) installation of timer or timing systems for a hot water heater; or
 - 139 (iii) installation of rain catchment systems; or
 - 140 (j) a modified, installed, or remodeled fixture that is approved as a utility cost-saving
 - 141 measure by the governing body of a local entity.
- 142 (21) "Environmental remediation activity" means a surface or subsurface enhancement,
- 143 effort, cost, initial or ongoing maintenance expense, facility, installation, system, earth
- 144 movement, or change to grade or elevation which improves the use, function, aesthetics, or
- 145 environmental condition of publically or privately owned property.
- 146 (22) "Equivalent residential unit" means a dwelling, unit, or development that is equal
- 147 to a single-family residence in terms of the nature of its use or impact on an improvement to be
- 148 provided in the assessment area.
- 149 (23) "Governing body" means:
 - 150 (a) for a county, city, or town, the legislative body of the county, city, or town;
 - 151 (b) for a local district, the board of trustees of the local district;

- 152 (c) for a special service district:
- 153 (i) the legislative body of the county, city, or town that established the special service
- 154 district, if no administrative control board has been appointed under Section 17D-1-301; or
- 155 (ii) the administrative control board of the special service district, if an administrative
- 156 control board has been appointed under Section 17D-1-301; and
- 157 (d) for the military installation development authority created in Section 63H-1-201,
- 158 the authority board, as defined in Section 63H-1-102.
- 159 (24) "Guaranty fund" means the fund established by a local entity under Section
- 160 11-42-701.
- 161 (25) "Improved property" means property upon which a residential, commercial, or
- 162 other building has been built.
- 163 (26) "Improvement":
- 164 (a) (i) means a publicly owned infrastructure, system, or other facility, a publicly or
- 165 privately owned energy efficiency upgrade, a publicly or privately owned renewable energy
- 166 system, or publicly or privately owned environmental remediation activity that:
- 167 (A) a local entity is authorized to provide;
- 168 (B) the governing body of a local entity determines is necessary or convenient to
- 169 enable the local entity to provide a service that the local entity is authorized to provide; or
- 170 (C) a local entity is requested to provide through an interlocal agreement in accordance
- 171 with Title 11, Chapter 13, Interlocal Cooperation Act; and
- 172 (ii) includes facilities in an assessment area, including a private driveway, an irrigation
- 173 ditch, and a water turnout, that:
- 174 (A) can be conveniently installed at the same time as an infrastructure, system, or other
- 175 facility described in Subsection (26)(a)(i); and
- 176 (B) are requested by a property owner on whose property or for whose benefit the
- 177 infrastructure, system, or other facility is being installed; or
- 178 (b) for a local district created to assess groundwater rights in accordance with Section
- 179 17B-1-202, means a system or plan to regulate groundwater withdrawals within a specific
- 180 groundwater basin in accordance with Sections 17B-1-202 and 73-5-15.
- 181 (27) "Improvement revenues":
- 182 (a) means charges, fees, impact fees, or other revenues that a local entity receives from

183 improvements; and

184 (b) does not include revenue from assessments.

185 (28) "Incidental refunding costs" means any costs of issuing refunding assessment
186 bonds and calling, retiring, or paying prior bonds, including:

187 (a) legal and accounting fees;

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

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

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

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

194 (f) any other costs that the governing body determines are necessary and proper to incur
195 in connection with the issuance of refunding assessment bonds; and

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

198 (29) "Installment payment date" means the date on which an installment payment of an
199 assessment is payable.

200 (30) "Interim warrant" means a warrant issued by a local entity under Section
201 11-42-601.

202 (31) "Jurisdictional boundaries" means:

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

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

205 (32) "Local district" means a local district under Title 17B, Limited Purpose Local
206 Government Entities - Local Districts.

207 (33) "Local entity" means a county, city, town, special service district, local district, an
208 interlocal entity as defined in Section 11-13-103, a military installation development authority
209 created in Section 63H-1-201, or other political subdivision of the state.

210 (34) "Local entity obligations" means assessment bonds, refunding assessment bonds,
211 interim warrants, and bond anticipation notes issued by a local entity.

212 (35) "Mailing address" means:

213 (a) a property owner's last-known address using the name and address appearing on the

214 last completed real property assessment roll of the county in which the property is located; and

215 (b) if the property is improved property:

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

217 (ii) the post office box, rural route number, or other mailing address of the property, if

218 a street number has not been assigned.

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

222 (37) "Operation and maintenance costs":

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

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

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

233 (39) "Prior assessment ordinance" means the ordinance levying the assessments from
234 which the prior bonds are payable.

235 (40) "Prior assessment resolution" means the resolution levying the assessments from
236 which the prior bonds are payable.

237 (41) "Prior bonds" means the assessment bonds that are refunded in part or in whole by
238 refunding assessment bonds.

239 (42) "Project engineer" means the surveyor or engineer employed by or the private
240 consulting engineer engaged by a local entity to perform the necessary engineering services for
241 and to supervise the construction or installation of the improvements.

242 (43) "Property" includes real property and any interest in real property, including water
243 rights and leasehold rights.

244 (44) "Property price" means the price at which a local entity purchases or acquires by

245 eminent domain property to make improvements in an assessment area.

246 (45) "Provide" or "providing," with reference to an improvement, includes the
247 acquisition, construction, reconstruction, renovation, maintenance, repair, operation, and
248 expansion of an improvement.

249 (46) "Public agency" means:

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

251 (b) a political subdivision of the state.

252 (47) "Reduced payment obligation" means the full obligation of an owner of property
253 within an assessment area to pay an assessment levied on the property after the assessment has
254 been reduced because of the issuance of refunding assessment bonds, as provided in Section
255 [11-42-608](#).

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

258 (49) "Renewable energy system" means a product, a system, a device, or an interacting
259 group of devices that is permanently affixed to commercial or industrial real property and:

260 (a) produces energy from renewable resources, including:

261 (i) a photovoltaic system;

262 (ii) a solar thermal system;

263 (iii) a wind system;

264 (iv) a geothermal system, including:

265 (A) a generation system;

266 (B) a direct-use system; or

267 (C) a ground source heat pump system;

268 (v) a microhydro system; or

269 (vi) any other renewable source system approved by the governing body of a local
270 entity; or

271 (b) stores energy, including:

272 (i) a battery storage system; or

273 (ii) any other energy storing system approved by the governing body of a local entity.

274 (50) "Reserve fund" means a fund established by a local entity under Section
275 [11-42-702](#).

276 (51) "Service" means:
277 (a) water, sewer, storm drainage, garbage collection, library, recreation,
278 communications, or electric service;
279 (b) economic promotion activities; or
280 (c) any other service that a local entity is required or authorized to provide.
281 (52) "Sewer assessment area" means an assessment area that has as its primary purpose
282 the financing and funding of public improvements to provide sewer service where there is, in
283 the opinion of the local board of health, substantial evidence of septic system failure in the
284 defined area due to inadequate soils, high water table, or other factors proven to cause failure.
285 [~~52~~] (53) "Special service district" means the same as that term is defined in Section
286 17D-1-102.
287 [~~53~~] (54) "Unassessed benefitted government property" means property that a local
288 entity may not assess in accordance with Section 11-42-408 but is benefitted by an
289 improvement, operation and maintenance, or economic promotion activities.
290 [~~54~~] (55) "Unimproved property" means property upon which no residential,
291 commercial, or other building has been built.
292 [~~55~~] (56) "Voluntary assessment area" means an assessment area that contains only
293 property whose owners have voluntarily consented to an assessment.

Legislative Review Note
Office of Legislative Research and General Counsel