

1 ASSESSMENT AREA ACT AMENDMENTS

2 2017 GENERAL SESSION

3 STATE OF UTAH

4

5 LONG TITLE

6 General Description:

7 This bill modifies provisions of the Assessment Area Act.

8 Highlighted Provisions:

9 This bill:

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

14 Money Appropriated in this Bill:

15 None

16 Other Special Clauses:

17 None

18 Utah Code Sections Affected:

19 AMENDS:

20 11-42-202, as last amended by Laws of Utah 2016, Chapters 85 and 371

21 11-42-409, as last amended by Laws of Utah 2015, Chapter 396

22

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

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

25 11-42-202. Requirements applicable to a notice of a proposed assessment area
26 designation.

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

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

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

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

32 (iii) finance some or all of the cost of improvements by an assessment on benefitted

33 property within the assessment area;

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

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

39 (i) the nature of the improvements; and

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

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

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

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

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

54 (h) state the assessment method by which the governing body proposes to ~~levy the~~
55 calculate the proposed assessment, including, if the local entity is a municipality or county,
56 whether the assessment will be collected:

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

58 (ii) by inclusion on a property tax notice issued in accordance with Section 59-2-1317
59 and in compliance with Section 11-42-401;

60 (i) state:

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

- 64 (ii) the method by which the governing body will determine the number of protests
65 required to defeat the designation of the proposed assessment area or acquisition or
66 construction of the proposed improvements; and
- 67 (iii) in large, boldface, and conspicuous type that a property owner must protest the
68 designation of the assessment area in writing if the owner objects to the area designation or
69 being assessed for the proposed improvements, operation and maintenance costs, or economic
70 promotion activities;
- 71 (j) state the date, time, and place of the public hearing required in Section 11-42-204;
- 72 (k) if the governing body elects to create and fund a reserve fund under Section
73 11-42-702, include a description of:
- 74 (i) how the reserve fund will be funded and replenished; and
75 (ii) how remaining money in the reserve fund is to be disbursed upon full payment of
76 the bonds;
- 77 (l) if the governing body intends to designate a voluntary assessment area, include a
78 property owner consent form that:
- 79 (i) estimates the total assessment to be levied against the particular parcel of property;
80 (ii) describes any additional benefits that the governing body expects the assessed
81 property to receive from the improvements;
- 82 (iii) designates the date and time by which the fully executed consent form is required
83 to be submitted to the governing body; and
- 84 (iv) if the governing body intends to enforce an assessment lien on the property in
85 accordance with Subsection 11-42-502.1(2)(c):
- 86 (A) appoints a trustee that satisfies the requirements described in Section 57-1-21;
87 (B) gives the trustee the power of sale; and
88 (C) explains that if an assessment or an installment of an assessment is not paid when
89 due, the local entity may sell the property owner's property to satisfy the amount due plus
90 interest, penalties, and costs, in the manner described in Title 57, Chapter 1, Conveyances;
- 91 (m) if the local entity intends to levy an assessment to pay operation and maintenance
92 costs or for economic promotion activities, include:
- 93 (i) a description of the operation and maintenance costs or economic promotion
94 activities to be paid by assessments and the initial estimated annual assessment to be levied;

- 95 (ii) a description of how the estimated assessment will be determined;
- 96 (iii) a description of how and when the governing body will adjust the assessment to
97 reflect the costs of:
- 98 (A) in accordance with Section 11-42-406, current economic promotion activities; or
99 (B) current operation and maintenance costs;
- 100 (iv) a description of the method of assessment if different from the method of
101 assessment to be used for financing any improvement; and
- 102 (v) a statement of the maximum number of years over which the assessment will be
103 levied for:
- 104 (A) operation and maintenance costs; or
105 (B) economic promotion activities;
- 106 (n) if the governing body intends to divide the proposed assessment area into
107 classifications under Subsection 11-42-201(1)(b), include a description of the proposed
108 classifications;
- 109 (o) if applicable, state the portion and value of the improvement that will be increased
110 in size or capacity to serve property outside of the assessment area and how the increases will
111 be financed; and
- 112 (p) state whether the improvements will be financed with a bond and, if so, the
113 currently estimated interest rate and term of financing, subject to Subsection (2), for which the
114 benefitted properties within the assessment area may be obligated.
- 115 (2) The estimated interest rate and term of financing in Subsection (1)(p) may not be
116 interpreted as a limitation to the actual interest rate incurred or the actual term of financing as
117 subject to the market rate at the time of the issuance of the bond.
- 118 (3) A notice required under Subsection 11-42-201(2)(a) may contain other information
119 that the governing body considers to be appropriate, including:
- 120 (a) the amount or proportion of the cost of the improvement to be paid by the local
121 entity or from sources other than an assessment;
- 122 (b) the estimated total amount of each type of assessment for the various improvements
123 to be financed according to the method of assessment that the governing body chooses; and
- 124 (c) provisions for any improvements described in Subsection 11-42-102(26)(a)(ii).
- 125 (4) Each notice required under Subsection 11-42-201(2)(a) shall:

126 (a) (i) (A) be published in a newspaper of general circulation within the local entity's
127 jurisdictional boundaries, once a week for four consecutive weeks, with the last publication at
128 least five but not more than 20 days before the day of the hearing required in Section
129 11-42-204; or

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

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

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

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

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

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

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

154 (a) the property owner gives written consent;

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

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

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

161 **11-42-409. Assessment requirements and prohibitions -- Economic promotion**
162 **activities assessment requirements and prohibitions -- Allocation for unassessed**
163 **benefitted government property.**

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

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

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

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

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

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

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

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

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

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

- 188 (a) shall:
- 189 (i) (A) levy the assessment on each block, lot, tract, or parcel of property that benefits
190 from the improvement; and
- 191 (B) to whatever depth, including full depth, on the parcel of property that the governing
192 body determines but that still complies with Subsections (1)(a) and (b);
- 193 (ii) make an allowance for each corner lot receiving the same improvement on both
194 sides so that the property is not assessed at the full rate on both sides; and
- 195 (iii) pay for any increase in size or capacity that serves property outside of the
196 assessment area with funds other than those levied by an assessment;
- 197 (b) may:
- 198 (i) use different methods for different improvements in an assessment area;
- 199 (ii) assess different amounts in different classifications, even when using the same
200 method, if acquisition or construction costs differ from classification to classification;
- 201 (iii) allocate a corner lot allowance under Subsection (3)(a)(ii) to all other benefitted
202 property within the assessment area by increasing the assessment levied against the other
203 assessed property in the same proportion as the improvement is assessed;
- 204 (iv) to comply with Subsection (1)(a), levy an assessment within classifications; and
- 205 (v) assess property to replace improvements that are approaching or have exceeded
206 their useful life or to increase the level of service of an existing improvement; and
- 207 (c) may not:
- 208 (i) consider the costs of the additional size or capacity of an improvement that will be
209 increased in size or capacity to serve property outside of the assessment area when calculating
210 an assessment or determining an assessment method; or
- 211 (ii) except for in a voluntary assessment area or as provided in Subsection (3)(b)(v),
212 assess a property for an improvement that would duplicate or provide a reasonably similar
213 service that is already provided to the property.
- 214 (4) A local entity that levies an assessment under this chapter for economic promotion
215 activities:
- 216 (a) shall:
- 217 (i) levy the assessment on each benefitted property; and
- 218 (ii) subject to Subsection (4)(d), use an assessment method that, when applied to a

219 benefitted property, meets the requirements of Subsection (1)(a);

220 ~~[(a)]~~ (b) may:

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

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

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

226 (i) office lease rates;

227 (ii) retail sales rates;

228 (iii) customer base;

229 (iv) public perception;

230 (v) hotel room rates and occupancy levels;

231 (vi) property values;

232 (vii) the commercial environment from enhanced services;

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

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

235 and

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

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

240 (5) A local entity may levy an assessment that would otherwise violate a provision of
241 this chapter if the owners of all property to be assessed voluntarily enter into a written
242 agreement with the local entity consenting to the assessment.

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