

CONVENTION AND TOURISM BUSINESS ASSESSMENT**AREA ACT**

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Robert M. Spendlove

Senate Sponsor: _____

LONG TITLE**General Description:**

This bill enacts the Convention and Tourism Business Assessment Area Act.

Highlighted Provisions:

This bill:

- defines terms;
- allows the legislative body of a county of the first class to designate a convention and tourism business assessment area to levy an assessment on certain lodging establishments to pay for certain activities that benefit lodging establishments;
- establishes requirements for a county legislative body to designate an assessment area, including procedures for filing a petition to designate an assessment area, giving notice of the proposed assessment area, hearing protests, and holding a public meeting to adopt an ordinance or resolution designating the assessment area;
- establishes requirements for a county legislative body to amend, renew, or dissolve the assessment area; and
- establishes requirements for a person to contest the levying of an assessment or the designation of an assessment area.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

11-42b-101, Utah Code Annotated 1953

11-42b-102, Utah Code Annotated 1953

11-42b-103, Utah Code Annotated 1953

11-42b-104, Utah Code Annotated 1953

11-42b-105, Utah Code Annotated 1953

11-42b-106, Utah Code Annotated 1953

11-42b-107, Utah Code Annotated 1953

11-42b-108, Utah Code Annotated 1953

11-42b-109, Utah Code Annotated 1953

11-42b-110, Utah Code Annotated 1953

11-42b-111, Utah Code Annotated 1953

11-42b-112, Utah Code Annotated 1953

11-42b-113, Utah Code Annotated 1953

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

Section 1. Section **11-42b-101** is enacted to read:

CHAPTER 42b. CONVENTION AND TOURISM BUSINESS ASSESSMENT AREA

ACT

11-42b-101. Definitions.

As used in this chapter:

(1) "Assessment" means the assessment that a specified county levies on benefitted properties under this chapter to pay for beneficial activities.

(2) "Assessment area" means a convention and tourism business assessment area designated under this chapter.

(3) (a) "Beneficial activity" means any activity or service that increases hotel room rates or occupancy levels at lodging establishments.

(b) "Beneficial activity" includes an activity to:

(i) promote tourism;

(ii) sponsor or incentivize a cultural or sports event, festival, conference, or convention;

(iii) facilitate economic or workforce development for the lodging industry, including workforce recruitment or retention; or

(iv) promote placemaking, visitor management, or destination enhancement.

(4) "Benefitted property" means a lodging establishment that directly or indirectly benefits from a beneficial activity.

(5) "Guest" means an individual for whom a lodging establishment provides lodging accommodations for compensation.

(6) "Lodging establishment" means the same as that term is defined in Section [29-2-102](#).

(7) "Municipality" means a city, town, or metro township.

(8) "Qualified number of owners" means a number of owners of benefitted properties that represents 50% or more of the total assessment amount levied against all benefitted properties within a proposed or existing assessment area, provided that if an owner of one or more benefitted properties represents 40% or more of the total assessment amount levied against all benefitted properties within a proposed or existing assessment area, no more than 40% of the total assessment amount shall be attributed to that owner.

(9) "Specified county" means a county of the first class.

(10) "Third party administrator" means a private nonprofit organization, primarily engaged in destination marketing and promotion, that enters into a contract with a specified county to provide beneficial activities within an assessment area in accordance with the management plan.

Section 2. Section **11-42b-102** is enacted to read:

11-42b-102. Designating an assessment area -- Levying and paying an assessment - Requirements and prohibitions.

(1) Subject to the requirements of this part, the legislative body of a specified county intending to levy an assessment on benefitted properties to pay for beneficial activities shall adopt an ordinance or resolution designating an assessment area.

(2) A specified county that levies an assessment under this chapter for beneficial activities:

(a) shall:

(i) levy an assessment on each benefitted property within the assessment area;

(ii) use an assessment method that, when applied to a benefitted property, reflects an equitable portion of the benefit the benefitted property will receive for the beneficial activities for which the assessment is levied;

(iii) levy and collect an assessment in accordance with a management plan that meets the requirements of Subsection 11-42b-103(2)(a); and

(iv) contract with a third party administrator to implement beneficial activities within the assessment areas;

(b) may:

(i) levy an assessment only on lodging establishments located within the geographical boundaries of the specified county;

(ii) establish benefit zones that divide the assessment area into multiple types or classifications to:

(A) levy a different level of assessment; or

(B) use a different assessment method in each classification to reflect more fairly the benefits that property within the different types or classifications is expected to receive because of the proposed beneficial activities;

(iii) rely on estimated benefits from an increase in:

(A) retail sales rates;

(B) customer base;

(C) public perception;

(D) hotel room rates and occupancy levels;

(E) the commercial environment from enhanced services;

(F) another articulable method of estimating benefits; or

(G) a combination of the methods described in Subsections (2)(b)(iii)(A) through (G);
and

(iv) may not:

(A) include, within an assessment area, any area of land that is included within the geographic boundaries of a municipality unless the legislative body of the municipality adopts an ordinance or resolution consenting to the municipality's inclusion in the assessment area; or

(B) levy an assessment for a period longer than 10 years, unless the assessment area is renewed in accordance with Section 11-42b-109.

(3) The legislative body of a specified county may not adopt a designation ordinance or resolution under Subsection (1) unless the legislative body:

(a) receives a petition that meets the requirements of Section 11-42b-103;

(b) gives notice as provided in Section 11-42b-104;

(c) receives and considers all protests filed under Section 11-42b-105;

(d) holds a public hearing as provided in Section 11-42b-106; and

(e) holds a public meeting as provided in Section 11-42b-107.

(4) (a) The owner of a benefitted property that pays an assessment under this chapter may place the assessment as a mandatory surcharge on guest receipts.

(b) A surcharge under this Subsection (4):

(i) shall be disclosed on all information and communication platforms of the benefitted property in the same manner as other surcharges, hotel and occupancy taxes, and sales and use taxes as required by applicable laws and regulations; and

(ii) may not:

(A) be used to calculate a benefitted property's gross receipts or gross revenues for any purpose, including the calculation of sales revenue, occupancy taxes, or state income taxes; or

(B) be considered as part of income pursuant to any lease or operator agreement.

(5) The payment of an assessment under this chapter may not be taken as a deduction from income for state income tax purposes.

Section 3. Section 11-42b-103 is enacted to read:

11-42b-103. Petition to designate assessment area -- Requirements -- Management plan contents.

(1) The process for a specified county to designate an assessment area is initiated by the filing of a petition with the legislative body of the specified county.

(2) A petition under Subsection (1) shall:

(a) include a proposed management plan that:

(i) describes:

(A) the boundaries and duration of the proposed assessment area;

(B) each benefitted property proposed to be assessed;

(C) the total estimated amount of assessment to be levied against all benefitted properties for each year an assessment is levied;

(D) the method by which the proposed assessment is calculated;

(E) the beneficial activities to be paid by assessments for each year an assessment is levied;

(F) the total estimated amount of assessment to be expended on beneficial activities for each year an assessment is levied;

(G) the proposed source or sources of financing, including the proposed method and basis of levying the assessment in sufficient detail to allow each owner of benefitted property to calculate the amount of the assessment to be levied against the owner's benefitted property;

(H) any proposed benefit zones as described in Subsection 11-42b-102(2)(b)(ii); and

(I) the interest, penalties, and costs or other requirements of the proposed assessment;

(ii) establishes procedures for collecting the proposed assessment;

(iii) requires the legislative body to contract with a third party administrator to implement the proposed beneficial activities within the assessment area;

(iv) includes a statement regarding the right of a benefitted property to impose a surcharge on guests of the benefitted property as provided in Subsection 11-42b-102(4); and

(b) be signed by a qualified number of owners.

Section 4. Section 11-42b-104 is enacted to read:

11-42b-104. Notice of proposed assessment area -- Requirements.

(1) If the legislative body of a specified county receives a petition that meets the requirements of Section 11-42b-103, the legislative body shall give notice of the proposed assessment area.

(2) The notice under Subsection (1) shall:

(a) include the following information:

(i) a statement that the legislative body received a petition to designate an assessment area under Section 11-42b-103;

(ii) a statement that the specified county proposes to:

(A) designate one or more areas within the specified county's geographic boundaries as an assessment area;

(B) contract with a third party administrator to provide beneficial activities within the

183 proposed assessment area; and

184 (C) finance some or all of the cost of providing beneficial activities by an assessment
185 on benefitted properties within the assessment area;

186 (iii) a summary of the contents of the proposed management plan, including the
187 information described in Subsection [11-42b-103](#)(2)(a)(i);

188 (iv) a statement explaining how an individual can access the petition described in
189 Subsection (2)(a), including the contents of the proposed management plan;

190 (v) a statement that contains:

191 (A) the date described in Section [11-42b-105](#) and the location at which a protest under
192 Section [11-42b-105](#) may be filed;

193 (B) the method by which the legislative body will determine the number of protests
194 required to defeat the designation of the proposed assessment area or implementation of the
195 proposed beneficial activities, subject to Subsection [11-42b-107](#)(1)(b); and

196 (C) a statement in large, boldface, and conspicuous type explaining that an owner of a
197 benefitted property must protest the designation of the assessment area in writing if the owner
198 objects to the area designation or being assessed for the proposed beneficial activities;

199 (vi) the date, time, and place of the public hearing required in Section [11-42b-106](#); and

200 (vii) any other information the legislative body considers appropriate;

201 (b) (i) be posted in at least three public places within the specified county's geographic
202 boundaries at least 20 but not more than 35 days before the day of the hearing required in
203 Section [11-42b-106](#); and

204 (ii) be published on the Utah Public Notice Website described in Section [63A-16-601](#)
205 for four weeks before the deadline for filing protests specified in the notice under Subsection
206 (2)(a)(v); and

207 (c) be mailed, postage prepaid, within 10 days after the first publication or posting of
208 the notice under Subsection (2)(b) to each owner of benefitted property within the proposed
209 assessment area at the owner's mailing address.

210 (3) (a) The legislative body may record the version of the notice that is published or
211 posted in accordance with Subsection (2)(b) with the office of the county recorder.

212 (b) The notice recorded under Subsection (3)(a) expires and is no longer valid one year
213 after the day on which the legislative body records the notice if the legislative body has failed

to adopt the designation ordinance or resolution under Section [11-42b-102](#) designating the assessment area for which the notice was recorded.

Section 5. Section **11-42b-105** is enacted to read:

11-42b-105. Protests.

(1) An owner of a benefitted property that is proposed to be assessed and who does not want the benefitted property to be included in the assessment area may, within 30 days after the day of the hearing described in Section [11-42b-106](#), file a written protest with the legislative body:

(a) against:

(i) the designation of an assessment area;

(ii) the inclusion of the owner's benefitted property in the proposed assessment area; or

(iii) the proposed beneficial activities to be implemented; or

(b) protesting:

(i) whether the assessment meets the requirements of Section [11-42b-102](#); or

(ii) any other aspect of the proposed designation of an assessment area.

(2) Each protest under Subsection (1) shall:

(a) describe or otherwise identify the benefitted property owned by the person filing the protest; and

(b) include the signature of the owner of the benefitted property.

(3) An owner subject to assessment may withdraw a protest at any time before the expiration of the 30-day period described in Subsection (1) by filing a written withdrawal with the legislative body.

(4) If the legislative body intends to assess benefitted properties within the proposed assessment area by establishing benefit zones, as described in Subsection [11-42b-102\(2\)\(b\)\(ii\)](#), and the legislative body has clearly noticed the legislative body's intent, the legislative body shall:

(a) in determining whether adequate protests have been filed, aggregate the protests by the type of beneficial activity or by classification; and

(b) apply to and calculate for each type of beneficial activity or classification the threshold requirements of adequate protests.

(5) The failure of an owner of a benefitted property within the proposed assessment

area to file a timely written protest constitutes a waiver of any objection to:

(a) the designation of the assessment area;

(b) any beneficial activity to be implemented within the assessment area;

(c) the inclusion of the owner's benefitted property within the assessment area; and

(d) the fact, but not amount, of benefit to the owner's benefitted property.

(6) The legislative body shall post the total and percentage of the written protests the legislative body receives under this section on the legislative body's website, or, if no website is available, at the legislative body's place of business at least five days before the public meeting described in Section [11-42b-106](#).

Section 6. Section **11-42b-106** is enacted to read:

11-42b-106. Public hearing.

(1) On the date and at the time and place specified in the notice under Section [11-42b-104](#), the legislative body shall hold a public hearing.

(2) (a) The legislative body:

(i) subject to Subsection (2)(a)(ii), may continue the public hearing from time to time to a fixed future date and time; and

(ii) may not hold a public hearing that is a continuance less than five days before the deadline for filing protests described in Section [11-42b-105](#).

(b) The continuance of a public hearing does not restart or extend the protest period described in Subsection [11-42b-105](#).

(3) At the public hearing, the legislative body shall hear all:

(a) objections to the designation of the proposed assessment area or the beneficial activities proposed to be implemented within the assessment area;

(b) objections to whether the assessment will meet the requirements of Section [11-42b-102](#); and

(c) persons desiring to be heard.

Section 7. Section **11-42b-107** is enacted to read:

11-42b-107. Public meeting -- Adoption of ordinance or resolution regarding proposed assessment area -- Limitations.

(1) (a) After holding a public hearing under Section [11-42b-106](#) and within 90 days after the day that the protest period expires in accordance with Subsection [11-42b-105](#), the

276 legislative body shall:

277 (i) count the written protests filed or withdrawn in accordance with Section [11-42b-105](#)
278 and calculate whether adequate protests have been filed; and

279 (ii) hold a public meeting to announce the protest tally and whether adequate protests
280 have been filed.

281 (b) Adequate protests are filed under Subsection (1)(a) if protests have been filed by a
282 qualified number of owners.

283 (c) If adequate protests are not filed, the legislative body at the public meeting may
284 adopt a resolution or ordinance:

285 (i) abandoning the proposal to designate an assessment area; or

286 (ii) (A) designating an assessment area; and

287 (B) approving a management plan as proposed under Section [11-42b-103](#), or with
288 changes under Subsection (1)(e).

289 (d) If adequate protests are filed, the legislative body at the public meeting:

290 (i) may not adopt a resolution or ordinance designating the assessment area; and

291 (ii) may adopt a resolution or ordinance to abandon the proposal to designate the
292 assessment area.

293 (e) In the absence of adequate protests upon the expiration of the protest period and
294 subject to Subsection (1)(e)(ii), the legislative body may make changes to:

295 (i) a beneficial activity proposed for implementation under the proposed management
296 plan; or

297 (ii) the area or areas proposed to be included within the assessment area under the
298 proposed management plan.

299 (2) A legislative body may not make a change in accordance with Subsection (1)(e)(i)
300 if the change would result in:

301 (a) a change in the nature of a beneficial activity or reduction in the estimated amount
302 of benefit to a benefitted property, whether in size, quality, or otherwise, then that described in
303 the proposed management plan;

304 (b) an estimated total assessment to any benefitted business within the assessment area
305 that exceeds the estimate described in the proposed management plan; or

306 (c) a financing term that extends beyond the estimated term of financing under the

proposed management plan.

(3) After the adoption of an ordinance or resolution described in Subsection (1)(c)(ii), the legislative body may contract with a third party administrator to provide beneficial activities within the assessment area.

Section 8. Section 11-42b-108 is enacted to read:

11-42b-108. Amendments to management plan -- Procedure -- Notice requirements.

(1) After the legislative body adopts an ordinance or resolution approving a management plan as provided in Subsection 11-42b-108(1)(c)(ii) and contracts with a third party administrator to provide beneficial activities within the assessment area, the legislative body may amend the management plan if:

(a) the third party administrator submits to the legislative body a written request for amendments;

(b) subject to Subsection (2), the legislative body gives notice of the proposed amendments;

(c) the legislative body holds a public meeting no more than 90 days after the day on which the legislative body gives notice under Subsection (1)(b); and

(d) at the public meeting described in Subsection (1)(c), the legislative body adopts an ordinance or resolution approving the amendments to the management plan.

(2) The notice described in Subsection (1)(b) shall:

(a) describe the proposed amendments to the management plan;

(b) state the date, time, and place of the public meeting described in Subsection (1)(c); and

(c) (i) be posted in at least three public places within the specified county's geographic boundaries at least 20 but not more than 35 days before the day of the public meeting described in Subsection (1)(c); and

(ii) be published on the Utah Public Notice Website described in Section 63A-16-601 for four weeks before the public meeting described in Subsection (1)(c); and

(d) be mailed, postage prepaid, within 10 days after the first publication or posting of the notice under Subsection (2)(c) to each owner of benefitted property within the assessment area at the owner's mailing address.

Section 9. Section **11-42b-109** is enacted to read:

11-42b-109. Renewal of assessment area designation -- Procedure -- Disposition of previous revenues.

(1) Upon the expiration of an assessment area, the legislative body may, for a period not to exceed 10 years, renew the assessment area as provided in this section.

(2) (a) If there are no changes to the management plan or the designation of the third party administrator, the legislative body may not renew the assessment area unless:

(i) subject to Subsection (2)(c), the legislative body gives notice of the proposed renewal;

(ii) the legislative body holds a public meeting no more than 90 days after the day on which the legislative body gives notice under Subsection (2)(a)(i); and

(iii) at the public meeting described in Subsection (2)(a)(ii), the legislative body adopts an ordinance or resolution renewing the assessment area designation.

(b) If there are changes to the management plan or the designation of the third party administrator, the legislative body may not renew the assessment area unless the legislative body:

(i) gives notice of the proposed renewal in accordance with Section [11-42b-104](#);

(ii) receives and considers all protests filed under Section [11-42b-105](#);

(iii) holds a public hearing as provided in Section [11-42b-106](#);

(iv) holds a public meeting as provided in Section [11-42b-107](#); and

(v) at the public meeting described in Subsection (2)(b)(iv), adopts an ordinance or resolution renewing the assessment area.

(c) The notice described in Subsection (2)(a)(i) shall:

(i) state:

(A) that the legislative body proposes to renew the assessment area with no changes; and

(B) the date, time, and place of the public meeting described in Subsection (2)(a)(ii);

(ii) (A) be posted in at least three public places within the specified county's geographic boundaries at least 20 but not more than 35 days before the day of the public meeting described in Subsection (2)(a)(ii); and

(B) be published on the Utah Public Notice Website described in Section [63A-16-601](#)

for four weeks before the public meeting described in Subsection (2)(a)(ii); and

(iii) be mailed, postage prepaid, within 10 days after the first publication or posting of the notice under Subsection (2)(c)(ii) to each owner of benefitted property within the assessment area at the owner's mailing address.

(3) (a) Upon renewal of an assessment area, any remaining revenues derived from the levy of assessments, or any revenues derived from the sale of assets acquired with the revenues, shall be transferred to the renewed assessment area.

(b) If the renewed assessment area includes a benefitted property that was not included in the previous assessment area, the third party administrator may only expend revenues described in Subsection (3)(a) on benefitted properties that were included in the previous assessment area.

(c) If the renewed assessment area does not include a benefitted property that was included in the previous assessment area, the third party administrator shall refund to the owner of the benefitted property the revenues described in Subsection (3)(a) attributable to the benefitted property.

Section 10. Section 11-42b-110 is enacted to read:

11-42b-110. Dissolution of assessment area -- Procedure -- Disposition of revenues.

(1) The legislative body may dissolve an assessment area before the assessment area expires as provided in this section.

(2) The legislative body may not dissolve an assessment area under Subsection (1) unless:

(a) (i) the legislative body determines there has been a misappropriation of funds, malfeasance, or a violation of law in connection with the management of the assessment area; or

(ii) a petition to dissolve the assessment area:

(A) is signed by a qualified number of owners; and

(B) is submitted to the legislative body within the period described in Subsection (3);

(b) subject to Subsection (4), the legislative body gives notice of the proposed dissolution;

(c) the legislative body holds a public meeting; and

(d) at the public meeting described in Subsection (2)(c), the legislative body adopts an ordinance or resolution dissolving the assessment area.

(3) The owners of benefitted properties may submit to the legislative body a petition described in Subsection (2)(a)(ii):

(a) within a 30-day period that begins after the day on which the assessment area is designated by ordinance or resolution under Section [11-42b-107](#); or

(b) within the same 30-day period during each subsequent year in which the assessment area exists.

(4) The notice described in Subsection (2)(b) shall:

(a) state:

(i) the reasons for the proposed dissolution; and

(ii) the date, time, and place of the public meeting described in Subsection (2)(c);

(b) (i) be posted in at least three public places within the specified county's geographic boundaries at least 20 but not more than 35 days before the day of the public meeting described in Subsection (2)(c); and

(ii) be published on the Utah Public Notice Website described in Section [63A-16-601](#) for four weeks before the public meeting described in Subsection (2)(c); and

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

(5) Upon the dissolution of an assessment area, the third party administrator shall return to the owner of each benefitted property any remaining revenues attributable to the benefitted property.

Section 11. Section **11-42b-111** is enacted to read:

11-42b-111. Action to contest assessment or proceeding.

(1) A person who contests an assessment or any proceeding to designate an assessment area may commence a civil action against the specified county to:

(a) set aside a proceeding to designate an assessment area; or

(b) enjoin the levy or collection of an assessment.

(2) A person bringing an action under Subsection (1) shall bring the action in the district court with jurisdiction in the specified county.

(3) (a) Except as provided in Subsection (3)(b), a person may not begin the action against or serve a summons relating to the action on the specified county more than 30 days after:

(i) the effective date of the designation ordinance or resolution adopted under Section 11-42b-107, if the action relates to the designation of an assessment area or the levying of an assessment; or

(ii) the effective date of the ordinance or resolution adopted under Section 11-42b-108, if the action relates to the levying of an assessment under an amended management plan.

(b) If each benefitted property within an assessment area consents to the designation of the assessment area and the levying of an assessment, or if each benefitted property within an assessment area consents to the amendments to the management plan, as applicable, a person may not bring an action against or serve a summons relating to the action on the specified county more than 15 days after:

(i) the effective date of the designation ordinance or resolution adopted under Section 11-42b-107, if the action relates to the designation of an assessment area or the levying of an assessment; or

(ii) the effective date of the ordinance or resolution adopted under Section 11-42b-108, if the action relates to the levying of an assessment under an amended management plan.

(4) An action under Subsection (1) is the exclusive remedy of a person who contests an assessment or any proceeding to designate an assessment area.

(5) A court may not set aside, in part or in whole or declare invalid an assessment, a proceeding to designate an assessment area, or a proceeding to levy an assessment that meets the requirements of Section 11-42b-102 because of an error or irregularity that does not relate to the equity or justice of the assessment or proceeding.

(6) (a) A person may bring a claim of misuse of assessment funds through a mandamus action regardless of the expiration of the period for bringing an action under Subsection (3).

(b) This section does not prohibit the filing of criminal charges against or the prosecution of a party for the misuse of assessment funds.

Section 12. Section **11-42b-112** is enacted to read:

11-42b-112. No limitation on other county powers.

(1) This chapter does not limit a power that a specified county has under other

462 applicable law to:

463 (a) make an improvement or provide a service;

464 (b) create a district;

465 (c) levy an assessment or tax; or

466 (d) issue a bond or a refunding bond.

467 (2) If there is a conflict between a provision of this chapter and any other statutory
468 provision, the provision of this chapter governs.

469 Section 13. Section **11-42b-113** is enacted to read:

470 **11-42b-113. Severability.**

471 A court's invalidation of any provision of this chapter does not affect the validity of any
472 other provision of this chapter.