

Effective 3/28/2017

**Part 1
General Provisions**

11-42a-101 Title.

This chapter is known as the "Commercial Property Assessed Clean Energy Act" or "C-PACE Act."

Enacted by Chapter 470, 2017 General Session

11-42a-102 Definitions.

- (1) "Air quality standards" means that a vehicle's emissions are equal to or cleaner than the standards established in bin 4 Table S04-1, of 40 C.F.R. 86.1811-04(c)(6).
- (2)
 - (a) "Assessment" means the assessment that a local entity or the C-PACE district levies on private property under this chapter to cover the costs of an energy efficiency upgrade, a clean energy system, or an electric vehicle charging infrastructure.
 - (b) "Assessment" does not constitute a property tax but shares the same priority lien as a property tax.
- (3) "Assessment fund" means a special fund that a local entity establishes under Section 11-42a-206.
- (4) "Benefitted property" means private property within an energy assessment area that directly benefits from improvements.
- (5) "Bond" means an assessment bond and a refunding assessment bond.
- (6)
 - (a) "Clean energy system" means an energy system that:
 - (i) produces energy from clean resources, including:
 - (A) a photovoltaic system;
 - (B) a solar thermal system;
 - (C) a wind system;
 - (D) a geothermal system, including a generation system, a direct-use system, or a ground source heat pump system;
 - (E) a micro-hydro system;
 - (F) a biofuel system;
 - (G) energy derived from nuclear fuel; or
 - (H) any other clean source system that the governing body of the local entity approves; or
 - (ii) stores energy, including:
 - (A) a battery storage system; or
 - (B) any other energy storing system that the governing body or chief executive officer of a local entity approves.
 - (b) "Clean energy system" includes any improvement that relates physically or functionally to any of the products, systems, or devices listed in Subsection (6)(a)(i) or (ii).
 - (c) "Clean energy system" does not include a system described in Subsection (6)(a)(i) if the system provides energy to property outside the energy assessment area, unless the system:
 - (i)
 - (A) existed before the creation of the energy assessment area; and

- (B) beginning before January 1, 2017, provides energy to property outside of the area that became the energy assessment area;
 - (ii) provides energy to property outside the energy assessment area under an agreement with a public electrical utility that is substantially similar to agreements for other renewable energy systems that are not funded under this chapter; or
 - (iii) is a biofuel system.
- (7)
- (a) "Commercial or industrial real property" means private real property used directly or indirectly or held for one of the following purposes or activities, regardless of whether the purpose or activity is for profit:
 - (i) commercial;
 - (ii) mining;
 - (iii) agricultural;
 - (iv) industrial;
 - (v) manufacturing;
 - (vi) trade;
 - (vii) professional;
 - (viii) a private or public club;
 - (ix) a lodge;
 - (x) a business; or
 - (xi) a similar purpose.
 - (b) "Commercial or industrial real property" includes:
 - (i) private real property that is used as or held for dwelling purposes and contains:
 - (A) more than four rental units; or
 - (B) one or more owner-occupied or rental condominium units affiliated with a hotel; and
 - (ii) real property owned by:
 - (A) the military installation development authority, created in Section 63H-1-201; or
 - (B) the Utah Inland Port Authority, created in Section 11-58-201.
- (8) "Contract price" means:
- (a) up to 100% of the cost of installing, acquiring, refinancing, or reimbursing for an improvement, as determined by the owner of the property benefitting from the improvement; or
 - (b) the amount payable to one or more contractors for the assessment, design, engineering, inspection, and construction of an improvement.
- (9) "C-PACE" means commercial property assessed clean energy.
- (10) "C-PACE district" means the statewide authority established in Section 11-42a-106 to implement the C-PACE Act in collaboration with governing bodies, under the direction of OED.
- (11) "Electric vehicle charging infrastructure" means equipment that is:
- (a) permanently affixed to commercial or industrial real property; and
 - (b) designed to deliver electric energy to a qualifying electric vehicle or a qualifying plug-in hybrid vehicle.
- (12) "Energy assessment area" means an area:
- (a) within the jurisdictional boundaries of a local entity that approves an energy assessment area or, if the C-PACE district or a state interlocal entity levies the assessment, the C-PACE district or the state interlocal entity;
 - (b) containing only the commercial or industrial real property of owners who have voluntarily consented to an assessment under this chapter for the purpose of financing the costs of improvements that benefit property within the energy assessment area; and
 - (c) in which the proposed benefitted properties in the area are:

- (i) contiguous; or
 - (ii) located on one or more contiguous or adjacent tracts of land that would be contiguous or adjacent property but for an intervening right-of-way, including a sidewalk, street, road, fixed guideway, or waterway.
- (13) "Energy assessment bond" means a bond:
- (a) issued under Section 11-42a-401; and
 - (b) payable in part or in whole from assessments levied in an energy assessment area.
- (14) "Energy assessment lien" means a lien on property within an energy assessment area that arises from the levy of an assessment in accordance with Section 11-42a-301.
- (15) "Energy assessment ordinance" means an ordinance that a local entity adopts under Section 11-42a-201 that:
- (a) designates an energy assessment area;
 - (b) levies an assessment on benefitted property within the energy assessment area; and
 - (c) if applicable, authorizes the issuance of energy assessment bonds.
- (16) "Energy assessment resolution" means one or more resolutions adopted by a local entity under Section 11-42a-201 that:
- (a) designates an energy assessment area;
 - (b) levies an assessment on benefitted property within the energy assessment area; and
 - (c) if applicable, authorizes the issuance of energy assessment bonds.
- (17) "Energy efficiency upgrade" means an improvement that is:
- (a) permanently affixed to commercial or industrial real property; and
 - (b) designed to reduce energy or water consumption, including:
 - (i) insulation in:
 - (A) a wall, roof, floor, or foundation; or
 - (B) a heating and cooling distribution system;
 - (ii) a window or door, including:
 - (A) a storm window or door;
 - (B) a multiglazed window or door;
 - (C) a heat-absorbing window or door;
 - (D) a heat-reflective glazed and coated window or door;
 - (E) additional window or door glazing;
 - (F) a window or door with reduced glass area; or
 - (G) other window or door modifications;
 - (iii) an automatic energy control system;
 - (iv) in a building or a central plant, a heating, ventilation, or air conditioning and distribution system;
 - (v) caulk or weatherstripping;
 - (vi) a light fixture that does not increase the overall illumination of a building, unless an increase is necessary to conform with the applicable building code;
 - (vii) an energy recovery system;
 - (viii) a daylighting system;
 - (ix) measures to reduce the consumption of water, through conservation or more efficient use of water, including installation of:
 - (A) low-flow toilets and showerheads;
 - (B) timer or timing systems for a hot water heater; or
 - (C) rain catchment systems;
 - (x) a modified, installed, or remodeled fixture that is approved as a utility cost-saving measure by the governing body or executive of a local entity;

- (xi) measures or other improvements to effect seismic upgrades;
 - (xii) structures, measures, or other improvements to provide automated parking or parking that reduces land use;
 - (xiii) the extension of an existing natural gas distribution company line;
 - (xiv) an energy efficient elevator, escalator, or other vertical transport device;
 - (xv) any other improvement that the governing body or executive of a local entity approves as an energy efficiency upgrade; or
 - (xvi) any improvement that relates physically or functionally to any of the improvements listed in Subsections (17)(b)(i) through (xv).
- (18) "Energy system" means a product, system, device, or interacting group of devices that:
- (a) produces or stores energy; and
 - (b) is permanently affixed to commercial or industrial real property not located in the certified service area of a distribution electrical cooperative, as defined in Section 54-2-1.
- (19) "Governing body" means:
- (a) for a county, city, or town, the legislative body of the county, city, or town;
 - (b) for a special district, the board of trustees of the special district;
 - (c) for a special service district:
 - (i) if no administrative control board has been appointed under Section 17D-1-301, the legislative body of the county, city, town, or metro township that established the special service district; or
 - (ii) if an administrative control board has been appointed under Section 17D-1-301, the administrative control board of the special service district;
 - (d) for a public infrastructure district, the board of the public infrastructure district;
 - (e) for the military installation development authority created in Section 63H-1-201, the board, as that term is defined in Section 63H-1-102; and
 - (f) for the Utah Inland Port Authority, created in Section 11-58-201, the board, as defined in Section 11-58-102.
- (20) "Improvement" means a publicly or privately owned energy efficiency upgrade, clean energy system, or electric vehicle charging infrastructure that:
- (a) a property owner has requested; or
 - (b) has been or is being installed on a property for the benefit of the property owner.
- (21) "Incidental refunding costs" means any costs of issuing a refunding assessment bond and calling, retiring, or paying prior bonds, including:
- (a) legal and accounting fees;
 - (b) charges of financial advisors, escrow agents, certified public accountant verification entities, and trustees;
 - (c) underwriting discount costs, printing costs, and the costs of giving notice;
 - (d) any premium necessary in the calling or retiring of prior bonds;
 - (e) fees to be paid to the local entity to issue the refunding assessment bond and to refund the outstanding prior bonds;
 - (f) any other costs that the governing body determines are necessary and proper to incur in connection with the issuance of a refunding assessment bond; and
 - (g) any interest on the prior bonds that is required to be paid in connection with the issuance of the refunding assessment bond.
- (22) "Installment payment date" means the date on which an installment payment of an assessment is payable.
- (23) "Jurisdictional boundaries" means:
- (a) for the C-PACE district or any state interlocal entity, the boundaries of the state; and

- (b) for each local entity, the boundaries of the local entity.
- (24)
- (a) "Local entity" means:
 - (i) a county, city, or town;
 - (ii) a special service district, a special district, or an interlocal entity as that term is defined in Section 11-13-103;
 - (iii) a public infrastructure district, created under Title 17D, Chapter 4, Public Infrastructure District Act;
 - (iv) a state interlocal entity;
 - (v) the military installation development authority, created in Section 63H-1-201;
 - (vi) the Utah Inland Port Authority, created in Section 11-58-201; or
 - (vii) any political subdivision of the state.
 - (b) "Local entity" includes the C-PACE district solely in connection with:
 - (i) the designation of an energy assessment area;
 - (ii) the levying of an assessment; and
 - (iii) the assignment of an energy assessment lien to a third-party lender under Section 11-42a-302.
- (25) "Local entity obligations" means energy assessment bonds and refunding assessment bonds that a local entity issues.
- (26) "OED" means the Office of Energy Development created in Section 79-6-401.
- (27) "OEM vehicle" means the same as that term is defined in Section 19-1-402.
- (28) "Overhead costs" means the actual costs incurred or the estimated costs to be incurred in connection with an energy assessment area, including:
 - (a) appraisals, legal fees, filing fees, facilitation fees, and financial advisory charges;
 - (b) underwriting fees, placement fees, escrow fees, trustee fees, and paying agent fees;
 - (c) publishing and mailing costs;
 - (d) costs of levying an assessment;
 - (e) recording costs; and
 - (f) all other incidental costs.
- (29) "Parameters resolution" means a resolution or ordinance that a local entity adopts in accordance with Section 11-42a-201.
- (30) "Prior bonds" means the energy assessment bonds refunded in part or in whole by a refunding assessment bond.
- (31) "Prior energy assessment ordinance" means the ordinance levying the assessments from which the prior bonds are payable.
- (32) "Prior energy assessment resolution" means the resolution levying the assessments from which the prior bonds are payable.
- (33) "Property" includes real property and any interest in real property, including water rights and leasehold rights.
- (34) "Public electrical utility" means a large-scale electric utility as that term is defined in Section 54-2-1.
- (35) "Qualifying electric vehicle" means a vehicle that:
 - (a) meets air quality standards;
 - (b) is not fueled by natural gas;
 - (c) draws propulsion energy from a battery with at least 10 kilowatt hours of capacity; and
 - (d) is an OEM vehicle except that the vehicle is fueled by a fuel described in Subsection (35)(c).
- (36) "Qualifying plug-in hybrid vehicle" means a vehicle that:
 - (a) meets air quality standards;

- (b) is not fueled by natural gas or propane;
- (c) has a battery capacity that meets or exceeds the battery capacity described in Subsection 30D(b)(3), Internal Revenue Code; and
- (d) is fueled by a combination of electricity and:
 - (i) diesel fuel;
 - (ii) gasoline; or
 - (iii) a mixture of gasoline and ethanol.
- (37) "Reduced payment obligation" means the full obligation of an owner of property within an energy assessment area to pay an assessment levied on the property after the local entity has reduced the assessment because of the issuance of a refunding assessment bond, in accordance with Section 11-42a-403.
- (38) "Refunding assessment bond" means an assessment bond that a local entity issues under Section 11-42a-403 to refund, in part or in whole, energy assessment bonds.
- (39) "Special district" means a special district under Title 17B, Limited Purpose Local Government Entities - Special Districts.
- (40) "Special service district" means the same as that term is defined in Section 17D-1-102.
- (41) "State interlocal entity" means:
 - (a) an interlocal entity created under Chapter 13, Interlocal Cooperation Act, by two or more counties, cities, or towns that collectively represent at least a majority of the state's population; or
 - (b) an entity that another state authorized, before January 1, 2017, to issue bonds, notes, or other obligations or refunding obligations to finance or refinance projects in the state.
- (42) "Third-party lender" means a trust company, savings bank, savings and loan association, bank, credit union, or any other entity that provides loans directly to property owners for improvements authorized under this chapter.

Amended by Chapter 347, 2025 General Session

11-42a-103 No limitation on other local entity powers -- Conflict with other statutory provisions.

- (1) This chapter does not limit a power that a local entity has under other applicable law to:
 - (a) make an improvement or provide a service;
 - (b) create a district;
 - (c) levy an assessment or tax; or
 - (d) issue a bond or a refunding bond.
- (2) If there is a conflict between a provision of this chapter and any other statutory provision, the provision of this chapter governs.
- (3) After January 1, 2017, a local entity or the C-PACE district may create an energy assessment area within the certificated service territory of a public electrical utility for the installation of a clean energy system with a nameplate rating of:
 - (a) no more than 2.0 megawatts; or
 - (b) more than 2.0 megawatts to serve load that the public electrical utility does not already serve.

Amended by Chapter 53, 2024 General Session

11-42a-104 Action to contest assessment or proceeding -- Requirements -- Exclusive remedy -- Bonds and assessment incontestable.

- (1)

- (a) A person may commence a civil action against a local entity to contest an assessment, a proceeding to designate an energy assessment area, or a proceeding to levy an assessment.
- (b) The remedies available in a civil action described in Subsection (1)(a) are:
 - (i) setting aside the proceeding to designate an energy assessment area; or
 - (ii) enjoining the levy or collection of an assessment.
- (2)
 - (a) A person bringing an action under Subsection (1) shall bring the action in the district court with jurisdiction in the county in which the energy assessment area is located.
 - (b) A person may not begin the action against or serve a summons relating to the action on the local entity more than 30 days after the earlier of:
 - (i) the date of publication or posting of the notice of the adoption of a parameters resolution that the local entity adopts in accordance with Section 11-42a-201;
 - (ii) the effective date of the energy assessment resolution or ordinance; or
 - (iii) the written agreement between a local entity and a third-party lender, described in Section 11-42a-302.
- (3) An action under Subsection (1) is the exclusive remedy of a person:
 - (a) claiming an error or irregularity in an assessment, a proceeding to designate an energy assessment area, or a proceeding to levy an assessment; or
 - (b) challenging a bondholder's or third-party lender's right to repayment.
- (4) A court may not set aside, in part or in whole or declare invalid an assessment, a proceeding to designate an energy assessment area, or a proceeding to levy an assessment because of an error or irregularity that does not relate to the equity or justice of the assessment or proceeding.
- (5) Except as provided in Subsection (6), after the expiration of the 30-day period described in Subsection (2)(b):
 - (a) the following become incontestable against any person that has not commenced an action and served a summons as provided in this section:
 - (i) the written agreement entered into or to be entered into under Section 11-42a-302;
 - (ii) the energy assessment bonds and refunding assessment bonds:
 - (A) that a local entity has issued or intends to issue; or
 - (B) with respect to the creation of an energy assessment area; and
 - (iii) assessments levied on property in the energy assessment area; and
 - (b) a court may not inquire into and a person may not bring a suit to enjoin or challenge:
 - (i) the issuance or payment of an energy assessment bond or a refunding assessment bond;
 - (ii) the payment under the written agreement between a local entity and a third-party lender described in Section 11-42a-302;
 - (iii) the levy, collection, or enforcement of an assessment;
 - (iv) the legality of an energy assessment bond, a refunding assessment bond, or a written agreement between a local entity and a third-party lender described in Section 11-42a-302;or
 - (v) an assessment.
- (6)
 - (a) A person may bring a claim of misuse of assessment funds through a mandamus action regardless of the expiration of the 30-day period described in Subsection (2)(b).
 - (b) This section does not prohibit the filing of criminal charges against or the prosecution of a party for the misuse of assessment funds.

Amended by Chapter 431, 2018 General Session

11-42a-105 Severability.

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

Enacted by Chapter 470, 2017 General Session

11-42a-106 C-PACE district established -- OED to direct and administer C-PACE district.

- (1) There is created the C-PACE district.
- (2) The C-PACE district may, subject to Subsection (3):
 - (a) designate an energy assessment area;
 - (b) levy an assessment;
 - (c) assign an energy assessment lien to a third-party lender; and
 - (d) collect an assessment within an energy assessment area in accordance with Section 11-42a-302.
- (3)
 - (a) The C-PACE district may only take the actions described in Subsection (2) if a governing body makes a written request of the C-PACE district to, in accordance with this chapter:
 - (i) create an energy assessment area within the jurisdiction of the governing body; and
 - (ii) finance an improvement within that energy assessment area.
 - (b) Before creating an energy assessment area under Subsection (3)(a), the C-PACE district shall enter into an agreement with the relevant public electrical utility to establish the scope of the improvement to be financed.
- (4)
 - (a) OED shall administer and direct the operation of the C-PACE district.
 - (b) OED may:
 - (i) adopt a fee schedule and charge fees, in accordance with Section 63J-1-504, to cover the cost of administering and directing the operation of the C-PACE district;
 - (ii) delegate OED's powers under this chapter to a third party to assist in administering and directing the operation of the C-PACE district; and
 - (iii) make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish procedures necessary to carry out the actions described in Subsection (2).
 - (c) If OED delegates OED's power under Subsection (4)(b)(ii), OED shall:
 - (i) delegate the authority through a written agreement with the third party; and
 - (ii) ensure that the written agreement includes provisions that:
 - (A) require the third party to be subject to an audit by the state auditor regarding the delegation;
 - (B) require the third party to submit to OED monthly reports, including information regarding the assessments the C-PACE district levies and the payments the C-PACE district receives; and
 - (C) insulate OED from liability for the actions of the third party and the C-PACE district while under the direction and administration of the third party.
 - (d) OED is subject to Title 63G, Chapter 7, Governmental Immunity Act of Utah.
- (5) The state is not liable for the acts or omissions of the C-PACE district or the C-PACE district's directors, administrators, officers, agents, employees, third-party directors or administrators, or third-party lenders, including any obligation, expense, debt, or liability of the C-PACE district.

Enacted by Chapter 470, 2017 General Session

