Effective 3/28/2017

Chapter 42a
Commercial Property Assessed Clean Energy Act

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;

(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 the military installation development authority created in Section 63H-1-201, the board, as that term is defined in Section 63H-1-102; and
(e) 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 state interlocal entity;
(iv) the military installation development authority, created in Section 63H-1-201;
(v) the Utah Inland Port Authority, created in Section 11-58-201; or
(vi) 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 42, 2024 General Session
Amended by Chapter 53, 2024 General Session
Amended by Chapter 438, 2024 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

Part 2
Energy Assessments

11-42a-201 Resolution or ordinance designating an energy assessment area, levying an assessment, and issuing an energy assessment bond -- Notice of adoption.

(1)
- (a) Except as otherwise provided in this chapter, and subject to the requirements of this part, at the request of a property owner on whose property or for whose benefit an improvement is being installed or being reimbursed, a governing body of a local entity may adopt an energy assessment resolution or an energy assessment ordinance that:
  - (i) designates an energy assessment area;
  - (ii) levies an assessment within the energy assessment area; and
  - (iii) if applicable, authorizes the issuance of an energy assessment bond.
- (b) The governing body of a local entity may, by adopting a parameters resolution, delegate to an officer of the local entity, in accordance with the parameters resolution, the authority to:
  - (i) execute an energy assessment resolution or ordinance that:
    - (A) designates an energy assessment area;
    - (B) levies an energy assessment lien; and
    - (C) approves the final interest rate, price, principal amount, maturities, redemption features, and other terms of the energy assessment bonds; and
  - (ii) approve and execute all documents related to the designation of the energy assessment area, the levying of the energy assessment lien, and the issuance of the energy assessment bonds.
- (c) The boundaries of a proposed energy assessment area may:
  - (i) include property that is not intended to be assessed; and
  - (ii) overlap, be coextensive with, or be substantially coterminous with the boundaries of any other energy assessment area or an assessment area created under Title 11, Chapter 42, Assessment Area Act.
- (d) The energy assessment resolution or ordinance described in Subsection (1)(a) is adequate for purposes of identifying the property to be assessed within the energy assessment area if the resolution or ordinance describes the property to be assessed by legal description and tax identification number.

(2)
- (a) A local entity that adopts an energy assessment resolution or ordinance under Subsection (1)(a) or a parameters resolution under Subsection (1)(b) shall give notice of the adoption of the energy assessment resolution or ordinance or the parameters resolution by publishing a copy of the resolution or ordinance for the local entity's jurisdiction, as a class A notice under Section 63G-30-102, for at least 21 days.
- (b) Except as provided in Subsection (2)(a), a local entity is not required to make any other publication or posting of the resolution or ordinance.

(3) Notwithstanding any other statutory provision regarding the effective date of a resolution or ordinance, each energy assessment resolution or ordinance takes effect on the later of:
  (a) the date on which the governing body of the local entity adopts the energy assessment resolution or ordinance;
  (b) the date of publication or posting of the notice of adoption of either the energy assessment resolution or ordinance or the parameters resolution described in Subsection (2); or
  (c) at a later date as provided in the resolution or ordinance.
(4)
  (a) The governing body of each local entity that has adopted an energy assessment resolution or ordinance under Subsection (1) shall, within five days after the effective date of the resolution or ordinance, file a notice of assessment interest with the recorder of the county in which the property to be assessed is located.
  (b) Each notice of assessment interest under Subsection (4)(a) shall:
    (i) state that the local entity has an assessment interest in the property to be assessed; and
    (ii) describe the property to be assessed by legal description and tax identification number.
  (c) If a local entity fails to file a notice of assessment interest under this Subsection (4):
    (i) the failure does not invalidate the designation of an energy assessment area; and
    (ii) the local entity may not assess a levy against a subsequent purchaser of a benefitted property that lacked recorded notice unless:
      (A) the subsequent purchaser gives written consent;
      (B) the subsequent purchaser has actual notice of the assessment levy; or
      (C) the subsequent purchaser purchased the property after a corrected notice was filed under Subsection (4)(d).
  (d) The local entity may file a corrected notice if the entity fails to comply with the date or other requirements for filing a notice of assessment interest.
  (e) If a governing body has filed a corrected notice under Subsection (4)(d), the local entity may not retroactively collect or adjust the amount of the levy to recapture lost funds for a levy that the local entity was prohibited from collecting, if applicable, under Subsection (4)(c).

Amended by Chapter 435, 2023 General Session

11-42a-202 Designation of energy assessment area -- Requirements.

A local entity may not include property in an energy assessment area unless the owner of the property located in the energy assessment area provides to the local entity:
(1) evidence that there are no existing delinquent taxes, special assessments, or water or sewer charges on the property;
(2) evidence that the property is not subject to a trust deed or other lien on which there is a recorded notice of default, foreclosure, or delinquency that has not been cured;
(3) evidence that there are no involuntary liens, including a lien on real property or on the proceeds of a contract relating to real property, for services, labor, or materials furnished in connection with the construction or improvement of the property; and
(4) the written consent of each person or institution holding a lien on the property.

Enacted by Chapter 470, 2017 General Session

11-42a-203 Levying an assessment within an energy assessment area-- Prerequisites.
(1) If a local entity designates an energy assessment area in accordance with this chapter, the local entity may:

(a) levy an assessment within the energy assessment area; and
(b) collect the assessment by:
(i) directly billing the property owner; or
(ii) inclusion on a property tax notice issued in accordance with this section and Section 59-2-1317.
(2) If a local entity includes an assessment on a property tax notice as described in Subsection (1)(b) and bills for the assessment in the same manner as a property tax, the assessment constitutes a lien, is enforced, and is subject to other penalty provisions, in accordance with this chapter.
(3) If a local entity includes an assessment on a property tax notice, the county treasurer shall, on the property tax notice:
(a) clearly state that the assessment is for the improvement provided by the local entity; and
(b) itemize the assessment separately from any other tax, fee, charge, interest, or penalty that is included on the property tax notice in accordance with Section 59-2-1317.

Enacted by Chapter 470, 2017 General Session

11-42a-204 Limit on amount of assessment.
(1) An assessment levied within an energy assessment area may not, in the aggregate, exceed the sum of:
(a) the contract price or estimated contract price;
(b) overhead costs not to exceed 15% of the sum of the contract price or estimated contract price;
(c) an amount for contingencies of not more than 10% of the sum of the contract price or estimated contract price, if the assessment is levied before the completion of the construction of the improvements in the energy assessment area;
(d) capitalized interest; or
(e) an amount sufficient to fund a reserve fund.
(2) A local entity may only use the proceeds of an energy assessment bond or any third-party financing to refinance or reimburse the costs of improvements authorized under this chapter if the property owner incurred or financed the costs no earlier than three years before the day on which the local entity:
(a) adopts a parameters resolution;
(b) adopts an energy assessment resolution or ordinance; or
(c) assigns the energy assessment lien.

Amended by Chapter 431, 2018 General Session

11-42a-205 Installment payment of assessments.
(1) In an energy assessment resolution or ordinance that a local entity adopts under Subsection 11-42a-201(1)(a), the governing body may provide that some or all of the assessment be paid in installments:
(a) in accordance with the resolution or ordinance; and
(b) over a period not to exceed 30 years from the effective date of the resolution or ordinance.
(2)
(a) Each governing body that adopts an energy assessment resolution or ordinance that provides for the assessment to be paid in installments shall ensure that the resolution or ordinance provides that the unpaid balance of the assessment bears interest at a fixed rate, a variable

rate, or a combination of fixed and variable rates, as determined by the governing body, from the effective date of the resolution or ordinance or another date that the resolution or ordinance specifies.

(b) Each governing body that adopts an energy assessment resolution or ordinance that provides for the unpaid balance of the assessment to bear interest at a variable rate shall ensure that the resolution or ordinance specifies:

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

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

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

(3) Interest payable on assessments may include:

(a) interest on energy assessment bonds;

(b) ongoing costs that the local entity incurs for administration of the energy assessment area;

(c) a trustee's fees and expenses; and

(d) any costs that the local entity incurs with respect to:

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

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

(4) A property owner shall pay interest imposed in an energy assessment resolution or ordinance annually or at more frequent intervals as the resolution or ordinance provides, in addition to the amount of each installment.

(5)

(a) At any time, a property owner may prepay some or all of the assessment levied against the owner's property.

(b) A local entity may require that a prepayment of an installment include:

(i) an amount equal to the interest that would accrue on the assessment to the next date on which interest is payable on a bond issued or a loan made in anticipation of the collection of the assessment; and

(ii) the amount necessary, as determined by the governing body or the officer that the governing body designates, to ensure the availability of money to pay:

(A) interest that becomes due and payable on a bond or loan described in Subsection (5)(b)(i); and

(B) any premiums that become payable on a loan that is prepaid or on a bond that is called for redemption in order to use the money from the prepaid assessment installment.

Amended by Chapter 431, 2018 General Session

11-42a-206 Assessment fund -- Uses of money in the fund -- Treasurer's duties.

(1) Unless a local entity has assigned an energy assessment lien to a third-party lender under Section 11-42a-302, the governing body of each local entity that levies an assessment under this part on benefitted property within an energy assessment area, or the local entity's designee, may establish an assessment fund.

(2) The governing body or the local entity's designee, as applicable, shall deposit into the assessment fund all money paid to or for the benefit of the local entity from an assessment and interest on the assessment.

(3) The local entity may only expend money in an assessment fund for paying:

(a) local entity obligations; and

(b) costs that the local entity or the local entity's designee incurs with respect to the administration of the energy assessment area.

(4)

(a) The treasurer of the local entity or the local entity's designee, as applicable, is the custodian of the assessment fund, subject to Subsection (4)(c)(i).
(b) The treasurer of the local entity or the local entity's designee, as applicable, shall:
(i) keep the assessment fund intact and separate from all other local entity funds and money;
(ii) invest money in the assessment fund in accordance with Title 51, Chapter 7, State Money Management Act; and
(iii) keep on deposit in the assessment fund any interest the local entity receives from the investment of money in the assessment fund and use the interest exclusively for the purposes for which the governing body or the local entity's designee established the assessment fund.
(c) The treasurer of the local entity or the local entity's designee, as applicable, may:
(i) arrange for a trustee bank to hold the assessment fund on behalf of the local entity; and
(ii) pay money out of the assessment fund subject to Subsection (3).

Enacted by Chapter 470, 2017 General Session

Part 3
Energy Assessment Liens

11-42a-301 Assessment constitutes a lien -- Characteristics of an energy assessment lien.
(1) If a local entity that adopts an assessment resolution or ordinance records the assessment resolution or ordinance and the notice of proposed assessment, in accordance with Section 11-42a-201, in the office of the recorder of the county in which the assessed property is located, each assessment levied under this chapter, including any installment of an assessment, interest, and any penalties and costs of collection, constitutes a political subdivision lien, as that term is defined in Section 11-60-102, against the assessed property, in accordance with Title 11, Chapter 60, Political Subdivision Lien Authority, and subject to the provisions of this chapter, beginning on the effective date of the energy assessment resolution or ordinance that the local entity adopts under Subsection 11-42a-201(1)(a).
(2) An energy assessment lien under this section:
(a) is superior to the lien of a trust deed, mortgage, mechanic's or materialman's lien, or other encumbrances;
(b) has the same priority as, but is separate and distinct from:
(i) a lien for general property taxes;
(ii) any other energy assessment lien levied under this chapter; or
(iii) an assessment lien levied under Title 11, Chapter 42, Assessment Area Act;
(c) applies to any reduced payment obligations without interruption, change in priority, or alteration in any manner; and
(d) continues until the assessment and any related reduced payment obligations, interest, penalties, and costs are paid, regardless of:
(i) a sale of the property for or on account of a delinquent general property tax, special tax, or other assessment; or
(ii) the issuance of a tax deed, an assignment of interest by the county, or a sheriff's certificate of sale or deed.

Amended by Chapter 197, 2018 General Session

Amended by Chapter 431, 2018 General Session

11-42a-302 Assignment of energy assessment lien.

(1)
- (a) In lieu of issuing energy assessment bonds to finance the costs of improvements under this chapter, a third-party lender may provide financing to a property owner to finance, refinance, or reimburse the costs of improvements.
- (b) A local entity, through the local entity's executive or administrator, as applicable, may assign to the third-party lender described in Subsection (1)(a) the local entity's rights in the energy assessment lien by entering into a written agreement with the third-party lender.

(2)
- (a) If a local entity assigns the local entity's rights in an energy assessment lien to a third-party lender under Subsection (1), the local entity's executive or administrator, as applicable, may authorize the designation of the energy assessment area and the levying of the assessment in lieu of the adoption of an energy assessment resolution or ordinance by the governing body of the local entity under Section 11-42a-201.
- (b) If a local entity assigns the local entity's rights under Subsection (1)(b), the local entity shall ensure that the written agreement with the third-party lender:
  - (i) includes the information required to be included within an energy assessment resolution or ordinance described in Section 11-42a-201;
  - (ii) complies with Section 11-42a-201;
  - (iii) requires the third-party lender to be subject to an audit by the state auditor regarding the assigned energy assessment lien;
  - (iv) requires the third-party lender to submit to the local entity monthly reports, including information regarding the payments the third-party lender receives; and
  - (v) insulates the local entity from liability for the actions of the third-party lender.

(3) If a local entity assigns an energy assessment lien to a third-party lender, in accordance with Subsection (1), except as provided in Subsection 11-42a-303(2), the third-party lender has and possesses the same powers and rights at law or in equity to enforce the lien that the local entity creating the lien would have if the local entity did not assign the lien, including the rights and powers of the local entity under Sections 11-42a-303 and 11-42a-304.

(4)
- (a) Any financing in connection with the assignment of an energy assessment lien to a third-party lender under this section is not:
  - (i) an obligation of the local entity that assigns the lien; or
  - (ii) a charge against the general credit or taxing powers of the local entity that assigns the lien.
- (b) A local entity may not obligate itself to pay any assessment levied or bond issued under this chapter.
- (c) The assessments and the property upon which the energy assessment lien is recorded are the sole securities for the assignment of an energy assessment lien.

Enacted by Chapter 470, 2017 General Session

11-42a-303 Enforcement of an energy assessment lien.

(1)
- (a) If an assessment or an installment of an assessment is not paid when due in a given year:
  - (i) subject to Subsection (1)(c):

(A) by September 15, the governing body of the local entity that levies the assessment shall certify any unpaid amount calculated as of the date of certification to the treasurer of the county in which the assessed property is located; and

(B) the county treasurer shall include the certified amount on the property tax notice required by Section 59-2-1317 for that year; and

(ii) the local entity may sell the property on which the assessment has been levied for the amount due plus interest, penalties, and costs:

(A) in the manner provided in Title 59, Chapter 2, Part 13, Collection of Taxes, for the sale of property for delinquent general property taxes;

(B) by judicial foreclosure; or

(C) in the manner provided in Title 57, Chapter 1, Conveyances, as though the property were the subject of a trust deed in favor of the local entity if the owner of record of the property at the time the local entity initiates the process to sell the property in accordance with Title 57, Chapter 1, Conveyances, has executed a property owner's consent form in accordance with Subsection (1)(b).

(b) The local entity shall ensure that the consent form described in Subsection (1)(a)(ii)(C):

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

(ii) describes any additional benefits that the local entity expects the assessed property to receive from the improvements;

(iii) designates the date and time by which the fully executed consent form is required to be submitted to the local entity; and

(iv)

(A) appoints a trustee that satisfies the requirements described in Section 57-1-21;

(B) gives the trustee the power of sale; and

(C) explains that if an assessment or an installment of an assessment is not paid when due, the local entity may sell the property owner's property to satisfy the amount due plus interest, penalties, and costs, in the manner described in Title 57, Chapter 1, Conveyances.

(c)

(i) The certification of the unpaid amount described in Subsection (1)(a)(i):

(A) has no effect on the amount due plus interest, penalties, and costs or other requirements of the energy assessment as described in the energy assessment resolution or ordinance; and

(B) is required to provide for the ability of the local entity to collect the delinquent energy assessment by the sale of property in a sale for delinquent general property taxes and tax notice charges, as that term is defined in Section 59-2-1301.5, in accordance with Title 59, Chapter 2, Part 13, Collection of Taxes.

(ii) A local entity's failure to certify an amount in accordance with Subsection (1)(a)(i) or a county treasurer's failure to include the certified amount on the property tax notice is not a defense to and does not delay, prohibit, or diminish a local entity's lien rights or authority to pursue any enforcement remedy, other than a delay in the local entity's ability to collect the delinquent energy assessment as described in Subsection (1)(c)(i)(B).

(d) Nothing in Subsection (1)(a)(i) or in Title 11, Chapter 60, Political Subdivision Lien Authority, prohibits or diminishes a local entity's authority to pursue any remedy in Subsection (1)(a)(ii).

(2) If the local entity has assigned the local entity's rights to a third-party lender under Section 11-42a-302, the local entity shall provide written instructions to the third-party lender as to which method of enforcement the third-party lender shall pursue.

(3) Except as otherwise provided in this chapter, each tax sale under Subsection (1)(a)(ii)(B) is governed by Title 59, Chapter 2, Part 13, Collection of Taxes, to the same extent as if the sale were for the sale of property for delinquent general property taxes.
(4)
(a) In a foreclosure under Subsection (1)(a)(ii)(C):
(i) the local entity may bid at the sale;
(ii) if no one bids at the sale and pays the local entity the amount due on the assessment, plus interest and costs, the property is considered sold to the local entity for those amounts; and
(iii) the local entity's chief financial officer may substitute and appoint one or more successor trustees, as provided in Section 57-1-22.
(b)
(i) The local entity shall disclose the designation of a trustee under Subsection (4)(a)(ii) in the notice of default that the trustee gives to commence the foreclosure.
(ii) The local entity is not required to disclose the designation of a trustee under Subsection (4)(a)(ii) in an instrument separate from the notice described in Subsection (4)(b)(i).
(5)
(a) The redemption of property that is the subject of a tax sale under Subsection (1)(b) is governed by Title 59, Chapter 2, Part 13, Collection of Taxes.
(b) The redemption of property that is the subject of a foreclosure proceeding under Subsection (1)(a)(ii)(C) is governed by Title 57, Chapter 1, Conveyances.
(6) The remedies described in this part for the collection of an assessment and the enforcement of an energy assessment lien are cumulative, and the use of one or more of those remedies does not deprive the local entity of any other available remedy, means of collecting the assessment, or means of enforcing the energy assessment lien.

Amended by Chapter 197, 2018 General Session

11-42a-304 Default in the payment of an installment of an assessment -- Interest and costs -- Restoring the property owner to the right to pay installments.
(1) If an assessment is payable in installments and a default occurs in the payment of an installment when due:
(a) the local entity may:
(i) declare the delinquent amount to be immediately due and subject to collection as provided in this chapter;
(ii) if the financed improvements are not completed by the completion deadline to which the property owner agreed in the bond or financing documents, then within 60 days after the completion deadline, accelerate payment of the total unpaid balance of the assessment and declare the whole of the unpaid principal and the interest then due to be immediately due and payable; and
(iii) charge and collect all costs of collection, including attorney fees; and
(b) except as provided in Subsection (1)(a)(ii), the local entity may not accelerate payment of the total unpaid balance of the assessment.
(2) Delinquency interest accrues from the date of delinquency on all applicable amounts described in Subsection (1)(a) until the property owner pays the delinquency in full.
(3) A local entity shall ensure that any interest that the local entity assesses under this section and any collection costs that the local entity charges under this section are the same as for delinquent real property taxes for the year in which the balance of the fee or charge becomes delinquent unless the local entity determines otherwise.

(4) Notwithstanding Subsection (1), a property owner may regain the right to pay an assessment in installments as if no default had occurred if the owner pays the amount of all unpaid installments that are past due with interest, collection and foreclosure costs, and administrative, redemption, and other fees, including attorney fees, before:
  (a) the final date that payment may be legally made under a final sale or foreclosure of property to collect delinquent assessment installments, if the governing body enforces collection under Title 59, Chapter 2, Part 13, Collection of Taxes; or
  (b) the end of the three-month reinstatement period provided in Section 57-1-31, if the governing body enforces collection through the method of foreclosing trust deeds.

Enacted by Chapter 470, 2017 General Session

11-42a-305 Release and discharge of energy assessment lien -- Notice of dissolution of energy assessment area.

(1)
  (a) Upon payment in full of an assessment on a parcel of property, the local entity or third-party lender, in the event the local entity has assigned the energy assessment lien to the third-party lender, shall file a release and discharge of the energy assessment lien on the property in the office of the recorder of the county where the property is located.
  (b) The local entity or third-party lender shall ensure that each release and discharge under Subsection (1)(a):
    (i) includes a legal description of the affected property; and
    (ii) complies with other applicable requirements for recording a document.

(2)
  (a) Upon payment in full of all assessments levied within an energy assessment area, or upon providing for payment in full, the local entity or third-party lender, in the event the local entity has assigned the energy assessment lien to the third-party lender, shall file a notice of the dissolution of the energy assessment area in the office of the recorder of the county where the property within the energy assessment area is located.
  (b) The local entity or third-party lender shall ensure that each notice under Subsection (2)(a):
    (i) includes a legal description of the property assessed within the energy assessment area; and
    (ii) complies with all other applicable requirements for recording a document.

Enacted by Chapter 470, 2017 General Session

Part 4
Energy Assessment Bonds and Refunding Assessment Bonds

11-42a-401 Local entity may authorize the issuance of energy assessment bonds -- Limit on amount of bonds -- Features of energy assessment bonds.

(1) A local entity may, subject to the requirements of this chapter, authorize the issuance of a bond to pay, refinance, or reimburse the costs of improvements in an energy assessment area, and other related costs, against the funds that the local entity will receive because of an assessment in an energy assessment area.

(2) A local entity may, by adoption of a parameters resolution, delegate to one or more officers of the issuer the authority to:
(a) in accordance with the parameters resolution, approve the final interest rate or rates, price, principal amount, maturity or maturities, redemption features, and other terms of the bond; and
(b) approve and execute all documents relating to the issuance of a bond.
(3) The aggregate principal amount of a bond authorized under Subsection (1) may not exceed:
(a) the unpaid balance of assessments at the time the bond is issued; or
(b) the total costs of the improvements to be refinanced or reimbursed if the property owner incurred the costs of improvements to be refinanced or reimbursed no earlier than three years before the date on which the local entity:
(i) adopted a parameters resolution;
(ii) adopted an energy assessment resolution or ordinance; or
(iii) assigned the energy assessment lien.
(4) The issuer of an energy assessment bond issued under this section shall ensure that:
(a) the energy assessment bond:
(i) is fully negotiable for all purposes;
(ii) matures at a time that does not exceed the period that installments of assessments in the assessment area are due and payable, plus one year;
(iii) is issued in registered form as provided in Title 15, Chapter 7, Registered Public Obligations Act;
(iv) provides that interest be paid semiannually, annually, or at another interval as specified by the governing body; and
(v) is not dated earlier than the effective date of the assessment ordinance; and
(b) the resolution authorizing the issuance of the bond defines the place where the bond is payable, the form of the bond, and the manner in which the bond is sold.
(5)
(a) A local entity may:
(i)
(A) provide that an energy assessment bond may be called for redemption before maturity; and
(B) fix the terms and conditions of redemption, including the notice to be given and any premium to be paid;
(ii) subject to Subsection (5)(b), require an energy assessment bond to bear interest at a fixed or variable rate, or a combination of fixed and variable rates;
(iii) specify the terms and conditions under which:
(A) an energy assessment bond bearing interest at a variable interest rate may be converted to bear interest at a fixed interest rate; and
(B) the local entity agrees to repurchase the bonds;
(iv) engage a remarketing agent and indexing agent, subject to the terms and conditions to which the governing body agrees; and
(v) include all costs associated with an energy assessment bond, including any costs resulting from any of the actions the local entity is authorized to take under this section, in an assessment levied under Section 11-42a-203.
(b) If an energy assessment bond carries a variable interest rate, the local entity shall specify:
(i) the basis upon which the variable rate is to be determined over the life of the bond;
(ii) the manner in which and schedule upon which the rate is to be adjusted; and
(iii) a maximum rate that the bond may carry.

(6) A local entity may only use the proceeds of an energy assessment bond to refinance or reimburse costs of improvements authorized under this chapter if the property owner incurred the costs no earlier than three years before the date on which the local entity:
  (a) adopted a parameters resolution;
  (b) adopted an energy assessment resolution or ordinance; or
  (c) assigned the energy assessment lien.

Amended by Chapter 431, 2018 General Session

11-42a-402 Energy assessment bond not a local entity's general obligation -- Liability and responsibility of a local entity issuing an energy assessment bond -- No state liability.
(1)
  (a) An energy assessment bond that a local entity issues under this chapter:
    (i) is a limited obligation of the local entity; and
    (ii) does not constitute nor give rise to:
      (A) a general obligation or liability of the local entity or the state; or
      (B) a charge against the general credit or taxing powers of the local entity or the state.
  (b) The local entity shall ensure that the limitation described in Subsection (1)(a) is plainly stated upon the face of the bond.
  (c) The assessments and the property upon which the energy assessment lien is recorded are the sole securities for an energy assessment bond.
(2)
  (a) A local entity that issues an energy assessment bond is not liable and may not obligate itself for payment of the bond, except for a fund that the local entity creates and receives from assessments against which the bond is issued.
  (b) Unless otherwise provided in this chapter, a local entity that issues an energy assessment bond is responsible for:
    (i) the lawful levy of all assessments; and
    (ii) the faithful accounting, collection, settlement, and payment of assessments.

Enacted by Chapter 470, 2017 General Session

11-42a-403 Refunding assessment bonds.
(1) A local entity may, by a resolution adopted by the governing body, authorize the issuance of a refunding assessment bond as provided in this section, to repay prior bonds in whole or in part, whether at or before the maturity of the prior bonds, at stated maturity, upon redemption, or upon declaration of maturity.
(2)
  (a) Subject to Subsection (2)(b), the issuance of a refunding assessment bond is governed by Title 11, Chapter 27, Utah Refunding Bond Act.
  (b) If there is a conflict between a provision of Title 11, Chapter 27, Utah Refunding Bond Act, and a provision of this part, the provision of this part governs.
(3) In issuing a refunding assessment bond, the local entity shall require the refunding assessment bond and interest on the bond to be payable from and secured, to the extent the prior bonds were payable from and secured, by:
  (a) the same assessments; or
  (b) the reduced assessments adopted by the governing body under Section 11-42a-404.
(4) A refunding assessment bond:

(a) is payable solely from the sources described in Subsection (3);
(b) matures no later than one year after the date of final maturity of the prior bonds;
(c) does not mature at a time or bear interest at a rate that will cause the local entity to be unable to pay the bond when due from the sources listed in Subsection (3);
(d) bears interest as the governing body determines and subject to the provisions relating to interest in Section 11-42a-401; and
(e) pays one or more issues of the issuing local entity's prior bonds.
(5) If the bond refunds two or more issues of a local entity's prior bonds, the local entity may issue the bond in one or more series.

Enacted by Chapter 470, 2017 General Session

11-42a-404 Reducing assessments after issuance of refunding assessment bonds -- Retroactive effect.

(1) Each local entity that issues a refunding assessment bond shall adopt a resolution or ordinance amending the previously adopted energy assessment resolution or ordinance that:
(a) reduces, as determined by the local entity's governing body:
(i) the assessments levied under the previous resolution or ordinance;
(ii) the interest payable on the assessments levied under the previous resolution or ordinance; or
(iii) both the assessments levied under the previous resolution or ordinance and the interest payable on those assessments;
(b) allocates the reductions under Subsection (1)(a) so the then unpaid assessments levied against benefitted property within the assessment area and the unpaid interest on those assessments receive a proportionate share of the reductions;
(c) states the amounts of the reduced payment obligation for each property assessed in the prior resolution or ordinance; and
(d) states the effective date of any reduction in the assessment levied in the prior resolution or ordinance.
(2) In a resolution or ordinance described in Subsection (1), the local entity is not required to describe each block, lot, part of a block or lot, tract, or parcel of property assessed.
(3) The local entity shall ensure that each reduction under Subsection (1)(a) is equal to the amount by which the principal, interest, or combined principal and interest payable on the refunding assessment bond, after accounting for incidental refunding costs associated with the refunding assessment bond, is less than the amount of principal, interest, or combined principal and interest payable on the prior bonds.
(4) A reduction under Subsection (1)(a) does not apply to an assessment or interest paid before the reduction.
(5) A resolution or ordinance under Subsection (1) may not become effective before the date when any principal, interest, redemption premium on the prior bonds, and advances under Subsection 11-42-607(5)(a) are fully paid or legally considered to be paid.
(6) Except for the amount of reduction to a prior assessment or interest on a prior assessment, neither the issuance of a refunding assessment bond nor the adoption of a resolution or ordinance under Subsection (1) affects:
(a) the validity or continued enforceability of a prior assessment or interest on the assessment; or
(b) the validity, enforceability, or priority of an energy assessment lien.
(7) Each reduction of a prior assessment and the interest on the assessment continues to exist in favor of the refunding assessment bonds.

(8) Even after payment in full of the prior bonds that a refunding assessment bond refunds, an energy assessment lien continues to exist to secure payment of:
  (a) the reduced payment obligations;
  (b) the penalties and costs of collection of those obligations; and
  (c) the refunding assessment bond.
(9) A lien securing a reduced payment obligation from which a refunding assessment bond is payable and by which the bond is secured is subordinate to an energy assessment lien that secures the original or prior assessment and prior bonds until the prior bonds are paid in full or legally considered to be paid in full.
(10) Unless prior bonds are paid in full simultaneously with the issuance of a refunding assessment bond, the local entity shall:
  (a) irrevocably set aside the proceeds of the refunding assessment bond in an escrow or other separate account; and
  (b) pledge the account described in Subsection (10)(a) as security for the payment of the prior bonds, the refunding assessment bond, or both.
(11) This part applies to any refunding assessment bond:
  (a) regardless of whether the local entity already issued the bond; and
  (b) regardless of whether the local entity issued the prior bonds that the bond refunded under prior law and regardless of whether that law is currently in effect.

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