

SB0273S01 compared with SB0273

~~text~~ shows text that was in SB0273 but was deleted in SB0273S01.

Inserted text shows text that was not in SB0273 but was inserted into SB0273S01.

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Senator J. Stuart Adams proposes the following substitute bill:

ENERGY DEVELOPMENT AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: J. Stuart Adams

House Sponsor: _____

LONG TITLE

General Description:

This bill enacts the Commercial Property Assessed Clean Energy Act or C-PACE Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ enacts the Commercial Property Assessed Clean Energy Act or C-PACE Act;
- ▶ repeals provisions related to energy assessments from the Assessment Area Act;
- ▶ limits the availability of judicial recourse to challenge or enjoin certain assessments and bonds;
- ▶ creates the C-PACE district;
- ▶ requires the Office of Energy Development (OED) to administer and direct the actions of the C-PACE district;

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- ▶ allows OED to delegate OED's authority over the C-PACE district to a third party, subject to certain contractual provisions;
- ▶ provides for a local governing body to adopt an energy assessment resolution or ordinance to designate an energy assessment area and levy an energy assessment upon private property where the property owner consents to the assessment;
- ▶ allows a local entity to levy an assessment against government land under certain circumstances;
- ▶ allows a property owner to pay an energy assessment in installments;
- ▶ provides for the creation of an assessment fund and limits the use and investment of money in the fund;
- ▶ describes the characteristics of an energy assessment lien;
- ▶ allows a local entity to assign an energy assessment lien to a third-party lender to provide financing for certain improvements, subject to certain contractual provisions;
- ▶ provides for the enforcement of an energy assessment lien, including for delinquent assessment payments;
- ▶ provides for the release and discharge of an assessed property and an energy assessment area;
- ▶ allows a local entity to issue an energy assessment bond and a refunding assessment bond;
- ▶ limits the liability and obligation of a local entity issuing an energy assessment bond;
- ▶ provides for the reduction of assessments after the issuance of a refunding assessment bond;
- ▶ subjects a refunding assessment bond that a local entity has already issued to the provisions of this bill;
- ▶ adds funds that OED collects for directing and administering the C-PACE district to the list of nonlapsing funds and accounts in the Budgetary Procedures Act;
- ▶ enacts a sunset date, subject to review, for the nonlapsing status of OED's funds;
- ▶ allows OED to charge fees for the performance of OED's duties; and
- ▶ makes technical and conforming changes.

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Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

- 11-42-102**, as last amended by Laws of Utah 2016, Chapter 371
- 11-42-103**, as last amended by Laws of Utah 2016, Chapter 371
- 11-42-202**, as last amended by Laws of Utah 2016, Chapters 85 and 371
- 11-42-301**, as last amended by Laws of Utah 2016, Chapter 371
- 11-42-408**, as last amended by Laws of Utah 2016, Chapter 371
- 11-42-411**, as last amended by Laws of Utah 2016, Chapter 371
- 63I-1-263**, as last amended by Laws of Utah 2016, Chapters 65, 136, 156, 322, and 408
- 63J-1-505**, as last amended by Laws of Utah 2014, Chapter 189
- 63J-1-602.4**, as last amended by Laws of Utah 2016, Chapters 193 and 240
- 63M-4-401**, as last amended by Laws of Utah 2015, Chapters 356 and 378

ENACTS:

- 11-42a-101**, Utah Code Annotated 1953
- 11-42a-102**, Utah Code Annotated 1953
- 11-42a-103**, Utah Code Annotated 1953
- 11-42a-104**, Utah Code Annotated 1953
- 11-42a-105**, Utah Code Annotated 1953
- 11-42a-106**, Utah Code Annotated 1953
- 11-42a-201**, Utah Code Annotated 1953
- 11-42a-202**, Utah Code Annotated 1953
- 11-42a-203**, Utah Code Annotated 1953
- 11-42a-204**, Utah Code Annotated 1953
- 11-42a-205**, Utah Code Annotated 1953
- 11-42a-206**, Utah Code Annotated 1953
- 11-42a-301**, Utah Code Annotated 1953
- 11-42a-302**, Utah Code Annotated 1953

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11-42a-303, Utah Code Annotated 1953

11-42a-304, Utah Code Annotated 1953

11-42a-305, Utah Code Annotated 1953

11-42a-401, Utah Code Annotated 1953

11-42a-402, Utah Code Annotated 1953

11-42a-403, Utah Code Annotated 1953

11-42a-404, Utah Code Annotated 1953

REPEALS:

11-42-209, as last amended by Laws of Utah 2016, Chapter 371

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

Section 1. Section **11-42-102** is amended to read:

11-42-102. Definitions.

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

(a) protests relating to:

(i) property that has been deleted from a proposed assessment area; or

(ii) an improvement that has been deleted from the proposed improvements to be provided to property within the proposed assessment area; and

(b) protests that have been withdrawn under Subsection 11-42-203(3).

(2) "Assessment area" means an area, or, if more than one area is designated, the aggregate of all areas within a local entity's jurisdictional boundaries that is designated by a local entity under Part 2, Designating an Assessment Area, for the purpose of financing the costs of improvements, operation and maintenance, or economic promotion activities that benefit property within the area.

(3) "Assessment bonds" means bonds that are:

(a) issued under Section 11-42-605; and

(b) payable in part or in whole from assessments levied in an assessment area,

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improvement revenues, and a guaranty fund or reserve fund.

(4) "Assessment fund" means a special fund that a local entity establishes under Section 11-42-412.

(5) "Assessment lien" means a lien on property within an assessment area that arises from the levy of an assessment, as provided in Section 11-42-501.

(6) "Assessment method" means the method:

(a) by which an assessment is levied against benefitted property, whether by frontage, area, taxable value, fair market value, lot, parcel, number of connections, equivalent residential unit, any combination of these methods, or any other method; and

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

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

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

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

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

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

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

(13) (a) "Commercial or industrial real property" means 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) industrial;

(iv) manufacturing;

(v) governmental;

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- (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 real property that:

- (i) is used as or held for dwelling purposes; and
- (ii) contains more than four rental units.

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

(15) "Contract price" means:

- (a) the cost of acquiring an improvement, if the improvement is acquired; or
- (b) the amount payable to one or more contractors for the design, engineering, inspection, and construction of an improvement.

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

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

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

- (a) sponsoring festivals and markets;
- (b) promoting business investment or activities;
- (c) helping to coordinate public and private actions; and
- (d) developing and issuing publications designed to improve the economic well-being of the commercial area.

~~[(19) "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 as those terms are defined in Subsection 59-7-605(1).]~~

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

~~[(a) insulation in:]~~

~~[(i) a wall, roof, floor, or foundation; or]~~

~~[(ii) a heating and cooling distribution system;]~~

~~[(b) a window or door, including:]~~

~~[(i) a storm window or door;]~~

~~[(ii) a multiglazed window or door;]~~

~~[(iii) a heat-absorbing window or door;]~~

~~[(iv) a heat-reflective glazed and coated window or door;]~~

~~[(v) additional window or door glazing;]~~

~~[(vi) a window or door with reduced glass area; or]~~

~~[(vii) other window or door modifications;]~~

~~[(c) an automatic energy control system;]~~

~~[(d) in a building or a central plant, a heating, ventilation, or air conditioning and distribution system;]~~

~~[(e) caulk or weatherstripping;]~~

~~[(f) 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;]~~

~~[(g) an energy recovery system;]~~

~~[(h) a daylighting system;]~~

~~[(i) measures to reduce the consumption of water, through conservation or more efficient use of water, including:]~~

~~[(i) installation of low-flow toilets and showerheads;]~~

~~[(ii) installation of timer or timing systems for a hot water heater; or]~~

~~[(iii) installation of rain catchment systems; or]~~

~~[(j) a modified, installed, or remodeled fixture that is approved as a utility cost-saving measure by the governing body of a local entity.]~~

~~[(21)] (19) "Environmental remediation activity" means a surface or subsurface enhancement, effort, cost, initial or ongoing maintenance expense, facility, installation, system,~~

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earth movement, or change to grade or elevation [~~which~~] that improves the use, function, aesthetics, or environmental condition of [~~publically or privately~~] publicly owned property.

~~[(22)]~~ (20) "Equivalent residential unit" means a dwelling, unit, or development that is equal to a single-family residence in terms of the nature of its use or impact on an improvement to be provided in the assessment area.

~~[(23)]~~ (21) "Governing body" means:

- (a) for a county, city, or town, the legislative body of the county, city, or town;
- (b) for a local district, the board of trustees of the local district;
- (c) for a special service district:
 - (i) the legislative body of the county, city, or town that established the special service district, if no administrative control board has been appointed under Section 17D-1-301; or
 - (ii) the administrative control board of the special service district, if an administrative control board has been appointed under Section 17D-1-301; and
- (d) for the military installation development authority created in Section 63H-1-201, the authority board, as defined in Section 63H-1-102.

~~[(24)]~~ (22) "Guaranty fund" means the fund established by a local entity under Section 11-42-701.

~~[(25)]~~ (23) "Improved property" means property upon which a residential, commercial, or other building has been built.

~~[(26)]~~ (24) "Improvement":

(a) (i) means a publicly owned infrastructure, system, [~~or other facility, a publicly or privately owned energy efficiency upgrade, a publicly or privately owned renewable energy system, or publicly or privately owned~~] or environmental remediation activity that:

- (A) a local entity is authorized to provide;
- (B) the governing body of a local entity determines is necessary or convenient to enable the local entity to provide a service that the local entity is authorized to provide; or
- (C) a local entity is requested to provide through an interlocal agreement in accordance with Title 11, Chapter 13, Interlocal Cooperation Act; and

(ii) includes facilities in an assessment area, including a private driveway, an irrigation ditch, and a water turnout, that:

- (A) can be conveniently installed at the same time as an infrastructure, system, or other

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facility described in Subsection [~~(26)~~] (24)(a)(i); and

(B) are requested by a property owner on whose property or for whose benefit the infrastructure, system, or other facility is being installed; or

(b) for a local district created to assess groundwater rights in accordance with Section 17B-1-202, means a system or plan to regulate groundwater withdrawals within a specific groundwater basin in accordance with Sections 17B-1-202 and 73-5-15.

[~~(27)~~] (25) "Improvement revenues":

(a) means charges, fees, impact fees, or other revenues that a local entity receives from improvements; and

(b) does not include revenue from assessments.

[~~(28)~~] (26) "Incidental refunding costs" means any costs of issuing refunding assessment bonds 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, 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 bonds 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 refunding assessment bonds; and

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

[~~(29)~~] (27) "Installment payment date" means the date on which an installment payment of an assessment is payable.

[~~(30)~~] (28) "Interim warrant" means a warrant issued by a local entity under Section 11-42-601.

[~~(31)~~] (29) "Jurisdictional boundaries" means:

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

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

[~~(32)~~] (30) "Local district" means a local district under Title 17B, Limited Purpose

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Local Government Entities - Local Districts.

~~[(33)]~~ (31) "Local entity" means a county, city, town, special service district, local district, an interlocal entity as defined in Section 11-13-103, a military installation development authority created in Section 63H-1-201, or other political subdivision of the state.

~~[(34)]~~ (32) "Local entity obligations" means assessment bonds, refunding assessment bonds, interim warrants, and bond anticipation notes issued by a local entity.

~~[(35)]~~ (33) "Mailing address" means:

(a) a property owner's last-known address using the name and address appearing on the last completed real property assessment roll of the county in which the property is located; and

(b) if the property is improved property:

(i) the property's street number; or

(ii) the post office box, rural route number, or other mailing address of the property, if a street number has not been assigned.

~~[(36)]~~ (34) "Net improvement revenues" means all improvement revenues that a local entity has received since the last installment payment date, less all amounts payable by the local entity from those improvement revenues for operation and maintenance costs.

~~[(37)]~~ (35) "Operation and maintenance costs":

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

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

~~[(38)]~~ (36) "Overhead costs" means the actual costs incurred or the estimated costs to be incurred by a local entity in connection with an assessment area for appraisals, legal fees, filing fees, financial advisory charges, underwriting fees, placement fees, escrow, trustee, and paying agent fees, publishing and mailing costs, costs of levying an assessment, recording costs, and all other incidental costs.

~~[(39)]~~ (37) "Prior assessment ordinance" means the ordinance levying the assessments from which the prior bonds are payable.

~~[(40)]~~ (38) "Prior assessment resolution" means the resolution levying the assessments from which the prior bonds are payable.

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~~[(41)]~~ (39) "Prior bonds" means the assessment bonds that are refunded in part or in whole by refunding assessment bonds.

~~[(42)]~~ (40) "Project engineer" means the surveyor or engineer employed by or the private consulting engineer engaged by a local entity to perform the necessary engineering services for and to supervise the construction or installation of the improvements.

~~[(43)]~~ (41) "Property" includes real property and any interest in real property, including water rights and leasehold rights.

~~[(44)]~~ (42) "Property price" means the price at which a local entity purchases or acquires by eminent domain property to make improvements in an assessment area.

~~[(45)]~~ (43) "Provide" or "providing," with reference to an improvement, includes the acquisition, construction, reconstruction, renovation, maintenance, repair, operation, and expansion of an improvement.

~~[(46)]~~ (44) "Public agency" means:

- (a) the state or any agency, department, or division of the state; and
- (b) a political subdivision of the state.

~~[(47)]~~ (45) "Reduced payment obligation" means the full obligation of an owner of property within an assessment area to pay an assessment levied on the property after the assessment has been reduced because of the issuance of refunding assessment bonds, as provided in Section 11-42-608.

~~[(48)]~~ (46) "Refunding assessment bonds" means assessment bonds that a local entity issues under Section 11-42-607 to refund, in part or in whole, assessment bonds.

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

~~[(a) produces energy from renewable resources, including:]~~

~~[(i) a photovoltaic system;]~~

~~[(ii) a solar thermal system;]~~

~~[(iii) a wind system;]~~

~~[(iv) a geothermal system, including:]~~

~~[(A) a generation system;]~~

~~[(B) a direct-use system; or]~~

~~[(C) a ground source heat pump system;]~~

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~~[(v) a microhydro system; or]~~

~~[(vi) any other renewable source system approved by the governing body of a local entity; or]~~

~~[(b) stores energy, including:]~~

~~[(i) a battery storage system; or]~~

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

~~[(50)] (47) "Reserve fund" means a fund established by a local entity under Section 11-42-702.~~

~~[(51)] (48) "Service" means:~~

~~(a) water, sewer, storm drainage, garbage collection, library, recreation, communications, or electric service;~~

~~(b) economic promotion activities; or~~

~~(c) any other service that a local entity is required or authorized to provide.~~

~~[(52)] (49) "Special service district" means the same as that term is defined in Section 17D-1-102.~~

~~[(53)] (50) "Unassessed benefitted government property" means property that a local entity may not assess in accordance with Section 11-42-408 but is benefitted by an improvement, operation and maintenance, or economic promotion activities.~~

~~[(54)] (51) "Unimproved property" means property upon which no residential, commercial, or other building has been built.~~

~~[(55)] (52) "Voluntary assessment area" means an assessment area that contains only property whose owners have voluntarily consented to an assessment.~~

Section 2. Section **11-42-103** is amended to read:

11-42-103. Limit on effect of this chapter.

(1) Nothing in this chapter may be construed to authorize a local entity to provide an improvement or service that the local entity is not otherwise authorized to provide.

(2) Notwithstanding Subsection (1), a local entity may provide [~~a renewable energy system, an energy efficiency upgrade, electric vehicle charging infrastructure, or~~] an environmental remediation activity that the local entity finds or determines to be in the public interest.

Section 3. Section **11-42-202** is amended to read:

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

- (1) Each notice required under Subsection 11-42-201(2)(a) shall:
 - (a) state that the local entity proposes to:
 - (i) designate one or more areas within the local entity's jurisdictional boundaries as an assessment area;
 - (ii) provide an improvement to property within the proposed assessment area; and
 - (iii) finance some or all of the cost of improvements by an assessment on benefitted property within the assessment area;
 - (b) describe the proposed assessment area by any reasonable method that allows an owner of property in the proposed assessment area to determine that the owner's property is within the proposed assessment area;
 - (c) describe, in a general and reasonably accurate way, the improvements to be provided to the assessment area, including:
 - (i) the nature of the improvements; and
 - (ii) the location of the improvements, by reference to streets or portions or extensions of streets or by any other means that the governing body chooses that reasonably describes the general location of the improvements;
 - (d) state the estimated cost of the improvements as determined by a project engineer;
 - (e) for the version of notice mailed in accordance with Subsection (4)(b), state the estimated total assessment specific to the benefitted property for which the notice is mailed;
 - (f) state that the local entity proposes to levy an assessment on benefitted property within the assessment area to pay some or all of the cost of the improvements according to the estimated benefits to the property from the improvements;
 - (g) if applicable, state that an unassessed benefitted government property will receive improvements for which the cost will be allocated proportionately to the remaining benefitted properties within the proposed assessment area and that a description of each unassessed benefitted government property is available for public review at the location or website described in Subsection (6);
 - (h) state the assessment method by which the governing body proposes to levy the assessment, including, if the local entity is a municipality or county, whether the assessment

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will be collected:

(i) by directly billing a property owner; or

(ii) by inclusion on a property tax notice issued in accordance with Section 59-2-1317

and in compliance with Section 11-42-401;

(i) state:

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

(ii) the method by which the governing body will determine the number of protests required to defeat the designation of the proposed assessment area or acquisition or construction of the proposed improvements; and

(iii) in large, boldface, and conspicuous type that a property owner must protest the designation of the assessment area in writing if the owner objects to the area designation or being assessed for the proposed improvements, operation and maintenance costs, or economic promotion activities;

(j) state the date, time, and place of the public hearing required in Section 11-42-204;

(k) if the governing body elects to create and fund a reserve fund under Section 11-42-702, include a description of:

(i) how the reserve fund will be funded and replenished; and

(ii) how remaining money in the reserve fund is to be disbursed upon full payment of the bonds;

(l) if the governing body intends to designate a voluntary assessment area, include a property owner consent form that:

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

(ii) describes any additional benefits that the governing body 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 governing body; and

(iv) if the governing body intends to enforce an assessment lien on the property in accordance with Subsection 11-42-502.1(2)(c):

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

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(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;

(m) if the local entity intends to levy an assessment to pay operation and maintenance costs or for economic promotion activities, include:

(i) a description of the operation and maintenance costs or economic promotion activities to be paid by assessments and the initial estimated annual assessment to be levied;

(ii) a description of how the estimated assessment will be determined;

(iii) a description of how and when the governing body will adjust the assessment to reflect the costs of:

(A) in accordance with Section 11-42-406, current economic promotion activities; or

(B) current operation and maintenance costs;

(iv) a description of the method of assessment if different from the method of assessment to be used for financing any improvement; and

(v) a statement of the maximum number of years over which the assessment will be levied for:

(A) operation and maintenance costs; or

(B) economic promotion activities;

(n) if the governing body intends to divide the proposed assessment area into classifications under Subsection 11-42-201(1)(b), include a description of the proposed classifications;

(o) if applicable, state the portion and value of the improvement that will be increased in size or capacity to serve property outside of the assessment area and how the increases will be financed; and

(p) state whether the improvements will be financed with a bond and, if so, the currently estimated interest rate and term of financing, subject to Subsection (2), for which the benefitted properties within the assessment area may be obligated.

(2) The estimated interest rate and term of financing in Subsection (1)(p) may not be interpreted as a limitation to the actual interest rate incurred or the actual term of financing as subject to the market rate at the time of the issuance of the bond.

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(3) A notice required under Subsection 11-42-201(2)(a) may contain other information that the governing body considers to be appropriate, including:

(a) the amount or proportion of the cost of the improvement to be paid by the local entity or from sources other than an assessment;

(b) the estimated total amount of each type of assessment for the various improvements to be financed according to the method of assessment that the governing body chooses; and

(c) provisions for any improvements described in Subsection [~~11-42-102(26)(a)(ii)~~] 11-42-102(24)(a)(ii).

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

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

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

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

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

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

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

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

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

(a) the property owner gives written consent;

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

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

Section 4. Section **11-42-301** is amended to read:

11-42-301. Improvements made only under contract let to lowest responsive, responsible bidder -- Publishing notice -- Sealed bids -- Procedure -- Exceptions to contract requirement.

(1) Except as otherwise provided in this section, a local entity may make improvements in an assessment area only under contract let to the lowest responsive, responsible bidder for the kind of service, material, or form of construction that the local entity's governing body determines in compliance with any applicable local entity ordinances.

(2) A local entity may:

(a) divide improvements into parts;

(b) (i) let separate contracts for each part; or

(ii) combine multiple parts into the same contract; and

(c) let a contract on a unit basis.

(3) (a) A local entity may not let a contract until after publishing notice as provided in Subsection (3)(b):

(i) at least one time in a newspaper of general circulation within the boundaries of the local entity at least 15 days before the date specified for receipt of bids; and

(ii) in accordance with Section 45-1-101, at least 15 days before the date specified for receipt of bids.

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(b) Each notice under Subsection (3)(a) shall notify contractors that the local entity will receive sealed bids at a specified time and place for the construction of the improvements.

(c) Notwithstanding a local entity's failure, through inadvertence or oversight, to publish the notice or to publish the notice within 15 days before the date specified for receipt of bids, the governing body may proceed to let a contract for the improvements if the local entity receives at least three sealed and bona fide bids from contractors by the time specified for the receipt of bids.

(d) A local entity may publish a notice required under this Subsection (3) at the same time as a notice under Section 11-42-202.

(4) (a) A local entity may accept as a sealed bid a bid that is:

- (i) manually sealed and submitted; or
- (ii) electronically sealed and submitted.

(b) The governing body or project engineer shall, at the time specified in the notice under Subsection (3), open and examine the bids.

(c) In open session, the governing body:

- (i) shall declare the bids; and
- (ii) may reject any or all bids if the governing body considers the rejection to be for the public good.

(d) The local entity may award the contract to the lowest responsive, responsible bidder even if the price bid by that bidder exceeds the estimated costs as determined by the project engineer.

(e) A local entity may in any case:

- (i) refuse to award a contract;
- (ii) obtain new bids after giving a new notice under Subsection (3);
- (iii) determine to abandon the assessment area; or
- (iv) not make some of the improvements proposed to be made.

(5) A local entity is not required to let a contract as provided in this section for:

(a) an improvement or part of an improvement the cost of which or the making of which is donated or contributed;

(b) an improvement that consists of furnishing utility service or maintaining improvements;

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(c) labor, materials, or equipment supplied by the local entity;

(d) the local entity's acquisition of completed or partially completed improvements in an assessment area;

(e) design, engineering, and inspection costs incurred with respect to the construction of improvements in an assessment area; or

(f) additional work performed in accordance with the terms of a contract duly let to the lowest responsive, responsible bidder.

(6) A local entity may itself furnish utility service and maintain improvements within an assessment area.

(7) (a) A local entity may acquire completed or partially completed improvements in an assessment area, but may not pay an amount for those improvements that exceeds their fair market value.

(b) Upon the local entity's payment for completed or partially completed improvements, title to the improvements shall be conveyed to the local entity or another public agency.

(8) The provisions of Title 11, Chapter 39, Building Improvements and Public Works Projects, and Section 72-6-108 do not apply to improvements to be constructed in an assessment area.

~~[(9)(a) Except as provided in Subsection (9)(b), this section does not apply to a voluntary assessment area designated for the purpose of levying an assessment for an energy efficiency upgrade, a renewable energy system, or electric vehicle charging infrastructure.]~~

~~[(b)(i) A local entity that designates a voluntary assessment area described in Subsection (9)(a) shall provide to each owner of property to be assessed a list of service providers authorized by the local entity to provide the energy efficiency upgrade, renewable energy system, or electric vehicle charging infrastructure.]~~

~~[(ii) A property owner described in Subsection (9)(b)(i) shall select a service provider from the list to provide the energy efficiency upgrade, renewable energy system, or electric vehicle charging infrastructure for the owner's property.]~~

Section 5. Section **11-42-408** is amended to read:

11-42-408. Assessment against government land prohibited -- Exception.

(1) (a) Except as provided in Subsection (2), a local entity may not levy an assessment

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against property owned by the federal government or a public agency, even if the property benefits from the improvement.

(b) Notwithstanding Subsection (1)(a), a public agency may contract with a local entity:

(i) for the local entity to provide an improvement to property owned by the public agency; and

(ii) to pay for the improvement provided by the local entity.

(c) Nothing in this section may be construed to prevent a local entity from imposing on and collecting from a public agency, or a public agency from paying, a reasonable charge for a service rendered or material supplied by the local entity to the public agency, including a charge for water, sewer, or lighting service.

(2) Notwithstanding Subsection (1):

(a) a local entity may continue to levy and enforce an assessment against property acquired by a public agency within an assessment area if the acquisition occurred after the assessment area was designated; and

(b) property that is subject to an assessment lien at the time it is acquired by a public agency continues to be subject to the lien and to enforcement of the lien if the assessment and interest on the assessment are not paid when due~~[-and]~~.

~~[(c) a local entity may levy an assessment against property owned by the federal government or a public agency if the federal government or public agency voluntarily enters into a voluntary assessment area for the purpose of financing an energy efficiency upgrade, a renewable energy system, or electric vehicle charging infrastructure.]~~

Section 6. Section **11-42-411** is amended to read:

11-42-411. Installment payment of assessments.

(1) (a) In an assessment resolution or ordinance, the governing body may, subject to Subsection (1)(b) and except as provided in Subsection (2)(c), provide that some or all of the assessment be paid in installments over a period not to exceed 20 years from the effective date of the resolution or ordinance.

(b) If an assessment resolution or ordinance provides that some or all of the assessment be paid in installments for a period exceeding 10 years from the effective date of the resolution or ordinance, the governing body:

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(i) shall make a determination that:

(A) the improvement for which the assessment is made has a reasonable useful life for the full period during which installments are to be paid; or

(B) it would be in the best interests of the local entity and the property owners for installments to be paid for more than 10 years; and

(ii) may provide in the resolution or ordinance that no assessment is payable during some or all of the period ending three years after the effective date of the resolution or ordinance.

(2) An assessment resolution or ordinance that provides for the assessment to be paid in installments may provide that the unpaid balance be paid over the period of time that installments are payable:

(a) in substantially equal installments of principal; or

(b) in substantially equal installments of principal and interest~~[, or]~~.

~~[(c) for an assessment levied for an energy efficiency upgrade, a renewable energy system, or electric vehicle charging infrastructure;]~~

~~[(i) in accordance with the assessment resolution or ordinance; and]~~

~~[(ii) over a period not to exceed 30 years from the effective date of the resolution or ordinance.]~~

(3) (a) Each assessment resolution or ordinance that provides for the assessment to be paid in installments shall, subject to Subsections (3)(b) and (c), provide that the unpaid balance of the assessment bear interest at a fixed rate, 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 specified in the resolution or ordinance.

(b) If the assessment is for operation and maintenance costs or for the costs of economic promotion activities:

(i) a local entity may charge interest only from the date each installment is due; and

(ii) the first installment of an assessment shall be due 15 days after the effective date of the assessment resolution or ordinance.

(c) If an assessment resolution or ordinance provides for the unpaid balance of the assessment to bear interest at a variable rate, the assessment resolution or ordinance shall specify:

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- (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.
- (4) Interest payable on assessments may include:
- (a) interest on assessment bonds;
 - (b) ongoing local entity costs incurred for administration of the assessment area; and
 - (c) any costs incurred 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.
- (5) Interest imposed in an assessment resolution or ordinance shall be paid in addition to the amount of each installment annually or at more frequent intervals as provided in the assessment resolution or ordinance.
- (6) (a) Except for an assessment for operation and maintenance costs or for the costs of economic promotion activities, a property owner may pay some or all of the entire assessment without interest if paid within 25 days after the assessment resolution or ordinance takes effect.
- (b) After the 25-day period stated in Subsection (6)(a), a property owner may at any time prepay some or all of the assessment levied against the owner's property.
- (c) A local entity may require a prepayment of an installment to include:
- (i) an amount equal to the interest that would accrue on the assessment to the next date on which interest is payable on bonds issued in anticipation of the collection of the assessment; and
 - (ii) the amount necessary, in the governing body's opinion or the opinion of the officer designated by the governing body, to assure the availability of money to pay:
 - (A) interest that becomes due and payable on those bonds; and
 - (B) any premiums that become payable on bonds that are called in order to use the money from the prepaid assessment installment.

Section 7. Section **11-42a-101** is enacted to read:

CHAPTER 42a. COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY ACT

Part 1. General Provisions

11-42a-101. Title.

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

Section 8. Section **11-42a-102** is enacted to read:

11-42a-102. Definitions.

(1) (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 renewable 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.

(2) "Assessment fund" means a special fund that a local entity establishes under Section 11-42a-206.

(3) "Benefitted property" means private property within an energy assessment area that directly benefits from improvements.

(4) "Bond" means an assessment bond and a refunding assessment bond.

(5) (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 private real property that:

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

(ii) contains more than four rental units.

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(6) "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.

(7) "C-PACE" means commercial property assessed clean energy.

(8) "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.

(9) "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, as those terms are defined in Section 59-7-605.

(10) "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; ~~and~~

(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 ~~area~~ 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.

(11) "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.

(12) "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.

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(13) "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.

(14) "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.

(15) "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;

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(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 (15)(b)(i) through ~~(xvi)~~xv.

(16) "Governing body" means:

(a) for a county, city, town, or metro township, the legislative body of the county, city, town, or metro township;

(b) for a local district, the board of trustees of the local 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; and

(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.

~~{~~ (17) "Improved property" means property upon which a residential, commercial, industrial, or other building has been built.

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~~(18)~~¹⁷ "Improvement" means a publicly or privately owned energy efficiency upgrade, renewable 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.

~~(19)~~¹⁸ "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.

~~(20)~~¹⁹ "Installment payment date" means the date on which an installment payment of an assessment is payable.

~~(21)~~²⁰ "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.

~~(22)~~²¹ "Local district" means a local district under Title 17B, Limited Purpose Local Government Entities - Local Districts.

~~(23)~~²² (a) "Local entity" means:

(i) a county, city, town, or metro township;

(ii) a special service district, a local 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; or

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(v) 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.

(~~24~~23) "Local entity obligations" means energy assessment bonds and refunding assessment bonds that a local entity issues.

(~~25~~24) "OED" means the Office of Energy Development created in Section 63M-4-401.

(~~26~~25) "Overhead costs" means the actual costs incurred or the estimated costs to be incurred in connection with an energy assessment area ~~{ for appraisals }~~, 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.

(~~27~~26) "Prior bonds" means the energy assessment bonds refunded in part or in whole by a refunding assessment bond.

(~~28~~27) "Prior energy assessment ordinance" means the ordinance levying the assessments from which the prior bonds are payable.

(~~29~~28) "Prior energy assessment resolution" means the resolution levying the assessments from which the prior bonds are payable.

(~~30~~29) "Property" includes real property and any interest in real property, including water rights and leasehold rights.

(~~31~~30) "Public ~~agency~~" means:

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

~~— (b) a political subdivision}~~electrical utility" means a large-scale electric utility as that term is defined in Section ~~11-49-102~~54-2-1.

(~~32~~31) "Reduced payment obligation" means the full obligation of an owner of

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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.

(~~(33)~~32) "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.

(~~(34)~~33)(a) "Renewable energy system" means a product, system, device, or interacting group of devices that is permanently affixed to commercial or industrial real property and:

(~~(a)~~i) produces energy from renewable resources, including:

(~~(i)~~A) a photovoltaic system;

(~~(ii)~~B) a solar thermal system;

(~~(iii)~~C) a wind system;

(~~(iv)~~D) a geothermal system, including:

~~(A) a generation system;~~

~~(B) a direct-use system;~~ or

~~(C) a ground source heat pump system;~~

(~~(v)~~E) a microhydro system;

(F) a biofuel system; or

(~~(vi)~~G) any other renewable source system that the governing body of ~~(a)~~the local entity approves;

(~~(b)~~ii) stores energy, including:

(~~(i)~~A) a battery storage system; or

(~~(ii)~~B) any other energy storing system that the governing body or chief executive officer of a local entity approves; or

(~~(c)~~iii) any improvement that relates physically or functionally to any of the products, systems, or devices listed in Subsection (~~(34)~~33)(a) ~~or (b).~~

~~(35)(i) or (ii).~~

(b) "Renewable energy system" does not include a system described in Subsection (33)(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

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(B) beginning before January 1, 2017, provides energy to property outside of the area that became the energy assessment area; or

(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.

(34) "Special service district" means the same as that term is defined in Section 17D-1-102.

(~~36~~35) "State interlocal entity" means:

(a) an interlocal entity created under Title 11, Chapter 13, Interlocal Cooperation Act, by two or more counties, cities, towns, or metro townships 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.

(~~37~~36) "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.

Section 9. Section **11-42a-103** is enacted to read:

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, if a local entity or the C-PACE district creates an energy assessment area within the certificated service territory of a public electrical utility for the installation of a renewable energy system with a nameplate rating greater than 2.0 megawatts on benefitted property that an existing customer of the public electrical utility owns, the local

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entity or the C-PACE district, as applicable, shall compensate the public electrical utility for any infrastructure that the public electrical utility installed to serve the customer that the customer no longer uses as a result of the installation of the renewable energy system.

Section 10. Section **11-42a-104** is enacted to read:

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 effective date of the energy assessment resolution, the energy assessment ordinance, or 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;

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(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.

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

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.

Section 12. Section **11-42a-106** is enacted to read:

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

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(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.

(~~3~~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 (~~3~~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.

(~~4~~5) The state is not liable for the acts or omissions of the C-PACE district or the

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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.

Section 13. Section **11-42a-201** is enacted to read:

Part 2. Energy Assessments

11-42a-201. Resolution or ordinance designation an energy assessment area, levying an assessment, and issuing an energy assessment bond.

(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 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.

(c) 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) shall give notice of the adoption by:

(i) publishing a copy or a summary of the resolution or ordinance once in a newspaper of general circulation where the energy assessment area is located; or

(ii) if there is no newspaper of general circulation where the energy assessment area is located, posting a copy of the resolution or ordinance in at least three public places within the local entity's jurisdictional boundaries for at least 21 days.

(b) Except as provided in Subsection (2)(a), a local entity is not required to make any

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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:

(a) on the date of publication or posting of the notice under Subsection (2); or

(b) 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) A local entity's failure to file a notice of assessment interest under this Subsection (4) has no effect on the validity of an assessment levied under an energy assessment resolution or ordinance adopted under Subsection (1).

Section 14. Section **11-42a-202** is enacted to read:

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.

Section 15. Section **11-42A-203** is enacted to read:

11-42A-203. Levying an assessment within an energy assessment area--

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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.

Section 16. Section **11-42a-204** is enacted to read:

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

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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 issues the energy assessment bond or assigns the energy assessment lien.

Section 17. Section **11-42a-205** is enacted to read:

11-42a-205. Installment payment of assessments.

(1) (a) 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:

(i) in accordance with the resolution or ordinance; and

(ii) 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; and

(c) 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

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(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.

Section 18. Section **11-42a-206** is enacted to read:

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).

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(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).

Section 19. Section **11-42a-301** is enacted to read:

Part 3. Energy Assessment Liens

11-42a-301. Assessment constitutes a lien -- Characteristics of an energy assessment lien.

(1) Each assessment levied under this chapter, including any installment of an assessment, interest, and any penalties and costs of collection, constitutes a lien against the assessed property, 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; or

(ii) any other energy assessment lien levied under this chapter;

(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:

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(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.

Section 20. Section **11-42a-302** is enacted to read:

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

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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.

Section 21. Section **11-42a-303** is enacted to read:

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

(1) If an assessment or an installment of an assessment is not paid when due, the local entity may sell the property on which the assessment has been levied for the amount due plus interest, penalties, and costs, in the manner provided:

(a) by resolution or ordinance of the local entity;

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

(c) in Title 57, Chapter 1, Conveyances, as though the property were the subject of a trust deed in favor of the local entity.

(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)(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)(c):

(i) the local entity may bid at the sale;

(ii) the local entity's governing body shall designate a trustee that satisfies the requirements of Section 57-1-21;

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(iii) each trustee designated under Subsection (4)(a)(ii) has a power of sale with respect to the property that is the subject of the delinquent energy assessment lien;

(iv) the property that is the subject of the delinquent energy assessment lien is considered to have been conveyed to the trustee, in trust, for the sole purpose of permitting the trustee to exercise the trustee's power of sale under Subsection (4)(a)(iii);

(v) 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

(vi) 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)(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.

Section 22. Section **11-42a-304** is enacted to read:

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;

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(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.

Section 23. Section **11-42a-305** is enacted to read:

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

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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.

Section 24. Section **11-42a-401** is enacted to read:

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 resolution or ordinance, delegate to one or more officers of the issuer the authority to:

(a) in accordance with the parameters in the resolution or ordinance, 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) if the property owner incurred the costs of improvements to be refinanced or

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reimbursed no earlier than three years before the date of issuance of the energy assessment bond, the total costs of the improvements to be refinanced or reimbursed.

(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) bears interest at the lowest rate or rates reasonably obtainable;

(iv) is issued in registered form as provided in Title 15, Chapter 7, Registered Public Obligations Act;

(v) provides that interest be paid semiannually, annually, or at another interval as specified by the governing body; and

(vi) 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.

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(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 of issuance of the energy assessment bond.

Section 25. Section **11-42a-402** is enacted to read:

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.

Section 26. Section **11-42a-403** is enacted to read:

11-42a-403. Refunding assessment bonds.

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(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.

Section 27. Section **11-42a-404** is enacted to read:

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

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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

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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.

Section 28. Section **63I-1-263** is amended to read:

63I-1-263. Repeal dates, Titles 63A to 63N.

(1) Subsection 63A-5-104(4)(h) is repealed on July 1, 2024.

(2) Section 63A-5-603, State Facility Energy Efficiency Fund, is repealed July 1, 2023.

(3) Title 63C, Chapter 4a, Constitutional and Federalism Defense Act, is repealed July 1, 2018.

(4) Title 63C, Chapter 4b, Commission for the Stewardship of Public Lands, is repealed November 30, 2019.

(5) Title 63C, Chapter 16, Prison Development Commission Act, is repealed July 1, 2020.

(6) Title 63C, Chapter 17, Point of the Mountain Development Commission Act, is repealed July 1, 2021.

(7) Title 63H, Chapter 4, Heber Valley Historic Railroad Authority, is repealed July 1,

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2020.

(8) Title 63H, Chapter 8, Utah Housing Corporation Act, is repealed July 1, 2026.

(9) On July 1, 2025:

(a) in Subsection 17-27a-404(3)(c)(ii), the language that states "the Resource Development Coordinating Committee," is repealed;

(b) Subsection 23-14-21(2)(c) is amended to read "(c) provide notification of proposed sites for the transplant of species to local government officials having jurisdiction over areas that may be affected by a transplant.";

(c) in Subsection 23-14-21(3), the language that states "and the Resource Development Coordinating Committee" is repealed;

(d) in Subsection 23-21-2.3(1), the language that states "the Resource Development Coordinating Committee created in Section 63J-4-501 and" is repealed;

(e) in Subsection 23-21-2.3(2), the language that states "the Resource Development Coordinating Committee and" is repealed;

(f) Subsection 63J-4-102(1) is repealed and the remaining subsections are renumbered accordingly;

(g) Subsections 63J-4-401(5)(a) and (c) are repealed;

(h) Subsection 63J-4-401(5)(b) is renumbered to Subsection 63J-4-401(5)(a) and the word "and" is inserted immediately after the semicolon;

(i) Subsection 63J-4-401(5)(d) is renumbered to Subsection 63J-4-401(5)(b);

(j) Sections 63J-4-501, 63J-4-502, 63J-4-503, 63J-4-504, and 63J-4-505 are repealed;

and

(k) Subsection 63J-4-603(1)(e)(iv) is repealed and the remaining subsections are renumbered accordingly.

(10) (a) Subsection 63J-1-602.4(15) is repealed July 1, 2022.

(b) When repealing Subsection 63J-1-602.4(15), the Office of Legislative Research and General Counsel shall, in addition to the office's authority under Subsection 36-12-12(3), make necessary changes to subsection numbering and cross references.

~~(11)~~ (11) The Crime Victim Reparations and Assistance Board, created in Section 63M-7-504, is repealed July 1, 2017.

~~(12)~~ (12) Title 63M, Chapter 11, Utah Commission on Aging, is repealed July 1,

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2017.

~~[(12)]~~ (13) Title 63N, Chapter 2, Part 2, Enterprise Zone Act, is repealed July 1, 2018.

~~[(13)]~~ (14) (a) Title 63N, Chapter 2, Part 4, Recycling Market Development Zone Act, is repealed January 1, 2021.

(b) Subject to Subsection ~~[(13)]~~ (14)(c), Sections 59-7-610 and 59-10-1007 regarding tax credits for certain persons in recycling market development zones, are repealed for taxable years beginning on or after January 1, 2021.

(c) A person may not claim a tax credit under Section 59-7-610 or 59-10-1007:

(i) for the purchase price of machinery or equipment described in Section 59-7-610 or 59-10-1007, if the machinery or equipment is purchased on or after January 1, 2021; or

(ii) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), if the expenditure is made on or after January 1, 2021.

(d) Notwithstanding Subsections ~~[(13)]~~ (14)(b) and (c), a person may carry forward a tax credit in accordance with Section 59-7-610 or 59-10-1007 if:

(i) the person is entitled to a tax credit under Section 59-7-610 or 59-10-1007; and

(ii) (A) for the purchase price of machinery or equipment described in Section 59-7-610 or 59-10-1007, the machinery or equipment is purchased on or before December 31, 2020; or

(B) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), the expenditure is made on or before December 31, 2020.

~~[(14)]~~ (15) Section 63N-2-512 is repealed on July 1, 2021.

~~[(15)]~~ (16) (a) Title 63N, Chapter 2, Part 6, Utah Small Business Jobs Act, is repealed January 1, 2021.

(b) Section 59-9-107 regarding tax credits against premium taxes is repealed for calendar years beginning on or after January 1, 2021.

(c) Notwithstanding Subsection ~~[(15)]~~ (16)(b), an entity may carry forward a tax credit in accordance with Section 59-9-107 if:

(i) the person is entitled to a tax credit under Section 59-9-107 on or before December 31, 2020; and

(ii) the qualified equity investment that is the basis of the tax credit is certified under Section 63N-2-603 on or before December 31, 2023.

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~~[(16)]~~ (17) Title 63N, Chapter 12, Part 3, Utah Broadband Outreach Center, is repealed July 1, 2018.

Section 29. Section **63J-1-505** is amended to read:

63J-1-505. Payment of fees prerequisite to service -- Exception.

(1) (a) State and county officers required by law to charge fees may not perform any official service unless the fees prescribed for that service are paid in advance.

(b) When the fee is paid, the officer shall perform the services required.

(c) An officer is liable upon the officer's official bond for every failure or refusal to perform an official duty when the fees are tendered.

(2) (a) Except as provided in Subsection (2)(b), no fees may be charged:

(i) to the officer's state, or any county or subdivision of the state;

(ii) to any public officer acting for the state, county, or subdivision;

(iii) in cases of habeas corpus;

(iv) in criminal causes before final judgment;

(v) for administering and certifying the oath of office;

(vi) for swearing pensioners and their witnesses; or

(vii) for filing and recording bonds of public officers.

(b) Fees may be charged for payment:

(i) of recording fees for assessment area recordings in compliance with ~~[Section]~~

Sections 11-42-205 and 11-42a-302;

(ii) of recording fees for judgments recorded in compliance with Sections 57-3-106 and 78A-7-105; and

(iii) to the state engineer under Section 73-2-14.

Section 30. Section **63J-1-602.4** is amended to read:

63J-1-602.4. List of nonlapsing funds and accounts -- Title 61 through Title 63N.

(1) Funds paid to the Division of Real Estate for the cost of a criminal background check for a mortgage loan license, as provided in Section 61-2c-202.

(2) Funds paid to the Division of Real Estate for the cost of a criminal background check for principal broker, associate broker, and sales agent licenses, as provided in Section 61-2f-204.

(3) Certain funds donated to the Department of Human Services, as provided in

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Section 62A-1-111.

(4) Appropriations from the National Professional Men's Basketball Team Support of Women and Children Issues Restricted Account created in Section 62A-1-202.

(5) Certain funds donated to the Division of Child and Family Services, as provided in Section 62A-4a-110.

(6) Appropriations from the Choose Life Adoption Support Restricted Account created in Section 62A-4a-608.

(7) Appropriations to the Division of Services for People with Disabilities, as provided in Section 62A-5-102.

(8) Appropriations to the Division of Fleet Operations for the purpose of upgrading underground storage tanks under Section 63A-9-401.

(9) A portion of the funds appropriated to the Utah Seismic Safety Commission, as provided in Section 63C-6-104.

(10) Funds appropriated or collected for publishing the Office of Administrative Rules' publications, as provided in Section 63G-3-402.

(11) The Immigration Act Restricted Account created in Section 63G-12-103.

(12) Money received by the military installation development authority, as provided in Section 63H-1-504.

(13) Appropriations to the Utah Science Technology and Research Initiative created in Section 63M-2-301.

(14) Appropriations to fund the Governor's Office of Economic Development's Enterprise Zone Act, as provided in Title 63N, Chapter 2, Part 2, Enterprise Zone Act.

(15) Funds collected for directing and administering the C-PACE district created in Section 11-42a-302.

~~(15)~~ (16) The Motion Picture Incentive Account created in Section 63N-8-103.

~~(16)~~ (17) Certain money payable for commission expenses of the Pete Suazo Utah Athletic Commission, as provided under Section 63N-10-301.

Section 31. Section **63M-4-401** is amended to read:

63M-4-401. Creation of Office of Energy Development -- Director -- Purpose -- Rulemaking regarding confidential information.

(1) There is created an Office of Energy Development.

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(2) (a) The governor's energy advisor shall serve as the director of the office or appoint a director of the office.

(b) The director:

(i) shall, if the governor's energy advisor appoints a director under Subsection (2)(a), report to the governor's energy advisor; and

(ii) may appoint staff as funding within existing budgets allows.

(c) The office may consolidate energy staff and functions existing in the state energy program.

(3) The purposes of the office are to:

(a) serve as the primary resource for advancing energy and mineral development in the state;

(b) implement:

(i) the state energy policy under Section 63M-4-301; and

(ii) the governor's energy and mineral development goals and objectives;

(c) advance energy education, outreach, and research, including the creation of elementary, higher education, and technical college energy education programs;

(d) promote energy and mineral development workforce initiatives; and

(e) support collaborative research initiatives targeted at Utah-specific energy and mineral development.

(4) By following the procedures and requirements of Title 63J, Chapter 5, Federal Funds Procedures Act, the office may:

(a) seek federal grants or loans;

(b) seek to participate in federal programs; and

(c) in accordance with applicable federal program guidelines, administer federally funded state energy programs.

(5) The office shall perform the duties required by Sections 11-42a-106, 59-7-614.7, 59-10-1029, Part 5, Alternative Energy Development Tax Credit Act, and Part 6, High Cost Infrastructure Development Tax Credit Act.

(6) (a) For purposes of administering this section, the office may make rules, by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to maintain as confidential, and not as a public record, information that the

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office receives from any source.

(b) The office shall maintain information the office receives from any source at the level of confidentiality assigned by the source.

(7) The office may charge application, filing, and processing fees in amounts determined by the office in accordance with Section 63J-1-504 for performing office duties described in this part.

Section 32. **Repealer.**

This bill repeals:

Section 11-42-209, Designation of assessment area for an energy efficiency upgrade, a renewable energy system, or electric vehicle charging infrastructure -- Requirements.

Section 33. **Effective date.**

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

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Legislative Review Note

Office of Legislative Research and General Counsel†