

ENERGY FACILITY AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: J. Stuart Adams

House Sponsor: Stephen G. Handy

LONG TITLE

General Description:

This bill allows the delegation of certain authority regarding an energy assessment.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ allows the governing body of a local entity to adopt a certain resolution to delegate to an officer of the entity the authority to:
 - designate an energy assessment area;
 - levy an energy assessment;
 - approve certain terms of energy assessment bonds; and
 - issue energy assessment bonds;
- ▶ amends Title 11, Chapter 42a, Commercial Property Assessed Clean Energy Act, to provide for the delegation of energy assessment authority; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



- 28 **11-42a-102**, as enacted by Laws of Utah 2017, Chapter 470
 - 29 **11-42a-104**, as enacted by Laws of Utah 2017, Chapter 470
 - 30 **11-42a-201**, as enacted by Laws of Utah 2017, Chapter 470
 - 31 **11-42a-204**, as enacted by Laws of Utah 2017, Chapter 470
 - 32 **11-42a-205**, as enacted by Laws of Utah 2017, Chapter 470
 - 33 **11-42a-301**, as enacted by Laws of Utah 2017, Chapter 470
 - 34 **11-42a-401**, as enacted by Laws of Utah 2017, Chapter 470
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36 *Be it enacted by the Legislature of the state of Utah:*

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

38 **11-42a-102. Definitions.**

39 (1) (a) "Assessment" means the assessment that a local entity or the C-PACE district
40 levies on private property under this chapter to cover the costs of an energy efficiency upgrade,
41 a renewable energy system, or an electric vehicle charging infrastructure.

42 (b) "Assessment" does not constitute a property tax but shares the same priority lien as
43 a property tax.

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

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

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

49 (5) (a) "Commercial or industrial real property" means private real property used
50 directly or indirectly or held for one of the following purposes or activities, regardless of
51 whether the purpose or activity is for profit:

- 52 (i) commercial;
- 53 (ii) mining;
- 54 (iii) agricultural;
- 55 (iv) industrial;
- 56 (v) manufacturing;
- 57 (vi) trade;
- 58 (vii) professional;

- 59 (viii) a private or public club;
- 60 (ix) a lodge;
- 61 (x) a business; or
- 62 (xi) a similar purpose.
- 63 (b) "Commercial or industrial real property" includes:
- 64 (i) private real property that~~[-(i)]~~ is used as or held for dwelling purposes~~[-]~~ and
- 65 contains:
- 66 [(~~it~~) contains] (A) more than four rental units~~[-]~~; or
- 67 (B) one or more owner-occupied or rental condominium units affiliated with a hotel;
- 68 and
- 69 (ii) real property that the military installation development authority, created in Section
- 70 [63H-1-201](#), owns.
- 71 (6) "Contract price" means:
- 72 (a) up to 100% of the cost of installing, acquiring, refinancing, or reimbursing for an
- 73 improvement, as determined by the owner of the property benefitting from the improvement; or
- 74 (b) the amount payable to one or more contractors for the assessment, design,
- 75 engineering, inspection, and construction of an improvement.
- 76 (7) "C-PACE" means commercial property assessed clean energy.
- 77 (8) "C-PACE district" means the statewide authority established in Section [11-42a-106](#)
- 78 to implement the C-PACE Act in collaboration with governing bodies, under the direction of
- 79 OED.
- 80 (9) "Electric vehicle charging infrastructure" means equipment that is:
- 81 (a) permanently affixed to commercial or industrial real property; and
- 82 (b) designed to deliver electric energy to a qualifying electric vehicle or a qualifying
- 83 plug-in hybrid vehicle, as those terms are defined in Section [59-7-605](#).
- 84 (10) "Energy assessment area" means an area:
- 85 (a) within the jurisdictional boundaries of a local entity that approves an energy
- 86 assessment area or, if the C-PACE district or a state interlocal entity levies the assessment, the
- 87 C-PACE district or the state interlocal entity;
- 88 (b) containing only the commercial or industrial real property of owners who have
- 89 voluntarily consented to an assessment under this chapter for the purpose of financing the costs

90 of improvements that benefit property within the energy assessment area; and

91 (c) in which the proposed benefitted properties in the area are:

92 (i) contiguous; or

93 (ii) located on one or more contiguous or adjacent tracts of land that would be
94 contiguous or adjacent property but for an intervening right-of-way, including a sidewalk,
95 street, road, fixed guideway, or waterway.

96 (11) "Energy assessment bond" means a bond:

97 (a) issued under Section 11-42a-401; and

98 (b) payable in part or in whole from assessments levied in an energy assessment area.

99 (12) "Energy assessment lien" means a lien on property within an energy assessment
100 area that arises from the levy of an assessment in accordance with Section 11-42a-301.

101 (13) "Energy assessment ordinance" means an ordinance that a local entity adopts
102 under Section 11-42a-201 that:

103 (a) designates an energy assessment area;

104 (b) levies an assessment on benefitted property within the energy assessment area; and

105 (c) if applicable, authorizes the issuance of energy assessment bonds.

106 (14) "Energy assessment resolution" means one or more resolutions adopted by a local
107 entity under Section 11-42a-201 that:

108 (a) designates an energy assessment area;

109 (b) levies an assessment on benefitted property within the energy assessment area; and

110 (c) if applicable, authorizes the issuance of energy assessment bonds.

111 (15) "Energy efficiency upgrade" means an improvement that is:

112 (a) permanently affixed to commercial or industrial real property; and

113 (b) designed to reduce energy or water consumption, including:

114 (i) insulation in:

115 (A) a wall, roof, floor, or foundation; or

116 (B) a heating and cooling distribution system;

117 (ii) a window or door, including:

118 (A) a storm window or door;

119 (B) a multiglazed window or door;

120 (C) a heat-absorbing window or door;

- 121 (D) a heat-reflective glazed and coated window or door;
- 122 (E) additional window or door glazing;
- 123 (F) a window or door with reduced glass area; or
- 124 (G) other window or door modifications;
- 125 (iii) an automatic energy control system;
- 126 (iv) in a building or a central plant, a heating, ventilation, or air conditioning and
- 127 distribution system;
- 128 (v) caulk or weatherstripping;
- 129 (vi) a light fixture that does not increase the overall illumination of a building, unless
- 130 an increase is necessary to conform with the applicable building code;
- 131 (vii) an energy recovery system;
- 132 (viii) a daylighting system;
- 133 (ix) measures to reduce the consumption of water, through conservation or more
- 134 efficient use of water, including installation of:
- 135 (A) low-flow toilets and showerheads;
- 136 (B) timer or timing systems for a hot water heater; or
- 137 (C) rain catchment systems;
- 138 (x) a modified, installed, or remodeled fixture that is approved as a utility cost-saving
- 139 measure by the governing body or executive of a local entity;
- 140 (xi) measures or other improvements to effect seismic upgrades;
- 141 (xii) structures, measures, or other improvements to provide automated parking or
- 142 parking that reduces land use;
- 143 (xiii) the extension of an existing natural gas distribution company line;
- 144 (xiv) an energy efficient elevator, escalator, or other vertical transport device;
- 145 (xv) any other improvement that the governing body or executive of a local entity
- 146 approves as an energy efficiency upgrade; or
- 147 (xvi) any improvement that relates physically or functionally to any of the
- 148 improvements listed in Subsections (15)(b)(i) through (xv).
- 149 (16) "Governing body" means:
- 150 (a) for a county, city, town, or metro township, the legislative body of the county, city,
- 151 town, or metro township;

- 152 (b) for a local district, the board of trustees of the local district;
- 153 (c) for a special service district:
- 154 (i) if no administrative control board has been appointed under Section 17D-1-301, the
- 155 legislative body of the county, city, town, or metro township that established the special service
- 156 district; or
- 157 (ii) if an administrative control board has been appointed under Section 17D-1-301, the
- 158 administrative control board of the special service district; and
- 159 (d) for the military installation development authority created in Section 63H-1-201,
- 160 the board, as that term is defined in Section 63H-1-102.
- 161 (17) "Improvement" means a publicly or privately owned energy efficiency upgrade,
- 162 renewable energy system, or electric vehicle charging infrastructure that:
- 163 (a) a property owner has requested; or
- 164 (b) has been or is being installed on a property for the benefit of the property owner.
- 165 (18) "Incidental refunding costs" means any costs of issuing a refunding assessment
- 166 bond and calling, retiring, or paying prior bonds, including:
- 167 (a) legal and accounting fees;
- 168 (b) charges of financial advisors, escrow agents, certified public accountant verification
- 169 entities, and trustees;
- 170 (c) underwriting discount costs, printing costs, and the costs of giving notice;
- 171 (d) any premium necessary in the calling or retiring of prior bonds;
- 172 (e) fees to be paid to the local entity to issue the refunding assessment bond and to
- 173 refund the outstanding prior bonds;
- 174 (f) any other costs that the governing body determines are necessary and proper to incur
- 175 in connection with the issuance of a refunding assessment bond; and
- 176 (g) any interest on the prior bonds that is required to be paid in connection with the
- 177 issuance of the refunding assessment bond.
- 178 (19) "Installment payment date" means the date on which an installment payment of an
- 179 assessment is payable.
- 180 (20) "Jurisdictional boundaries" means:
- 181 (a) for the C-PACE district or any state interlocal entity, the boundaries of the state;
- 182 and

- 183 (b) for each local entity, the boundaries of the local entity.
- 184 (21) "Local district" means a local district under Title 17B, Limited Purpose Local
- 185 Government Entities - Local Districts.
- 186 (22) (a) "Local entity" means:
- 187 (i) a county, city, town, or metro township;
- 188 (ii) a special service district, a local district, or an interlocal entity as that term is
- 189 defined in Section [11-13-103](#);
- 190 (iii) a state interlocal entity;
- 191 (iv) the military installation development authority created in Section [63H-1-201](#); or
- 192 (v) any political subdivision of the state.
- 193 (b) "Local entity" includes the C-PACE district solely in connection with:
- 194 (i) the designation of an energy assessment area;
- 195 (ii) the levying of an assessment; and
- 196 (iii) the assignment of an energy assessment lien to a third-party lender under Section
- 197 [11-42a-302](#).
- 198 (23) "Local entity obligations" means energy assessment bonds and refunding
- 199 assessment bonds that a local entity issues.
- 200 (24) "OED" means the Office of Energy Development created in Section [63M-4-401](#).
- 201 (25) "Overhead costs" means the actual costs incurred or the estimated costs to be
- 202 incurred in connection with an energy assessment area, including:
- 203 (a) appraisals, legal fees, filing fees, facilitation fees, and financial advisory charges;
- 204 (b) underwriting fees, placement fees, escrow fees, trustee fees, and paying agent fees;
- 205 (c) publishing and mailing costs;
- 206 (d) costs of levying an assessment;
- 207 (e) recording costs; and
- 208 (f) all other incidental costs.
- 209 (26) "Parameters resolution" means a resolution or ordinance that a local entity adopts
- 210 in accordance with Section [11-42a-201](#).
- 211 [~~26~~] (27) "Prior bonds" means the energy assessment bonds refunded in part or in
- 212 whole by a refunding assessment bond.
- 213 [~~27~~] (28) "Prior energy assessment ordinance" means the ordinance levying the

214 assessments from which the prior bonds are payable.

215 ~~[(28)]~~ (29) "Prior energy assessment resolution" means the resolution levying the
216 assessments from which the prior bonds are payable.

217 ~~[(29)]~~ (30) "Property" includes real property and any interest in real property, including
218 water rights and leasehold rights.

219 ~~[(30)]~~ (31) "Public electrical utility" means a large-scale electric utility as that term is
220 defined in Section 54-2-1.

221 ~~[(31)]~~ (32) "Reduced payment obligation" means the full obligation of an owner of
222 property within an energy assessment area to pay an assessment levied on the property after the
223 local entity has reduced the assessment because of the issuance of a refunding assessment
224 bond, in accordance with Section 11-42a-403.

225 ~~[(32)]~~ (33) "Refunding assessment bond" means an assessment bond that a local entity
226 issues under Section 11-42a-403 to refund, in part or in whole, energy assessment bonds.

227 ~~[(33)]~~ (34) (a) "Renewable energy system" means a product, system, device, or
228 interacting group of devices that is permanently affixed to commercial or industrial real
229 property not located in the certified service area of a distribution electrical cooperative, as that
230 term is defined in Section 54-2-1, and:

231 (i) produces energy from renewable resources, including:

232 (A) a photovoltaic system;

233 (B) a solar thermal system;

234 (C) a wind system;

235 (D) a geothermal system, including a generation system, a direct-use system, or a
236 ground source heat pump system;

237 (E) a microhydro system;

238 (F) a biofuel system; or

239 (G) any other renewable source system that the governing body of the local entity
240 approves;

241 (ii) stores energy, including:

242 (A) a battery storage system; or

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

245 (iii) any improvement that relates physically or functionally to any of the products,
246 systems, or devices listed in Subsection [~~(33)~~] (34)(a)(i) or (ii).

247 (b) "Renewable energy system" does not include a system described in Subsection
248 [~~(33)~~] (34)(a)(i) if the system provides energy to property outside the energy assessment area,
249 unless the system:

250 (i) (A) existed before the creation of the energy assessment area; and

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

253 (ii) provides energy to property outside the energy assessment area under an agreement
254 with a public electrical utility that is substantially similar to agreements for other renewable
255 energy systems that are not funded under this chapter.

256 [~~(34)~~] (35) "Special service district" means the same as that term is defined in Section
257 17D-1-102.

258 [~~(35)~~] (36) "State interlocal entity" means:

259 (a) an interlocal entity created under Title 11, Chapter 13, Interlocal Cooperation Act,
260 by two or more counties, cities, towns, or metro townships that collectively represent at least a
261 majority of the state's population; or

262 (b) an entity that another state authorized, before January 1, 2017, to issue bonds,
263 notes, or other obligations or refunding obligations to finance or refinance projects in the state.

264 [~~(36)~~] (37) "Third-party lender" means a trust company, savings bank, savings and loan
265 association, bank, credit union, or any other entity that provides loans directly to property
266 owners for improvements authorized under this chapter.

267 Section 2. Section 11-42a-104 is amended to read:

268 **11-42a-104. Action to contest assessment or proceeding -- Requirements --**

269 **Exclusive remedy -- Bonds and assessment incontestable.**

270 (1) (a) A person may commence a civil action against a local entity to contest an
271 assessment, a proceeding to designate an energy assessment area, or a proceeding to levy an
272 assessment.

273 (b) The remedies available in a civil action described in Subsection (1)(a) are:

274 (i) setting aside the proceeding to designate an energy assessment area; or

275 (ii) enjoining the levy or collection of an assessment.

276 (2) (a) A person bringing an action under Subsection (1) shall bring the action in the
277 district court with jurisdiction in the county in which the energy assessment area is located.

278 (b) A person may not begin the action against or serve a summons relating to the action
279 on the local entity more than 30 days after the earlier of:

280 (i) the date of publication or posting of the notice of the adoption of a parameters
281 resolution that the local entity adopts in accordance with Section 11-42a-201;

282 (ii) the effective date of the energy assessment resolution~~[; the energy assessment]~~ or
283 ordinance~~[;]~~; or

284 (iii) the written agreement between a local entity and a third-party lender, described in
285 Section 11-42a-302.

286 (3) An action under Subsection (1) is the exclusive remedy of a person:

287 (a) claiming an error or irregularity in an assessment, a proceeding to designate an
288 energy assessment area, or a proceeding to levy an assessment; or

289 (b) challenging a bondholder's or third-party lender's right to repayment.

290 (4) A court may not set aside, in part or in whole or declare invalid an assessment, a
291 proceeding to designate an energy assessment area, or a proceeding to levy an assessment
292 because of an error or irregularity that does not relate to the equity or justice of the assessment
293 or proceeding.

294 (5) Except as provided in Subsection (6), after the expiration of the 30-day period
295 described in Subsection (2)(b):

296 (a) the following become incontestable against any person that has not commenced an
297 action and served a summons as provided in this section:

298 (i) the written agreement entered into or to be entered into under Section 11-42a-302;

299 (ii) the energy assessment bonds and refunding assessment bonds:

300 (A) that a local entity has issued or intends to issue; or

301 (B) with respect to the creation of an energy assessment area; and

302 (iii) assessments levied on property in the energy assessment area; and

303 (b) a court may not inquire into and a person may not bring a suit to enjoin or
304 challenge:

305 (i) the issuance or payment of an energy assessment bond or a refunding assessment
306 bond;

307 (ii) the payment under the written agreement between a local entity and a third-party
308 lender described in Section 11-42a-302;

309 (iii) the levy, collection, or enforcement of an assessment;

310 (iv) the legality of an energy assessment bond, a refunding assessment bond, or a
311 written agreement between a local entity and a third-party lender described in Section
312 11-42a-302; or

313 (v) an assessment.

314 (6) (a) A person may bring a claim of misuse of assessment funds through a mandamus
315 action regardless of the expiration of the 30-day period described in Subsection (2)(b).

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

318 Section 3. Section 11-42a-201 is amended to read:

319 **11-42a-201. Resolution or ordinance designating an energy assessment area,**
320 **levying an assessment, and issuing an energy assessment bond.**

321 (1) (a) Except as otherwise provided in this chapter, and subject to the requirements of
322 this part, at the request of a property owner on whose property or for whose benefit an
323 improvement is being installed or being reimbursed, a governing body of a local entity may
324 adopt an energy assessment resolution or an energy assessment ordinance that:

325 (i) designates an energy assessment area;

326 (ii) levies an assessment within the energy assessment area; and

327 (iii) if applicable, authorizes the issuance of an energy assessment bond.

328 (b) The governing body of a local entity may, by adopting a parameters resolution,
329 delegate to an officer of the local entity, in accordance with the parameters resolution, the
330 authority to:

331 (i) execute an energy assessment resolution or ordinance that:

332 (A) designates an energy assessment area;

333 (B) levies an energy assessment lien; and

334 (C) approves the final interest rate, price, principal amount, maturities, redemption
335 features, and other terms of the energy assessment bonds; and

336 (ii) approve and execute all documents related to the designation of the energy
337 assessment area, the levying of the energy assessment lien, and the issuance of the energy

338 assessment bonds.

339 ~~[(b)]~~ (c) The boundaries of a proposed energy assessment area may:

340 (i) include property that is not intended to be assessed; and

341 (ii) overlap, be coextensive with, or be substantially coterminous with the boundaries
342 of any other energy assessment area or an assessment area created under Title 11, Chapter 42,
343 Assessment Area Act.

344 ~~[(c)]~~ (d) The energy assessment resolution or ordinance described in Subsection (1)(a)
345 is adequate for purposes of identifying the property to be assessed within the energy assessment
346 area if the resolution or ordinance describes the property to be assessed by legal description and
347 tax identification number.

348 (2) (a) A local entity that adopts an energy assessment resolution or ordinance under
349 Subsection (1)(a) or a parameters resolution under Subsection (1)(b) shall give notice of the
350 adoption of the energy assessment resolution or ordinance or the parameters resolution by:

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

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

356 (b) Except as provided in Subsection (2)(a), a local entity is not required to make any
357 other publication or posting of the resolution or ordinance.

358 (3) Notwithstanding any other statutory provision regarding the effective date of a
359 resolution or ordinance, each energy assessment resolution or ordinance takes effect on the
360 later of:

361 (a) the date on which the governing body of the local entity adopts the energy
362 assessment resolution or ordinance;

363 ~~[(a) on]~~ (b) the date of publication or posting of the notice ~~[under]~~ of adoption of
364 either the energy assessment resolution or ordinance or the parameters resolution described in
365 Subsection (2); or

366 ~~[(b)]~~ (c) at a later date as provided in the resolution or ordinance.

367 (4) (a) The governing body of each local entity that has adopted an energy assessment
368 resolution or ordinance under Subsection (1) shall, within five days after the effective date of

369 the resolution or ordinance, file a notice of assessment interest with the recorder of the county
370 in which the property to be assessed is located.

371 (b) Each notice of assessment interest under Subsection (4)(a) shall:

372 (i) state that the local entity has an assessment interest in the property to be assessed;

373 and

374 (ii) describe the property to be assessed by legal description and tax identification
375 number.

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

379 Section 4. Section **11-42a-204** is amended to read:

380 **11-42a-204. Limit on amount of assessment.**

381 (1) An assessment levied within an energy assessment area may not, in the aggregate,
382 exceed the sum of:

383 (a) the contract price or estimated contract price;

384 (b) overhead costs not to exceed 15% of the sum of the contract price or estimated
385 contract price;

386 (c) an amount for contingencies of not more than 10% of the sum of the contract price
387 or estimated contract price, if the assessment is levied before the completion of the
388 construction of the improvements in the energy assessment area;

389 (d) capitalized interest; or

390 (e) an amount sufficient to fund a reserve fund.

391 (2) A local entity may only use the proceeds of an energy assessment bond or any
392 third-party financing to refinance or reimburse the costs of improvements authorized under this
393 chapter if the property owner incurred or financed the costs no earlier than three years before
394 the day on which the local entity [~~issues the energy assessment bond or~~];

395 (a) adopts a parameters resolution;

396 (b) adopts an energy assessment resolution or ordinance; or

397 (c) assigns the energy assessment lien.

398 Section 5. Section **11-42a-205** is amended to read:

399 **11-42a-205. Installment payment of assessments.**

400 (1) In an energy assessment resolution or ordinance that a local entity adopts under
401 Subsection 11-42a-201(1)(a), the governing body may provide that some or all of the
402 assessment be paid in installments:

- 403 (a) in accordance with the resolution or ordinance; and
- 404 (b) over a period not to exceed 30 years from the effective date of the resolution or
405 ordinance.

406 (2) (a) Each governing body that adopts an energy assessment resolution or ordinance
407 that provides for the assessment to be paid in installments shall ensure that the resolution or
408 ordinance provides that the unpaid balance of the assessment bears interest at a fixed rate, a
409 variable rate, or a combination of fixed and variable rates, as determined by the governing
410 body, from the effective date of the resolution or ordinance or another date that the resolution
411 or ordinance specifies.

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

- 415 (i) the basis upon which the rate is to be determined from time to time;
- 416 (ii) the manner in which and schedule upon which the rate is to be adjusted; and
- 417 (iii) a maximum rate that the assessment may bear.

418 (3) Interest payable on assessments may include:

- 419 (a) interest on energy assessment bonds;
- 420 (b) ongoing costs that the local entity incurs for administration of the energy
421 assessment area; ~~and~~

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

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

- 424 (i) securing a letter of credit or other instrument to secure payment or repurchase of
425 bonds; or
- 426 (ii) retaining a marketing agent or an indexing agent.

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

430 (5) (a) At any time, a property owner may prepay some or all of the assessment levied

431 against the owner's property.

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

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

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

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

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

442 Section 6. Section **11-42a-301** is amended to read:

443 **11-42a-301. Assessment constitutes a lien -- Characteristics of an energy**
444 **assessment lien.**

445 (1) Each assessment levied under this chapter, including any installment of an
446 assessment, interest, and any penalties and costs of collection, constitutes a lien against the
447 assessed property, beginning on the effective date of the energy assessment resolution or
448 ordinance that the local entity adopts under Subsection [11-42a-201\(1\)\(a\)](#).

449 (2) An energy assessment lien under this section:

450 (a) is superior to the lien of a trust deed, mortgage, mechanic's or materialman's lien, or
451 other encumbrances;

452 (b) has the same priority as, but is separate and distinct from:

453 (i) a lien for general property taxes; ~~[or]~~

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

455 (iii) an assessment lien levied under Title 11, Chapter 42, Assessment Area Act;

456 (c) applies to any reduced payment obligations without interruption, change in priority,
457 or alteration in any manner; and

458 (d) continues until the assessment and any related reduced payment obligations,
459 interest, penalties, and costs are paid, regardless of:

460 (i) a sale of the property for or on account of a delinquent general property tax, special
461 tax, or other assessment; or

462 (ii) the issuance of a tax deed, an assignment of interest by the county, or a sheriff's
463 certificate of sale or deed.

464 Section 7. Section 11-42a-401 is amended to read:

465 **11-42a-401. Local entity may authorize the issuance of energy assessment bonds**
466 **-- Limit on amount of bonds -- Features of energy assessment bonds.**

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

471 (2) A local entity may, by adoption of a parameters resolution [~~or ordinance~~], delegate
472 to one or more officers of the issuer the authority to:

473 (a) in accordance with the parameters [~~in the~~] resolution [~~or ordinance~~], approve the
474 final interest rate or rates, price, principal amount, maturity or maturities, redemption features,
475 and other terms of the bond; and

476 (b) approve and execute all documents relating to the issuance of a bond.

477 (3) The aggregate principal amount of a bond authorized under Subsection (1) may not
478 exceed:

479 (a) the unpaid balance of assessments at the time the bond is issued; or

480 (b) the total costs of the improvements to be refinanced or reimbursed if the property
481 owner incurred the costs of improvements to be refinanced or reimbursed no earlier than three
482 years before the date [~~of issuance of the energy assessment bond, the total costs of the~~
483 ~~improvements to be refinanced or reimbursed.~~] on which the local entity:

484 (i) adopted a parameters resolution;

485 (ii) adopted an energy assessment resolution or ordinance; or

486 (iii) assigned the energy assessment lien.

487 (4) The issuer of an energy assessment bond issued under this section shall ensure that:

488 (a) the energy assessment bond:

489 (i) is fully negotiable for all purposes;

490 (ii) matures at a time that does not exceed the period that installments of assessments
491 in the assessment area are due and payable, plus one year;

492 [~~(iii) bears interest at the lowest rate or rates reasonably obtainable;~~]

493 ~~[(iv)]~~ (iii) is issued in registered form as provided in Title 15, Chapter 7, Registered
494 Public Obligations Act;

495 ~~[(v)]~~ (iv) provides that interest be paid semiannually, annually, or at another interval as
496 specified by the governing body; and

497 ~~[(vi)]~~ (v) is not dated earlier than the effective date of the assessment ordinance; and

498 (b) the resolution authorizing the issuance of the bond defines the place where the bond
499 is payable, the form of the bond, and the manner in which the bond is sold.

500 (5) (a) A local entity may:

501 (i) (A) provide that an energy assessment bond may be called for redemption before
502 maturity; and

503 (B) fix the terms and conditions of redemption, including the notice to be given and
504 any premium to be paid;

505 (ii) subject to Subsection (5)(b), require an energy assessment bond to bear interest at a
506 fixed or variable rate, or a combination of fixed and variable rates;

507 (iii) specify the terms and conditions under which:

508 (A) an energy assessment bond bearing interest at a variable interest rate may be
509 converted to bear interest at a fixed interest rate; and

510 (B) the local entity agrees to repurchase the bonds;

511 (iv) engage a remarketing agent and indexing agent, subject to the terms and conditions
512 to which the governing body agrees; and

513 (v) include all costs associated with an energy assessment bond, including any costs
514 resulting from any of the actions the local entity is authorized to take under this section, in an
515 assessment levied under Section [11-42a-203](#).

516 (b) If an energy assessment bond carries a variable interest rate, the local entity shall
517 specify:

518 (i) the basis upon which the variable rate is to be determined over the life of the bond;

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

520 (iii) a maximum rate that the bond may carry.

521 (6) A local entity may only use the proceeds of an energy assessment bond to refinance
522 or reimburse costs of improvements authorized under this chapter if the property owner
523 incurred the costs no earlier than three years before the date ~~[of issuance of the energy~~

524 ~~assessment bond.]~~ on which the local entity:

525 (a) adopted a parameters resolution;

526 (b) adopted an energy assessment resolution or ordinance; or

527 (c) assigned the energy assessment lien.

Legislative Review Note
Office of Legislative Research and General Counsel