

CLEAN ENERGY ACT AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jacob L. Anderegg

House Sponsor: Angela Romero

LONG TITLE

General Description:

This bill enacts definitions in the Commercial Property Assessed Clean Energy Act.

Highlighted Provisions:

This bill:

- ▶ enacts definitions; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

11-42a-102, as last amended by Laws of Utah 2019, Chapter 399

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

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

11-42a-102. Definitions.

(1) "Air quality standards" means that a vehicle's emissions are equal to or cleaner than the standards established in bin 4 Table S04-1, of 40 C.F.R. 86.1811-04(c)(6).

[~~(1)~~] (2) (a) "Assessment" means the assessment that a local entity or the C-PACE



28 district levies on private property under this chapter to cover the costs of an energy efficiency
29 upgrade, a renewable energy system, or an electric vehicle charging infrastructure.

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

32 [~~2~~] (3) "Assessment fund" means a special fund that a local entity establishes under
33 Section 11-42a-206.

34 [~~3~~] (4) "Benefitted property" means private property within an energy assessment
35 area that directly benefits from improvements.

36 [~~4~~] (5) "Bond" means an assessment bond and a refunding assessment bond.

37 [~~5~~] (6) (a) "Commercial or industrial real property" means private real property used
38 directly or indirectly or held for one of the following purposes or activities, regardless of
39 whether the purpose or activity is for profit:

- 40 (i) commercial;
- 41 (ii) mining;
- 42 (iii) agricultural;
- 43 (iv) industrial;
- 44 (v) manufacturing;
- 45 (vi) trade;
- 46 (vii) professional;
- 47 (viii) a private or public club;
- 48 (ix) a lodge;
- 49 (x) a business; or
- 50 (xi) a similar purpose.

51 (b) "Commercial or industrial real property" includes:

- 52 (i) private real property that is used as or held for dwelling purposes and contains:
 - 53 (A) more than four rental units; or
 - 54 (B) one or more owner-occupied or rental condominium units affiliated with a hotel;

55 and

- 56 (ii) real property owned by:
 - 57 (A) the military installation development authority, created in Section 63H-1-201; or
 - 58 (B) the Utah Inland Port Authority, created in Section 11-58-201.

59 ~~[(6)]~~ (7) "Contract price" means:

60 (a) up to 100% of the cost of installing, acquiring, refinancing, or reimbursing for an
61 improvement, as determined by the owner of the property benefitting from the improvement; or

62 (b) the amount payable to one or more contractors for the assessment, design,
63 engineering, inspection, and construction of an improvement.

64 ~~[(7)]~~ (8) "C-PACE" means commercial property assessed clean energy.

65 ~~[(8)]~~ (9) "C-PACE district" means the statewide authority established in Section
66 11-42a-106 to implement the C-PACE Act in collaboration with governing bodies, under the
67 direction of OED.

68 ~~[(9)]~~ (10) "Electric vehicle charging infrastructure" means equipment that is:

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

70 (b) designed to deliver electric energy to a qualifying electric vehicle or a qualifying
71 plug-in hybrid vehicle~~[, as those terms are defined in Section 59-7-605].~~

72 ~~[(10)]~~ (11) "Energy assessment area" means an area:

73 (a) within the jurisdictional boundaries of a local entity that approves an energy
74 assessment area or, if the C-PACE district or a state interlocal entity levies the assessment, the
75 C-PACE district or the state interlocal entity;

76 (b) containing only the commercial or industrial real property of owners who have
77 voluntarily consented to an assessment under this chapter for the purpose of financing the costs
78 of improvements that benefit property within the energy assessment area; and

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

80 (i) contiguous; or

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

84 ~~[(11)]~~ (12) "Energy assessment bond" means a bond:

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

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

87 ~~[(12)]~~ (13) "Energy assessment lien" means a lien on property within an energy
88 assessment area that arises from the levy of an assessment in accordance with Section
89 11-42a-301.

90 ~~[(13)]~~ (14) "Energy assessment ordinance" means an ordinance that a local entity
91 adopts under Section 11-42a-201 that:

- 92 (a) designates an energy assessment area;
- 93 (b) levies an assessment on benefitted property within the energy assessment area; and
- 94 (c) if applicable, authorizes the issuance of energy assessment bonds.

95 ~~[(14)]~~ (15) "Energy assessment resolution" means one or more resolutions adopted by a
96 local entity under Section 11-42a-201 that:

- 97 (a) designates an energy assessment area;
- 98 (b) levies an assessment on benefitted property within the energy assessment area; and
- 99 (c) if applicable, authorizes the issuance of energy assessment bonds.

100 ~~[(15)]~~ (16) "Energy efficiency upgrade" means an improvement that is:

- 101 (a) permanently affixed to commercial or industrial real property; and
- 102 (b) designed to reduce energy or water consumption, including:
 - 103 (i) insulation in:
 - 104 (A) a wall, roof, floor, or foundation; or
 - 105 (B) a heating and cooling distribution system;
 - 106 (ii) a window or door, including:
 - 107 (A) a storm window or door;
 - 108 (B) a multiglazed window or door;
 - 109 (C) a heat-absorbing window or door;
 - 110 (D) a heat-reflective glazed and coated window or door;
 - 111 (E) additional window or door glazing;
 - 112 (F) a window or door with reduced glass area; or
 - 113 (G) other window or door modifications;
 - 114 (iii) an automatic energy control system;
 - 115 (iv) in a building or a central plant, a heating, ventilation, or air conditioning and
116 distribution system;
 - 117 (v) caulk or weatherstripping;
 - 118 (vi) a light fixture that does not increase the overall illumination of a building, unless
119 an increase is necessary to conform with the applicable building code;
 - 120 (vii) an energy recovery system;

- 121 (viii) a daylighting system;
- 122 (ix) measures to reduce the consumption of water, through conservation or more
123 efficient use of water, including installation of:
- 124 (A) low-flow toilets and showerheads;
- 125 (B) timer or timing systems for a hot water heater; or
- 126 (C) rain catchment systems;
- 127 (x) a modified, installed, or remodeled fixture that is approved as a utility cost-saving
128 measure by the governing body or executive of a local entity;
- 129 (xi) measures or other improvements to effect seismic upgrades;
- 130 (xii) structures, measures, or other improvements to provide automated parking or
131 parking that reduces land use;
- 132 (xiii) the extension of an existing natural gas distribution company line;
- 133 (xiv) an energy efficient elevator, escalator, or other vertical transport device;
- 134 (xv) any other improvement that the governing body or executive of a local entity
135 approves as an energy efficiency upgrade; or
- 136 (xvi) any improvement that relates physically or functionally to any of the
137 improvements listed in Subsections ~~[(15)]~~ (16)(b)(i) through (xv).
- 138 ~~[(16)]~~ (17) "Governing body" means:
- 139 (a) for a county, city, town, or metro township, the legislative body of the county, city,
140 town, or metro township;
- 141 (b) for a local district, the board of trustees of the local district;
- 142 (c) for a special service district:
- 143 (i) if no administrative control board has been appointed under Section 17D-1-301, the
144 legislative body of the county, city, town, or metro township that established the special service
145 district; or
- 146 (ii) if an administrative control board has been appointed under Section 17D-1-301, the
147 administrative control board of the special service district;
- 148 (d) for the military installation development authority created in Section 63H-1-201,
149 the board, as that term is defined in Section 63H-1-102; and
- 150 (e) for the Utah Inland Port Authority, created in Section 11-58-201, the board, as
151 defined in Section 11-58-102.

152 [~~(17)~~] (18) "Improvement" means a publicly or privately owned energy efficiency
153 upgrade, renewable energy system, or electric vehicle charging infrastructure that:

- 154 (a) a property owner has requested; or
- 155 (b) has been or is being installed on a property for the benefit of the property owner.

156 [~~(18)~~] (19) "Incidental refunding costs" means any costs of issuing a refunding
157 assessment bond and calling, retiring, or paying prior bonds, including:

- 158 (a) legal and accounting fees;
- 159 (b) charges of financial advisors, escrow agents, certified public accountant verification
160 entities, and trustees;
- 161 (c) underwriting discount costs, printing costs, and the costs of giving notice;
- 162 (d) any premium necessary in the calling or retiring of prior bonds;
- 163 (e) fees to be paid to the local entity to issue the refunding assessment bond and to
164 refund the outstanding prior bonds;
- 165 (f) any other costs that the governing body determines are necessary and proper to incur
166 in connection with the issuance of a refunding assessment bond; and
- 167 (g) any interest on the prior bonds that is required to be paid in connection with the
168 issuance of the refunding assessment bond.

169 [~~(19)~~] (20) "Installment payment date" means the date on which an installment
170 payment of an assessment is payable.

171 [~~(20)~~] (21) "Jurisdictional boundaries" means:

- 172 (a) for the C-PACE district or any state interlocal entity, the boundaries of the state;
- 173 and

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

175 [~~(21)~~] (22) "Local district" means a local district under Title 17B, Limited Purpose
176 Local Government Entities - Local Districts.

177 [~~(22)~~] (23) (a) "Local entity" means:

- 178 (i) a county, city, town, or metro township;
- 179 (ii) a special service district, a local district, or an interlocal entity as that term is
180 defined in Section [11-13-103](#);
- 181 (iii) a state interlocal entity;
- 182 (iv) the military installation development authority, created in Section [63H-1-201](#);

183 (v) the Utah Inland Port Authority, created in Section [11-58-201](#); or

184 (vi) any political subdivision of the state.

185 (b) "Local entity" includes the C-PACE district solely in connection with:

186 (i) the designation of an energy assessment area;

187 (ii) the levying of an assessment; and

188 (iii) the assignment of an energy assessment lien to a third-party lender under Section
189 [11-42a-302](#).

190 ~~[(23)]~~ [\(24\)](#) "Local entity obligations" means energy assessment bonds and refunding
191 assessment bonds that a local entity issues.

192 ~~[(24)]~~ [\(25\)](#) "OED" means the Office of Energy Development created in Section
193 [63M-4-401](#).

194 [\(26\)](#) "OEM vehicle" means the same as that term is defined in Section [19-1-402](#).

195 ~~[(25)]~~ [\(27\)](#) "Overhead costs" means the actual costs incurred or the estimated costs to
196 be incurred in connection with an energy assessment area, including:

197 (a) appraisals, legal fees, filing fees, facilitation fees, and financial advisory charges;

198 (b) underwriting fees, placement fees, escrow fees, trustee fees, and paying agent fees;

199 (c) publishing and mailing costs;

200 (d) costs of levying an assessment;

201 (e) recording costs; and

202 (f) all other incidental costs.

203 ~~[(26)]~~ [\(28\)](#) "Parameters resolution" means a resolution or ordinance that a local entity
204 adopts in accordance with Section [11-42a-201](#).

205 ~~[(27)]~~ [\(29\)](#) "Prior bonds" means the energy assessment bonds refunded in part or in
206 whole by a refunding assessment bond.

207 ~~[(28)]~~ [\(30\)](#) "Prior energy assessment ordinance" means the ordinance levying the
208 assessments from which the prior bonds are payable.

209 ~~[(29)]~~ [\(31\)](#) "Prior energy assessment resolution" means the resolution levying the
210 assessments from which the prior bonds are payable.

211 ~~[(30)]~~ [\(32\)](#) "Property" includes real property and any interest in real property, including
212 water rights and leasehold rights.

213 ~~[(31)]~~ [\(33\)](#) "Public electrical utility" means a large-scale electric utility as that term is

214 defined in Section 54-2-1.

215 (34) "Qualifying electric vehicle" means a vehicle that:

216 (a) meets air quality standards;

217 (b) is not fueled by natural gas;

218 (c) draws propulsion energy from a battery with at least 10 kilowatt hours of capacity;

219 and

220 (d) is an OEM vehicle except that the vehicle is fueled by a fuel described in

221 Subsection (34)(c).

222 (35) "Qualifying plug-in hybrid vehicle" means a vehicle that:

223 (a) meets air quality standards;

224 (b) is not fueled by natural gas or propane;

225 (c) has a battery capacity that meets or exceeds the battery capacity described in

226 Subsection 30D(b)(3), Internal Revenue Code; and

227 (d) is fueled by a combination of electricity and:

228 (i) diesel fuel;

229 (ii) gasoline; or

230 (iii) a mixture of gasoline and ethanol.

231 ~~[(32)]~~ (36) "Reduced payment obligation" means the full obligation of an owner of
232 property within an energy assessment area to pay an assessment levied on the property after the
233 local entity has reduced the assessment because of the issuance of a refunding assessment
234 bond, in accordance with Section 11-42a-403.

235 ~~[(33)]~~ (37) "Refunding assessment bond" means an assessment bond that a local entity
236 issues under Section 11-42a-403 to refund, in part or in whole, energy assessment bonds.

237 ~~[(34)]~~ (38) (a) "Renewable energy system" means a product, system, device, or
238 interacting group of devices that is permanently affixed to commercial or industrial real
239 property not located in the certified service area of a distribution electrical cooperative, as that
240 term is defined in Section 54-2-1, and:

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

242 (A) a photovoltaic system;

243 (B) a solar thermal system;

244 (C) a wind system;

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

247 (E) a microhydro system;

248 (F) a biofuel system; or

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

251 (ii) stores energy, including:

252 (A) a battery storage system; or

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

255 (iii) any improvement that relates physically or functionally to any of the products,
256 systems, or devices listed in Subsection ~~[(34)]~~ (38)(a)(i) or (ii).

257 (b) "Renewable energy system" does not include a system described in Subsection
258 ~~[(34)]~~ (38)(a)(i) if the system provides energy to property outside the energy assessment area,
259 unless the system:

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

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

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

266 ~~[(35)]~~ (39) "Special service district" means the same as that term is defined in Section
267 [17D-1-102](#).

268 ~~[(36)]~~ (40) "State interlocal entity" means:

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

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

274 ~~[(37)]~~ (41) "Third-party lender" means a trust company, savings bank, savings and loan
275 association, bank, credit union, or any other entity that provides loans directly to property

276 owners for improvements authorized under this chapter.