

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Allow for the Establishment of Commercial Property Assessed Clean Energy Programs

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 35-A MRSA c. 101 is enacted to read:

CHAPTER 101

COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY

§ 10201. Declaration of public purpose

It is declared that the establishment and implementation of commercial property assessed clean energy, or commercial PACE, programs to finance energy savings improvements are public purposes.

§ 10202. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Commercial PACE. "Commercial PACE" means commercial property assessed clean energy.

2. Commercial PACE agreement. "Commercial PACE agreement" means an agreement that authorizes the creation of a commercial PACE assessment on qualifying property and that is approved in writing by all owners of the qualifying property at the time of the agreement.

3. Commercial PACE assessment. "Commercial PACE assessment" means an assessment made against qualifying property to finance an energy savings improvement.

4. Commercial PACE ordinance. "Commercial PACE ordinance" means an ordinance adopted by the legislative body of a municipality for the purpose of participating in a commercial PACE program.

5. Commercial PACE program. "Commercial PACE program" means a program established under this chapter by the trust, a 3rd party contracted by the trust or a municipality, under which commercial property owners can finance energy savings improvements on qualifying property.

6. Energy savings improvement. "Energy savings improvement" means an improvement to qualifying property that, as determined by the trust, is new and permanently affixed to qualifying property and that:

A. Will result in increased energy efficiency and substantially reduced energy use and:

(1) Meets or exceeds applicable United States Environmental Protection Agency and United States Department of Energy Energy Star program or similar energy efficiency standards established or approved by the trust; or

(2) Involves weatherization of commercial or industrial property in a manner approved by the trust; or

B. Involves a renewable energy installation, an electric thermal storage system or any heating equipment that meets or exceeds standards established or approved by the trust.

7. Qualifying property. "Qualifying property" means real commercial property that:

A. Does not have a residential mortgage; and

B. Is located in a municipality that participates in a commercial PACE program pursuant to this chapter.

8. Renewable energy installation. "Renewable energy installation" means a fixture, product, system, device or interacting group of devices installed behind the meter at a qualifying property, or on contiguous property under common ownership, that produces energy or heat from renewable sources, including, but not limited to, photovoltaic systems, solar thermal systems, highly efficient wood heating systems, geothermal systems and wind systems.

9. Trust. "Trust" means the Efficiency Maine Trust established in section 10103.

§ 10203. Commercial PACE programs

1. Establishment; administration. The trust, a 3rd party contracted by the trust or a municipality that has adopted a commercial PACE ordinance may establish a commercial PACE program. Notwithstanding any other provision of law to the contrary, the trust may use funds from its administrative fund or program funds to pay reasonable administrative expenses of the trust, a 3rd party contracted by the trust or a municipality incurred to carry out the purposes of this chapter.

2. Energy savings improvement financing. Financing for energy savings improvements may be provided by any funds available for those improvements, except for proceeds from the regional greenhouse gas initiative as defined in Title 38, section 580-A, subsection 19. If funds are provided by a nongovernmental lender, including, but not limited to, banks and investment firms, the nongovernmental lender has the contractual right to receive commercial PACE assessment payments. Commercial PACE financing may cover up to 100% of an energy savings improvement's costs, including audits, energy savings improvement development and application fees.

3. Program administration; municipal participation and liability. A commercial PACE program must be administered as follows.

A. A municipality that has adopted a commercial PACE ordinance may:

(1) Administer the functions of a commercial PACE program, including, but not limited to, entering into commercial PACE agreements with commercial property owners and collecting commercial PACE assessments; or

(2) Enter into a contract with the trust to administer some or all functions of the commercial PACE program for the municipality.

B. The trust may enter into a contract with a municipality that has adopted a commercial PACE ordinance to administer commercial PACE program functions in the municipality.

C. The trust may enter into a contract with a 3rd-party administrator to administer a commercial PACE program for a municipality.

D. Notwithstanding any other provision of law to the contrary, municipal officers and municipal officials, including, without limitation, tax assessors and tax collectors, are not personally liable to the trust or to any other person for claims, of whatever kind or nature, under or related to a commercial PACE program established under subsection 1, including, without limitation, claims for or related to uncollected commercial PACE assessments.

E. Other than the fulfillment of its obligations specified in a commercial PACE agreement, a municipality has no liability to a commercial property owner for or related to energy savings improvements financed under a commercial PACE program.

4. Quality assurance system. Subject to the availability of funds, the trust shall, within one year of the establishment of a commercial PACE program under subsection 1, adopt by rule a comprehensive quality assurance system for the commercial PACE program. In developing a quality assurance system under this subsection, the trust must consult with industry stakeholders, including, but not limited to, representatives of clean energy and energy efficiency programs, contractors and environmental, energy efficiency and labor organizations.

5. Terms and conditions. The trust may, by rule, establish terms and conditions under which municipalities and commercial property owners may participate in a commercial PACE program established under subsection 1, which may include, but are not limited to, terms and conditions related to program design, implementation and administration, cost sharing, collection of commercial PACE assessments and recording of liens. The trust may vary the terms and conditions established under this subsection applicable to a participating municipality from those of other participating municipalities by mutual agreement with that municipality. Any terms or conditions established by the trust may not conflict with other provisions of this chapter.

6. Model documents; educational materials. Subject to the availability of funds, the trust shall develop and provide to municipalities model commercial PACE ordinances, model commercial PACE agreements, other model forms and documents and educational materials for use by municipalities in the implementation of commercial PACE programs.

§ 10204. Consumer underwriting and disclosure

1. Underwriting. A commercial PACE agreement entered into pursuant to a commercial PACE program must comply with underwriting requirements established by rule by the trust. Underwriting requirements established by the trust must, at a minimum:

A. Provide that the term of the commercial PACE agreement not exceed the estimated useful life of the financed energy savings improvements;

B. Require that the estimated cost savings from the energy savings improvements over the useful life of such improvements exceed the direct costs to the commercial property owner of such improvements;

C. Require proof of ownership of the qualifying property;

D. Require that the qualifying property:

(1) Is current on property taxes and sewer charges;

(2) Has no outstanding and unsatisfied tax or sewer liens;

(3) Is not subject to a reverse mortgage; and

(4) Is not subject to a mortgage or other lien on which there is a recorded notice of default, foreclosure or delinquency that has not been cured;

E. Require that the owner or owners of the qualifying property certify that there are no overdue payments on mortgages secured by the property; and

F. Require escrows for commercial PACE assessment payments when appropriate.

2. Consumer disclosure; truth in lending. A commercial PACE agreement entered into pursuant to a commercial PACE program must provide consumer disclosure consistent with the principles of truth in lending as specified in rules adopted by the trust. In adopting such rules, the trust shall seek advice from the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection and consumer credit industry stakeholders. Notwithstanding Title 9-A, section 1-202, commercial PACE assessments are not subject to the Maine Consumer Credit Code, Article 8-A.

3. Consumer privacy. The provisions of the federal Gramm-Leach-Bliley Act, 15 United States Code, Section 6801 et seq. (1999), and the applicable implementing federal regulations regarding the privacy of consumer information, apply to all consumer financial information obtained by the trust or municipalities or their designees in implementing commercial PACE programs under this chapter.

§ 10205. Commercial PACE assessments; collection; priority

1. Collection of assessments. Commercial PACE assessments constitute a lien against the qualifying property on which they are made until they are paid, and must be assessed and collected by the trust, a 3rd-party administrator contracted by the trust, a municipality or an agent designated by the trust or a municipality in any manner allowed under the commercial PACE program, consistent with applicable laws.

2. Notice; filing. A notice of a commercial PACE agreement must be filed in the appropriate registry of deeds. The filing of this notice creates a commercial PACE lien against the property subject to the commercial PACE assessment until the amounts due under the terms of the commercial PACE agreement are paid in full. A notice filed under this subsection must, at a minimum, include:

- A. The amount of funds disbursed or to be disbursed pursuant to the commercial PACE agreement;
- B. The names and addresses of the current owners of the qualifying property subject to the commercial PACE assessment;
- C. A description of the qualifying property subject to the commercial PACE assessment, including its tax map and lot number;
- D. The duration of the commercial PACE agreement;
- E. The name and address of the entity filing the notice; and
- F. Written verification of mortgage lender consent.

3. Priority. A commercial PACE assessment takes precedence over all other liens or encumbrances except a lien for taxes of the municipality where the qualifying property is located on real property, except that the precedence of such a commercial PACE assessment over any lien held by an existing mortgage holder is subject to the written consent of such existing mortgage holder.

4. Mortgage lender notice and consent. Any financial institution holding a lien, mortgage or security interest in or other encumbrance on the property for which a commercial PACE assessment is sought must be provided written notice of the commercial property owner's intention to participate in the commercial PACE program and acknowledge in writing to the commercial property owner and municipality that they have received such notice. A commercial PACE assessment may not be approved until the financial institution holding the lien, mortgage or security interest in or other encumbrance on the property has provided written consent to the commercial property owner and municipality that the property may participate in the program. This written consent must be recorded in the registry of deeds.

5. Acceleration not permitted. A commercial PACE assessment runs with the property in the same manner as a property tax lien. The portion of the assessment that has not yet become due is not eliminated by foreclosure and the assessment cannot be accelerated or extinguished until fully repaid.

6. Judicial sale or foreclosure. In the event of a judicial sale or foreclosure of a property subject to a commercial PACE lien, all parties with mortgages or liens on that property, including without limitation commercial PACE lien holders, must receive on account of such mortgages or liens sale proceeds in accordance with the priority established in this chapter and by applicable law. A commercial PACE assessment is not eliminated by foreclosure and cannot be accelerated. Only the portion of a commercial PACE assessment that is in arrears at the time of foreclosure takes precedence over other mortgages or liens; the remainder transfers with the property at resale.

7. Release of lien. A municipality shall discharge a commercial PACE lien created under subsection 2 upon full payment of the amount specified in the commercial PACE agreement. The discharge of a commercial PACE lien under this subsection must be filed with the appropriate registry of deeds.

§ 10206. Commercial property owners

1. Purchase of goods and services. A commercial property owner who has entered into a commercial PACE agreement under this chapter may purchase directly all goods and services for the energy savings improvements described in the commercial PACE agreement, subject to vendor certification by the trust and other requirements of the trust. Goods and services purchased by a commercial property owner for the energy savings improvements under a commercial PACE agreement are not subject to any public procurement ordinance or statute.

2. Rights. Commercial property owners retain all rights under contract or law against parties other than the municipality or the trust with respect to energy savings improvements financed through commercial PACE agreements.

§ 10207. Annual report

The trust shall report annually on the implementation of this chapter as part of the report required under section 10104, subsection 5.

§ 10208. Rulemaking

Rules adopted under this chapter are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

§ 10209. Construction; home rule

Nothing in this chapter may be construed to limit the home rule authority of a municipality.

§ 10210. Conformity to changed standards

If standards are adopted by any state or federal agency subsequent to a municipality's adoption of a commercial PACE ordinance or participation in a commercial PACE program and those standards substantially conflict with the municipality's manner of participation in the commercial PACE program, the municipality shall take necessary steps to conform its participation to those standards.

SUMMARY

This bill allows the Efficiency Maine Trust or a municipality to establish a commercial property assessed clean energy program to finance energy savings improvements on qualifying property.