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S.P. 582

In Senate, May 16, 2019

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

Reference to the Committee on Energy, Utilities and Technology suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator SANBORN, H. of Cumberland.
Cosponsored by Representative STROM of Pittsfield and
Senators: BLACK of Franklin, LUCHINI of Hancock, WOODSOME of York,
Representatives: BERRY of Bowdoinham, HICKMAN of Winthrop, RYKERSON of Kittery,
SHEATS of Auburn, WADSWORTH of Hiram.

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

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

3 **CHAPTER 101**

4 **COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY**

5 **§10201. Declaration of public purpose**

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

9 **§10202. Definitions**

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

12 **1. Commercial PACE.** "Commercial PACE" means commercial property assessed
13 clean energy.

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

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

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

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

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

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

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

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

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

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

8 A. Does not have a residential mortgage; and

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

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

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

18 **§10203. Commercial PACE programs**

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

25 **2. Energy savings improvement financing.** Financing for energy savings
26 improvements may be provided by any funds available for those improvements, except
27 for proceeds from the regional greenhouse gas initiative as defined in Title 38, section
28 580-A, subsection 19. If funds are provided by a nongovernmental lender, including, but
29 not limited to, banks and investment firms, the nongovernmental lender has the
30 contractual right to receive commercial PACE assessment payments. Commercial PACE
31 financing may cover up to 100% of an energy savings improvement's costs, including
32 audits, energy savings improvement development and application fees.

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

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

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

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

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

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

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

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

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

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

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

39 **§10204. Consumer underwriting and disclosure**

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

- 1 A. Provide that the term of the commercial PACE agreement not exceed the
2 estimated useful life of the financed energy savings improvements;
- 3 B. Require that the estimated cost savings from the energy savings improvements
4 over the useful life of such improvements exceed the direct costs to the commercial
5 property owner of such improvements;
- 6 C. Require proof of ownership of the qualifying property;
- 7 D. Require that the qualifying property:
- 8 (1) Is current on property taxes and sewer charges;
9 (2) Has no outstanding and unsatisfied tax or sewer liens;
10 (3) Is not subject to a reverse mortgage; and
11 (4) Is not subject to a mortgage or other lien on which there is a recorded notice
12 of default, foreclosure or delinquency that has not been cured;
- 13 E. Require that the owner or owners of the qualifying property certify that there are
14 no overdue payments on mortgages secured by the property; and
- 15 F. Require escrows for commercial PACE assessment payments when appropriate.

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

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

28 **§10205. Commercial PACE assessments; collection; priority**

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

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

1 A. The amount of funds disbursed or to be disbursed pursuant to the commercial
2 PACE agreement;

3 B. The names and addresses of the current owners of the qualifying property subject
4 to the commercial PACE assessment;

5 C. A description of the qualifying property subject to the commercial PACE
6 assessment, including its tax map and lot number;

7 D. The duration of the commercial PACE agreement;

8 E. The name and address of the entity filing the notice; and

9 F. Written verification of mortgage lender consent.

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

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

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

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

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

