

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-ONE

—
S.P. 147 - L.D. 340

**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 lien. "Commercial PACE lien" means a lien secured against a qualifying property that is created by a commercial PACE assessment.

5. 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.

6. 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.

7. Energy savings improvement. "Energy savings improvement" means an improvement or series of improvements to qualifying property that, as determined by the trust, are new and permanently affixed to qualifying property and that:

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

(1) Meet or exceed 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) Involve weatherization of commercial or industrial property in a manner approved by the trust; or

B. Involve a renewable energy installation, an energy storage system as defined in section 3481, subsection 6, an electric thermal storage system, electric vehicle supply equipment or heating equipment that meets or exceeds standards established or approved by the trust. Heating equipment that is not a renewable energy installation must be heating equipment that produces the lowest carbon emissions of any heating equipment reasonably available to the property owner, as determined by the trust, and must meet the requirements of section 10204, subsection 1, paragraph B.

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

A. Does not have a residential mortgage;

B. Is not owned by a residential customer or small commercial customer as defined in section 3106, subsection 1, paragraphs C and D, respectively;

C. Consists of 5 or more rental units if the property is a commercial building designed for residential use;

D. Is not owned by a federal, state or municipal government or public school; and

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

9. 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 that do not on average generate more energy or heat than the peak demand of the property.

10. 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 provision of law to the contrary, the trust may use funds from its administrative fund, program funds or fees on commercial PACE assessments to pay reasonable administrative expenses of the trust or to pay a 3rd party contracted by the trust for costs 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, including billing and collection of commercial PACE assessments, except that the trust may not administer the collection of commercial PACE assessments in default pursuant to section 10205, subsection 5.

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 part or all of a commercial PACE program for a municipality.

D. Notwithstanding any provision of law to the contrary, staff or trustees of the trust, 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, neither the trust nor a municipality has any liability to a commercial property owner for or related to energy savings improvements financed under a commercial PACE program.

F. The trust may collect fees necessary to administer commercial PACE programs.

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 quality assurance system for the commercial PACE program. In developing a quality assurance system under this subsection, the trust shall 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.

A commercial PACE assessment may be used to secure financing for the construction of a new building or facility. Financing secured by a commercial PACE assessment for the construction of a new building or facility must be used for energy savings improvements on the property that significantly exceed the energy standards of the Maine Uniform Building and Energy Code, adopted pursuant to Title 10, section 9722, subsection 6, paragraph B, or the applicable energy code in the municipality where the project is located, as determined by the trust. A lender under this chapter may disburse funds for new construction projects before project completion.

6. Model documents; educational materials. 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. Underwriting

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 achieve for the property owner a savings-to-investment ratio of not less than 1.0;

C. Require that the qualifying property have a debt service coverage ratio of not less than 1.0 at the time the commercial PACE agreement is entered into;

D. Require that the qualifying property have a loan-to-value ratio of not more than 1.0 at the time the commercial PACE agreement is entered into, calculated by dividing the total amount of debt secured by the property by the property value;

E. Require that the qualifying property's commercial PACE assessment-to-value ratio be no greater than 0.35;

F. Require proof of ownership of the qualifying property;

G. Require that the qualifying property:

(1) Be current on real estate taxes, personal property taxes and municipal sewer, sanitary and water district charges;

(2) Have no outstanding and unsatisfied tax or municipal sewer, sanitary or water district liens; and

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

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

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

§10205. Commercial PACE assessments; collection; priority

1. Collection of assessments. A commercial PACE assessment constitutes a lien on the qualifying property until it is paid in full 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. If the trust or a 3rd-party administrator contracted by the trust collects commercial PACE assessments on behalf of a municipality, the trust shall periodically report to the municipality on the status of the commercial PACE assessments in the municipality and shall notify the municipality immediately of any delinquent commercial PACE assessments. Upon receiving notification from the trust of a delinquent commercial PACE assessment, a municipality shall notify the holder of any mortgage on the property of the delinquent assessment.

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, if there is a mortgage on the property.

3. Priority. A commercial PACE lien secures payment for any unpaid commercial PACE assessment and, together with all associated interest and penalties for default and associated attorney's fees and collection costs, takes precedence over all other liens or encumbrances except a lien for real property taxes of the municipality and liens of municipal sewer, sanitary and water districts. From the date of recording, a commercial

PACE lien is a priority lien against a property, subject only to liens set out in section 6111-A, Title 36, section 552 and Title 38, sections 1050 and 1208, except that the priority of such a commercial PACE lien over any lien, except a lien for real property taxes of the municipality or a lien of a municipal sewer, sanitary or water district, that existed prior to the commercial PACE lien is subject to the written consent of such existing lienholder.

4. Mortgage lender notice and consent. Any financial institution holding a lien, mortgage or security interest in or other collateral 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 must acknowledge in writing to the commercial property owner and municipality that the financial institution has 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 collateral encumbrance on the property has provided written consent to the commercial property owner and municipality that the borrower may participate and enroll the collateral property in the commercial PACE program. This written consent must be filed in the registry of deeds and must include a written acknowledgement and understanding by the financial institution holding the lien, mortgage or security interest in or other collateral encumbrance on the property:

- A. Of the priority status provided to commercial PACE liens pursuant to subsection 3;
- B. Of the foreclosure process applicable to properties subject to commercial PACE liens under subsection 5; and
- C. That the financial institution is not required to but has voluntarily elected to consent to the enrollment of the property in the commercial PACE program.

5. Collection, default and foreclosure. A commercial PACE assessment for which notice is properly recorded under this section creates a lien on the property. The portion of the assessment that has not yet become due is not eliminated by foreclosure, and the lien may not be accelerated or extinguished until fully repaid.

A commercial PACE assessment and any interest, fees, penalties and attorney's fees incurred in its collection must be collected in the same manner as the real property taxes of the municipality in which the property is located. If a commercial PACE assessment is delinquent or in default and the borrower or property owner is delinquent in any tax debt due to the municipality in which the property is located, collection may occur only by the recording of liens and by foreclosure under Title 36, sections 942 and 943. Liens must be recorded and released in the same manner as liens for real property taxes.

If only a commercial PACE assessment is delinquent but the borrower or property owner is current on payment of all municipal taxes due to the participating municipality, then a commercial PACE lienholder shall accept an assignment of the commercial PACE lien, as provided in the written agreement between the participating municipality and the commercial PACE lender. The assignee shall have and possess all the same powers and rights at law as the participating municipality and its tax collector with regards to the priority of the commercial PACE lien, the accrual of interest and fees and the costs of collection. The assignee shall have the same rights to enforce the commercial PACE lien as any private party or lender holding a lien on real property, including, but not limited to, the right of foreclosure consistent with Title 14, sections 6203-A and 6321 and any other action in contract or lawsuit for the enforcement of the commercial PACE lien. The

assignee shall recover costs and reasonable attorney's fees incurred as a result of any foreclosure action or other legal proceeding brought pursuant to this subsection, which may be collected by the assignee at any time after the assignee has made demand for payment.

6. Judicial or nonjudicial sale or foreclosure. In the event of a judicial or nonjudicial sale or foreclosure of a property subject to a commercial PACE lien by a lienholder that is not a commercial PACE lienholder, the commercial PACE lien must survive the foreclosure or sale to the extent of any unpaid installment, interest, penalties or fees secured by the lien that were not paid from the proceeds of the sale. All parties with mortgages or liens on that property, including without limitation commercial PACE lienholders, 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.

Unless otherwise agreed upon by the commercial PACE lender, all payments on a commercial PACE assessment that become due after the date of transfer by judicial or nonjudicial sale or foreclosure must continue to be secured by a lien on the property and are the responsibility of the transferee.

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. A discharge under this subsection must be filed in the appropriate registry of deeds and must include reference to the notice required under subsection 2.

§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 any applicable vendor certification required 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.