

MAINE STATE LEGISLATURE

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Amendment Name: Amendment CA (S-458) (LD 1748 2020)

Date: 8/3/2020

Date: (Filing No. S-)

ENERGY, UTILITIES AND TECHNOLOGY

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STATE OF MAINE
SENATE
129TH LEGISLATURE
SECOND SPECIAL SESSION

COMMITTEE AMENDMENT " " to S.P. 582, L.D. 1748, Bill, "An Act To Allow for the Establishment of Commercial Property Assessed Clean Energy Programs"

Amend the bill in section 1 in §10202 by inserting after subsection 3 the following:

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

Amend the bill in section 1 in §10202 by striking out all of subsections 6 and 7 (page 1, lines 27 to 34 and page 2, lines 1 to 10 in L.D.) and inserting the following:

'6. 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 the lowest carbon emissions producing 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.

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

A. Does not have a residential mortgage;

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

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

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

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

8 Amend the bill in section 1 in §10202 in subsection 8 in the last line (page 2, line 16
9 in L.D.) by inserting after the following: "wind systems" the following: 'that do not on
10 average generate more energy or heat than the peak demand of the property'

11 Amend the bill in section 1 in §10202 by renumbering the subsections to read
12 consecutively.

13 Amend the bill in section 1 by striking out all of §§10203 to 10205 and inserting the
14 following:

15 **'§10203. Commercial PACE programs**

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

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

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

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

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

36 (2) Enter into a contract with the trust to administer some or all functions of the
37 commercial PACE program for the municipality, including billing and collection
38 of commercial PACE assessments, except that the trust may not administer the
39 collection of commercial PACE assessments in default pursuant to section 10205,
40 subsection 5.

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

4 C. The trust may enter into a contract with a 3rd-party administrator to administer
5 part or all of a commercial PACE program for a municipality.

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

12 E. Other than the fulfillment of its obligations specified in a commercial PACE
13 agreement, neither the trust nor a municipality has any liability to a commercial
14 property owner for or related to energy savings improvements financed under a
15 commercial PACE program.

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

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

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

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

41 **6. Model documents; educational materials.** The trust shall develop and provide
42 to municipalities model commercial PACE ordinances, model commercial PACE
43 agreements, other model forms and documents and educational materials for use by
44 municipalities in the implementation of commercial PACE programs.

1 **§10204. Underwriting**

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

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

7 B. Require that the estimated cost savings from the energy savings improvements
8 over the useful life of such improvements achieve for the property owner a savings-
9 to-investment ratio of not less than 1.0;

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

12 D. Require that the qualifying property have a loan-to-value ratio of not more than
13 1.0 at the time the commercial PACE agreement is entered into, calculated by
14 dividing the total amount of debt secured by the property by the property value;

15 E. Require that the qualifying property's assessment-to-value ratio be no greater than
16 0.35;

17 F. Require proof of ownership of the qualifying property;

18 G. Require that the qualifying property:

19 (1) Be current on property taxes and sewer charges;

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

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

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

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

26 **§10205. Commercial PACE assessments; collection; priority**

27 **1. Collection of assessments.** A lender providing financing under a commercial
28 PACE program has a lien on the qualifying property to secure the payment of an unpaid
29 commercial PACE assessment. A lien resulting from a commercial PACE assessment on
30 the qualifying property must be assessed and collected by the trust, a 3rd-party
31 administrator contracted by the trust, a municipality or an agent designated by the trust or
32 a municipality in any manner allowed under the commercial PACE program, consistent
33 with applicable laws. If the trust or a 3rd-party administrator contracted by the trust
34 collects commercial PACE assessments on behalf of a municipality, the trust shall
35 periodically report to the municipality on the status of the commercial PACE assessments
36 in the municipality and shall notify the municipality immediately of any delinquent
37 commercial PACE assessments. Upon receiving notification from the trust of a
38 delinquent commercial PACE assessment, a municipality shall notify the holder of any
39 mortgage on the property of the delinquent assessment.

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

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

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

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

12 D. The duration of the commercial PACE agreement;

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

14 F. Written verification of mortgage lender consent, if there is a mortgage on the
15 property.

16 **3. Priority.** A commercial PACE lien secures payment for any unpaid commercial
17 PACE assessment and, together with all associated interest and penalties for default and
18 associated attorney's fees and collection costs, takes precedence over all other liens or
19 encumbrances except a lien for real property taxes of the municipality and liens of
20 municipal sewer and water districts. From the date of recording, a commercial PACE lien
21 is a priority lien against a property, subject only to liens set out in section 6111-A, Title
22 36, section 552 and Title 38, sections 1050 and 1208, except that the priority of such a
23 commercial PACE lien over any lien, except for a lien held by a sewer, water or other
24 municipal district, that existed prior to the commercial PACE lien is subject to the written
25 consent of such existing lienholder.

26 **4. Mortgage lender notice and consent.** Any financial institution holding a lien,
27 mortgage or security interest in or other collateral encumbrance on the property for which
28 a commercial PACE assessment is sought must be provided written notice of the
29 commercial property owner's intention to participate in the commercial PACE program
30 and acknowledge in writing to the commercial property owner and municipality that the
31 financial institution has received such notice. A commercial PACE assessment may not
32 be approved until the financial institution holding the lien, mortgage or security interest in
33 or other collateral encumbrance on the property has provided written consent to the
34 commercial property owner and municipality that the borrower may participate and enroll
35 the collateral property in the commercial PACE program. This written consent must be
36 filed in the registry of deeds.

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

41 A lien created by a commercial PACE assessment recorded in the registry of deeds and
42 any interest, fees, penalties and attorney's fees incurred in its collection must be collected
43 in the same manner as the real property taxes of the municipality in which the property is

1 located. If a commercial PACE assessment is delinquent or in default, collection may
2 occur only by the recording of liens and by foreclosure under Title 36, sections 942 and
3 943. Liens must be recorded and released in the same manner as liens for real property
4 taxes.

5 **6. Judicial sale or foreclosure by 3rd-party lienholder.** In the event of a judicial
6 or nonjudicial sale or foreclosure by a 3rd-party lienholder of a property subject to a
7 commercial PACE lien, the lien must survive the foreclosure or sale to the extent of any
8 unpaid installment, interest, penalties or fees secured by the lien that were not paid from
9 the proceeds of the sale. All parties with mortgages or liens on that property, including
10 without limitation commercial PACE lien holders, must receive on account of such
11 mortgages or liens sale proceeds in accordance with the priority established in this
12 chapter and by applicable law. A commercial PACE assessment is not eliminated by
13 foreclosure and cannot be accelerated. Only the portion of a commercial PACE
14 assessment that is in arrears at the time of foreclosure takes precedence over other
15 mortgages or liens; the remainder transfers with the property at resale.

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

20 **7. Release of lien.** A municipality shall discharge a commercial PACE lien created
21 under subsection 2 upon full payment of the amount specified in the commercial PACE
22 agreement. A discharge under this subsection must be filed with the appropriate registry
23 of deeds and must include reference to the notice required under subsection 2.'

24 Amend the bill in section 1 in §10206 in subsection 1 in the 4th line (page 6, line 5 in
25 L.D.) by striking out the following: "vendor certification" and inserting the following:
26 'any applicable vendor certification required'

27 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
28 section number to read consecutively.

29 SUMMARY

30 This amendment makes the following changes to the bill.

31 1. It defines "commercial PACE lien" and makes technical changes distinguishing
32 between a commercial PACE lien and a commercial PACE assessment.

33 2. It clarifies the definition of "qualifying property" to require that the property:

34 A. Is not owned by a residential customer or small commercial customer as defined
35 in the Maine Revised Statutes, Title 35-A, section 3106, subsection 1;

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

38 C. Is not owned by a federal, state or municipal government or public school.

39 3. It allows that a commercial PACE assessment may be used to secure financing for
40 the construction of a new building or facility and provides that financing secured for such
41 projects must be used for energy savings improvements on the property that significantly

1 exceed the energy standards of the Maine Uniform Building and Energy Code or the
2 applicable energy code in the municipality where the project is located, as determined by
3 the Efficiency Maine Trust.

4 4. It allows a lender to disburse funds for new construction projects financed through
5 a commercial PACE assessment before project completion.

6 5. It creates additional underwriting requirements for the savings-to-investment ratio,
7 debt service coverage ratio and combined loan-to-value ratio of a qualifying property.

8 6. It removes from the bill provisions regarding underwriting and disclosure that
9 apply to the residential property sector.

10 7. It clarifies that a lender providing financing under a commercial PACE program
11 has a lien on the qualifying property to secure the payment of an unpaid commercial
12 PACE assessment.

13 8. It requires that if the trust or a 3rd-party administrator contracted by the trust
14 collects commercial PACE assessments on behalf of a municipality, the trust must
15 periodically report to the municipality on the status of the commercial PACE assessments
16 and must notify the municipality immediately of any delinquent commercial PACE
17 assessments and that upon receiving notification from the trust of a delinquent
18 commercial PACE assessment, a municipality must notify the holder of any mortgage on
19 the property of the delinquent assessment.

20 9. It establishes the priority of a commercial PACE lien versus other liens that may
21 be on the property.

22 10. It creates requirements regarding the recording of commercial PACE
23 assessments and commercial PACE liens.

24 11. It creates and clarifies collection procedures for commercial PACE assessments
25 that are delinquent or in default.

26 12. It makes minor technical changes to clarify the bill and make the language
27 consistent in each section.



129th MAINE LEGISLATURE

LD 1748

LR 1608(02)

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

Fiscal Note for Bill as Amended by Committee Amendment " "

Committee: Energy, Utilities and Technology

Fiscal Note Required: Yes

Fiscal Note

Current biennium cost increase - Efficiency Maine Trust

Current biennium revenue increase - Efficiency Maine Trust

Fiscal Detail and Notes

This bill authorizes the Efficiency Maine Trust (EMT), a third party contracted by EMT or a municipality to establish and administer a commercial property assessed clean energy (PACE) program. The bill directs EMT to adopt a quality assurance system and develop and provide model commercial PACE ordinances, forms and other implementation materials to interested parties. EMT is authorized to collect fees to cover its costs of administering the program. The creation and administration of the commercial PACE program will result in additional expenditures by EMT. These expenditures will be offset by fees collected. No estimate of these costs and revenues is made at this time.